

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

THURSDAY, THE 15TH DAY OF FEBRUARY 2024 / 26TH MAGHA, 1945

CRL.MC NO. 6638 OF 2018

AGAINST THE JUDGMENT IN CC 2914/2015 OF JUDICIAL MAGISTRATE
OF FIRST CLASS ,CHAVAKKAD

PETITIONER/RESPONDENT/ACCUSED:

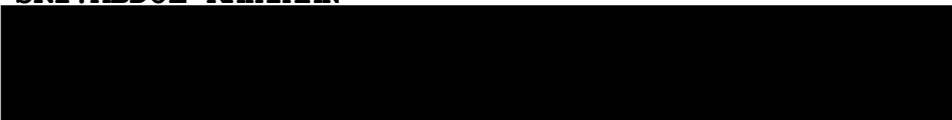
DR.NAVANEETH K.UNNI



BY ADV REENA ABRAHAM

RESPONDENT/COMPLAINANT/STATE:

- 1 STATE PREPSENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, PIN 682031.
- 2 DRUGS INSPECTOR (INTELLIGENCE BRANCH)
OFFICE OF THE ASSISTANT DRUGS CONTROLLER, THRISSUR,
PIN 680001
- 3 HERING PHARMA
X/5378, SAHRUDAYA LANE, MALIKAPEEDIKA, ALANGAD PO,
ERNAKULAM, PIN 683511, REPRESENTED BY MANAGING
PARNTER, PIN 683511
- 4 SRI.ABDUL RAHIMAN



BY ADVS.
ADDL.DIRECTOR GENERAL OF PROSECUTION
SMT.C.P.JYOTHY

SRI. T.R. RANJITH (PP)

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
15.02.2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

BECHU KURIAN THOMAS, J.

Cri.M.C No. 6638 of 2018

Dated this the 15th day of February, 2024

ORDER

Petitioner is the 1st accused in C.C.No.2914/2015 before the Judicial First Class Magistrate Court, Chavakkad. He seeks to quash all proceedings against him in the above case. The offences alleged against the petitioner are under Sections 18(c) and 22(1)(cca) of the Drugs and Cosmetics Act, 1940 ('the Act' for short).

2. The proceedings in C.C.No.2914/2015 arose out of a private complaint filed by the Drugs Inspector on the basis of information received from Sri.P.P.Jomon, who alleged that petitioner is a 'fraud Doctor' practicing Homeopathy after stocking and selling Homeopathic medicines from the premises of 'M/s Panacea Homeo Clinic', Vadanappilly Junction, Thrissur without any authority. Pursuant to the complaint, the Drugs Inspector conducted an enquiry which revealed that bills of homeopathic medicines were kept in the clinic, without the accused having any drug license nor any

qualification to practice as a Medical Practitioner. The complaint also alleged that the accused registered himself as a homeopath on 10.06.2013 and hence the purchase and storing of medicines prior to that date was without authority and contrary to provisions of Section 18(c) of the Act. It was also alleged that accused had procured homeopathic medicines in violation of Section 22(1)(cca) of the Act and thereby committed the offences alleged.

3. Smt.Reena Abraham, learned counsel for the petitioner contended that, the petitioner is a Homeopathic Practitioner duly registered on 10.06.2013 and that the inspection was conducted only on 15.07.2013, wherein, the medicines purchased prior to his registration as a Homeopathic Practitioner were allegedly seized. It was submitted that even if the entire allegations in the complaint are assumed to be admitted, still none of the offences are made out as petitioner's father himself was a Homeopathic Medical Practitioner and that the Clinic was being conducted prior to 10.06.2013 and after 10.06.2013, by petitioner's father. According to the learned counsel, the fact that

petitioner's father was a Homeopathic Medical Practitioner even on the date of inspection is admitted as is evident from Annexure-A4, which is not even disputed and therefore, the homeopathic medicines purchased and stored in 'Panacea Homeo Clinic' cannot be said to be procured illegally or in violation of the Act.

4. Sri.Grashious Kuriakose, the learned Additional Director of Prosecution assisted by Sri.T.R.Renjith, learned Public Prosecutor contended that on the date of inspection that is, 15.07.2013 though the petitioner had been registered as Homeopathic Medical Practitioner, the bills seized from the building indicated purchase of medicines in January 2012 and May 2013, all of which were prior to the date of registration of the petitioner as a Doctor. According to the learned Public Prosecutor, the exemption granted Under Rule 123 of the Drugs and Cosmetics Rules, 1945 are not applicable to the petitioner and the same is available only to a person, who is a registered Medical Practitioner and on the date of procurement of the medicines by the petitioner, he was not a registered Medical Practitioner.

5. I have considered the rival contentions.

6. Concededly, petitioner's father was a Medical Practitioner on the date of inspection and even before that Annexure-A4 indicates that petitioner's father became a registered Homeopathic Doctor, as early as on 10.06.1998 and the said registration was valid even on the date of inspection. Therefore, the procurement of medicines and payment in 2011, 2012 and 2013 cannot be said to be *per se* illegal, since it was procured for the Homeopathic Clinic conducted by petitioner's father. Merely because petitioner's could have personally collected the medicines cannot be treated as procurement by the petitioner. The medical clinic was also being run by the petitioner's father who all the valid licenses under the Drugs and Cosmetics Act for purchasing stocking and selling such medicines.

7. Apart from the above, on the date of inspection which is 15.07.2013, the petitioner had already become a registered Medical Practitioner. In the above perspective, I am of the view that no purpose would be achieved by continuing the prosecution. The entire prosecution allegation even if it is

assumed to be correct would not make out any offence against the petitioner.

8. In a recent decision in **Priyanka Mishra v. State of Kerala [2023 SCC Online Sc, 978]** the accused should be protected against vexations and unwanted criminal prosecution and from unnecessarily being put through the rigours of an eventual trial. Further, in the decision in **Religare Finvest Ltd v. State of NCT of Delhi [2023 SCC Online SC 1148]**, it was held that though the power to quash criminal proceedings should not be lightly exercised, refusal to take recourse to that power, in cases that require or demand it would be like being blind to justice, which the Courts can scant afford to be.

9. While considering the question whether the power under Section 482 should be exercised or not, the Court must always be guided by the principles laid down in the provision itself i.e, to prevent the abuse of process of the Court or to secure the ends of justice. In the instant case, this Court is satisfied that both those parameters are satisfied. The complaint is required to be quashed to prevent the abuse of

process of Court and also to secure the ends of justice.

10. Accordingly, all proceedings in C.C.No.2914/2015 pending before the Judicial First Class Magistrate, Chavakkad are hereby quashed.

This Crl.Miscellaneous Case is allowed.

**Sd/-BECHU KURIAN THOMAS,
JUDGE**

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APPENDIX OF CRL.MC 6638/2018

PETITIONER ANNEXURES

- ANNEXURE A1 TRUE COPY OF THE HOMEO MEDICAL
REGISTRATION CERTIFICATE DATED
10.06.2013 ISSUED FROM TAMIL NADU
HOMEOPATHIC MEDICAL COUNCIL
- ANNEXURE A2 TRUE COPY OF THE HOMEO MEDICAL
REGISTRATION CERTIFICATE DATED
10.06.2013 ISSUED FROM TAMILNADU
HOMEOPATHIC MEDICAL COUNCIL
- ANNEXURE A3 TRUE COPY OF THE REGISTRATION
CERTIFICATE DATED 27.08.2013 ISSUED BY
THE REGISTRAR, COUNCIL OF HOMEOPATHIC
MEDICINE, KERALA STATE UNDER THE
PROVISIONS OF TRAVANCORE COCHIN
MEDICAL PRACTITION'S ACT 1953
- ANNEXURE A TRUE COPY OF THE REGISTRATION
CERTIFICATE OF PETITIONER'S FATHER
DATED 10.06.1998 ISSUED BY THE
SECRETARY ALL KERALA HOMEOPATHIC
ASSOCIATION (REGD) ALLEPPEY
- ANNEXURE A5 TRUE COPY OF THE AGREEMENT DATED
02.06.2007 EXECUTED BETWEEN
PETITIONER'S FATHER AND SRI. ABDUL
RAHIMAN
- ANNEXURE A6 TRUE COPY OF THE LETTER ISSUED BY THE
MANAGER MERCHANTS WELFARE SOCIETY,
VYABHARA BHAVAN BUILDING, ALMAVU
(JN), VATTANAPPILLY, DATED 09.04.2005

RESPONDENTS EXHIBITS: NIL

TRUE COPY

P.A TO JUDGE

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