
(2015) 10 MAD CK 0255

In the Madras High Court

Case No : Criminal Original Petition (MD) No. 10881 of 2009 and M.P.(MD) No. 1 of 2009

Chandralekha and Others

APPELLANT

Vs

S. Jesuraj

RESPONDENT

Date of Decision : 29-10-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 406, 420

Citation : (2015) 10 MAD CK 0255

Hon'ble Judges : R. Mala, J.

Bench : Single Bench

Advocate : D. Venkatesh, for the Appellant; A.R. Kannappan, for the Respondent

Final Decision : Dismissed

Judgement

R. Mala, J.—The petitioners, who are arrayed as the first and second accused, have come forward with the present petition to call for the records in C.C. No. 152 of 2009 on the file of learned Judicial Magistrate, Palani and quash the charge sheet.

2. Heard both sides.

3. The learned counsel for the petitioners would submit that it is alleged in the complaint that the respondent got married to one Jeyalakshmi on 11.05.2005 and after marriage, his wife was not conceived. On seeing the paper advertisement on 07.11.2005, the respondent along with his wife approached the petitioners for treatment. After due medical examination, it was found that his wife was not conceived, due to thyroid problem and instead of giving Thyroccion Sodium tablets I.P., in order to extract money from the respondent, the petitioners gave a false treatment and thereby, cheated him. It is also alleged that since there was no improvement in the treatment given by the petitioners, they approached another doctor and after treatment, his wife conceived and got a male child on 06.10.2007. Thereafter, on 24.04.2007, the petitioners received

a letter sent by the respondent seeking explanation for not giving proper treatment to his wife, for which, the petitioners have not sent any reply and hence, on 10.01.2008, when he met them in person, he was threatened and abused with filthy language and though he has given a complaint before the Palani Town Police Station, the police neither registered a case nor gave a receipt for his complaint and hence, he preferred a private complaint.

4. The learned counsel for the petitioners would further submit that since the first petitioner is a doctor, an opinion of Expert is necessary to proceed against her for the professional misconduct, but, here in this case, it was not done so. To substantiate his argument, he relied upon a judgment of the Apex Court in Uma Shankar Gopalika vs. State of Bihar and Another(2005) 10 SCC 336 , which was followed by this Court in Uma Shankar Gopalika vs. State of Bihar and Another(2005) 10 SCC 336 .

5. Adding further, the learned counsel would submit that the ingredients of Section 420 IPC have not been made out in this case. To substantiate the same, he relied upon a decision of the Apex Court in Uma Shankar Gopalika vs. State of Bihar and Another(2005) 10 SCC 336 .

6. The learned counsel has also taken me to Page No. 4 of the typed-set of papers to prove that the intention of the respondent is to extract money from the petitioners. Therefore, for all the reasons stated above, he wants to quash the entire proceedings in C.C. No. 152 of 2009 on the file of learned Judicial Magistrate, Palani.

7. Resisting the same, the learned counsel for the respondent would submit that the complaint has not been filed for medical negligence and the first petitioner is an Expert and she is running a Fertility Centre and after due medical examination, it was found that the wife of the respondent suffered from thyroid and without giving basic treatment for thyroid, with a view to extract money from the respondent, the petitioners have given false treatment for one and half years and when it was questioned, he was threatened and he was abused with filthy language and hence, the private complaint has been filed. After considering the evidence of P.W.1 and Exs.P.1 to P.3, since prima facie case has been made out, the learned Magistrate concerned has taken cognizance of offence and then only, summons has been issued to the petitioners. Hence, he prayed for dismissal of this petition.

8. He would also submit that the decisions relied upon the petitioners in Uma Shankar Gopalika vs. State of Bihar and Another(2005) 10 SCC 336 and Uma Shankar Gopalika vs. State of Bihar and Another(2005) 10 SCC 336 , are not applicable to the present case, since in the case on hand, the respondent wants to prosecute the petitioners for cheating him by giving false treatment.

9. I have considered the submissions made on either side and perused the materials available on record in the form of typed-set of papers.

10. Before going into the facts of the present case, first of all, this Court has to consider the decisions relied upon by the petitioners in Uma Shankar Gopalika vs. State of Bihar and Another(2005) 10 SCC 336 and Uma Shankar Gopalika vs. State of Bihar and Another(2005) 10 SCC 336 . The learned counsel for the petitioners has taken me through paragraph No. 49(2) of Jacob Mathew's case cited supra, which reads thus:

"(2) Negligence in the context of medical profession necessarily calls for a treatment with a difference. To infer rashness or negligence on the part of a professional, in particular a doctor, additional considerations apply. A case of occupational negligence is different from one of professional negligence. A simple lack of care, an error of judgment or an accident, is not proof of negligence on the part of a medical professional. So long as a doctor follows a practice acceptable to the medical profession of that day, he cannot be held liable for negligence merely because a better alternative course or method of treatment was also available or simply because a more skilled doctor would not have chosen to follow or resort to that practice or procedure which the accused followed. When it comes to the failure of taking precautions what has to be seen is whether those precautions were taken which the ordinary experience of men has found to be sufficient; a failure to use special or extraordinary precautions which might have prevented the particular happening cannot be the standard for judging the alleged negligence. So also, the standard of care, while assessing the practice as adopted, is judged in the light of knowledge available at the time of the incident, and not at the date of trial. Similarly, when the charge of negligence arises out of failure to use some particular equipment, the charge would fail if the equipment was not generally available at that particular time (that is, the time of the incident) at which it is suggested it should have been used."

11. However, the above citation is not applicable to the facts of the present case, because in the above citation, the aspect of medical negligence has been dealt with, but, in the case on hand, the allegation is that the first petitioner is an Expert, but, wantonly, she has not given proper treatment by way of cheating and also committed breach of trust. The dictum laid down in the said case was followed by this Court in Uma Shankar Gopalika vs. State of Bihar and Another(2005) 10 SCC 336 , which is also not applicable to the case on hand.

12. Relying upon the decision of the Supreme Court in Uma Shankar Gopalika vs. State of Bihar and Another(2005) 10 SCC 336 , the learned counsel for the petitioners would submit that in the present case, the ingredients of Section 420 IPC have not been made out.

13. At this juncture, it is useful to extract the ingredients of Section 420 IPC as under:

"Ingredients of section. - The ingredients of an offence of cheating are: (i) there should be fraudulent or dishonest inducement of a person by deceiving him, (ii) (a) the person so deceived should be induced to deliver any property to any

person, or to consent that any person shall retain any property; or (b) the person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived; and (iii) in cases covered by (ii)(b), the act of omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property - Uma Shankar Gopalika vs. State of Bihar and Another(2005) 10 SCC 336 ."

14. Here, in the case on hand, prima facie, a perusal of the complaint would go to show that the ingredients of Sections 420 and 406 IPC have been made out. The learned Magistrate concerned, after examination of P.W.1 and Exs.P.1 to P.3, has come to a conclusion that prima facie the offences made out against the petitioners and directed their appearance before the Court on 05.08.2009. Further, there is a specific averment in the complaint that on 10.01.2008 the petitioners abused the respondent in filthy language and also made a criminal intimidation. In such circumstances, I am of the view that it is not a fit case to quash the proceedings in C.C. No. 152 of 2009 on the file of learned Judicial Magistrate, Palani and hence, the Criminal Original Petition is liable to be dismissed and accordingly, it is, hereby, dismissed. Consequently, the connected miscellaneous petition is also dismissed.

15. However, since the case is of the year 2009, the learned Judicial Magistrate, Palani, is directed to dispose of the case in C.C. No. 152 of 2009 on merits and in accordance with law, within a period of six months from the date of receipt of a copy of this order.