

(2015) 02 BOM CK 0216

In the Bombay High Court

Case No : Criminal Application Nos. 1729 and 1730 of 2003

Vijay

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 13-02-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Indian Medical Council Act, 1956 — Section 15(3)
Penal Code, 1860 (IPC) — Section 304-A

Citation : (2015) ALLMR(Cri) 1889

Hon'ble Judges : V.M. Deshpande, J

Bench : Single Bench

Advocate : A.P. Bhandari, for the Appellant; V.H. Dighe, APP, Advocates for the Respondent

Judgement

V.M. Deshpande, J.—These two Criminal Applications filed u/s. 482 of the Code of Criminal Procedure can be decided by this common Judgment, since both arises out of the Judgment and order passed by the learned 4th Additional Sessions Judge, Aurangabad dated 27/07/2003 in Criminal Revision No. 15/2003, whereby the learned revisional Court dismissed the Revision filed by them and confirmed the order of issuance of process against them for the offence punishable u/s. 304-A of the Indian Penal Code by the learned Judicial Magistrate First Class, 16th Court in R.C.C. No. 1285/2002 dated 27/12/2002. The brief facts leading to the present proceedings u/s. 482 of the Code of Criminal Procedure can be narrated as under:

Respondent No. 2 Laxman Shamrao Ingle is the complainant. He filed Private Complaint in the Court of the learned Magistrate. In the said Complaint, the applicant in Criminal Application No. 1730/2003, Dr. Jamil Deshmukh is shown as accused No. 1, whereas the applicant in Criminal Application No. 1729/2003, Dr. Vijay Balkrishna Sarode is shown as accused No. 5. Besides these applicants, 4 others were also shown as accused persons in the said criminal case.

2. For the sake of convenience, the parties will be referred to as per their original position in the Complaint.

3. Undisputedly, accused No. 1 possesses qualification of B.H.M.S. and is registered under the Bombay Homeopathic Medical Council Act, 1954 [hereinafter referred to as the "Act" for the sake of brevity], whereas accused No. 5 is duly qualified Doctor. The Complaint proceeds that the complainant was required to admit his son Vijay on 09/03/2001 for giving allopathic treatment in M.G.M. Medical College and hospital at Aurangabad. According to the Complaint, accused No. 1 though a Homeopath, prescribed allopathic medicines and administered various injections intravenous to Vijay. It is further alleged in the Complaint that in spite of administering heavy doses of injection, such as voveron, ciprofloxacin and others, the condition of his son Vijay was deteriorating and, therefore, when the complainant enquired about the prognosis of his son, accused No. 1 abused him and forcefully discharged his son Vijay. That time, his son went in "coma". The Complaint further proceeds that thereafter he was required to take his son to the Govt. Medical College, Aurangabad where he was told that the condition of his son is critical and his both kidneys are failed. The Complaint further states that the Doctors of Govt. Medical College, Aurangabad remarked as to how at such critical stage, the patient was discharged. Vijay, who was admitted in the Govt. Medical College, Aurangabad in unconscious stage, ultimately died on 18/03/2001.

4. The Complaint further proceeds that after the death of his son, when he made inquiry with the original accused Nos. 2, 3 viz. trustees. Dean of the M.G.M. College, he was informed that accused No. 1 Jamil Deshmukh, being a Homeopathic Doctor, he is not supposed to give allopathic treatment. The Complaint states that accused No. 5, though he has not given treatment, he in collusion with accused No. 1 represented that he had given treatment to the deceased son of the complainant.

5. The verification statement of complainant was recorded before the learned Magistrate. Even before the issuance of process, 2 witnesses Bhimrao Ganpat Gadekar and Dr. Parmod Eknathrao Jadhav were examined by the complainant.

6. The learned Magistrate, on 27/12/2002, passed order and thereby issued process against all accused for the offence punishable u/s. 304-A of the Indian Penal Code read with section 15(3) of the Medical Council Act, 1956.

7. All accused persons filed Revision in the Court of Sessions Judge, Aurangabad challenging the correctness of the order of issuance of process by the learned Magistrate. The said Revision was registered as Criminal Revision No. 15/2003. The said Revision was allotted on the file of 4th Additional Sessions Judge, Aurangabad.

The learned Revisional Court, after hearing the parties to the Revision, partly allowed the Revision. The revisional Court maintained the order of issuance of process against accused No. 1 Dr. Jamil Deshmukh and accused No. 5 Vijay

Balkrishna Sarode for the offence punishable u/s. 304-A of the Indian Penal Code.

The learned revisional Court set aside the order of issuance of process against all the accused u/s. 15(3) of the Medical Council Act, 1956.

The learned revisional Court dropped the proceedings against original accused Nos. 2, 3, 4 and 6.

8. It is against this order passed by the learned revisional Court, the original accused Nos. 1 and 5 are before this Court through these two Criminal Applications filed u/s. 482 of the Code of Criminal Procedure.

9. Heard Mr. A.P. Bhandari, the learned counsel for the Applicants, Mr. V.H. Dighe, the learned A.P.P. for Respondent No. 1 - State and Mr. B.V. Dhage, the learned counsel in both the Applications for the original complainant in extenso.

With the assistance of the learned counsel, I have gone through the record and proceedings placed before this Court, which was called at the time of admission of the present Criminal Applications.

10. Mr. Bhandari, the learned counsel for the applicants submitted that the order passed by the Courts below issuing process u/s. 304-A of the Indian Penal Code is required to be set aside in as much as there is nothing on record to show that the accused persons were responsible for the death of Vijay. He submitted that, even the entire complaint and the documents are taken in its face value, it does not show that there was any negligence on the part of these two Doctors. He further submitted that, in fact, the observations made by the learned revisional Court shows that against the medical advise, the complainant took discharge of his son and thereafter he was admitted in the Govt. Medical College, Aurangabad and, therefore, there is every possibility that at Govt. Medical College, Aurangabad there was no proper treatment given to his son, resulting to his death. He relied upon the authoritative pronouncement of Hon'ble Apex Court reported in Jacob Mathew Vs. State of Punjab and Another, (2005) ACJ 1840 : AIR 2005 SC 3180 : (2009) 2 CompLJ 367 : (2005) 3 CPJ 9 : (2005) CriLJ 3710 : (2005) 4 CTC 540 : (2005) 6 JT 584 : (2005) 6 SCC 1 : (2005) 2 SCR 307 Supp .

11. Per contra, the learned counsel for the complainant submitted that the negligence on the part of these 2 Doctors is writ large. According to him, though Dr. Jamil Deshmukh was a Homeopath, he has prescribed and administered various allopathic injections and Dr. Sarode is in collusion with him.

12. At the time of issuance of process, the learned Magistrate is not expected to deal with each and every aspect. Suffice it to say, the learned Magistrate must be satisfied on the basis of the Complaint, verification statement, available documents and the other material that there exists prima facie case to proceed with against the accused persons. The learned Magistrate is not required to go into the deep probative value of the material on record. The learned Magistrate before issuing process, undisputedly, has to exercise his judicial mind. However,

at that stage, the learned Magistrate is required to find out whether there is sufficient ground to proceed against the accused or not. He is not required to determine the adequacy of evidence or probability of the accused being guilty. It is not expected from the learned Magistrate, at this stage, to embark upon meticulous examination of evidence or material.

13. The learned counsel has tried to submit that from the observations of the learned revisional Court that on 14/03/2001 in the morning at 7.30 a.m., the complainant himself has got his son discharged from M.G.M. Hospital against medical advise. He submitted that the learned revisional Court gave clear cut finding to that effect in the last portion of paragraph 8 of the Judgment.

14. Firstly, there was no occasion for the revisional Court to make such observation. The learned Magistrate after scrutinizing the complaint, the documents and the evidence adduced on record before issuance of process, was prima facie satisfied that there is material against accused Nos. 1 and 2 and thereafter issued process. In fact, the learned revisional Court has ultimately confirmed the said order.

15. The learned counsel invited my attention to the said consent letter, which according to him, is given by the present complainant. The perusal of the said letter, reflect that the signature of the complainant is obtained on blank paper and thereafter the material is written. This can be seen with naked eyes since there is unusual space appearing in between the completion of the material and the signature complainant.

16. Further, the medical papers ultimately shows that the name of Dr. Sarode is appearing, thereby, prima facie the allegation made by the complainant in the Complaint that name of accused No. 5 Dr. Sarode is used only to protect accused No. 1 Dr. Jamil Deshmukh and Dr. Sarode is in collusion with him, get support.

17. What is important to note is that the evidence of Dr. Pramod Jadhav, who was Examined by the complainant even before the issuance of process. His evidence is recorded on 16/11/2002. Dr. Pramod Jadhav is having qualification as M.B.B.B., M.S., though his specialization is in E.N.T. His evidence would reveal that after examining the discharge card, which contains the treatment given to Vijay at M.G.M. Hospital, he has stated on oath as under:

"Due to such treatment [discharge card treatment], patient can die, such treatment was wrongly given".

18. While considering the above, one need not go by the words used by the deponent in strict manner. The same is having the element of negligence. Now the degree of negligence has to be proved by complainant at later stage when he will be required to adduce evidence to prove charge.

19. The learned Magistrate and the learned revisional Court, therefore, were right in issuing the process against the present applicants for the offence punishable u/s. 304-A of the Indian Penal Code, which is confirmed by the

learned revisional Court.

20. Ultimately, it will be for the complainant to prove the charge by adducing required evidence. A private complainant can not always have the knowledge of the medical science, however, in the present case, there is evidence on record to show that Dr. Jamil Deshmukh who was not expected to prescribe and administer allopathic medicine, has done it and in order to save him. Dr. Sarode has stepped in on the case papers. Coupled with Dr. Jadhav's evidence, I see no reason to take other view than taken by the Courts below in respect of the issuance of process against these 2 applicants. Hence, both these Criminal Applications are dismissed. Rule discharged.

21. At this stage, the learned counsel for the applicants submitted that interim order was in operation in their favour since 2003 and, therefore, requested that for reasonable period the interim stay operating in their favour be extended. Looking to the fact that the interim order was operating in favour of the applicants since 2003, the interim stay granted in their favour on 29/09/2004 shall remain in operation for further period of 8 weeks from today. After the expiry of said 8 weeks, the interim order shall be vacated automatically without reference to this Court.