

**THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY**

**CRIMINAL PETITION No.6034 of 2010**

**ORDER:**

1 This petition is filed under Section 482 Cr.P.C. seeking to quash the proceedings against the petitioner in C.C.No.113 of 2010 on the file of the Court of the Additional Judicial Magistrate of I Class, Gudivada, taken on file for the offences punishable under Sections 269, 336 and 338 of IPC.

2 The learned counsel for the petitioner would submit that the trial Court committed grave error while taking cognizance of the offences against the petitioner in violation of Section 197 Cr.P.C since no prior sanction was obtained from the competent authority to launch criminal prosecution against the petitioner. He further submitted that the trial Court ought not to have taken cognizance of the offences against the petitioner in the absence of medical opinion indicating the negligence, if any, on the part of the petitioner and in such circumstances continuation of criminal proceedings against the petitioner would certainly amount to abuse of process of law as well as miscarriage of justice.

3 *Per contra*, it is the contention of the learned counsel for the first respondent that sanction can be obtained at any time. He further submitted that the material available on record, *prima facie*, reveals the medical negligence on the part of the petitioner.

4 The facts leading to filing of the present petition are as succinctly follows:

5 The sister of the first respondent was admitted in Area hospital, A.P. Vidya Vidhana Parishad, Gudivada on 06.12.2003 at about 6.00 PM for delivery. On the same day, the petitioner conducted caesarean operation to the sister of the first respondent. On 21.01.2004 again the sister of the first respondent visited the area hospital complaining abdominal pain for which the Superintendent of the hospital gave treatment to her by administering some injections. On the same day the

sister of the first respondent visited the VRM Peoples Health Care Hospital run by one Dr.K. Vijay Kumar Reddy. On 29.01.2004 on the advice of the petitioner, the sister of the first respondent joined as inpatient in Government Hospital, Machilipatnam and was discharged on the same day. On 13.02.2004 the sister of the first respondent while attending calls of nature found some foreign material. That foreign material was shown to the Superintendent of the Area Hospital, Gudivada, who in turn informed that there was some negligence in conducting caesarean operation to the sister of the first respondent.

6 On 14.4.2004 the first respondent lodged a complaint with the I Town Police Station, Gudivada who in turn registered a case against the petitioner. After completion of investigation, the police, in connivance with the petitioner, referred the matter as mistake of fact. The Government refused to accord permission for prosecution of the petitioner. Having no other alternative, the first respondent filed the complaint before the trial Court on 20.01.2010. The learned Additional Judicial Magistrate of I Class, Gudivada, has taken cognizance of the offences against the petitioner punishable under sections 269, 336 and 338 of IPC. Hence the present petition.

7 The crucial question that falls for consideration is whether there is any prima facie material indicating medical negligence on the part of the petitioner, which justifies the trial Court to take cognizance of offences against him under sections 269, 336 and 338 of IPC.

8 It is the case of the first respondent that his sister was admitted in Area hospital, A.P. Vidya Vidhana Parishad, Gudivada on 06.12.2003 at about 6.00 PM for delivery. As per the allegations made in the complaint, the sister of the first respondent underwent caesarean operation and gave birth to a female child and was discharged after one week. By the time of discharge, the first respondent has not made any complaint that there is deficiency in medical service, or, put it in a different way, there was some negligence on the part of the petitioner while conducting

caesarean operation to his sister. No doubt, the sister of the complainant has taken treatment in Area hospital, Machilipatnam as outpatient on 21.01.4004.

9 The allegation made in the complaint is that on 13.02.2004 the sister of the first respondent found some foreign material after attending calls of nature. The foreign substance was not sent to any laboratory for analysis in order to find out reasons. The complaint lodged by the first respondent was referred as mistake of fact in the year 2008 itself. If really the police have not investigated into the matter on correct lines, what prevented the first respondent to file a protest petition challenging the final report submitted by police? The first respondent lodged the complaint nearly six years after the alleged incident. Along with the complaint the petitioner did not enclose any report indicating the medical negligence, in any, on the part of the petitioner. The first respondent did not take any steps to produce the case sheet of the Area Hospital, Gudivada relating to the treatment given to his sister so as to indicate the deficiency, if any, in the treatment given by the doctors to his sister.

10 On the other hand, the Commissioner of A.P. Vidya Vidhana Parishad, Hyderabad had conducted an enquiry into the allegations made against the petitioner and forwarded the report to the Government, which, in turn dropped the proceedings against the accused. It is not out of place to extract hereunder the proceedings of the Commissioner of A.P. Vidya Vidhana Parishad, Hyderabad in ROC No.2360/VCB/2004 dated 16.05.2008:

“In pursuance of the orders issued by the Govt. in the ref. 14<sup>th</sup> cited, it is informed that the Govt., decided to drop further action against Dr. M. Usha Rani former CAS, Area Hospital, Gudiwada and presently working at District Hospital, King Koti, Hyderabad on the charge on negligence in treating the patient Smt. P. Vijayalaxmi R/o Gudiwada is dropped. And request of permission by the Police Dept., Krishna District to prosecute the above doctor, on the above allegations is rejected by the Govt.”

11 This also clearly indicates that there was no negligence on the part of the petitioner while conducting caesarean operation to the sister of the

first respondent.

12 In view of the guidelines issued in **John Oni Akerele v R**<sup>[1]</sup>, **Bolam v Friern Hospital Management Committee**<sup>[2]</sup>, **Dr.Suresh Gupta v Government of NCT of Delhi**<sup>[3]</sup>, **Jacob Mathew v Sate of Punjab**<sup>[4]</sup>, **Martin F. D'Souza v Mohd. Ishfaq**<sup>[5]</sup>, **Malay Kumar Ganguly v Sukumar Mukherjee**<sup>[6]</sup>, **Kusum Sharma v Batra Hospital and Medical Research Centre**<sup>[7]</sup>, **A.S.V.Narayana Rao v Ratnamala**<sup>[8]</sup>, and **P.B.Desai Vs. State of Maharashtra**<sup>[9]</sup>, the trial Court has to follow the procedure strictly while taking cognizance of offence against a doctor on medical negligence.

13 It is an admitted fact that at the relevant point of time, the petitioner was working as Civil Assistant Surgeon in Area hospital, A.P. Vidya Vidhana Parishad, Gudivada. The petitioner along with the Superintendent of the said hospital conducted caesarean operation to the sister of the first respondent. It is the duty of the Civil Assistant Surgeons to conduct operations to the patients. It is not the case of the first respondent that the petitioner is not competent person to conduct caesarean operation. Even as per the allegations made in the complaint, the petitioner conducted caesarean operation to the sister of the first respondent under the supervision and control of the Superintendent of the said hospital. It is not the case of the first respondent that the petitioner has taken any amount from him for conducting operation at least to justify that conducting of operation will fall outside the purview of discharge of her duties in the capacity of Civil Assistant Surgeon. As per the allegations made in the complaint, the petitioner paid some amount to the Superintendent of the said hospital.

14 Even as per the allegations made in the complaint, the petitioner conducted operation while discharging her duties as Civil Assistant Surgeon in the Area hospital, A.P. Vidya Vidhana Parishad, Gudivada.

The petitioner is a public servant as defined under Section 21 of IPC. The Parliament in its wisdom incorporated Section 197 Cr.P.C. to protect the interest of the honest and dedicated government servant from malicious prosecution or frivolous litigation. Any complaint filed in contravention of Section 197 Cr.P.C is *non est* in the eye of law.

15 To substantiate the arguments that prior sanction must be obtained before initiating criminal prosecution against a Government Servant, the learned counsel for the petitioner has drawn my attention to the ratio laid down in the following decisions.

i. ***International Advanced Research Centre For Powder Metallurgy and New Materials (ARCI) v. Nimra Cerglass Technics Private Limited*** <sup>[10]</sup>

wherein the Hon'ble apex Court held at para No.26 as follows:

26. The second appellant Dr. S.V.Joshi was the Associate Director. The third appellant Dr. G. Sunderarajan was the Director of ARCI and both of them were acting in their official capacity. Appellants 2 and 3 neither acted in their personal capacity nor stood to receive any personal monetary benefits from the transfer of said technology. Appellants 2 and 3 were representatives of ARCI which is a grant-in-aid research and development institute under the Ministry of Science and Technology, Government of India and hence previous sanction as mandated under Section 197 CrPC must have been obtained before proceeding against them as their act was only in discharge of their official duties. In this regard, our attention was drawn to a communication from the Ministry of Science and Technology indicating that for initiating criminal proceeding against Appellants 2 and 3, permission is required and the said communication reads as under:

“.....They have both been appointed by the Government of India and are governed by all rules and regulations of the Government of India....

It is further stated that we have examined all the actions taken by Dr.G.Sundararajan and S.V.Joshi in relation to the activities pertaining to the technology transfer agreement dated 18.6.1999 between ARCI and M/s. NIMRA Cerglass, Hyderabad and are of firm view that these actions were taken by the above officers while discharging their official duty in good faith and in the best interest of ARCI.

Therefore, for initiating criminal proceeding against DR. G. Sunderarajan and Dr. S.V.Joshi, Government of India's permission is required.”

The alleged acts of Appellants 2 and 3 were committed while acting in discharge of their official duties, sanction from the competent authority was necessary before initiating criminal prosecution against them. Since we have held that from the

averments made in the complaint, the essential ingredients of dishonest intention is not made out, we are not inclined to further elaborate upon this point.”

ii. ***N.K. Ganguly v. Central Bureau of Investigation, New Delhi*** <sup>[11]</sup>

wherein the Hon’ble apex Court held at para No.35 as follows:

“From a perusal of the case law referred to supra, it becomes clear that for the purpose of obtaining previous sanction from the appropriate Government under Section 197 CrPC, it is imperative that the alleged offence is committed in discharge of official duty by the accused. It is also important for the Court to examine the allegations contained in the final report against the appellants, to decide whether previous sanction is required to be obtained by the respondent from the appropriate Government before taking cognizance of the alleged offence by the learned Special Judge against the accused. In the instant case, since the allegation made against the appellants in the final report filed by the respondent that the alleged offences were committed by them in discharge of their official duty, therefore, it was essential for the learned Special Judge to correctly decide as to whether the previous sanction from the Central Government under Section 197 CrPC was required to be taken by the respondent, before taking cognizance and passing an order issuing summons to the appellants for their presence.”

16 The principle enunciated in the cases cited supra is clearly applicable to the facts of the case on hand. Therefore, I have no hesitation to hold that the trial Court committed grave error while taking cognizance of the offences against the petitioner without there being previous sanction of the competent authority as contemplated under Section 197 Cr.P.C. When taking cognizance of offence itself is held to be *non est* in the eye of law, continuation of criminal proceedings against the petitioner, would, certainly, amount to abuse of process of law.

17 This petition is filed under Section 482 CrPC to quash the proceedings against the petitioner. It is a settled principle of law that the Court can quash the proceedings in rarest of rare cases while exercising the inherent jurisdiction. In ARCI case (10 supra) the Hon’ble apex Court held at para Nos.24 and 25 as under:

24. Learned Counsel for the Respondent submitted that any defence to be taken by the Appellants is to be raised only during the course of trial and is not to be raised in the initial stage of the prosecution. In support of his contention, the learned Counsel placed reliance upon *Trisuns Chemical Industry v. Rajesh Agarwal and Ors.* {(1999) 8 SCC 686}; *Rajesh Bajaj v. State NCT of Delhi and Ors.* {(1999) 3 SCC 259}; *P. Swaroopa Rani v. M. Hari Narayana Alias Hari Babu*: {(2008) 5 SCC 765} and *Iridium India Telecom Ltd. v. Motorola Incorporated and Ors.* {(2011) 1 SCC 74}. Learned Counsel for the

Respondent further submitted that when the Magistrate has taken cognizance of an offence and the power of the High Court to interfere is only to a limited extent, the High Court cannot substitute its view for the summoning order passed by the Magistrate. In support of this contention, learned Counsel placed reliance upon the decisions of this Court in *Fiona Shrikhande v. State of Maharashtra and Anr.* {(2013) 14 SCC 44}; *Bhushan Kumar and Anr. v. State (NCT) of Delhi and Anr.* {(2012) 5 SCC 424} and *Smt. Nagawwa v. Veeranna Shivalingappa Konjalgi and Ors.* {(1976) 3 SCC 736}.

25. The above decisions reiterate the well-settled principles that while exercising inherent jurisdiction Under Section 482 Code of Criminal Procedure, it is not for the High Court to appreciate the evidence and its truthfulness or sufficiency inasmuch as it is the function of the trial court. High Court's inherent powers, be it, civil or criminal matters, is designed to achieve a salutary public purpose and that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. If the averments in the complaint do not constitute an offence, the court would be justified in quashing the proceedings in the interest of justice.

18 In *State of Haryana v Bhajan Lal*<sup>[12]</sup> the Apex Court, after having surveyed the entire case law on the point, has laid down certain indicia with reference to which, High Court, may, in exercise of powers under Article 226 of the Constitution of India or under Section 482 Cr.P.C, interfere with proceedings relating to cognizable offences to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

19 For the foregoing discussion, I am of the considered view that it is a fit case to quash the proceedings against the petitioner in order to prevent miscarriage of justice.

20 In the result, this Criminal Petition is allowed, quashing the proceedings against petitioner in C.C.No.113 of 2010 on the file of the Court of the Additional Judicial Magistrate of I Class, Gudivada. As a sequel, miscellaneous petitions if any pending in this Criminal Petition shall stand dismissed.

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***T. SUNIL CHOWDARY, J.***

***Date: 29-03-2016***

***Kvsn***

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<sup>[1]</sup> AIR 1943 PC 72

- [\[2\]](#) (1957) 2 All ER 118 = (1957) 1 WLR 582
- [\[3\]](#) AIR 2004 SC 4091 = (2004) 6 SCC 422
- [\[4\]](#) (2005) 6 SCC 1 = AIR 2005 SC 3180
- [\[5\]](#) (2009) 3 SCC 1 = I (2009) CPJ 32 (SC)
- [\[6\]](#) (2009) 9 SCC 221 = AIR 2010 SC 1162
- [\[7\]](#) (2010) 3 SCC 480 = AIR 2010 SC 1050
- [\[8\]](#) (2013) 10 SCC 741
- [\[9\]](#) AIR 2014 SC 795
- [\[10\]](#) (2016) 1 SCC 348
- [\[11\]](#) (2016) 2 SCC 143
- [\[12\]](#) AIR 1992 SC 604