

**Pandian Vs. The State Rep.By Its**

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**SooperKanoon Citation :** [sooperkanoon.com/65064](http://sooperkanoon.com/65064)

**Court :** Chennai

**Decided On :** Aug-25-2015

**Judge :** The Honourable Ms.Justice R.Mala

**Appellant :** Pandian

**Respondent :** The State Rep.By Its

**Judgement :**

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

25. 08.2015 CORAM THE HONOURABLE MS.JUSTICE R.MALA CRL.O.P.(MD).No.5596 of 2015 & M.P(MD)No.1 of 2015 Pandian : Petitioner/Sole accused Vs. The State rep.by its The Inspector of Police, Sethubavachathiram Police Station, Thanjavur District. :Respondent/Respondent PRAYER Petition is filed under Section 482 of the Criminal Procedure Code praying to call for the records pertaining to the FIR in Crime No.21 of 2015 on the file of the respondent police and quash the same as illegal. !For Petitioner : Mr.T.Lenin Kumar For Respondent : Mr.K.Anbarasan Govt.Advocate. :

**ORDER**

The petitioner has come forward with this petition seeking to quash the F.I.R in Crime No.21 of 2015 on the file of the respondent police for the offences under Section 14(c) IPC of Indian Medical Council Act, 1956, stating that without obtaining any certificate or licence, he is practising medical profession. To

controvert the same, the petitioner herein has annexed along with the petition a copy of the Homoeopathy Medical Registration Certificate dated 14.03.2001 to show that he is a registered Homeopathy Medical practitioner. It is stated by the petitioner that there is no averment in the F.I.R with regard to his practising in allopathy medicine and except the complainant, who is the Inspector of Police, no person has alleged that he took treatment in the allopathy. On these grounds, the petitioner seeks quashment of the FIR.

2. In support of his contention, the learned Counsel appearing for the the petitioner relied upon the decision in the case of Tamil Nadu Siddha Medical Graduates'Association rep.by its President, 354, 19th Cross Street, NSK Nagar, Chennai-600 106 -vs- Letika Saran, I.P.S., The Director General of Police (Law and Order) Kamarajar Road, Mylapore, Chennai-600 004 reported in 2010(4) CTC798 and another decision reported in CDJ 2010 MHC6560and prayed for quashing the FIR.

3. Resisting the same, the learned Government Advocate appearing for the respondent submitted in the counter that the case has been registered against him under Section 14 (c) of the Indian Medical Council Act, since the petitioner is not a qualified practitioner in Allopathic Medicine. On receiving the information, the respondent Police had visited the premises of the petitioner and found that the petitioner was prescribing Allopathic medicines to some of his patients, which was seized under the seizure magazar.

4. On a perusal of the counter, it is seen that the respondent police have not filed any relevant papers to prove as to which disease, the petitioner was prescribing Allopathy medicines and more over, the person, who was alleged to be treated by the petitioner, has not been examined by the respondent police.

5. It is appropriate to extract the averments as found mentioned in the FIR, as under: "ufrpa jftypd; nghpy; ky;ypg;gl;odk; uhkh; nfhapy; bjUtpy; fz;fhzpf;Fk; nghJ mq;F ahnuh nghypahf kUj;Jt rpfpr;ir bra;J tUtij mwpe;J gh;f;Fk; nghJ ,jd; kh;ldpy; fz;l me;j egh; jg;gpnaho tpl;lhh;. tprhpf;f jg;gpnahoa vjphpahdth; ve;jtpj muR mDkjp kw;Wk; chpkk; ,y;yhkYk;> Kiwahd kUj;Jtf; fy;Yhhp rh;W bgwhkYk; kdpj capUf;F Mgj;J Vw;gLk; vd;W bjhpe;Jk; kUj;Jt bjhHpy; bra;J tUtJ bjhpa te;jJ."

In such circumstances, it is not known as to why the respondent Police visited the premises of the petitioner all of a sudden, without even receiving any complaint from the patient, who was treated in Allopathic medicine by the petitioner. It is pertinent to state that neither any document of prescription has been filed nor statement from the patient treated in Allopathic medicine, recorded under Section 161 produced before this Court.

6. Taking into account the same, I am of the view that there is no prima facie material placed before this Court to see that the petitioner is practicing in Allopathy medicine. A reading of the judgment in Tamil Nadu Siddha Medical Graduates' Association rep. by its President, 354, 19th Cross Street, NSK Nagar, Chennai-600 106 -vs- Letika Saran, I.P.S., The Director General of Police (Law and Order) Kamarajar Road, Mylapore, Chennai-600 004 (supra), would reveal that a Circular has been incorporated in the said judgment, in which it has been stated as under: "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. 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, Homeopathy 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. 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)" 4. 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 F.M.IBRAHIM KALIFULLA,J, kua 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 Surgery. If any action had been taken against such of those medical practitioners referred to above, it is needless to state that, such action should be dropped forthwith pending further orders in the writ petition. 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.

7. In the judgment reported in CDJ 2010 MHC6560 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 (IM22), 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 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 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).

8. Considering the submissions made on either side and also bearing in mind the Circular issued by the Government, vide which a direction was issued not to interfere with the medical practitioners of Ayurvedic and Homeopathy as per the licence given to them, I am of the view that it is a fit case for quashing the FIR. Accordingly, the FIR in Crime No.21 of 2015 on the file of the respondent police

against the petitioner is hereby quashed and the Criminal Original Petition is allowed. Consequently, the connected Miscellaneous petition is closed. To The Inspector of Police, Sethubavachathiram Police Station, Thanjavur District. .

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