



IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2000 OF 2024

Sanjay s/o Manohar Kumbephalkar .. Applicant

versus

The State of Maharashtra & another .. Respondents

Mr. G. L. Deshpande, Advocate for the Applicant.

Mr. N. R. Dayama, APP for the State.

Mr. S. T. Jadhav, Advocate holding for Mr. P. D. Suryawanshi,  
Advocate for Respondent No. 2.

**CORAM : R. M. JOSHI, J.**

RESERVED ON : 19<sup>th</sup> August, 2026.

PRONOUNCED ON : 24<sup>th</sup> August, 2026.

ORDER :

1. This application is filed under Section 482 of Code of Criminal Procedure seeking quashment of First Information Report in Crime No. 200/2022 registered with Majalgaon City Police Station, Majalgaon, Dist. Beed for the offences punishable under Sections 420 of Indian Penal Code, Section 33 of Maharashtra Medical Practitioners Act and Sections 18(c), 18(a)(i), 27(b) of Drugs and Cosmetics Act, charge-sheet No. 87/2022 dated 18.07.2023 and consequential proceeding bearing RCC No. 241/2022 pending with Joint Judicial Magistrate First Class, Majalgaon.

2. First informant, Medical Officer, PHC Sadola, lodged report with the concerned police station informing that in order to find out bogus doctors, a team was formed. The Tahsildar, Majalgaon, informed the informant about Sankalp Vyasnmukti Kendra, run by present Applicant and the people being cheated therein. Accordingly, informant and the team visited the spot on 11.08.2022 at about 11.00 am. According to the informant, it was found that the Applicant had no medical licence to treat the patients. At the spot, it was found that 16 patients were being treated and Allopathy medicines including IV fluids etc. were found. Offence, therefore, came to be registered against the Applicant.

3. Learned Counsel for the Applicant submits that the offences though are charged under the provisions of Maharashtra Medical Practitioners Act so also Drugs and Cosmetics Act, unless appropriate procedure is followed as contemplated therein, no criminal proceeding could be initiated against the Applicant. It is his contention that the relevant provisions of the said Act prohibit lodging of First Information Report and only on the basis of the complaint lodged by the competent authority/authorised officer, no cognizance of the said offence can be taken. According to him the

provisions of Maharashtra Medical Practitioners Act, do not apply to the present case, since Applicant never treated any inmate of centre neither manufactured, sold or distributed any drugs/medicines. It is his submission that though there is allegation against the Applicant that he cheated the patients, it is his contention that on the basis of material on record, more particularly statements of doctor as well as patients, no offence of cheating is made out against the Applicant. It is his further submission that since the only cognizable offence under Section 420 of Indian Penal Code is not made out, rest of the offences cannot be allowed to be treated by the Trial Court. According to him, though there are no allegations against the present Applicant as regards contravention of provisions of Mental Healthcare Act, 2017, however, since arguments are made on behalf of prosecution to that effect about powers of the Court to frame charge under the said provisions, no First Information Report could have been lodged in respect of the offence under the said Act. Since these offences are punishable with fine only, they become non-cognizable in nature. It is his submission that in the circumstances it would be unjust to call upon the Applicant to undergo the rigors of criminal trial. It is his further submission that the provisions of Mental Healthcare Act are not attracted to the present case.

4. Learned APP and learned Counsel for the informant opposed the application firstly by submitting that the offence is serious in nature as the Applicant is undertaking treatment of patients without any licence and causing harm to the patients. Secondly, it is their submission that there is evidence on record to indicate that the Applicant has not registered himself under the provisions of Mental Healthcare Act and also the treatment is not being extended to the patients by Medical Officer competent to extend such treatment. This fact, according to them, clearly indicates about offence of cheating being committed by the Applicant. It is their submission that the provisions of Drugs and Cosmetics Act as well as Maharashtra Medical Practitioners Act are rightly invoked in the instant case. Attention of the Court is drawn to the provisions of Section 154(4) of Code of Criminal Procedure indicating that when non-cognizable offence has been charged along with cognizable offence, it is open for the investigating agency to investigate into such non-cognizable offence so also the Trial Court would get jurisdiction to try the same. It is their submission that since the offences under Section 420 of Indian Penal Code as well as offence under Medical Practitioners Act, which are cognizable in nature are attracted in the present case, there is no justification to quash the proceeding.

5. At the outset, it would be useful to refer to judgment of Hon'ble Supreme Court in case of State of Haryana and others Vs. Bhajan Lal and others, **1992 SCC (SUPP) 1 335**, which gives guidelines for the decision of quashment of criminal proceedings. Relevant observations made therein read thus :

*“ 102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.*

*(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 under Section 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 under Section 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 of 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.”*

Keeping in mind these observations, facts of the case are assessed.

6. Perusal of the First Information Report indicates that the allegation against the present Applicant is that he is running a de-addiction centre without registration. It is alleged that the Applicant has cheated the patients. On the basis of the arguments advanced on behalf of the prosecution, it seems that the prosecution has sought to make out a case that since there is no registration of the said de-addiction centre under the Mental Healthcare Act, so also since the treatment has not been extended by a competent doctor, it becomes an offence of cheating. At this stage, it would be relevant to take note of the provisions of Indian Penal Code. The word 'Cheating' is defined thus :-

*“Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to “cheat”.*

The above provision clearly indicates that the consideration for offence of cheating is that there should be intention of the accused since inception to cause loss to the victim and to have unlawful gain for himself. Perusal of the charge-sheet indicates that there are statements recorded of Dr. Patki as well as patients indicating that no treatment was extended by the present Applicant to the patients but the treatment is given by a registered Medical Practitioner. The advertisement, which forms part of charge-sheet also clearly not only names the treating documents but also shows the educational qualifications. Apart from this, none of the witnesses claim that they were assured of treatment by a particular doctor or a doctor holding any requisite/specific qualification and against the said assurance, they agreed to pay money to the Applicant. In absence of any such statement on record, it is not possible to attribute offence of cheating against the present Applicant.

7. In so far as the offence punishable under Section 33 of Maharashtra Medical Practitioners Act is concerned, it would be necessary to take note of relevant provisions of the said Act, which read thus:

*Section 2(2) : For the purposes of Chapter VI, a person shall be deemed to practice any system of medicine who holds himself out as being able to diagnose, treat, operate, or prescribe medicine or other remedy or to give medicine for any ailment, disease, injury, pain, deformity or physical condition or who, by any advertisement, demonstration, exhibition or teaching offers or undertakes, by any means or method whatsoever to diagnose, treat, operate or prescribe medicine or other remedy or to give medicine for any ailment, disease, injury, pain, deformity or physical condition :*

*Provided that, a person who, -*

- (i) mechanically fits or sells lenses, artificial eyes, limbs or other apparatus or appliances; or*
- (ii) is engaged in the mechanical examination of eyes for the purpose of constructing or adjusting spectacles, eye-glasses or lenses; or*
- (iii) practices physiotherapy or electrotherapy or chiripody or naturopathy or hydropathy or yogic healing; or*
- (iv) without personal gain furnishes medical treatment or does domestic administration of family remedies; or*
- (v) being registered under the Dentists Act, 1948, limits his practice to the art of dentistry; or*
- (vi) being a nurse, midwife or health visitor registered or enlisted under the Bombay Nurses, Midwives and Health visitors Act, 1954, or any other corresponding law for the*

*time being in force in the State or a Dal attends on a case of labour,*

*shall not be deemed to practice medicine;*

*Explanation :- In this sub-section -*

- (i) “advertisement” includes any word, letter, notice, circular, picture, illustration, model, sign, placard, board or other document and any announcement made orally or by any means of producing or transmitting light sound, smoke or other audible or visible representation; and*
- (ii) “physio-therapy” means treatment of any ailment, disease, injury, pain, deformity or physical condition, by message or other physical means, but does not include bone-setting.*

This provision indicates that for application of Chapter VI of the Act, the person should hold himself out as being able to diagnosis, treat, operate etc. or advertises so. Thus, in order to attract the said provision there must be evidence to show that such person claimed himself to treat the patients. Perusal of charge-sheet does not show any material to indicate so. None of the statements of witnesses depict the Applicant himself posing to be person who would treat the patients. Even advertisement brought on record shows that treatment would be extended by Doctors named therein. Thus, the evidence collected during investigation and forming part of

charge-sheet, even if accepted to be correct, no offence punishable under Section 33 of the Medical Practitioners Act, is made out against the Applicant.

8. In so far as invocation of Drugs and Cosmetics Act, is concerned, Section 18(a) of the Act reads thus :-

Section 18 : Prohibition of manufacture and sale of certain drugs and cosmetics :

From such date as may be fixed by the State Government by notification in the Official Gazette in this behalf, no person shall himself or by any other person on his behalf -

(a) manufacture for sale or for distribution, or sell, or stock or exhibit or offer for sale, or distribute -

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As far as the provisions of Section 18 are concerned, charge-sheet shows no such offence is made out and there is no evidence to establish offence under Section 18(a) since the Applicant was neither manufacturing nor distributing the said medicines.

9. Even if it is accepted that a Medical Practitioner having qualification of MBBS only can treat such patients, at the most, it will be contravention of provisions of Mental Healthcare Act. The

said provision indicates that the offence of such contravention is punishable with fine only. As such, this offence becomes non-cognizable in nature. It is, therefore, not open for the police to investigate into said crime and it was mandatory that the competent authority ought to have lodged a complaint with the Magistrate. Even if the case of the prosecution is accepted that treatment was not extended by a Medical Practitioner possessing qualification of MBBS, it becomes contravention of provisions of Mental Healthcare Act and nothing beyond that.

10. Though in First Information Report there is no reference of Mental Healthcare Act, 2017, as rightly argued by learned APP that it would be open for the Trial Court to frame the charges under the provisions of the said Act, in a given case, where there is *prima facie* evidence on record.

11. At this stage, it would be necessary to take note of Section 2(p) of the Mental Healthcare Act defines Mental Healthcare Establishment, which reads thus :-

(p) “mental healthcare establishment” means any health establishment, including Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homoeopathy

establishment, by whatever name called, either wholly or partly, meant for the care of persons with mental illness, established, owned, controlled or maintained by the appropriate Government, local authority, trust, whether private or public, corporation, co-operative society, organisation or any other entity or person, where persons with mental convalescence and rehabilitation, either temporarily or otherwise, and includes any general hospital or general nursing home established or maintained by the appropriate Government, local authority, trust, whether private or public, corporation, co-operative society, organisation or any other entity or person; but does not include a family residential place where a person with mental illness resides with his relatives or friends.”

12. Section 2(s) defines Mental Illness as :-

“mental illness” means a substantial disorder of thinking, mood, perception, orientation or memory that grossly impairs judgment, behaviour, capacity to recognise reality or ability to meet the ordinary demands of life, mental conditions associated with the abuse of alcohol and drugs, but does not include mental retardation which is a condition of arrested or incomplete development of mind of a person, specially characterised by sub-normality of intelligence.

Thus, an establishment which is meant for care of persons with mental illness, which also includes a person having mental conditions associated with the abuse of alcohol and drugs, is a mental health establishment.

The above definition indicates that a mental healthcare establishment is any health establishment by whatsoever name meant for care of persons but does not include any family residential place where person with mental illness resides with relatives or friends. Here, it is not the case of the Applicant that being relative or friend, he is taking care of the patients. This Court, therefore, has no hesitation to hold that a de-addiction centre like one in the present case would be required registration under Mental Healthcare s Act.

13. There is allegation against Applicant of him not having registration under Maharashtra Nursing Homes Registration Act. Under Section 12 of the said Act, contravention of provisions of the said Act, unless provided elsewhere, is punishable with fine of Rs. 5,000/-. Section 13 provides for punishment to the offence by Corporations. Section 6 makes non-registration of Nursing Homes as

an offence punishable with imprisonment which may extend to six months or with fine upto Rs. 10,000/-. Having regard to the nature of punishment, the offences under this Act are non cognizable in nature.

14. Needless to emphasize that in view of the provisions of Maharashtra Nursing Homes Registration Act, non medical operations such as administration, finance etc. could be undertaken by a non medical practitioner. However, the overseeing of medical management thereof must be with a person holding a degree in medical sciences and qualified nurses employed therein. No case of there being medical activities conducted by Applicant is sought to be made out herein.

15. Thus, this Court does not agree with the submissions of learned Counsel for Applicant that provisions of Mental Healthcare Act and Maharashtra Nursing Home Act, do not apply to the present case. It is held that having regard to the nature of treatment extended to the patients the de-addiction centre must have registration under Maharashtra Nursing Homes Registration Act, 1949 as well as Mental Healthcare Act, 2017.

16. In view of the above facts, once it is held that the offences of cheating, Medical Practitioners Act as well as Drugs and Cosmetics Act are not made out, all other offences remain non-cognizable in nature. It was, therefore, not open for the investigating agency to carry out investigation into the said crime and the procedure as prescribed in the relevant law had to be adopted. Consequently, Applicant cannot be called upon to undergo rigors of trial. Application, therefore, is accordingly allowed in terms of prayer clauses 'B' and 'F'. It is however clarified that above order shall not come in way of the authorities to take/initiate action against the Applicant in accordance with law.

( R. M. JOSHI, J.)

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