

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 4941 OF 2016

Ashok S/o Baburao Giri
Age : 49 years, Occ : Medical Practitioner,
R/o Tapdiya Eatate, Hingoli,
Tq. & Dist. Hingoli.

..APPLICANT

-VERSUS-

- 1) The State of Maharashtra
Through Basmat Police Station,
Tq. Basmat, Dist. Hingoli.
- 2) Ravikiran S/o Tukaram Chavan
Age : 56 years, Occ : Service,
At present R/o Deputy Director
of Health, Aurangabad
Tq. & Dist. Aurangabad.

..RESPONDENTS

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Advocate for applicant : Mr. D.M. Shinde
APP for Respondent/State : Mr. S.P. Deshmukh

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**CORAM : S.S. SHINDE &
K.K. SONAWANE, JJ.**

RESERVED ON : 10th April, 2017

PRONOUNCED ON : 18th April, 2017

JUDGMENT (S.S. SHINDE, J):-

Rule. Rule made returnable forthwith
and heard finally with the consent of the
learned counsel appearing for the parties.

2. This application seeks quashment of F.I.R. bearing C.R. No. 101/2016 registered with Basmat Police Station, Hingoli dated 30th June, 2016 under section 420 of the Indian Penal Code.

3. The brief facts, leading for filing the present application, are as under :-

Respondent No.2 herein lodged the first information report against the applicant with Police Station Basmat for the offence punishable under section 420 of the Indian Penal Code. It is alleged in the said first information report that, on 30th June, 2016, when the Principal Secretary Smt.Sujata Pradhan of Health Department, Government of Maharashtra and Dr. Shreemati Jaiswal, the Specialist at Pune visited the hospital in Hingoli district at Basmat, during their visit, the complaints were received from the citizens of Basmat against the present applicant, who was working as Class-II Officer at the relevant time in the Government Hospital at Basmat, raising the grievance that, the applicant has indulged in private medical practice. In view of the

complaints received from the various citizens, Dr. Smt. Sujata, the Principal Secretary, Public Health Department, Mumbai with Dr. Gopal Kadam, Residence Medical Officer, General Hospital, Hingoli, Dr.Dhanve, District Health Officer, Zilla Parishad, Hingoli, Dr. Pandey, Superintendent, Women's Hospital and Dr.Babasaheb Rodge, Civil Surgeon, General Hospital, Hingoli visited Shivam Hospital, which is situate nearby the Rest House and made inquiries. During inquiries, it was revealed that, the present applicant, who is working as Medical Officer, Class-II in District Government Hospital at Hingoli is also engaged in private practice in the said hospital. It appears that, Dr. Balasaheb Selukar, who was present in the said hospital and other staff members of Shivam hospital stated that, the present applicant is on visiting terms with their hospital and engaged in private practice. It is further alleged that, even the documents of Shivam hospital mentions the name of present applicant. It is further alleged in the first information report that, though the Government has given six increments to the applicant for not indulging into private

practice and though the applicant has proceeded on medical leave, he was found doing the private practice in Shivam hospital and the said act of the applicant amounts to cheating to the State Government. Therefore, with the above allegations, the first information report came to be registered against the applicant by respondent no.2.

4. The learned counsel appearing for the applicant submits that, initial date of appointment of the applicant is 20th March, 1993. The applicant was not feeling well since long prior to registration of the first information report and hence he felt that, he is unable to give proper service in the Government hospital and hence, he submitted his application for voluntary retirement addressed to the Additional Chief Secretary, Public Health Department, Government of Maharashtra, Mantralaya, Mumbai routed through the District Civil Surgeon, Civil Hospital, Hingoli. It is submitted that, the said application was filed on 14th March, 2016 and in view of the provisions of Rule 66 of the Maharashtra Civil Services (Pension) Rules, 1982, if the decision is not taken by the Competent Authority on the said

application for voluntary retirement within the period of three months from the date of submitting the application, the said application is deemed to have been allowed and from the date of completion of three months period, the voluntary retirement automatically stands effected. It is submitted that, the concerned authority has any reservation in not accepting the request of the applicant for voluntary retirement, to that effect, it should have been communicated to the applicant within the period stipulated in the said application. Therefore, it is submitted that, keeping in view the provisions of Rule 66 of the Maharashtra Civil Services (Pension) Rules, 1982, the application filed by the applicant on 11th March, 2016 for voluntary retirement, by virtue of completion of three months period, in view of the deeming provision, the said application stood allowed, and as a result the applicant stands retired automatically on 11th June, 2016. Therefore, he has no concern with the Government Hospital at Hingoli. Even during the period of said three months, the applicant filed application seeking leave on 10th June, 2016. Therefore, the allegation that, the applicant was not available in the

Civil Hospital on 30th June, 2016 has no substance in view of the fact that, he did file the application seeking permission to proceed on leave w.e.f. 10th June, 2016. The learned counsel appearing for the applicant invited our attention to the contents of the application dated 14th March, 2016 filed for voluntary retirement and submits that, on expiry of three months period i.e. on 11th June, 2016, the applicant stood voluntarily retired from Government service, and therefore, there was no question of any enquiry from Shivam hospital about, whether the applicant is indulged into private medical practice or otherwise. It is submitted that, since the applicant possesses Postgraduate in medicine, therefore, he was entitled for six increments, which was allotted in his favour in view of the provisions of the Government Resolution dated 19th November, 2012 issued by Public Health Department, Government of Maharashtra, Mantralaya, Mumbai.

5. It is submitted that, upon perusal of the said Government Resolution, nowhere it is prescribed that, the increments are given only for those who are non-practicing

doctors. It is submitted that, even if the allegations in the first information report are taken as true, even then as per the Government Resolution dated 7th August, 2012 issued by Public Health Department, Government of Maharashtra, Mantralaya, Mumbai, at the most, the authority could have initiated the departmental enquiry against the applicant, as contemplated under the provisions of the Maharashtra Civil Services (Conduct) Rules, 1979 and under the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. It is submitted that, aforementioned Government Resolutions are very specific and if the employee opts to accept non-practicing allowances and still he continued with the private practices in that case, departmental enquiry can be initiated against the employee.

6. The learned counsel appearing for the applicant invites our attention to the exposition of law by the Supreme Court in the case of **Kanwarjit Singh Kakkar V/s State of Punjab and anr**¹ and submits that, in similar facts situation like in the present case, in the case of **Kanwarjit Singh (supra)**, the

1 2011(13) SCC 158

Supreme Court has taken a view that, the conduct of the appellants who are alleged to have indulged in private practice while holding the office of government doctor and hence public servant at the most, could be proceeded with for departmental proceeding under the Service Rules but in so far as making out of an offence either under the Prevention of Corruption Act or under the IPC, would be difficult to sustain. The learned counsel appearing for the applicant further submits that, so as to attract the ingredients of section 420 of I.P. Code, there should be fraudulent or dishonest intention of a person by deceiving him and the person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property, or the person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived. The learned counsel further submits that, the act of omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property. In support of aforesaid contentions, he invites our attention to the unreported judgment of

the Division bench of Bombay High Court, bench at Aurangabad in the case of **Rashmi W/o Satish Khandvikar and another V/s The State of Maharashtra and anr. in Criminal Application No.3127 of 2016 decided on 17th October, 2016.** Therefore, relying upon the pleadings in the application, grounds taken therein and annexures thereto, the learned counsel appearing for the applicant submits that, the application deserves to be allowed.

7. On the other hand, the learned A.P.P. appearing for the respondent/State, relying upon the affidavit in reply filed by respondent no.2 – Dr. Ravikiran Tukaram Chavhan, working as Deputy Director of Health Services, Mumbai, submits that, the applicant had submitted the notice for voluntary retirement and the same was sent to the office of Civil Surgeon Hingoli on 14th March, 2016. As per Government Resolution dated 12th September, 2014, the Medical Officers and Medical Superintendents are required to submit their notice for voluntary retirement directly to the Government. The Civil Surgeon, Hingoli vide letter dated 18th March, 2016 intimated to the applicant to submit his notice for voluntary retirement to the

Principal Secretary, Public Health Department, Government of Maharashtra, Mantralaya, Mumbai. It is submitted that, it is true that, the crime is registered on 30th June, 2016 for the offence punishable under section 420 of the I.P. Code against the applicant, till today no Government orders in respect of sanction of applicant's voluntary retirement is received. It is submitted that, the departmental enquiry against the applicant is proposed.

8. The applicant has filed the rejoinder affidavit to the reply filed by respondent no.2. It is stated in the rejoinder affidavit that, the letter of intimation issued by the Civil Surgeon, Government Hospital, Hingoli on 18th March, 2016 is never served upon him. The applicant though worked on the post till 10th May, 2016 and thereafter, he proceeded on leave on medical ground and he never joined the services at Civil Hospital at Hingoli. It is stated that, if such letter is issued on 18th March, 2016, in that case, the same should have been mentioned in Outward Register maintained by the Hospital at Hingoli. However, such record is not maintained. The

learned counsel relying upon the averments made in the rejoinder affidavit submits that, till date neither he has received the letter dated 18th March, 2016 issued by the Civil Surgeon, Government Hospital, Hingoli nor the communication from the Department of Health, Government of Maharashtra, about the status of his application for voluntary retirement.

9. We have considered the submissions advanced by the learned counsel appearing for the applicant and the learned A.P.P. appearing for the respondent/State and also perused the investigation papers.

10. It is true that, in case of **Kanwarjit Singh Kakkar (supra)**, the Supreme Court in the facts of that case, wherein the appellants therein were prosecuted for the offence punishable under sections 13(1)(d) read with section 13(2) r/w Rule 15 of the Punjab Civil Medical (State Service Class I) Rules, 1972 and section 168 of the Indian Penal Code, 1860, has taken a view that, the conduct of the appellants who are alleged to have indulged in private practice while holding the office of government doctor and hence public servant at the most, could be

proceeded with for departmental proceeding under the Service Rules but in so far as making out of an offence either under the Prevention of Corruption Act or under the IPC, would be difficult to sustain. It is further observed that, if the medical professional has acted in a manner which is contrary only to the government instructions de hors any criminal activity or criminal negligence, the same would not constitute an offence either under the Indian Penal Code or under the Prevention of Corruption Act. However, in the facts of the present case, there are specific allegations in the first information report that, the applicant is a Specialist Doctor, and therefore, six additional increments have been given to him. The said additional increments have been given to him so that he should not indulge in doing the private practice. It is alleged that, though the applicant proceeded on leave on health ground, he was found doing the private practice during the said period in Shivam hospital. It further appears that, the statement of number of witnesses from Shivam hospital and also Medical Officers working there have been recorded and they stated that, during the said period, applicant

attended the hospital and examined the patients. It has also come on record that, some incriminating documents from Shivam hospital on which the name of the applicant has been mentioned, have admittedly recovered. It is come on record that, the applicant withdrawn the salary till the end of 30th May, 2016 and on 30th June, 2016, he was found practicing in private hospital. It is also relevant to mention that, even the salary would include increments. Therefore, prima facie, it appears that, the applicant by pretending that, he is not doing private practice in private medical hospital, has withdrawn/secured the benefits of six additional increments. Therefore, the aforestated act of the applicant is distinguishable, vis-a-vis, the facts involved in the case of **Kanwarjit Singh Kakkar (supra)**.

11. The contention of the applicant that, he sent notice for voluntary retirement on 14th March, 2016, and the said notice was sent through the office of Civil Surgeon, Hingoli to the Principal Secretary, Public Health Department, Mantralaya, Mumbai, needs to be examined in the light of the affidavit

in reply filed by respondent no.2. It is stated in the affidavit in reply filed by respondent no.2 that, as per the procedure, the applicant supposed to have sent the notice to the Principal Secretary, Department of Health, Government of Maharashtra, Mumbai. It is stated that, immediately on 18th March, 2016, the letter was written to the applicant that, as per procedure, the applicant should have sent the said notice directly to the Principal Secretary, Department of Health, Government of Maharashtra, Mantralaya, Mumbai. It is specifically stated in paragraph no.4 of the affidavit in reply that, as per the Government Order dated 12th September, 2014, the Medical Officers and Medical Superintendents are required to submit their notice for voluntary retirement directly to the Government. The contention of the learned counsel appearing for the applicant that, the applicant did not receive the letter dated 18th March, 2016, written by the Civil Surgeon, Hingoli, deserves no consideration. It cannot be believed that, the applicant was not aware that, the notice is required to be sent directly to the Government, and secondly, he did not receive the letter written by the Civil Surgeon on

18th March, 2016. Therefore, the contention of the learned counsel appearing for applicant that, since the said notice was given on 14th March, 2016 and in view of the provisions of Rule 66 of the Maharashtra Civil Services (Pension) Rules, 1982, on completion of three months period, his application for voluntary retirement stood automatically allowed/effected, has no force.

12. Upon careful perusal of the allegations in the first information report, the said allegations, prima facie, attract the ingredients, so as to constitute offence under section 420 of the Indian Penal Code. As already observed, the applicant is beneficiary of receiving such additional six increments, on the ground that, he is not practicing privately, and secondly, though he proceeded on leave on account of ill health, during the said period, he found privately practicing in Shivam hospital.

13. In view of the discussion in forgoing paragraphs, we are not inclined to entertain the prayer for quashing first information report. Hence the application stands rejected. An observations made

hereinabove, are prima facie in nature, and only for the purpose of adjudication of the present application. We make it clear that, this order would not preclude the applicant from availing of an appropriate remedy, as available in law, in the event of filing Report by the Investigating Officer under section 173(8) of the Code of Criminal Procedure.

14. The Rule stands discharged. The application stands rejected.

(K.K. SONAWANE, J.)

(S.S. SHINDE, J.)

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