

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.3494/2015

Sanjay s/o Shridhar Andhare,
age 40 yrs., occu.Medical Practice,
r/o Shushrut Hospital, Barshi.
Tq.Barshi Dist.Solapur.

...Applicant..

Versus

1] The State of Maharashtra,
through the Home Department,
Mantralaya, Mumbai-32.

2] The Police Inspector,
Police Station, Paranda.
Tq.Paranda Dist.Osmanabad.

3] Mr.Sundarao s/o Bhausahab Humbe,
age ____ yrs., occu.Advocate,
r/o 1344, Samarth Nagar, Bhoom.
Tq.Bhoom Dist.Osmanabad.

...Respondents...

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Shri R.N. Dhorde, Senior Advocate i/b Shri V.N. Shelke,
Advocate for applicant.

Shri K.S. Patil, APP for respondent nos.1 & 2.

Shri V.D. Salunke with Shri K.R. Doke, Advocates for
respondent no.3.

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**CORAM: A.B. CHAUDHARI &
INDIRA K. JAIN, JJ.**

DATE: 15.10.2015

ORAL JUDGMENT (Per A.B. Chaudhari, J.) :

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1] This is an application under Section 482 of the Code of Criminal Procedure, 1973, for quashing FIR No.60/2015 dated 8.4.2015 registered at Police Station, Paranda, for the offences u/ss.353, 355, 504 and 186 of the Indian Penal Code that was lodged by the respondent no.3 - Sundarao s/o Bhausahab Humbe, Advocate against the applicant Dr. Sanjay s/o Shridhar Andhare.

2] The applicant is M.D. in Medicine and runs Sushrut Hospital at Shivajinagar, Barshi Dist.Solapur. He was a witness in Criminal Case No.64/2009. The case was pending in the Court of Judicial Magistrate, First Class, Paranda Dist.Osmanabad. The Judicial Magistrate, First Class, Paranda, had issued a non-bailable warrant for arrest of the applicant - doctor since according to the Court, he did not appear as a witness in response to the summons issued to him earlier. On the date fixed namely 8.4.2015, in the morning hours, in response to the non-bailable warrant, he appeared before the Court and applied for cancellation of non-bailable warrant, which request was allowed. It appears that he was asked to wait since the counsel for the accused in that criminal

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case wanted 15 minutes time. Accordingly, the applicant – doctor started waiting in the Court when other case namely RCS No.158/2009 was taken up by the Court and arguments were being heard. The Court kept the applicant – doctor waiting and at about 1-40 p.m., the applicant – doctor got up and addressed the Court in a loud voice that he is a practising doctor and was unable to wait for a long time. At about 3-40 p.m., the Judicial Magistrate, First Class, Paranda, issued him a show cause notice asking him to explain within two hours as to why action should not be taken against him for obstructing the Court work. It appears that after two hours, the learned Judicial Magistrate, First Class, Paranda, passed the order and recorded conviction u/s 228 of the Indian Penal Code and imposed fine in the sum of Rs.1,000/-, in default to suffer simple sentence for 20 days. At about 6-15 p.m., it appears that the applicant – doctor filed his reply to the show cause notice in which he stated that he was never served with any summons of the witness in the past before issuance of non-bailable warrant against him and, therefore, he could not appear on the earlier dates. He also stated in his reply that through

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inadvertence, without anything in his mind, contempt was committed, for which he regretted and, therefore, sought written apology and prayed for excuse. The learned trial Judge, however, passed the order thereon that since the reply was received after passing of the final order, the reply was not accepted and hence it was filed. It appears that simultaneously the respondent no.3 – Advocate Shri Sundarao s/o Bhausahab Humbe filed an application on 8.4.2015 in the same Court asking the Court to take severe action against the applicant – doctor. The Court made an order that the contempt notice was already issued to the applicant – doctor and, therefore, the application was kept pending. The applicant – doctor then immediately deposited fine amount of Rs.1,000/- and thus the matter ended there.

3] It does appear that the respondent no.3 on 7.5.2015 made an application to the Court to take action against the applicant – doctor by registering offence u/s 353, 355, 504 and 186 of the Indian Penal Code with a further threat to the Presiding Officer in writing that if the Court does not act and register the offences, then

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he would be compelled to cite the Presiding Officer as a witness in his complaint and, therefore, the Court must issue process against the applicant – doctor. The learned trial Judge made a detailed order on that application and we quote the said order as under:-

“

ORDER

Application put up before me today on 22/5/15. This is neither private complaint nor charge sheet. This is not a way to submit application in the Court. On 8/4/2015 this Court has taken action against concerned Dr.Andhare. Application dated 8/4/2015 of the present applicant Shri Humbe was filed stating that action regarding contempt was taken against the doctor. He was convicted. Thereafter, Shri Humbe has again filed this application which is nothing but to pressurize the Court. This Court has not stated anything to any one to file an application but concerned applicant mentioned contents to that extent. It also seems that Shri Humbe has filed complaint in the Police Station, Paranda. As per Section 300 of the Criminal Procedure Code, a person once convicted or acquitted and such conviction and acquittal is in force then he shall not be liable to tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him.

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In view of above reason, application is hit by provision of Section 300 of the Cr.P.C. Hence, filed. Application be kept in the contempt proceeding."

4] The respondent no.3 did not challenge the above order. In fact, he was hardly concerned. But the respondent no.3 then appears to have lodged the FIR in the Police Station, Paranda, for the offences punishable u/ss.353, 355, 504 and 186 of the Indian Penal Code against the applicant – doctor stating the same facts and that the Police should investigate the offence. The Police Station Officer readily registered the offences on his complaint and hence this application for quashing the FIR.

5] The averments in this application show that a patient by name Sadashiv Deshmukh, aged 55 years, was admitted in the hospital of the applicant on 2.4.2015 with acute respiratory distress syndrome and ultimately the patient died on 8.4.2015 at 1-00 p.m. While in the Court from morning, the applicant – doctor was getting repeated phone calls from his hospital to look after the

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patient, but then the applicant was held up in the Court right from morning till the evening and in the meanwhile the patient died at about 1-00 p.m. It clearly appears to us that the applicant – doctor was expecting that he would be relieved from the Court within a short time and would come back and attend the patient in his hospital and that is why he went early in the morning in the Court, but was asked to wait upto 1-40 p.m. and further that he was receiving calls from hospital. But then he had no alternative because there was a non-bailable warrant of that date against him and until the Court relieved him, he could not go back to the hospital. Unfortunately, the patient died. It further appears that the respondent no.3 who claims that he was put to disturbance by the applicant – doctor during his arguments in a civil case and that, therefore, he was aggrieved by the conduct of the applicant – doctor and, therefore, offences should be registered against the applicant – doctor, he lodged the FIR in the Police Station, which readily registered the offences.

6] In support of the application, Shri R.N. Dhorde,

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Senior Advocate with Advocate Shri V.N. Shelke vehemently argued that not a single Section of the Indian Penal Code is attracted since the respondent no.3 – lawyer cannot be said to be a public servant. He further argued that the Magistrate had already made an order convicting the applicant – doctor and imposing fine of Rs.1,000/- and, therefore, the matter ended at the level of the learned Magistrate. He then contended that since the alleged offences had taken place in the Court-hall, it is only the Magistrate who could take cognizance and in fact the Magistrate took cognizance and ended up with the matter and, therefore, the FIR lodged by the respondent no.3 was with oblique motive and only with a view to take some or the other revenge against the applicant. According to him, the complaint filed by the respondent no.3 before the Police Station itself was not maintainable and, therefore, the FIR could not have been registered at all since the happenings are said to have taken place in the Court and the only competent authority was the Court to lodge the FIR or as the case may be, the Court did not think so. He, therefore, prayed for quashing the FIR and allowing the application with costs.

7] Per contra, learned counsel Shri V.D. Salunke with Advocate Shri K.R. Doke for the respondent no.3 vehemently opposed the application and submitted that Advocate in the Court is an officer of the Court and, therefore, the insult of the Advocate by the applicant – doctor amounted to offences punishable u/ss.353, 355, 504 and 186 of the Indian Penal Code and the FIR was rightly lodged in the Police Station. According to him, the respondent no.3 rightly lodged the FIR with the Police Station since the Court did not take action against the applicant – doctor despite seriousness of the offences committed by him. He thus prayed for dismissal of the application with costs.

8] We have heard the learned counsel for the rival parties at length. The issue arising in the present case is about the way in which professional doctors or the doctors who are Government servants are treated in the Court. We do not mean to say that the majesty of the Court can be allowed to be lowered down. But at the same time, the Court cannot ask the doctor to indefinitely

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wait for giving evidence in the Court. In the instant case, as is seen from the reply, the applicant – doctor stated in his reply which was filed late at 6-15 p.m. on that day before the Magistrate that he was never served with the summons and was erroneously issued the non-bailable warrant and that is why he had come to Court. This statement in the reply made by him is not controverted in the affidavit filed before us by the respondent no.3. At any rate, the Magistrate herself says that witness summons was issued to him, but he did not appear and, therefore, non-bailable warrant was issued. Without going into the controversy as to whether the summons was actually received by the doctor or not, at any rate, we find that the learned trial Magistrate should have issued bailable warrant rather than issuing a non-bailable warrant against a professional doctor if at all the Court found that the witness was avoiding his appearance. We do not find any justification on the part of the learned Magistrate straightly issuing a non-bailable warrant against a professional doctor. The issuance of non-bailable warrant has serious consequences. It may not have been within the knowledge

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of the learned Magistrate that a serious patient was admitted in the hospital of the applicant and was under treatment and that the doctor was getting calls after calls from his hospital and as stated earlier, unfortunately the patient had died at about 1-00 p.m. on the same day. But then we can understand the agony of the applicant – doctor who thought that his first job was to look after the patient and save the life of the patient but due to non-bailable warrant he had no other option but to go to the Court. We, therefore, find that the learned Magistrate was not justified in directly issuing non-bailable warrant against the applicant.

9] Next, we then find that the learned Magistrate took the view in the matter with full responsibility and with the sense of administration of justice by ordering recovery of fine amount of Rs.1,000/- for offence u/s 228 of the Indian Penal Code and since that order has not been challenged before us, we think that the Magistrate added to the majesty of the Court rather than taking revenge. However, the respondent no.3 who had absolutely no reason or cause to hound the applicant – doctor lodged

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the FIR in the Police after one month and the Police also registered the offence treating the respondent no.3 as a public servant. It appears that the respondent no.3 did not disclose before the Police Officer about the orders passed by the Magistrate convicting the applicant for offence punishable u/s 228 of the Indian Penal Code and imposing fine of Rs.1,000/-, which he paid and thus the conviction and sentence was implemented. The respondent no.3 – Advocate appears to have his own notions about the superiority of his legal profession over the medical profession or the doctors and that is why it appears that the respondent no.3 lodged the FIR in the Police Station fully knowing that the matter was closed at the end of the Magistrate. We cannot countenance, nay, we deprecate such a conduct on the part of the respondent no.3 who appears to be an Advocate with sufficient seniority in the profession.

10] Thus, it is clear that the conflict as to which profession is superior between the medical profession and the legal profession has come to the fore in this case. In the case of *Pt.Parmanand Katara v. Union of India &*

others reported at **AIR 1989 SC 2039**, the Apex Court stated thus in paragraph no.16 as under and we quote following extracted portion from paragraph no.16 :

"We therefore have no hesitation in assuring the persons in the medical profession that these apprehensions, even if have some foundation, should not prevent them from discharging their duty as a medical professional to save a human life and to do all that is necessary but at the same time, we hope and trust that with this expectation from the members of the medical profession, the police, the members of the legal profession, our law courts and everyone concerned will also keep in mind that a man in the medical profession should not be unnecessarily harassed for purposes of interrogation or for any other formality and should not be dragged during investigations at the police station and it should be avoided as far as possible. We also hope and trust that our law courts will not summon a medical professional to give evidence unless the evidence is necessary and even if he is summoned, attempt should be made to see that the men in this profession are not made to wait and waste time unnecessarily and it is known that our law courts always have respect for the men in the medical profession and they are called to give evidence when necessary and attempts are

made so that they may not have to wait for long. We have no hesitation in saying that it is expected of the members of the legal profession which is the other honourable profession to honour the persons in the medical profession and see that they are not called to give evidence so long as it is not necessary. It is also expected that where the facts are so clear it is expected that unnecessary harassment of the members of the medical profession either by way of requests for adjournments or by cross examination should be avoided so that the apprehension that the men in the medical profession have which prevents them from discharging their duty to a suffering person who needs their assistance utmost, is removed and a citizen needing the assistance of a man in the medical profession receives it. "

11] We then find that in the Criminal Manual, there are provisions regarding witness summons to public servants, Member of Parliament etc., but then there is no provision regarding the witness summons to the professional doctors or other professional experts, who may be able to spend more time in the Court. In our opinion, guidelines are required to be framed, which should be strictly followed for the evidence of such witnesses like the professional doctors whose first duty

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is to attend the patients rather than as witness in the Court. There is a necessity to have proper rules or procedure for contacting the doctor concerned, who is to be examined as a witness, fixing time and date in consultation with him or her and making one and all aware about the same so that the doctor is not asked to wait in the Court for hours together. It may some times happen that the witness summons is given to doctor and then on the date fixed the Court may be on leave and in that case, the doctor will have to go back, which is not at all desirable and, therefore, there should be the system to communicate the doctor if the learned Judge is to go on leave. All that is now easy with technological advances. We are, therefore, of the opinion that the rules are required to be properly framed in this connection so that the doctor should be allowed to perform his duty first to attend to the patient rather than in the Court as a witness.

12] The next question is about the award of compensatory costs to the applicant from the respondent no.3. We find that the respondent no.3 for no reasons

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and being fully aware about the action taken by the Court by convicting the applicant – doctor for offence punishable u/s 228 of the Indian Penal Code and payment of fine of Rs.1,000/- by him, still lodged the FIR in the Police Station and not only that, in his application in writing to the Court dated 7.5.2015 in the last paragraph, threatened the Court that if the Court does not register the offences against the applicant – doctor, he would be compelled to name the Presiding Officer as a witness in the case. We do not approve of such type of conduct of the respondent no.3 and we find no justification whatsoever from a responsible Advocate. In our opinion, there was no cause or reason for the respondent no.3 to lodge the FIR in the Police Station or to persist being revengeful against the applicant – doctor. There is no justification whatsoever that the applicant was thus unnecessarily harassed by him. We have, therefore, come to the conclusion that costs in the sum of Rs.5,000/- by way of compensation should be paid by the respondent no.3 to the applicant – doctor. In the result, we make the following order.

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O R D E R

I. Criminal Application No.3494 of 2015 is allowed.

II. Rule is made absolute in terms of prayer clause (C).

III. Respondent No.3 shall pay compensatory costs in the sum of Rs.5,000/- (Rupees Five Thousand only) to the Applicant within a period of four weeks from today.

IV. The prayer for stay of paying the cost amount is rejected.

(INDIRA K. JAIN, J.)

(A.B. CHAUDHARI, J.)