



CORRECTED VIDE COURT'S ORDER DATED 01-04-2024
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1072 OF 2021

Dr. Madhav S/o Veerappa Chambule,
Aged : 50 years, Occu : Medical Practitioner,
R/o. Udaygiri Multi Specialty Hospital,
Shelal Road, Udgir, Tq. Udgir,
Dist. Latur

.. Petitioner

Versus

1] The State of Maharashtra,
Through the Police Station Officer,
Police Station Udgir (Rural), Dist. Latur

2] Maheshkumar S/o Trimbakrao Jivane,
Aged : 46 years, Occu: Self Employed,
R/o. Hindustan Colony, Bidar Road,
Udgir, Tq. Udgir, Dist. Latur (Orig. Complainant / Informant)

.. Respondents

...
Advocate for petitioner : Mr. A.N. Irpatgire
Mr. Maheshkumar Trimbakrao Jeevane respondent no. 2 in person
APP for the respondent – State : Mr. G.A. Kulkarni
...

**CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.**

RESERVED ON : 18 MARCH 2024
PRONOUNCED ON : 28 MARCH 2024

JUDGMENT (MANGESH S. PATIL, J.) :

Heard both the sides. Rule. Rule is made returnable forthwith. On their request, the matter is heard finally at the stage of admission.

2. The writ petition is by one of the accused is seeking quashment of the crime No. 0279 of 2021 registered at Udgir Police Station, Tq. Udgir, District – Latur and consequent charge sheet no. 204 of 2022 pending in the Court of Judicial Magistrate First Class,

Udgir for the offences punishable under section 420, 274, 275, 276, 34 of the Indian Penal Code and Section 9-B, 18(c), 17-B of the Drugs and Cosmetics Act, 1940.

3. The respondent no. 2 - informant lodged a complaint with Police on 12-06-2021 alleging that his mother aged 72 years was admitted to the petitioner's hospital since both of them have been friends for number of years. After HRCT scan and blood examination, initially she was treated as an outdoor patient on 15-04-2021. Again she developed fever and in the early morning of 16-04-2021, she was taken to the petitioner's hospital and was admitted. In the evening, she was shifted to the ICU and then in a special room. Another HRCT scan was done. Since it read 11, the petitioner diagnosed that she was having COVID infection and prescribed 6 doses of remdesivir injections. In spite of efforts, the informant could not get the injections and informed the petitioner about it.

4. The complaint then alleged that on 17-04-2021 in the morning hours, the petitioner called the informant in his cabin. A person was sitting there. The petitioner told him that he was Dr. Namdeo Giri and further informed that due to Dr. Giri's help, the remdesivir injections were arranged but will have to be bought at Rs.15,000/- per vial, in aggregate Rs.90,000/-. Considering the exigency, the informant agreed, however, Dr. Giri was having only two

vials which the petitioner handed over to the informant. It was having description as manufactured by Mylan company having brand name DESREM and the petitioner told him that it was remdesivir injection. The vials were having an indication that those were for clinical trial use. Therefore, the informant asked the petitioner as to if it would be advisable to give such injection to his mother whereupon the petitioner assured him that it would not make any difference and on the same day, his mother was given two doses of remdesivir.

5. The complaint then alleged that since the informant was not carrying sufficient money in the morning of 17-04-2021, Dr. Giri contacted him in his home where the informant paid him Rs.40,000/-. Dr. Giri then handed over him four more remdesivir injections after some time, near the petitioner's hospital. Dr. Giri collected the remaining amount of Rs.50,000/- on the next day from the informant's wife.

6. The complaint also then alleged that since there was scarcity of remdesivir injections, even his relatives were in search of such injections. On 18-04-2021, when the informant was in the hospital, his relatives handed over to him couple of remdesivir injections. Even those were of Mylan company with brand name DESREM. Those two remdesivir injections received from the relatives were administered to his mother on 18-04-2021 and 19-04-2021.

Thereafter, she was given another two remdesivir injections which the petitioner and Dr. Giri had given to him, on 20-04-2021 and 21-04-2021. Remaining two injections received from them remained with the informant. Unfortunately, the condition of his mother could not improve and she breathed last in the early hours of 02-05-2021.

7. The complaint also alleged that after coming out of the shock, due to death of mother he carefully examined the empty remdesivir vials which he had bought from the petitioner and Dr. Giri and couple of vials which had remained unused with him. The empty vials of the injections which were procured by his relatives and administered to mother and noticed that the residue drops in the empty vials of the injections which he had bought from the petitioner and Dr. Giri had turned reddish, however, similar residue drops from the vials which he had procured from the relatives had not turned reddish. He noticed that the vials received from the petitioner and Dr. Giri were for clinical trial use having MRP of Rs.4800/- showing date of manufacture as 09/2020 and the expiry date is 08/2022, when the expiry date of remdesivir injection is usually 1 year. He also noticed that the label of Mylan company on the vials bought from the petitioner and Dr. Giri appeared duplicate. It was having a toll free number but it was unresponsive.

8. It then alleged that on 15-05-2021, he compared the details together with the figures of the vials he had bought from the petitioner and Dr. Giri on Mylan company on its official website. On 18-05-2021, the company responded by informing him by return mail that those vials were duplicate. Having confirmed thus, he realized that taking advantage of the COVID-19 pandemic, he was defrauded and dishonestly and illegally was made to buy those duplicate remdesivir injection vials for a sum of Rs.90,000/-.

9. It also alleged that before approaching police, he indulged in telephonic conversation with the petitioner on his mobile which he recorded. He offered to return the remaining two vials purchased from Dr. Giri. Stating that the patients had reduced considerably, the petitioner refused to take it back and suggested him to approach Dr. Giri. It alleged that bogus remdesivir injections were fraudulently sold by the petitioner and co-accused Dr. Giri to the informant and he having been made to pay Rs.90,000- he was cheated. He produced the entire record, the empty vials of the alleged bogus injections, transcript of the telephonic conversation and the material received from the Mylan company, with the concerned police on 12-06-2021 while lodging the complaint.

10. Since no crime was being registered, it appears that the respondent no. 2 pursued the matter with the higher authorities and

ultimately a formal FIR was got registered from him on 17-07-2021 and the offence was registered initially as crime no. 279 of 2021 for the offences punishable under section 420, 274, 275, 276 r/w. 34 of the Indian Penal Code against the petitioner and Dr. Giri. It appears that the empty vials allegedly sold by the petitioner and Dr. Giri to the respondent no. 2 were sent to the Drugs and Cosmetics department. It was sent for forensic analysis. A report was received on 27-07-2021. The injection was found to be spurious and the Assistant Commissioner of Drugs, Latur directed the Investigating Officer to include the offence punishable under section 27 r/w. 9-B, 17-B and 18(c) of the Drugs Act.

11. During the course of investigation, supplementary statement of the respondent no. 2 were recorded on 08-10-2021 and 16-03-2022. Investigation was carried and the chargesheet was filed for all the afore-mentioned offences under the Indian Penal Code and the Drugs Act.

12. The learned advocate for the petitioner would submit that the registration of crime and its investigation by the police officer in respect of the offences under the Drugs Act itself is faulty. He could not have carried out the investigation into the offence under the Drugs Act and that goes to the root of the investigation.

13. The learned advocate Mr. Irpatgire would further submit that the petitioner has been falsely implicated. Even according to the respondent no. 2 they have been friends for many years. It is only because of such close relationship that the mother of the respondent no. 2 was admitted in the petitioner's hospital. He had no dishonest or fraudulent intention. As it is, due to the pandemic, remdesivir injections were not available. Since Dr. Giri was able to procure those, the petitioner had helped the respondent no. 2 in having it. There was no reason or occasion for the petitioner to know that it was spurious. Had there been any such intention and *mens rea*, instead of making the respondent no. 2 search for the injections, he himself could have readily made it available. It is only because Dr. Giri who was frequenting to the petitioner's hospital and was able to procure the remdesivir injections that the petitioner had informed the respondent no. 2. He had no role in the transaction except bringing Dr. Giri and the respondent no. 2 together. There is nothing to demonstrate that the petitioner has derived some wrongful gain without which ingredients for constituting the offence punishable under section 420 of the Indian Penal Code cannot be made out.

14. Mr. Irpatgire would submit that the petitioner is correctly being not charged or being held responsible for causing the death. He is also not being charged for medical negligence.

15. Mr. Irpatgire would then submit that investigation has not been proper. It is only because of the pressure created by the respondent no. 2, having developed grudge because of death of his mother that the crime was registered. The very version that after administration of two injections on the first day, according to the respondent no. 2, the empty vials were carried by him, would be improbable it being a bio-medical waste. He had procured few remdesivir injections from his relatives and he himself tendered the empty vials to the investigating machinery. Though chemical analysis was done it leaves every room to doubt as to if the vials which the respondent no. 2 states to have procured from Dr. Giri were handed over to the investigating machinery. Since there is no investigation about it, it would be gross abuse of the process of law to make the petitioner, who is a medical practitioner, to face the trial. The hospital where the petitioner is working, is a multi-specialty hospital wherein as many as 15 doctors work. There is enormous delay in lodging the FIR which leaves room for doubting the credentials of the allegations. Due to the enormous pressure created by the respondent no. 2, Dr. Giri ended his life and the respondent no.2 has even been prosecuted for abetting the suicide.

16. The learned APP and the respondent no. 2 in person by referring to affidavits filed by him would take us through the chargesheet and even point out the telephonic conversation between

the petitioner and the respondent no. 2 as was mentioned in the first complaint lodged on 12-06-2021. They would submit that this being a proceeding under section 482 of the Code of Criminal Procedure, this Court cannot undertake a minute scrutiny by holding a mini trial. They would submit that this Court would be guided by the principles laid down in the matters of ***Chilakamarthi Venkateswarlu and another Vs. State of Andhra Pradesh; (2019) SCC Online 948*** and ***State of Haryana V/s Bhajan Lal; 1992 Supp (1) SCC 335*** and according to them, it is only if the matter falls under categories laid down in that matter that a crime and criminal case can be quashed. Irrespective of other material, the very fact that the respondent no. 2 happens to be a friend of the petitioner, according to them, is sufficient to rule out any false implication. Similarly, they would submit that if at all the respondent no. 2 was intending to implicate the petitioner falsely, possibly several serious allegations could have been made / attributed to the petitioner. The respondents are not making any allegation about either the medical negligence or for directly causing death by using a spurious injection. This, according to them also would demonstrate that the respondent no. 2 has not initiated the prosecution with any ulterior motive.

17. As regards the delay, the respondent no. 2 would take us through the record to demonstrate as to how the police were reluctant to act on his complaint and he had to run from pillar to post and had to

approach the Inspector General of Police. It is only thereafter that the crime was registered. Even that did not happen at the first stroke when he approached the police and his report was received on 12-06-2021. Ultimately, the crime was registered on 17-07-2021.

18. As regards the objection regarding a police officer carrying out investigation in the offences under the Drugs Act, they would submit that by virtue of sub-section 3 of section 32 of the Drugs Act, a person who is being prosecuted for the offence under the Drugs Act, can also be simultaneously prosecuted under any other law for any act or omission which constitutes the offences in that Act. He would also rely upon the decision in the matter of ***Union of India Vs. Ashok Kumar Sharma; (2021) 12 SCC 674***.

19. On facts, the learned APP and the respondent no. 2 would submit that the doubt being raised in respect of the empty vials of the fake injection received by the respondent no. 2 after first two doses were administered to his mother, they would point out that there is WhatsApp conversation between the respondent no. 2 and his sister from USA, screenshots of which have been produced by the respondent no. 2 and are even part of the chargesheet to demonstrate that the empty vials were returned to the respondent no. 2. Besides, according to them, it would be a matter to be scanned by the trial Court based on the evidence to be led before it. If at all the prosecution is

unable to rule out the probabilities being pointed out by the petitioner, he would get due benefit, however, that exercise cannot be undertaken in this proceeding with a limited jurisdiction.

20. The learned APP and the respondent no.2 would further submit that the latter had also brought another remdesivir injection of different brand, which the petitioner refused to administer to his mother stating that it was fake. He being a medical practitioner, having special knowledge, must have been administering remdesivir injections during the COVID times and could have easily made out that the vials obtained from Dr. Giri were fake. There is a specific conversation transcript to substantiate this fact. Even the fact that the vials were containing specific instruction that those were for clinical trial use whereupon the petitioner assured that that would not make any difference. Though the petitioner initially refused to admit his association with Dr. Giri, admitted in the telephonic conversation that Dr. Giri was frequenting to his hospital wherein his patients used to be admitted and used to pay visits. It is only due to petitioner's intervention that the respondent no. 2 had bought those fake vials. Even if there is no actual proof about petitioner having received any share of the sale proceeds from Dr. Giri the above facts, at this juncture, are sufficient to demonstrate petitioner's involvement.

21. To sum up, they would conclude that it is not a case of false implication, prosecution deserves to be extended an opportunity to substantiate the charges by leading cogent evidence. The petitioner will get sufficient opportunity to participate in the trial and may even be acquitted but there is no reason to shunt the prosecution at the threshold.

22. It is trite that while exercising the powers under section 482 of the Code of Criminal Procedure, this court in the process of analyzing the material cannot indulge in a mini trial. It is only if the facts and circumstances are covered by the instances quoted in the matter of **Bhajan Lal**, this extra-ordinary jurisdiction can be exercised. Bearing in mind these principles, at the inception, it would be appropriate now to approach the facts and circumstances.

23. Starting with the ground of delay, in our considered view, that should not bother us at this juncture and the trial court can ponder upon it while reaching to a conclusion on overall conspectus of the matter and the evidence to be led before it. There is enough material to demonstrate that attempt of the respondent no. 2 to set the criminal law in motion did not find favours with the investigating machinery. It is only after some persuasion that ultimately the crime was registered. Even it appears that time was consumed for getting the empty vials tendered by the petitioner analyzed from a forensic laboratory and if all

these things have led to some delay, in our considered view, that cannot be a ground to stall the prosecution abruptly, particularly when there is *prima facie* material in the form of report of the forensic laboratory and even the response from the concerned company that the vials were fake ones.

24. As far as the objection regarding authority of a police officer to carry out investigation into the crime under the Drugs Act, the issue is no more *res integra* in view of the observations of the Supreme Court in the matter of **Ashok Kumar** (supra). Besides, even sub-section 3 of section 32 of the Drugs Act expressly mentions that the offences under that Act and any other law can be simultaneously proceeded with. Therefore, there is no substance in the statement on behalf of the petitioner that the investigating officer did not have the power to carry out investigation into the offences under the Drugs Act.

25. So far as the facts are concerned, the fact that the petitioner had introduced Dr. Giri to the respondent no. 2, they met in his cabin and vials were bought by the respondent no. 2 which were administered to his mother which were subsequently found to be spurious, coupled with the fact that instead of M.R.P. of Rs.4,800/- per vial, those were sold to the respondent no. 2 @ Rs.15,000/- per vial, that too is the rate having been agreed before the petitioner and in his cabin, in our considered view, is sufficient to make out the ingredients

for the offence of cheating as defined under section 420 of the Indian Penal Code.

26. Even if the actual money was received by Dr. Giri and there is no material to demonstrate about the petitioner having received any share of the sale proceeds, in our considered view, his subsequent conduct in dis-owning any relationship with Dr. Giri but admitting in the telephonic conversation about Dr. Giri's frequent visits to the hospital where apparently he used to admit his patients, are sufficient to demonstrate, at this juncture, that the allegations about he having fraudulently and dishonestly induced the respondent no. 2 to buy the fake vials, that too with an exorbitant price, in our considered view, is sufficient to reveal his complicity in the crime.

27. There is one more aspect which could have a bearing. The respondent no. 2 is stated to have approached the petitioner with unused vials which the respondent no. 2 had bought from Dr. Giri, however, he refused to use it to any other patient saying that the number of patients with COVID infection had reduced considerably and suggested him to meet Dr. Giri.

28. Considering the overall conspectus of the matter, in our considered view, it cannot be said that the petitioner is being falsely implicated or making him face the trial would be an abuse of the process of law.

29. We see no sufficient and cogent reason to quash the crime and the criminal case.

30. Criminal writ petition is dismissed.

31. Rule is discharged.

32. Observations made herein-above are confined to the decision of the present writ petition and the trial Court shall not feel influenced by those.

[SHAILESH P. BRAHME]
JUDGE

arp/

[MANGESH S. PATIL]
JUDGE