
(2008) 09 MAD CK 0199

In the Madras High Court

Case No : Criminal O.P. No. 9224 of 2004 and Criminal M.P. No. 3203 of 2004

Dr. N. Rangabashyam

APPELLANT

Vs

Mrs. Zeenath Begaum

RESPONDENT

Date of Decision : 29-09-2008

Acts Referred:

Citation : (2008) 09 MAD CK 0199

Hon'ble Judges : K.N. Basha, J

Bench : Single Bench

Advocate : K. Asokan for Gita Asokan, for the Appellant; M. Deivanandam, for the Respondent

Final Decision : Dismissed

Judgement

K.N. Basha, J.—The Petitioner, who has been implicated for the alleged offence u/s 406 and 420 IPC, has come forward with this petition seeking for the relief of quashing the proceedings pending in C.C. No. 1374 of 2004 on the file of the learned XI Metropolitan Magistrate, Sai-dapet, Chennai.

2. Mr. K. Asokan, learned Senior Counsel appearing for the Petitioner contended that the Petitioner is a leading Consultant Surgeon in Gastroenterology. It is submitted that the Petitioner was also a professor in Madras Medical College as well as in Stanley Medical College and he was also a visiting professor to the Annamalai University. It is submitted that the Petitioner is also a Honorary Surgeon to the President of India and Honorary Consultant to Armed Forces Medical Services and he has also specialized in the field of gastroenterology and has been enjoying enviable reputation by virtue of his specialization. Learned Senior Counsel would further submit that the Petitioner has also obtained the reputed B.C. Roy award from the President of India recently in respect of his contribution to the medical field.

3. Learned Senior Counsel submitted that the allegation levelled against the Petitioner as per the private complaint filed by the Respondent is to the effect

that the Respondent/complainant was referred by a leading doctor namely Dr. Palanivelu of Coimbatore to the Petitioner herein after the Respondent underwent treatment at the local hospital. It is submitted that the further allegation is that the Respondent underwent surgery performed by the Petitioner on 22.2.2001 and she was discharged on 14.3.2001 and as she has developed further pain in stomach, she had undergone further surgery performed by the Petitioner herein on 20.3.2001. It is submitted that the further allegation is to the effect that the Respondent was subjected to undergo several surgeries as the Petitioner assured full cure of the ailment suffered by the Respondent and that the Respondent was not fully cured. As per the complaint, the Respondent has sought for the medical records which were not furnished to the Respondent and thereby the Petitioner is said to have committed criminal breach of trust and cheating.

4. Learned Senior Counsel vehemently contended that even if the allegations contained in the complaint to be taken in its entirety true, no offence has been made out against the Petitioner. It is submitted that the Respondent preferred a private complaint before the Magistrate and the same was referred u/s 156(3) of the Code of Criminal Procedure to the Central Crime Branch police and the Central Crime Branch Police after conducting investigation ultimately filed a final report to the effect that the offence alleged against the Petitioner namely cheating and criminal breach of trust were not made out and the said final report has been filed during December 2003. It is contended that only thereafter, the Respondent/complainant by filing protest petition, the present impugned complaint was taken on file against the Petitioner for the offences as stated above. Learned Senior Counsel would further submit that the Respondent/complainant has undergone surgeries willingly and voluntarily without any compulsion and after getting consent, the surgeries were performed and the repeated consultation from the Petitioner itself shows that the Respondent was having confidence with the Petitioner and she underwent treatment all along. It is contended that the allegation contained in the complaint to the effect that the Petitioner assured full cure of the illness, on the face of it, is absurd. The learned Senior Counsel further contended that there is absolutely no entrustment of any property or document to the Petitioner and hence the offence of criminal breach of trust does not arise. Even the allegations contained in the complaint has not made out any ingredients of cheating and the private complaint would amount to a clear case of abuse of process of court.

5. Per contra, the learned Counsel appearing for the Respondent contended that there are specific allegations made against the Petitioner in the complaint making out a case of cheating and criminal breach of trust. It is contended that the Respondent/complainant sought for the production of the case records which were not furnished by the Petitioner and that itself will make out a case of criminal breach of trust. Learned Counsel for the Respondent would further contend that the Respondent/complainant was subjected to undergo number of surgeries mainly on the assurance given by the Petitioner that she would be cured fully and as such the Respondent has incurred expenses running to several

lakhs. It is contended that but for the assurance given by the Petitioner the Respondent would not have undergone the surgeries in spite of the objection made by her husband. Therefore, the Respondent/complainant was induced by the Petitioner to spend huge amount for undergoing surgeries performed by the Petitioner on the dishonest representation of the Petitioner to cure her illness fully and thereby committed the offence of cheating. It is submitted that the points raised by the Petitioner are questions of fact and as such the same have to be agitated only at the time of trial.

6. I have carefully considered the rival contentions put forward by either side and also perused the impugned complaint.

7. It is a very unfortunate case wherein a patient namely the Respondent herein has come forward with the allegations of criminal breach of trust and cheating against the Petitioner, who is a leading Surgeon in the field of gastroenterology and a former Professor of Madras Medical College and Stanley Medical College, after the Respondent/complainant all along took treatment from the Petitioner as the Respondent was referred by another leading Surgeon from Mofussil for specialized treatment as the Petitioner is an expert in the field of Gastroenterology.

8. A perusal of the impugned complaint discloses that the sum and substance of the allegations is to the effect that the Respondent/complainant underwent treatment and surgeries at the hands of the Petitioner as the Petitioner said to have made representation to the Respondent that her illness would be cured fully and further in spite of the demand of the Respondent the case records were not furnished to the Respondent/complainant and thereby committed the offence of cheating and criminal breach of trust.

9. At the outset, it is to be stated that if the allegations contained in the complaint to be taken in its entirety to be true, no offence made out much less the offence of cheating or criminal breach of trust. The allegation contained in the complaint is to the effect that the Petitioner made a representation to the Respondent/complainant that her illness would be cured fully is absurd. The contents of the impugned complaint discloses that the Respondent underwent treatment on her own, willingly and voluntarily as the Respondent/complainant was referred by another leading Doctor to the Petitioner for the specialized treatment, in view of the complication of the illness. This Court is of the considered view that only in extreme and rarest of rare cases where there is gross negligence, recklessness, inaction and indifferent attitude shown towards the patient during treatment may attract the criminal action. It is needless to state that medical profession is a noble profession as they are rendering their uninterrupted service to the humanity round the clock during the day and night. But, unfortunately there is undesirable and unhealthy trend prevailing nowadays to drag the medical experts in both civil and criminal cases for the reasons best known to the concerned persons. This Court is constrained to state that the devoted and dedicated service of medical experts in different fields should not be

hampered with by initiating unnecessary and unwarranted vexatious and frivolous cases both criminal and civil.

10. The Hon''ble Apex Court has held in *Dr. Suresh Gupta v. Govt of N.C.T. Of Delhi and Anr.* reported in 2004 (5) Supreme 604 that,

For fixing criminal liability on a doctor or surgeon, the standard of negligence required to be proved should be so high as can be described as "gross negligence" or "recklessness". It is not merely lack of necessary care, attention and skill.

Thus, when a patient agrees to got for medical treatment or surgical operation, every careless act of the medical man cannot be termed as "criminal". It can be termed "criminal" only when the medical man exhibits a gross lack of competence or inaction and wanton indifference to his patient's safety and which is found to have arisen from gross ignorance of gross negligence.

11. In yet another decision in *Jacob Mathew Vs. State of Punjab and Another*, , the Hon''ble Apex Court has held that,

Indiscriminate prosecution of medical professionals for criminal negligence is counter-productive and does no service or good to society. A medical practitioner faced with an emergency ordinarily tries his best to redeem the patient out of his suffering. He does not gain anything by acting with negligence or by omitting to do an act. Obviously, therefore, it will be for the complainant to clearly make out case of negligence before a medical practitioner is charged with or proceeded against criminally. A surgeon with shaky hands under fear of legal action cannot perform a successful operation and a quivering physician cannot administer the end-dose of medicine to his patient. If the hands be trembling with the dangling fear of facing a criminal prosecution in the event of failure for whatever reason-whether attributable to himself or not, neither can a surgeon successfully wield his life-saving scalpel to perform an essential surgery, nor can a physician successfully administer the life-saving dose of medicine.

12. In the same decision, the Hon''ble Apex Court has laid down the following guidelines:

Guidelines for prosecuting medical professionals for criminal negligence:

The investigating officer and the private complainant cannot always be supposed to have knowledge of medical science so as to determine whether the act of the accused medical professional amounts to a rash or negligent act within the domain of criminal law u/s 304-A IPC. The criminal process once initiated subjects the medical professional to serious embarrassment and sometimes harassment. He has to seek bail to escape arrest, which may or may not be granted to him. At the end he may be exonerated by acquittal or discharges but the loss which he has suffered to his reputation cannot be compensated by any standards. Many a complainant prefer recourse to criminal process as a tool for pressurising the medical professional for extracting uncalled for or unjust

compensation. Such malicious proceedings have to be guarded against. The service which the medical profession renders to human beings is probably the noblest of all, and hence there is a need for protecting doctors from frivolous or unjust prosecutions.

Statutory rules or executive instructions incorporating certain guidelines need to be framed and issued by the Government of India and/or the State Government in consultation with the Medical Council of India. So long as it is not done, the following guidelines will be in force which shall govern the prosecution of doctors for offences of which criminal rashness or criminal negligence is an ingredient. A private complaint may not be entertained unless the complainant has produced prima facie evidence before the court in the form of a credible opinion given by another competent doctor to support the charge of rashness or negligence on the part of the accused doctor. The investigating officer should, before proceeding against the doctor accused of rash or negligent act or omission, obtain an independent and competent medical opinion preferably from a doctor in government service, qualified in that branch of medical practice who can normally be expected to give an impartial and unbiased opinion applying the Boam test, (1957) 2 All ER 118, at p. 121 D-F (set out in para 19 herein) to the facts collected in the investigation.

(Emphasis made by this Court)

13. The above well settled principles of law laid down by the Hon''ble Apex Court in the decisions cited supra are squarely applicable to the facts of the instant case as in this case also the impugned complaint was entertained by the learned Magistrate in spite of the non-production of prima facie materials in the form of a credible opinion given by another competent Doctor qualified in that particular branch to substantiate the allegations and in the decision cited supra the Hon''ble Apex Court has held that without such opinion, a private complaint may not be entertained and as such the impugned complaint is liable to be quashed on this ground alone.

14. The Hon''ble Apex Court in a landmark decision in State of Haryana and others Vs. Ch. Bhajan Lal and others, has laid down the following guidelines for quashing:

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers u/s 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any

offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated u/s 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

In the above said guidelines, guidelines Nos. 1 and 5 are squarely applicable to the facts of the instant case, as stated above, as in this case also even if the entire allegations contained in the impugned complaint taken in its face value, no offence made out much less the offence of cheating or criminal breach of trust and it is further so absurd and inherently improbable for the Petitioner to give assurance to the Respondent/complainant to fully cure her illness in view of admitted averment contained in the complaint that the Respondent/complainant was referred to the Petitioner by another leading Surgeon from the Mofus-sil due to the complication of her illness.

15. Therefore, for the aforesaid reasons, this Court is of the considered view that allowing the proceedings to continue against the Petitioner would amount to a clear case of abuse of process of court and as such the proceedings is liable to be quashed. Accordingly, the proceedings pending against the Petitioner in C.C. No. 1374 of 2004 on the file of the learned XI Metropolitan Magistrate, Sai-dapet, Chennai is hereby quashed. Consequently, connected Crl.M.P. is closed.