

Crl.O.P.No.23128 of 2018

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.07.2022

PRONOUNCED ON : 22.07.2022

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Crl.O.P.No.23128 of 2018

and

Crl.M.P.No.12895 of 2018

Dr.R.Senthilkumar

.. Petitioner/Sole Accused

Vs.

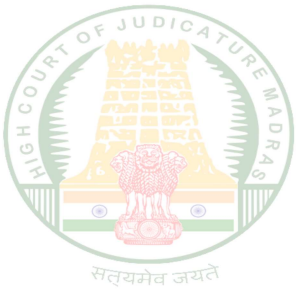
1. The State rep. by
The Sub Inspector of Police,
Panamarathupatti Police Station,
Salem District,
(Crime No.168 of 2017)

.. 1st Respondent/Complainant

2. Block Medical Officer,
Government Primary Health Centre,
Panamarathupatty,
Salem.

.. 2nd Respondent/Defacto complainant

PRAYER: This Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records and quash the Charge Sheet registered in C.C.No.8 of 2018, dated 25.01.2018 on the file of the Judicial Magistrate No.1, Salem.



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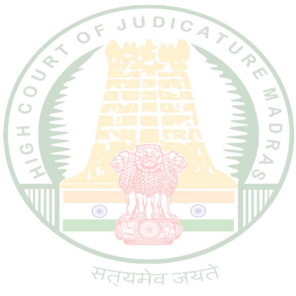
For Petitioner : Mr.V.Prakash Babu

For Respondents : Mr.S.Udaya Kumar (for R1)
Government Advocate (Crl. Side)

ORDER

The Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, seeking to call for the records and quash the Charge Sheet registered in Crime No.168 of 2017 dated 25.01.2018 in C.C.No.8 of 2018, on the file of the learned Judicial Magistrate No.1, Salem.

2. The Block Medical Officer, Government Primary Health Centrw, Panamarathupatty, Salem District, on the orders of the Joint Director, Medical Department, Salem had conducted raid in the premises of the petitioner namely, “Shree Senthil Balaji Polyclinic” on 09.10.2017 and found that the petitioner having been studied BHMS Homoeopathy Medicine had been practising in Allopathy Medicine and seized Allopathy Medicine from the clinic of the petitioner. Based on the above complaint dated 09.10.2017, the respondent police had registered FIR on 09.10.2017,



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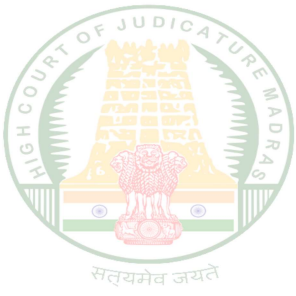
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against the petitioner in Crime No.168/2017 under Section 15(3) of the Indian Medical Council Act, 1956 and under Section 420 of the Indian Penal Code. Challenging the same, the above Criminal Original Petition is filed.

3. Heard the learned counsel for the petitioner and the learned Government Advocate (Crl.Side).

4. The case of the petitioner is that he had completed BHMS (Bachelor of Homoeopathic Medicine and Surgery), from the Tamil Nadu Dr.M.G.R.Medical University and registered himself in the Tamil Nadu Homoeopathy Medical Council and thus, the petitioner is a registered medical practitioner in Indian System of Medicine.

5. My attention is drawn to the Circular dated 15.10.2010 issued by the Health and Family Welfare Department, Government of Tamil Nadu, wherein it has been already held that “the institutionally qualified Practitioners of Ayurveda, Siddha and Unani, who are registered in the



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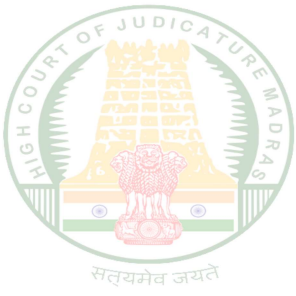
Tamil Nadu Board of Indian Medicine, Chennai are eligible to practice in the respective system with Allopathy based on the training and teaching they had in the Course. But they cannot exclusively do the practice in Allopathy Medicine.”

6. Learned Counsel for the petitioner relied upon the decisions of this Court in (i) WP (MD) No.7678 of 2010 dated 11.02.2011, (ii) 2010 SCC OnLine Mad 4034, (iii) WP (MD) No.10041 of 2017 dated 25.05.2017 and (iv) Crl.O.P.(MD). No.5596 of 2015 dated 25.08.2015, to the effect that to a limited extent, the petitioner, who has completed BHMS (Bachelor of Homoeopathic Medicine and Surgery), can use the Allopathy medicines and a circular was also issued to this effect. The Circular issued is as follows:

"Rc.No.147472/Cr.IV (2)/2010 Office of the Director General of Police
Chennai-600 004.Dated:19.06.2010

CIRCULAR MEMORANDUM

Sub: Indian System of Medicine-Police action against qualified Indian
Medicine Doctors-Instructions issued Regarding.



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Ref: Govt.Lr.No.22715/IM II(2)/Health Family Welfare Department,
dt.15.06.2010 & 16.06.2010

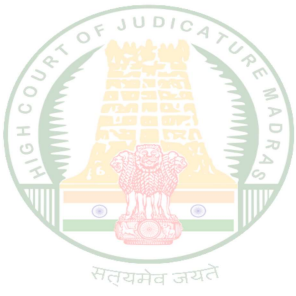
...

In the reference cited, the Government have stated that the Police Department in the course of their action against the Quacks has inspected the clinics run by the registered medical practitioners in Siddha, Ayurveda, Homoeopathy and Unani and arrested some of them as if they had practiced Allopathy System of Medicine. The Government have informed that as per section 17(3) B of the Indian Medicine Central Council Act, 1970 the institutionally qualified practitioners of Siddha, Ayurveda and Unani Tibb Homeopathy are eligible to practice respective systems with modern scientific medicine including Surgery and Gynecology Obstetrics, Anesthesiology, ENT, Ophthalmology etc based on the training and teaching.

2) Hence all Commissioners of Police/Inspectors General of Police, Deputy Inspector General of Police and Superintendents of Police are requested to instruct the Police Officers in the Cities and Districts not to intervene with the practice of registered practitioners of Siddha, Ayurveda, Unani, Homeopathy and Naturopathy who are registered in the Tamil Nadu Siddha Medical Council, Tamil Nadu Board of Indian Medicine and Tamil Nadu Homeopathy Medical Council. If any cases of the Doctors who are already under arrest may be reviewed with reference to the above clarification.

3) The letter from the Health & Family Welfare Department at 15.06.2010 is enclosed for perusal.

4) The instructions should be scrupulously followed.



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5) Receipt of this Circular Memo may be acknowledged.

Sd/- K.Radhakrishnan ADGP(Law & Order)

To:

All Commissioners of Police in the Cities

All Inspectors General of Police in Zones

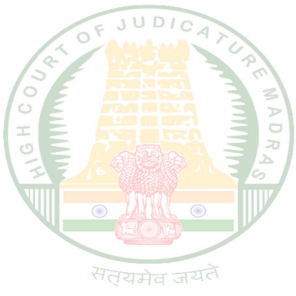
All Deputy Inspectors General of Police in Range.

All Superintendents of Police in the Districts."

/True Copy/Forwarded/By Order/ Personal Assistant (Admn)"

7. In the light of the said circular, it is imperative that no proceedings can be initiated against any of those registered practitioners in Siddha, Ayurveda, Homeopathy and Unani, who are eligible to practice irrespective of the respective system also with Modern Scientific Medicine including Surgery and Gynecology Obstetrics, Anesthesiology, ENT, Ophthalmology etc,. Such registration of the medical practitioners with Tamil Nadu Siddha Medical Council, Tamil Nadu Board of Indian Medicine and Tamil Nadu Homeopathy Medical Council as well as such of those qualified doctors who were recognised as such by the Madurai Kamaraj

University and Tamil Nadu Dr. MGR Medical University who have been qualified respectively in the system of bachelor of Siddha Medicine and



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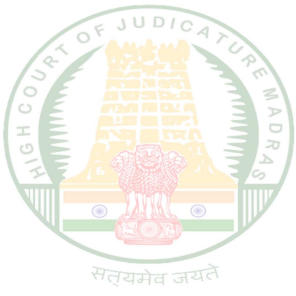
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Surgery.

8. In the said circular, a specific request has been made by the Commissioner of Police to his subordinates not to intervene with the practice of registered practitioners of Siddha, Ayurveda, Unani, Homeopathy and Naturopathy who are registered in the Tamil Nadu Siddha Medical Council, Tamil Nadu Board of Indian Medicine and Tamil Nadu Homeopathy Medical Council. Hence, it is clear that without following the said direction, the present case has been registered by the respondent police.

9. Further, in the judgment reported in CDJ 2010 MHC 6560, in paragraph 10, it has been held as follows:

"10.The learned counsel appearing for the petitioners would cite the government order in G.O.Ms.248, Health and Family Welfare (IM 2-2), dated 08.09.2010, which is extracted here under for ready reference:

No.II(2)/HF/575/2010.- Whereas, the rights of practitioners of Indian System of Medicine are protected under Section



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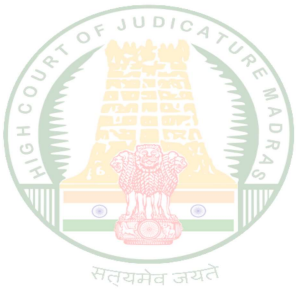
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17(3)(b) of the Indian Medicine Central Council Act, 1970
(Central Act 48 of 1970);

And Whereas, as per Section 2(1)(3) of the said Act, "Indian Medicine: means the system of Indian Medicine commonly known as Ashtang Ayurveda, Siddha or Unani Tibb whether supplemented or not by such modern advances, as the Central Council of Indian Medicine may declare by notification from time to time;

And Whereas, the Central Council of Indian Medicine in its Notification F.No.28-5/2004-AY (MM), dated the 19th May 2004, has clarified that the ward "Modern Advances" in clause (e) of Section 2(1) of the said Act as advances made in the various branches of modern scientific medicine in all its branches of internal medicine, surgery, gynaecology and obstetrics, anaesthesiology, diagnostic procedures and other technological innovation made from time to time and declare that the courses and curriculum conducted and recognized by the Central Council of Indian Medicine are supplemented with such modern advances;

And Whereas, the Central Council of Indian Medicine has improved and strengthened the syllabus of Indian Medicine by including subjects with regard to National Programmes like National Malaria Eradication programmes, Tuberculosis, Leprosy, Family Welfare Programme, Reproductive and Child Health



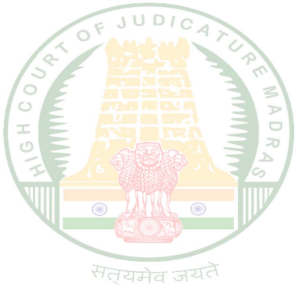
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Programme, Immunisation Programme, AIDS, Cancer, etc:

Now, Therefore, under sub-clause (iii) of clause (ee) of Rule 2 of the Drugs and Cosmetics Rules, 1945, the Governor of Tamil Nadu hereby declares every registered medical practitioner holding the qualification specified in the second, third or fourth Schedule to the Indian Medicine Central Council Act, 1970 (Central Act 48 of 1970) and Part III of the Schedule to the Tamil Nadu Siddha System of Medicine (Development and Registration of Practitioners) Act, 1997 (Tamil Nadu Act 34 of 1997) and registered in the Medical Register of the State maintained under the aforesaid Acts, as a person practicing the modern scientific system of medicine for the purposes of the Drugs and Cosmetics Act, 1940 (Central Act 23 of 1940).

10. In view of the settled preposition of law, as stated in the above decision and also taking note of the factual position that the petitioner herein is a qualified medical practitioner and after seeing the seizure mahazar, I find that the law laid down in the above said decision, squarely covers the factual position and therefore, I have no hesitation to quash the charge sheet. Accordingly, the Charge Sheet registered in C.C.No.8 of 2018, dated 25.01.2018 on the file of the learned Judicial Magistrate No.1, Salem, is



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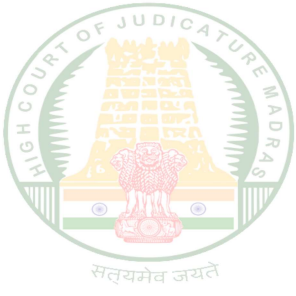
quashed and the Criminal Original Petition is allowed. Consequently, the connected Criminal Miscellaneous Petition is closed.

22.07.2022

Internet : Yes

Index : Yes/No

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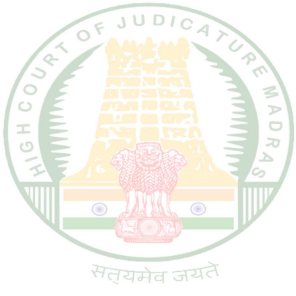


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To

1. The Sub Inspector of Police,
Panamarathupatti Police Station,
Salem District,
2. Block Medical Officer,
Government Primary Health Centre,
Panamarathupatty,
Salem.
3. The Public Prosecutor,
High Court, Madras.



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RMT.TEEKAA RAMAN,J.,

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Pre-delivery order in
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