
(2018) 10 J&K CK 0095

In the Jammu And Kashmir High Court

Case No : Criminal Miscellaneous Case No. 45 Of 2017, Other Writ Petition No. 33 Of 2017, IA Nos. 01 Of 2017 And 02 Of 2018

Dr. Shehnaz Bhatti @APPELLANT@Hash State Of Jammu & Kashmir And Anr

Date of Decision : 26-10-2018

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 154(1), 154(3), 156(3), 197, 482, 561A
Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 304A
Prevention Of Corruption Act, 1988 — Section 5

Citation : (2018) 10 J&K CK 0095

Hon'ble Judges : Sanjay Kumar Gupta, J

Bench : Single Bench

Advocate : Rozina Afzal, I.H. Bhat, Suyash Singh Chandel, Amit Gupta, Suyash Singh Chandel

Final Decision : Disposed Off

Judgement

CRMC No. 45/2017

1. In the instant petition filed under Section 561-A Cr. P.C, petitioner seeks quashing of FIR No.04/2017 dated 14th January, 2017 under Section 304-A RPC and Section 5 of P.C. Act and Complaint dated 24th November, 2016 before CJM, Poonch, which is illegal and in violation of law and the judgment passed by the Hon'ble Supreme Court of India.

2. The factual matrix of the case as projected in this petition is that the petitioner is a doctor by profession and has been working as such since 2007 in Poonch and has unblemished career record to her credit as Assistant Surgeon. Since 2010, she has been working as B-Grade Consultant Gynecologist in District Hospital, Poonch and has been conducting various deliveries and cesarean sections in professional manner. Her record of the number of normal deliveries and cesarean sections is evident from the work done report w.e.f. 01.04.2010 to 2017. The petitioner has been treating many patients coming from the far flung areas and village and one such patient, namely, Mussarat Bader W/o Tanveer Ahmed R/o

Fazlabad, Tehsil Surankote, District Poonch, also was managed by the petitioner 3-4 times and on the very first visit, the patient/deceased was advised to arrange for blood, as she was anemic and also belonged to O-tive group, which is a rare blood group and is not readily available. The petitioner also referred her to District Hospital, Rajouri, as some complication might arise due to the non-availability of O-tive blood donor.

3. It is also stated in the instant petition that on the intervening night of 14th November, 2016 and 15th November, 2016, the deceased-Mussarat Badar was admitted in District Hospital, Poonch for delivery and she was put on I/v fluids and the petitioner, who had conducted three cesareans and 18 deliveries during the whole day as the other two doctors were on leave and the entire burden was upon the petitioner and despite being extremely tired, was called by the staff for attending the patient and the moment petitioner reached the labour room, where the patient (deceased), who was on bed died and despite all the efforts made by the petitioner to save the said deceased and her unborn child, who died due to the hypovoluminic shock with rupture of uterus and internal body hemorrhage leading to cardio respiratory failure. On 24th November, 2016, after ten days of the death of Mussarat Badar-the husband of the deceased, namely, Tanveer Ahmed lodged a Complaint (Annexure-D) before the CJM, Poonch for lodging an FIR against the petitioner, as she is alleged to have committed negligence and did not treat the deceased properly, due to which his wife and child died at 6.30 A.M on 15th November, 2016 and the CJM, Poonch forwarded the same to SHO, Poonch with a direction to investigate the matter and submit the report to the Court. After obtaining the direction from the CJM, Poonch for investigating the matter, the husband of the deceased on 11th January, 2017 approached the Hon'ble High Court for seeking direction of registering of FIR against the petitioner and on 11th January, 2017, the Hon'ble Court directed SHO, Poonch to act upon the order passed by the CJM, Poonch with reference to the Complaint of the petitioner. The SHO, Poonch instead of investigating the matter and thereafter, submitting the report to CJM, Poonch, lodged an FIR No. 04/2017 (Annexure-F), which is impugned in this petition.

4. It is also stated in the petition that on creating hue and cry by the husband and the relatives of the deceased-Mussarat Badar, the Deputy Commissioner, Poonch ordered a Magisterial enquiry also into the death case of the Mussarat Badar and the concerned Tehsildar held an enquiry and submitted the report to the Deputy Commissioner, Poonch, wherein it is categorically stated by the nurses of the District Hospital, Poonch, who were on duty on the intervening night of 14th November, 2016 and 15th November, 2016, namely, Parveen Akhter W/o Abdul Qyum and Naseem Akhter W/o Mohd. Ayaz that Dr. Shehnaz Bhatti was present in the hospital and was attending other patients and the nurses informed her about the condition of the deceased on phone and the statement of Dr. Shehnaz Bhatti that the patient has O-tive Blood Group and also had two cesarean operation earlier and her husband and relatives were already told by her to take her to Jammu for her advance treatment. They did not bother

and came to the District Hospital, Poonch when her labour pains started and instead of travelling to Surankote Hospital, which is nearer to Fazalabad and have better facilities, they travelled 40 Km to reach the District hospital, Poonch and the petitioner made best efforts to save her life, but could not and the patient died due to the hypovolumic shock because of rupture of uterus. The petitioner has challenged the aforesaid impugned FIR and the Complaint dated 24th November, 2016 on the following grounds:-

- a) That the FIR impugned is bad in law and facts and is required to be quashed.
- b) That the FIR is registered on the basis of impugned Complaint filed under Section 156 (3) Cr. P.C before learned CJM, Poonch, which is in violation of law, as laid down by Hon'ble Supreme Court in Priyanka Srivastava Vs. State of U.P. The principal laid down therein are required to be followed by every Court in letter and spirit in the entire Country.
- c) That the FIR impugned does not make out a case of 304-A RPC or 5 P.C Act against the petitioner. That the deceased lost her life due to the non-availability of O-tive Blood Group and rupture of her uterus and internal bleeding though the petitioner mad best efforts to save her life, but since death has million exits, so it cannot be attributable to the doctor treating her.
- d) That the non-availability of O-tive Blood Group can be a drag on the functioning of the district Hospital, Poonch and because of which on very first visit of the deceased, petitioner had advised her to arrange for blood as she belong to O-tive Blood Group, which is a rare group and hardly any donor would be available in Poonch or in the alternative referred her to Jammu for better treatment. This cannot be attributable to the petitioner by any stretch of imagination.
- e) That a simple lack of care or judgment or an accident cannot be proof of professional negligence and the complainant, i.e., Tanveer Ahmed before filing the Complaint of medical negligence against the petitioner should have prima facie produced an independent opinion of a doctor preferably from a doctor in Government service, whether the act committed by the petitioner is negligent, which resulted in the death of the deceased and the act alleged was such, which was no followed in medical profession. Whether negligence in the context of medical profession calls for a treatment which a difference. In the instant case, the private Complaint was entertained by learned CJM, Poonch without any 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. On this ground alone, the impugned FIR and complaint deserve to be quashed.
- f) That SHO, Poonch was directed by learned CJM, Poonch to investigate the matter and the Investigating Officer should before proceeding against the doctor accused of rash or negligent act or omission, obtained an independent and competent medical opinion preferably from a doctor in Govt. service qualified in

that branch of medical practice, who can normally be expected to give an impartial and unbiased opinion based on bolams test to the fact collected in investigation. The same has not been produced and, therefore, FIR impugned requires to be set aside.

g) That the element of Section 5 of Prevention of Corruption Act has been in calculated without application of mind and the element of giving bribe is also an afterthought since the Complaint was lodged before the learned CJM, Poonch after ten days so as to give a shape to the prosecution story, hence FIR impugned is fabricated and manipulated and deserves to be set aside.

h) That the petitioner is a serving doctor in Govt. District Hospital, Poonch and the procedure to proceed against any Govt. servant requires to be followed in case of allegations under Prevention of Corruption Act. Previous sanction of the competent authority being pre-condition for the Court in taking cognizance of the offence if the offence alleged to have been committed by the accused can be said to be an act in discharge of her official duty. The same requires to be followed by the Court, whether there has been sanction for prosecuting the doctor/petitioner. The said impugned Complaint and FIR have been filed without obtaining sanction from the Govt., hence deserves to be quashed.

i) That having referred the deceased to Jammu or Rajouri and prior to that asking her husband and family to arrange for O-tive Blood a rare group of blood on her first visit only and the patient visited the petitioner three times in OPD District Hospital, Poonch and once in the clinic and on her every visit, the petitioner advised the deceased and her family for arranging the blood as well as to go to SMGS, Jammu or Rajouri, but the same was not followed by them cannot be a criminal negligence.

j) That neither learned CJM, Poonch nor Hon'ble High Court in OWP No. 33/2017 directed SHO, Poonch to register an FIR against the petitioner, then how the SHO, Poonch has the jurisdiction to register the aforesaid FIR and start harassing the petitioner for ascertaining her. The same required procedure to be observed and hence, FIR impugned required to be set aside.

k) That there are three doctors posted in District Hospital, Poonch, namely, Dr. Priyanka Bhagat, Dr. Manzoor and Dr. Shehnaz Bhatti/petitioner and since 12th November, 2016 to 16th November, 2016, the first two doctors were on leave and the entire burden of running the gynae department was upon the petitioner and on the same date, the petitioner had conducted three cesarean operations and eighteen normal deliveries and was continuously on night duties as well and whenever a patient is admitted by the Staff of the Hospital in routine manner, the doctor is called in emergencies and the petitioner attended the patient immediately on call by the staff. Hence, no dereliction of duty or of bribe can be attributable to the petitioner.

5. Objections have been filed on behalf of respondent No. 1. The stand taken therein is that the present petition is misconceived inasmuch as the same is not

maintainable and deserves to be dismissed out rightly. No legal, fundamental or statutory rights of the petitioner has been violated. On this count also, the petition deserves to be dismissed. It is stated in the objections that the petition raises disputed question of facts, which this Hon'ble Court while exercising its extraordinary jurisdiction under Section 561-A Cr. P.C may not probe into such disputed question of facts. On this count also, the petition deserves to be dismissed. The above titled petition under Section 561-A along with CMA, which is pending disposal before this Hon'ble Court is not maintainable, as the same has been filed by suppressing the real facts of the case, as such the same deserves to be dismissed. An FIR No. 04/2017 dated 14th January, 2017, registered at Police Station, Poonch for the commission of offences under Sections 304-A RPC.

OWP No. 33/2017

6. Through the medium of instant writ petition, petitioner seeks the following relief(s):-

"i) Mandamus commanding the official respondent No. 3 to register an FIR against the private respondent No. 7 and directing the respondent No. 2 to constitute a special investigating team to investigate the FIR in a fair and transparent manner or in alternative the respondent No. 1 may be directed to handover the investigation of the FIR to the crime branch.

ii) Writ of mandamus commanding the respondent Nos. 4 and 5 to initiate departmental enquiry against the respondent No. 7 with a further direction to the respondent No. 6 to submit the final magisterial report to the respondent Nos. 4 and 5.

iii) Mandamus commanding the official respondents to pay compensation to the petitioner for the death of the wife of the petitioner and his child by the negligence of the respondent No. 7."

7. The facts in nutshell are that the petitioner's wife, namely, Musarrat was pregnant and was under regular check up of the respondent No. 7, i.e., Dr. Shehnaz Bhatti, who was posted as Gynecologist in District Hospital, Poonch. On 09th May, 2016, the delivery date of the wife of the petitioner was given as 17th December, 2016 while on 01.08.2016, it was given on 21st December, 2016 by the respondent No. 7. In the mid night of 14/15 November, 2016, the wife of the petitioner got labour pain and was shifted to District Hospital, Poonch and got admitted vide No.485. In record, the respondent No. 7, who was on duty, but was not present in the hospital so the petitioner along with other persons approached the respondent No.7 3/4 times, but she did not come to the hospital. Finally when the condition of the wife of the petitioner deteriorated, then all the relatives collectively went to the residence of respondent No. 7, where the respondent No. 7 demanded rupees five thousand and out of the same, the petitioner paid rupees two thousand and the remaining amount had to be paid after the delivery in the hospital, but when the respondent No. 7 reached the

hospital and started checkup of the wife of the petitioner casually within one minute, the wife of the petitioner died. Thus, it is clarified that due to negligence of the respondent No. 7, the wife and the child of the petitioner died, as timely treatment was not given to her.

8. It is also stated in the petition that the petitioner along with her relatives approached the respondent No. 3, i.e., Station House Officer, Police Station, Poonch with a written application, annexed as Annexure-C to the writ petition, for lodging an FIR against the respondent No. 7, but the respondent No. 3 refused to lodge an FIR against the respondent No. 7. Thereafter, he approached the Chief Judicial Magistrate, Poonch and filed an application, seeking a direction to the respondent No. 3 for the registration of the FIR against the respondent No. 7. The learned Chief Judicial Magistrate, Poonch forwarded the same to respondent No. 3 for investigation under Section 156(3) Cr. P.C, but till date the respondent No. 3 has not taken any step for registration of FIR against the respondent No. 7. On 15th November, 2016, a protest was also held by the relatives and the general public after the death of the wife and the child of the petitioner, which has been covered by the press media also. The whole of the administration, i.e., District Magistrate also came on spot, the respondent No. 5, i.e., Medical Superintendent District Hospital, Poonch vide letter (Annexure-F) dated 15th November, 2016 recommended to the respondent No. 6, i.e., Deputy Commissioner, Poonch for a magisterial enquiry against the respondent No. 7. The Magisterial Enquiry was held and the Enquiry Report dated 23rd December, 2016 was submitted to the respondent No. 6. From the perusal of the Enquiry Report and Letter, it is evident that the respondent No. 7 did not attend the patients properly and there is negligence on the part of the respondent No. 7, as a result of which the wife and the child of the petitioner died. Despite the fact that the petitioner having approached respondent No. 3 and submitted him all the record, the respondent No. 3 has neither lodged any FIR nor is investigating the matter. The reason is only that the respondent No. 7 is a doctor and belongs to an influential family of District Poonch while the petitioner is a poor man and has no influence. It is also admitted by the respondent Nos. 4 and 5 that respondent No. 7 has done negligence and even no departmental enquiry or action has been taken against the respondent No. 7.

9. I have heard counsel at length. Counsel for petitioners in respective petitions have reiterated all grounds taken in the petitions, whereas counsels for respondents have opposed the prayers.

10. In support of her contention in petition for quashing of FIR, counsel for the petitioner has placed reliance upon the judgments of Hon'ble Supreme Court in cases titled, "Abdul Wahab Ansari Vs. State of Bihar", reported in 2000 AIR (SC) 3187 "Priyanka Srivastava and Anr. Vs. State of U.P and ors., reported in 2015 AIR (SC) 1758 and "Jacob Mathew Vs. State of Punjab, reported in 2005 AIR (SC) 3180".

11. I have considered rival contentions. In present case, as is evident from

record, the allegations against accused/petitioner is that a pregnant lady Mussarat Bader was brought to District Hospital Poonch at 2AM on intervening night of 14/15 November 2016; she was admitted in labour room, where petitioner was on duty, but was not there; she was consulted by staff of telephone and petitioner gave instruction for giving injections; instead of coming to labour room; the condition of patient started serious; relative approached the petitioner, but she refused to come; as per allegations petitioner has gone to her house instead of hospital, so relative approached the petitioner at home, where she demanded Rs.5000/-; she was given Rs. 2000/- and rest of money was to be given in hospital as relatives were not having money at that time. Petitioner came late but by that time both baby in womb and mother had died. A written report was lodged but Police did not conduct any investigation. So written complaint was made before JMIC (CJM) Poonch on 24.11.2016, who directed the police to investigate the matter u/s 156(3) Cr.P.C. Police did not lodge FIR; then husband of deceased filed writ petition no. OWP 33/2017 and this court on 11.01.2017 directed the police to act upon the order of CJM; accordingly FIR no.4/2017 u/s section 304-A RPC 5P.C Act was registered on the direction of High Court

12. Now law with regard to quashing of FIR/challan/complaint is well settled. These can only be quashed in order to prevent abuse of process of law or to otherwise secure the ends of justice. The expression 'ends of justice' and 'to prevent abuse of process of any court' are intended to work out either when an innocent person is unjustifiably subjected to an undeserving prosecution or if an ex-facie all merited prosecution is throttled at the threshold without allowing the material in support of it. This court while exercising the power under section 561-A Cr.P.C., does not function as court of trial, appeal or revision. Inherent jurisdiction has to be exercised sparingly, carefully and with great caution. These powers cannot be used to stifle the legitimate investigation. This is a discretionary power vested in High Court to do substantial justice. When the FIR is at initial stage of investigation, this court should be loath in quashing the same, unless investigation is barred under law.

13. Whether petitioner was present in hospital at relevant time is a question of fact, which requires investigation; whether deceased was put on I/v fluids and the petitioner, who had conducted three cesareans and 18 deliveries during the whole day, as the other two doctors were on leave and the entire burden was upon the petitioner, are facts which require detailed investigation; whether petitioner was called by the staff for attending the patient and the moment petitioner reached the labour room, where the patient (deceased), who was on bed, died despite all the efforts made by the petitioner to save the said deceased and her unborn child, are facts to be ascertained during investigation. Even perusal of inquiry report of Tehsildar dated 23.12.2019 would reveal that prior to this incident, one more patient had died in emergency ward due to alleged negligence of petitioner-Doctor. It has further been stated in this report that even Medical Suptd. of hospital raised point over the conduct of petitioner. Tehsildar

has categorically recommended that investigation in the matter be conducted from some investigating agency. The Medical Suptd. Poonch hospital has also written to District Magistrate vide his letter dated 15.11.2016 that petitioner Gynaecologist did not attend the patient properly on relevant day and time, with the result patient died. He recommended magisterial enquiry. Post mortem report of deceased also reveals that deceased died due to rupture of uterus and internal bleeding. These all are, prima facie, materials against the petitioners, which require detail investigation.

14. On these disputed questions of facts, this court cannot quash the FIR and can scuttle the statutory authority of police to investigate the matter.

15. In 2008 (3) SCC 753 in case titled *Som Mittal v. Govt. of Karnataka*, it has been held as under:-

"(10) In a catena of decisions this Court has deprecated the interference by the High Court in exercise of its inherent powers under Section 482 of the Code in a routine manner. It has been consistently held that the power under Section 482 must be exercised sparingly, with circumspection and in rarest of rare cases. Exercise of inherent power under Section 482 of the Code of Criminal Procedure is not the rule but it is an exception. The exception is applied only when it is brought to the notice of the Court that grave miscarriage of justice would be committed if the trial is allowed to proceed where the accused would be harassed unnecessarily if the trial is allowed to linger when prima facie it appears to Court that the trial would likely to be ended in acquittal. In other words, the inherent power of the Court under Section 482 of the Code of Criminal Procedure can be invoked by the High Court either to prevent abuse of process of any Court or otherwise to secure the ends of justice.

(11) This Court, in a catena of decisions, consistently gave a note of caution that inherent power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases. This Court also held that the High Court will not be justified in embarking upon an inquiry as to the reliability or genuineness or otherwise of the allegations made in the F.I.R. or the complaint and that the extra-ordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whims and caprice.

(12) We now refer to a few decisions of this Court deprecating the exercise of extra ordinary or inherent powers by the High Court according to its whims and caprice.

(13) In *State of Bihar v. J.A.C. Saldanha* (1980) 1 SCC 554 this Court pointed out at SCC p. 574:

The High Court in exercise of the extraordinary jurisdiction committed a grave error by making observations on seriously disputed questions of facts taking its cue from affidavits which in such a situation would hardly provide any reliable

material. In our opinion the High Court was clearly in error in giving the direction virtually amounting to a mandamus to close the case before the investigation is complete. We say no more.

(14) In *Hazari Lal Gupta v. Rameshwar Prasad* (1972) 1 SCC 452 this Court at SCC p. 455 pointed out:

In exercising jurisdiction under Section 561-A of the Criminal Procedure Code, the High Court can quash proceedings if there is no legal evidence or if there is any impediment to the institution or continuance of proceedings but the High Court does not ordinarily inquire as to whether the evidence is reliable or not. Where again, investigation into the circumstances of an alleged cognizable offence is carried on under the provisions of the Criminal Procedure Code, the High Court does not interfere with such investigation because it would then be the impeding investigation and jurisdiction of statutory authorities to exercise power in accordance with the provisions of the Criminal Procedure Code.

(15) In *Jehan Singh v. Delhi Administration* (1974) 4 SCC 522 the application filed by the accused under Section 561-A of the old Code for quashing the investigation was dismissed as being premature and incompetent on the finding that prima facie, the allegations in the FIR, if assumed to be correct, constitute a cognizable offence.

(16) In *Kurukshetra University v. State of Haryana* (1977) 4 SCC 451, this Court pointed out:

It surprises us in the extreme that the High Court thought that in the exercise of its inherent powers under Section 482 of the Code of Criminal Procedure, it could quash a first information report. The police had not even commenced investigation into the complaint filed by the Warden of the University and no proceeding at all was pending in any court in pursuance of the FIR. It ought to be realized that inherent powers do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice. That statutory power has to be exercised sparingly, with circumspection and in the rarest of rare cases. (emphasis supplied)

(17) In *State of Bihar v. Murad Ali Khan* (1988) 4 SCC 655 this Court held that the jurisdiction under Section 482 of the Code has to be exercised sparingly and with circumspection and has given the working that in exercising that jurisdiction, the High Court should not embark upon an enquiry whether the allegations in the complaint are likely to be established by evidence or not."

16. The law cited in case titled "*Abdul Wahab Ansari Vs. State of Bihar*" reported in 2000 AIR (SC) 3187 is not applicable, as sanction u/s 197 Cr. P.C is required when court takes cognizance and not to police for investigation. The facts in "*Jacob Mathew Vs. State of Punjab*", reported in 2005 AIR (SC) 3180, are quite different. In said case due to non-availability of oxygen cylinder in hospital, the prosecution was launched against treating doctor and apex court quashed the

proceeding as there was no negligence on behalf of Doctor. The court further issued certain guideline with regard to criminal prosecution against surgeon and physician (Doctors) that 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 Bolam's test to the facts collected in the investigation. A doctor accused of rashness or negligence, may not be arrested in a routine manner (simply because a charge has been leveled against him). Unless his arrest is necessary for furthering the investigation or for collecting evidence or unless the investigation officer feels satisfied that the doctor proceeded against would not make himself available to face the prosecution unless arrested, the arrest may be withheld.

17. From bare perusal of this law, it is evident that Apex Court has not totally debarred the Court from taking cognizance against doctor, but has made note of caution that unless prima facie evidence in the form of expert opinion of another doctor about negligence is not made out, cognizance should not be taken. A universal law cannot be applied that no criminal proceeding against doctor can be initiated against the doctor. Facts of present case are quite distinguishable. As is evident from allegations petitioner-Doctor never attended the patient and demanded money for treatment and due to her late coming in ward, the women and child in womb, died on relevant day and time.

18. In "Priyanka Srivastava and Anr. Vs. State of U.P and ors., reported in 2015 AIR (SC) 1758, it is held that before invoking the power of magistrate u/s section 156 (3) Cr.P.C., complainant should have moved an application u/s 154(1) and 154(3) Cr.P.C. and complaint should be supported with an affidavit.

19. In present case, complainant has categorically stated that he moved a written complaint before SHO but no action was taken; even he has annexed copy of application with complaint. Mere non-annexing of affidavit along with complaint, would not be sufficient to quash the FIR, especially when there is sufficient evidence available on record in support of allegations. Moreover, FIR has been registered on the direction of High Court passed in writ petition filed by husband of deceased.

20. In view of above discussion this petition (CRMC No.45/2017) is dismissed. Stay, if any, is vacated. Police to investigate the matter and complete investigation preferably within one month.

21. So far as writ petition no.33/2017 is concerned, I am of the view that there is no need to pass any order at present, because as per interim direction dated

11.1.2017 of this court, FIR no. 4/2017 was registered and subsequently the investigation was stayed by this court on 30.1.2017 in CRMC 45/2017; and now said CRMC 45/2017 has been dismissed and stay has been vacated. However, petitioner may approach afresh, if he would have any grievance in future. Disposed of accordingly.