

(1990) 09 GUJ CK 0011

In the Gujarat High Court

Case No : Misc. Criminal Application No. 2503/90 in Special Criminal Application No. 1302/90

Ala Ramji

APPELLANT

Vs

The State of Gujarat and Others

RESPONDENT

Date of Decision : 12-09-1990

Acts Referred:

Citation : (1992) CriLJ 867 : (1991) 2 GLR 18

Hon'ble Judges : S.M. Soni, J;K.J. Vaidya, J

Bench : Division Bench

Advocate : S.S. Patel, for the Appellant; K.H. Baxi, Addl. P.P., for the Respondent

Judgement

K.J. Vaidya, J.—Rule, Mr. K. H. Baxi, the learned A.P.P. appears and waives service of Rule. Heard the learned advocate Mrs. S. S. Patel and the learned A.P.P.

2. The short but important question arising for our consideration in this Misc. Criminal Application is : "Whether it is safe and advisable for any court and for that purpose any authority to place implicit reliance upon a medical certificate issued in the name of any sick person regarding his disease which do not, describe the identification mark as well as bear thumb impression or signature of such person?

3. The petitioner-convict Ala Ramji by this Misc. Criminal Application has prayed this court to grant extension of parole leave for 21 days on the ground of his wife Smt. Kuverben Ala suffering from an abdominal pain and that there were no male members in his family to manage for her treatment, operation etc. In support of this, the petitioner-convict has annexed a medical certificate issued by Dr. N. N. Bhadarka of Bhuj.

4. It appears from the record that earlier to this application, the petitioner-convict had filed a Special Criminal Application No. 1302/90 in this court, for getting himself released on parole leave for two months on the ground that his wife suffering from chest pain was hospitalised and there were no elderly male

members in the family to look after her. This court by an order dated 22nd August 1930 released the petitioner-convict on parole leave for ten days. Accordingly, the petitioner-convict was released on 4th September, 1990. Since this period of ten days parole leave expires on 14th September, 1990, the petitioner-convict has filed the present Misc. Criminal Application for extension of time for 21 days.

5. On perusing the record, it appears that Special Criminal Application No. 1302/90 was filed in this court on 21st August, 1990 while the present Misc. Criminal Application which is the off-shoot of the said Special Criminal Application, came to be filed on 11th September, 1990 i.e. hardly in about the span of three weeks. What is interesting to note is the two different types of sickness/ disease certificates from which the wife of the petitioner-convict is alleged to be suffering from. In the earlier Special Criminal Application, the medical certificate dated 19th August 1990, bearing the signature of Medical Officer, Panchayat Dispensary, Nirona, shows that Smt. Kuverben was suffering from Hyper-tension and heart disease and she was hospitalised as her condition was not good. While the second medical certificate dated 10th September, 1990 bearing signature of Dr. N. N. Bhadarka shows that Smt. Kuverben, wife of Ala Ramji of Nirona is admitted in the hospital for bleeding P/V for menorrhagia (excessive bleeding at the time of menstrual period) she was advised hysterectomy (removal of uterus) operation. Further, none of the above two certificates say a word about as to on what date Smt. Kuverben has been admitted in the hospital. There is nothing on the record to show as to when she was discharged from Panchayat Dispensary at Nirona. There is also nothing in either of the certificates by way of verifiable material in nature of identification mark of Smt. Kuverben in respect of whom such medical certificate came to be issued. May be all these are innocent slips, but at this stage, while considering the parole application of a person who is sentenced to life, in our opinion, same does cloud the truth. Under such circumstances, before we act upon such certificate and pass any order in favour of the petitioner-convict, we feel it desirable to have a second thought and proper checking. Ordinarily, a patient suffering from a heart disease, may not be immediately advised the hysterectomy operation. Of course, it is for the doctor to opine. Under such circumstances, we do not feel safe and advisable to accept such certificate straightway. It is no doubt true that medical certificate at Annexure-A of this application does mention the sickness of the wife of the petitioner-convict and is advised hysterectomy operation. It is equally true that the said certificate is issued on the letter-head duly signed by Dr. N. N. Bhadarka. It is further true that Dr. N. N. Bhadarka being M.D. (Gynac) appears to be duly qualified doctor and therefore competent to issue such certificate. But then all these, in our opinion, standing by themselves, are not sufficient to establish the correct identity of Smt. Kuverben, wife of the petitioner-convict as a person in respect of whom the said medical certificate is issued. Thus, two different ailments in two different medical certificates within three weeks and that too without any

reference of the identity marks of Smt. Kuverben in the said certificate, impels us not to accept the same at its face value. Not for a moment we suggest that this certificate is per-se false. What we say is that this certificate deserves much to be mentioned in it by way of identification mark of Smt. Kuverben so as to inspire our prima facie confidence regarding its genuineness. Such medical certificate in absence of proper identification mark of so named sick person in it is absolutely meaningless.

5.1. No court or any authority should take upon itself the risk of accepting and relying upon such defective medical certificate till the time it is duly verified and found to be correct. Granting of a medical certificate by the doctor is an act of serious responsibility. In fact in Modi's textbook of "Medical Jurisprudence and Toxicology", a very important instruction has been imparted to doctor while issuing the medical certificate. According to Dr. Modi -- "These are the simplest forms of documentary evidence and generally refer to ill-health, unsoundness of mind, death etc. These certificates should not be given lightly or carelessly, but with a due sense of responsibility for the opinion expressed in them. They are not accepted in a court of law unless they are granted by a duly qualified medical practitioner who is registered under the State Medical Council Act. In giving a certificate of ill-health, a medical practitioner should mention the exact nature of the illness and preferably should take, at the bottom of the certificate, the thumb-mark impression or signature of the individual to whom it refers. Dr. Modi has also prescribed a specimen form of such medical certificate in Appendix-II of the said book. The said form reads as under:--

This is to certify that Mr... aged about...years, bearing following identification marks has been examined by me this day and I find that he is suffering from....He is advised to take rest for a period of....

Identification 1. Marks. 2. Place : Signature & Reg. No. Date : of the doctor.

5.2. Further, in order to be still little more exact regarding the identity of the sick person in whose respect the medical certificate is to be issued, a photo of such sick person duly signed by the doctor can be insisted upon. (Of course it is for the authorities concerned to decide by framing the necessary rule regarding the same). The idea is that at any cost, the rot that has entered in submitting bogus certificates must be checked. In fact, the jail authorities should inform all prisoners in jail that the medical certificate will not be considered complete unless it complies with in the form suggested above.

5.3. In our opinion, the medical, certificate in order to command even the prima facie credibility, must comply with the aforesaid instructions of Dr. Modi.

6. After passing the above prima facie credibility test, the medical certificate has still one more reliability test to undergo before it can be safely accepted and relied upon. Accordingly, whenever any medical certificate is produced to press in service for obtaining orders in matters of parole leave or bail, the proper officer has to make further inquiry by contacting the doctor concerned who is stated to

have issued the medical I certificate in question. The concerned doctor should be asked (i) whether the certificate in question has been issued by him; (ii) whether he can identify the person in whose favour such certificate was issued. Despite these questions and answers, if some lingering doubts about the truthfulness of the certificate still persists, then the inquiry officer should not feel helpless to ask the doctor (i) to show the indoor-patient register; (ii) the counterfoils of fees receipt and/or any other medical service charges and/or advance hospitalization charges etc.; (iii) the treatment chart of the person concerned maintained in the hospital; (iv) and if the inquiry is made immediately, to see whether the sick person so named in the certificate is actually present in the hospital; (v) the last but not the least, to personally see such sick person, record his statement, ask for the medicines prescription given by the doctor and the bills regarding the medicines he purchased etc. It is this final report on the basis of which such medical certificate can either be accepted or rejected. Such inquiries should be prompt and at the D.S.P. level so that other side do not frustrate the same by "doing the needful". The reason behind verification and counter-checking of the medical certificate is those days all possibilities of same being false, forged and fabricated cannot be ruled out, and the reason for indepth inquiry on the lines suggested above, is that any slackness in lightly accepting the medical certificate is fraught with grave danger particularly in cases where the same is produced in support of parole leave or bail application. Any slackness in duty and vigilance in the matter has all the potentialities to play with the life, law and order of the society.

6.1. Therefore, for proper maintenance of law and order and further with a view to see that no person involved in serious offences escape from the prison by playing with the sentiments and sympathy of the authorities on ground of some false illness of the family members, operation etc. on the basis of bogus marketable medical certificates, insistence upon fool-proof medical certificate on the lines suggested above are desirable.

7. Thus, having regard to the facts and circumstances of the case, since the medical certificate dated 10th September, 1990 Annexure-A does not comply with the essential prerequisites of valid medical certificate, we do not deem it desirable to act upon it. As the parole leave is to expire on 14th September, 1990, the petitioner-convict has sufficient time to obtain a fresh valid medical certificate from the doctor along with the exact date of the operation in question. If the doctor is of the opinion that the operation in question is serious one necessitating the presence of responsible person, then in that case, proper application be made to the competent authority who shall decide it on merits expeditiously in the light of the observations made hereinabove.

8. In the result, this application for extension of time is rejected. Rule discharged.