
(2015) 08 MAD CK 0179
In the Madras High Court
Case No : Criminal R.C. (MD) No. 372 of 2007

P. Santosh Kumar

APPELLANT

Vs

The Inspector of Police and Others

RESPONDENT

Date of Decision : 10-08-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173, 239
Penal Code, 1860 (IPC) — Section 268, 368, 420, 486

Citation : (2015) 08 MAD CK 0179

Hon'ble Judges : S. Vimala, J

Bench : Single Bench

Advocate : N. Sundareshan for Sun Associates, for the Appellant; P. Kandasamy, Govt. Advocate, Advocates for the Respondent

Judgement

S. Vimala, J—Neither any property nor valuable security is involved in this case to attract Section 420 of I.P.C. Despite it, charge sheet has been filed under Section 420 IPC. Additionally, charge sheet has been filed imputing charges under Section 368 of I.P.C., and Sections 3, 4 and 8 of the Tamil Nadu Private Clinical Establishments (Regulation) Act, 1997, as against the three accused persons. viz. Yusuf Ali, Santosh Kumar and Rajamarthandam.

2. Dr.Vetrivel, the Secretary of Indian Medical Association, Tiruchendur District is the defacto complainant. He preferred a complaint against those three accused persons alleging that the three accused persons were running a hospital at Udangudi in the name of Yusuf Hospital and that they were treating and dispensing English medicines to patients for which they were lacking in required qualification and authorisation. After investigation, the respondent Police has filed the final report against the accused persons under Sections 3, 4 and 8 of the Tamil Nadu Private Clinical Establishments (Regulation) Act, 1997, and under Sections 268 and 420 IPC.

3. The learned Government Advocate (Crl.Side) would represent that the first accused -Yusuf Ali died, and the third accused was dropped at the time of filing

of charge sheet. The only person on record is the second accused-Santosh Kumar.

4. The petitioner herein filed a petition under Section 239 of Cr.P.C., seeking discharge of him from the charges levelled against him, before the Trial Court in CrI.M.P. No.43 of 2007. The Trial Court, by the order dated 16.03.2007, dismissed the petition giving a finding that there are prima facie materials to frame charges against the accused. Challenging the dismissal of the discharge petition, this revision petition has been filed.

5. The power of the Magistrate to discharge the accused as provided under Section 239 Cr.P.C., reads as under:

"239.When accused shall be discharged.-If, upon considering the police report and the documents sent with it under Section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing."

6. After all these examinations, if the Magistrate comes to the conclusion that charges are groundless as against the accused persons, the Magistrate has to discharge the accused. In this case, the Magistrate has come to the conclusion that there are materials to frame charge against the accused.

7. In order to appreciate the legality and propriety of the order passed by the Trial Court, it is necessary to look into the basic facts of this case.

8. According to the case of the prosecution, the first accused Yusif Ali was running a private clinical establishment in violation of Sections 3, 4 and 8 of the Tamil Nadu Private Clinical Establishments (Regulation) Act, 1997. The accused 1 and 2 are stated to have been practising allopathy without any qualification and authorisation. The third accused is stated to have been selling medicines under prescriptions of the unauthorised persons, viz. accused 1 and 2.

9. The relevant provisions under the "Act" reads as under:

(a) Section 3 providing for registration of the private clinical establishment, reads:

"(1) On or after the date of commencement of this Act, no person shall carry on any private clinical establishment unless such private clinical establishment is duly registered under this Act:

Provided that every private clinical establishment in existence on the date of the commencement of this Act shall apply for registration within three months from that date:

Provided further that every private clinical establishment in existence on the date of the commencement of this Act shall cease to carry on its business on the expiry of four months from that date unless such private clinical establishment

has applied for registration and is so registered or till such application is disposed of whichever is earlier.

(2) Every application for registration under sub section (1) shall be made to the competent authority in such form and in such manner and shall be accompanied by such fee not exceeding five thousand rupees as may be prescribed.

(3) No private clinical establishment shall be registered under this Act unless the competent authority is satisfied that such private clinical establishment is in a position to provide such specialised services and facilities possess such skilled manpower and equipments and conditions as may be prescribed."

(b) Section 4 providing for issuance of Certificate of Registration, reads:

"(1) The competent authority shall, after holding inquiry and after satisfying itself that the applicant has complied with all the requirements of this Act and the rules made thereunder, grant to the private clinical establishments a certificate of registration in such form and subject to such conditions as may be prescribed.

(2) If, after the inquiry and after giving an opportunity to the applicant of being heard, the competent authority is satisfied that the applicant has not complied with the requirements of this Act and the rules made thereunder, it shall, for reasons to be recorded in writing, reject the application or registration.

(3) Every certificate of registration valid for a period of five years and may be renewed for a period of five years at a time.

(4) Every application or renewal of registration shall be made within such time as may be prescribed and the provisions of this Act shall as far as may be apply in relation to the renewal of a registration as they apply in relation to registration.

(5) If a certificate of registration is lost, destroyed, mutilated or damaged, the competent authority may, on application and on payment of such fee as may be prescribed, issue a duplicate certificate."

(c) Section 8 providing for punishment for contravention of any provisions of the Act, reads:

"Whoever contravenes any provisions of this Act or any rule made under this Act or any condition of the registration granted thereunder shall be punishable with fine which shall not be less than five thousand rupees but which may extend to fifteen thousand rupees:

Provided that the Court may, for reasons to be recorded in the judgement impose a fine of five thousand rupees."

10. These offences, according to the case of the prosecution is alleged only as against the first accused. The only allegation against the petitioner herein is that he was working under the first accused-Yusuf Ali, in an institution which did not obtain necessary registration and the specific charge against the petitioner herein is under Section 268 and 420 IPC.

11. Whether there are materials collected by the prosecuting agency which are sufficient to raise a very strong suspicion to form a presumptive opinion as to the existence of factual ingredients which would constitute the offence under Sections 420 and 268 IPC is the issue to be considered.

12. In order to establish the charge under Section 420 IPC, the prosecution has to place materials to show that-

(1) The accused cheated some person,

(2) He did so dishonestly and

(3) He thereby induced the person deceived

(a) to deliver any property to any person or

(b) to make, alter or destroy the whole or any part of a valuable security or anything which was signed or sealed and which was capable of being converted into a valuable security. In other words, the burden is on the prosecution to place materials to show that the delivery of property was made as a consequence of some false statement made by the accused or on the basis of the accused causing the complainant to mislead as to a matter of fact or leading him to certain errors.

13. The necessary ingredients to be established in order to sustain the charge under Section 268 IPC are as under:

Section 268 of IPC defines the offence of public nuisance. A plain reading of Section 268 IPC would indicate that in order to amount to a public nuisance, a person must have acted in a manner which may cause any common injury, danger or annoyance to the public or to the people in general who might dwell in a certain area or in occupation of any property in the vicinity necessarily causing injury or obstruction or danger or annoyance to persons who may have occasion to exercise any public right in respect of that locality or property.

14. The offence defined under Section 486 IPC may be analysed in the following way:

(a) It may be caused either by an act or illegal omission;

(b) The effect thereof, must be either injury or danger or annoyance;

(c) It may actually caused either to the public in general or to that portion of the public who dwell or occupy property in the vicinity;

(d) The act must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right;

15. So far as the allegation levelled against the petitioner herein is concerned, he committed public nuisance and he cheated the public by adopting Allopathy, ie., English method of treatment as against some of the witnesses. The statements

relied upon by the prosecution to prove the charges against this accused person is the statement of Mr. Vetrivel, the Secretary of the Indian Medical Association, Tiruchendur District, and the statement of Rasool Maideen.

16. In the statement of Mr. Vetrivel, what is stated is that without any requisite educational qualification, the accused persons adopted English method of treatment, thereby the life of the public was in danger. From the materials placed before this Court, it is evident that the petitioner herein has obtained the degree of the Bachelor of Physiotherapy from Dr.MGR Medical University during April 1999. K.M. Electro Medical College & Hospital (run by the first accused) has invited applications for the post of Physiotherapist. Accordingly, on application being made, the petitioner has been appointed as Lecturer in the said Medical College with effect from 19.06.2000. Relying upon these documents, it was contended that the petitioner herein was doing only physiotherapy treatment to the persons who would come to the hospital and the treatment given by the petitioner was not in any way against the authorisation given under the certificate. Therefore, it is necessary to find out whether from the statements of witnesses, whether the offence against the petitioner herein, has been brought to surface.

17. So far as the statement of Rasool Maideen is concerned, it is his statement that in order to get treatment for fever, he went to the hospital run by the first accused and that he was treated by the petitioner herein. It is his further case that written prescription was given and based on that, he purchased medicines and got cured of the ailment. By the very nature of the allegation, one would expect some documents to show that the petitioner herein was prescribing medicines. No records have been produced.

18. It is the duty of the prosecution to have recovered the prescriptions as well as the documents like letter pad, which would give an indication that the petitioner herein might have given prescriptions.

19. It is for the prosecution to place sufficient materials to make out the charges, and the prosecution failed in placing the same. There is no concrete material or acceptable material or reliable material to proceed against the petitioner / accused.

20. The Trial Court ought to have considered the statements in order to find out whether the offences under Sections 268 and 420 IPC are made out as against those accused persons. The Trial Court ought to have conducted such examination of the accused to the extent of finding out whether the case of the prosecution might be true. But the Trial Court failed in doing so.

21. In view of the foregoing reasons, the Criminal Revision Case stands allowed. The petitioner is discharged.