

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL WRIT PETITION NO. 137 OF 2017**

Dr. Satyesh Kamat, son of Dr. Sonu Kamat,
46 years old, married, Indian National,
Resident of House No. 1146, near Dr. Sonu
Kamat Maternity & Surgical Hospital,
Curchorem, Goa. Petitioner

Versus

1. State of Goa, Through Police Inspector,
Curchorem Police Station, Curchorem,
Goa.
2. Public Prosecutor, High Court of Bombay
at Panaji, Goa, Altinho, Panaji. Respondents

Shri S. Desai, Senior Advocate with Ms. Pooja Desai, Advocate
for the Petitioner.

Shri S.R. Rivankar, Public Prosecutor for the Respondents.

CORAM:- C.V. BHADANG, J.

DATE:- 24th January, 2018.

ORAL JUDGMENT:

The challenge in this petition, under Article 227 of the Constitution of India, read with Section 482 of the Code of Criminal Procedure (Cr.P.C. for short), is to the order dated 15.12.2015, passed by the learned Magistrate in CRMA No. 104/2015/B. By the impugned order, the learned Magistrate has allowed the application filed by the respondent-State, under Section 473 of Cr.P.C., thereby extending the period for filing a

charge sheet, under Section 304-A of the Indian Penal Code (IPC for short) against the petitioner. The said order passed by the learned Magistrate has been confirmed in Criminal Revision Application No. 6/2016 by the learned Sessions Judge vide judgment and order dated 28.06.2017.

2. The brief facts necessary for the disposal of the petition may be stated thus:

That the petitioner is a Medical Practitioner, running Dr. Sonu Kamat Maternity & Surgical Hospital at Curchorem, Goa. Now deceased Manisha alias Pushpa, wife of Manjunath Kaktikar was carrying a pregnancy and was under treatment of the petitioner.

On 16.12.2008, Manisha was taken for regular check up to the petitioner's hospital. On 18.12.2008, Manisha experienced pain in the stomach and was rushed to Dr. Sonu Kamat Maternity & Surgical Hospital at 23:00 hours and was admitted in the hospital for treatment and management. On the following day i.e. 19.12.2008 at 16:20 hours, Manisha delivered a still born male child. Manisha continued to be admitted in the hospital, however, at 16:30 hours her condition deteriorated, when the petitioner advised that she should be shifted to Hospicio Hospital, Margao or Goa Medical College, Bambolim

(GMC) for treatment. Accordingly, Manisha was shifted to Hospicio Hospital, Margao, where she was declared as dead.

Ramdas Kalvekar, the brother of Manisha, filed a complaint with the Curchorem Police Station on 19.12.2008, requesting for necessary action to be taken, to find out the cause of death of his sister.

3. It appears that a case of an unnatural death, being U.D. No. 27/2008 was registered, under Section 174 of Cr.P.C. with P.S. Curchorem. Police Inspector, Curchorem Police Station sent a communication dated 20.12.2008 to the Deputy Collector and the Sub-Divisional Magistrate, Quepem, Goa (SDM for short), for conduction of an enquiry under Section 176 of Cr.P.C. It appears that on 24.12.2008, the SDM asked the Dean, Goa Medical College to form an expert committee/ethic committee to find out whether the petitioner and the staff of Dr. Sonu Kamat Hospital were negligent in handling the pregnancy case.

4. The record discloses that the expert committee comprising of three members i.e. Professor and Head, Department of Forensic Medicine, Department of Pathology and Department of OBG was constituted, which after examining the matter gave its report on 09.02.2009. The expert committee

found that the cause of death of Manisha was, “haemorrhagic shock due to massive subcapsular haemorrhage of right lobe of liver and intraperitoneal haemorrhage resulting from disseminated intravascular coagulation in the woman who delivered in the third trimester”. The expert committee also found that had timely and appropriate action been taken, possibly, the loss of life (lives) could have been prevented. It appears that a copy of the said report is also shown to be forwarded to the Police Inspector, Curchorem Police Station.

5. After this, nothing happened till the year 2015, when the Police Inspector, Curchorem Police Station wrote a letter to the SDM on 09.03.2015, enquiring as to the outcome of the enquiry under Section 176 of Cr.P.C. The SDM, Quepem ultimately forwarded a report dated 30.04.2015, finding that the death of Manisha and her new born child was caused due to the medical negligence on the part of the petitioner. On the basis of the said report, an FIR at Crime No. 35/2015 came to be registered at Curchorem Police Station and after investigation, a charge sheet came to be filed along with an application for condonation of delay before the learned Magistrate on 07.08.2015.

6. It was contended by the respondent-State before the learned Magistrate that, till the receipt of the report dated 30.04.2015, the matter was pending before the learned SDM, in an enquiry under Section 176 of Cr.P.C. and on receipt of the complaint, an FIR was registered and the investigation was completed within a span of three months and as such, there is no delay on the part of the Investigating Officer in completion of the investigation and filing of the charge sheet.

7. The application was opposed on behalf of the petitioner. It was contended that there is an inordinate delay of six and half years in filing the complaint. The limitation prescribed under Section 468 of Cr.P.C. in respect of offence under Section 304-A of IPC is three years. It was contended that thus, no case for extension of the period of limitation is made out.

8. The learned Magistrate by the impugned order dated 15.12.2015 came to the conclusion that the delay can be essentially attributed to the "lethargy on the part of the office of SDM, Quepem", where the enquiry remained pending. It was further found that the family of the deceased had promptly filed a complaint, which was forwarded to the SDM, Quepem.

The learned Magistrate found that the interest of the family members of the deceased would get precedence over the “technical right, which has accrued in favour of the accused/petitioner” and in that view of the matter, found that in the interest of justice, it is necessary to condone the delay. As noticed earlier, the said order has been confirmed by the learned Sessions Judge.

9. I have heard Shri Desai, the learned Senior Counsel for the petitioner and Shri Rivankar, the learned Public Prosecutor for the State. With the assistance of the learned Counsel for the parties, I have gone through the record.

10. It is submitted by Shri Desai, the learned Senior Counsel for the petitioner that, there is no prohibition for the Investigating Officer, to conduct the investigation simultaneously with an enquiry under Section 176 of Cr.P.C. In other words, it is submitted that the pendency of an enquiry under Section 176 of Cr.P.C., cannot be a ground for the Investigating Officer to have stayed his hands and for not having proceeded with the investigation. Secondly, it is contended that the pendency of the enquiry under Section 176 of Cr.P.C. is not a ground for exclusion of the said period, as

provided under Section 470 of Cr.P.C. The learned Senior Counsel strenuously urged that thus, the prosecution cannot rely on the time spent in holding the enquiry under Section 176 of Cr.P.C. as a ground for extending the period of limitation. It is submitted that before the learned Magistrate extends the period of limitation under Section 470 of Cr.P.C., it is necessary that the Magistrate comes to the conclusion that the delay has been properly explained or it is necessary to condone the delay in the interest of justice. The learned Senior Counsel has taken me through the order passed by the learned Magistrate as well as by the learned Sessions Judge in order to submit that the Courts below have not properly considered the question in the light of the facts and circumstances as obtaining on record and in the wake of requirements of Section 473 of Cr.P.C. The learned Senior Counsel has also made certain submissions in order to demonstrate that no case of medical negligence is made out in this case. It was pointed out that the complaint, filed by the brother of the deceased is incorrect. It is submitted that when Manisha was shifted to Hospicio Hospital, Margao, the record would show that she was alive for half an hour and she died during treatment at the said hospital. In order to show that there is no case of medical negligence established, reliance is placed on the decision of the Supreme Court in the case of

Jacob Mathew Vs. State of Punjab & Another, (2005) 6 SCC 1. Insofar as the issue of extension of period is concerned, reliance is placed on the decision of the Supreme Court in the case of **Sarah Mathew Vs. Institute of Cardio Vascular Diseases & Others, (2014) 2 SCC 62.**

11. On the contrary, it is submitted by Shri Rivankar, the learned Public Prosecutor that the Investigating Officer on receipt of the complaint, had promptly requested the SDM to conduct an enquiry in the unnatural death case, in as much as the death had occurred within seven years of marriage. It is submitted that thereafter, the Investigating Officer had no control over the enquiry. It is submitted that it is the Investigating Officer who wrote to the SDM on 09.03.2015 to inquire about the outcome of the enquiry and on receipt of the report dated 30.04.2015 from the SDM, the FIR was promptly registered and the charge sheet was filed on 01.08.2015. It is submitted that thus, there is no negligence or deliberate inaction on the part of the Investigating Officer. It is submitted that the offence is serious and the learned Magistrate having exercised the discretion in extending the period, this Court may not interfere.

12. I have given my anxious consideration to the rival circumstances and the submissions made and I do not find that a case for interference is made out.

13. The material facts and various dates are not in dispute. Under Section 174(3)(iii) of Cr.P.C., an enquiry has to be conducted in the case of an unnatural death, where the case relates to death, within seven years of marriage and any relative of the woman has made a request on her behalf. In the present case, the brother of the deceased had made a complaint, requesting for enquiring into the cause of death of his sister and the matter was accordingly forwarded to the SDM. The record discloses that the Dean, GMC was requested to form an expert committee/ethic committee, which was accordingly formed and the three member committee gave a report, finding that the death was caused due to the negligence of the petitioner. It is true that thereafter the matter remained pending for quite sometime till 09.03.2015, when the Investigating Officer inquired as to the outcome of the enquiry. It is only after this that the SDM sent his report on 30.04.2015, after which, an FIR came to be registered on 19.05.2015, followed by filing of the charge sheet on 01.08.2015. The question is whether, in such circumstances, a case for extension

of period of limitation under Section 473 of Cr.P.C., is made out. Section 473 of Cr.P.C is akin to Section 5 of the Limitation Act with an important addition that the Magistrate can direct extension of period of limitation, where it is “necessary to do so in the interest of justice”.

It can thus be seen that under Section 473 of Cr.P.C., the Court may take cognizance of an offence after the expiry of the period of limitation, if it is satisfied on facts and circumstances of the case that the delay has been properly explained or that it is necessary to do so in the interest of justice. The period of limitation provided under Section 468 of Cr.P.C., in respect of an offence under Section 304-A of IPC, is three years. In the present case, the sole ground for seeking extension of period of limitation is that the matter was pending in an enquiry under Section 176 of Cr.P.C.

14. It would be worthwhile, at this stage, to take a note of Section 176(1) of Cr.P.C., which reads thus:

“176. Inquiry by Magistrate into cause of death – (1) when the case is of the nature referred to in clause (i) or clause (ii) of sub-section (3) of section 174], the nearest Magistrate empowered to hold inquests shall, and in any other case mentioned in sub-section (1) of Section 174, any Magistrate so empowered may hold an inquiry into the cause of

death either instead of, or in addition to, the investigation held by the police officer; and if he does so, he shall have all the powers in conducting it which he would have in holding an inquiry into an offence."

It can thus be clearly seen that an enquiry under Section 176 of Cr.P.C. can be held by a Magistrate, so empowered, either instead of, or in addition to the investigation held by the police officer. Thus, although, investigation in a case of the present nature can be held along with the enquiry under Section 176, sub-section 1 of Cr.P.C. makes it abundantly clear that such enquiry can be held instead of or in addition to the investigation in this regard. The record discloses that the Investigating Officer had promptly sent the matter for enquiry under Section 176 of Cr.P.C. The learned Public Prosecutor is right in submitting that the Investigating Officer had no control over the conduction of the enquiry under Section 176 of Cr.P.C. At this stage, it is necessary to note that a copy of the covering letter dated 09.02.2009 from the expert committee was also sent to the Police Inspector, Curchorem Police Station. On the basis of this communication, it is strongly urged on behalf of the petitioner that it was on 09.02.2009 that the Investigating Officer came to know of the finding of the expert committee and even thereafter, no action was taken. The argument although

attractive at the first blush, cannot be accepted for the reason that the ultimate report by the SDM came only in the year 2015. Thus, it can be said that the enquiry under Section 176 of Cr.P.C. culminated only when the SDM sent a report in April 2015.

15. Reliance placed on Section 470 of Cr.P.C., also to my mind, is misplaced. This is because the prosecution is not coming with a case for exclusion of time. Section 470 of Cr.P.C. applies altogether to a different situation, where in computing the period of limitation, the time during which any person has been prosecuting with due diligence another prosecution, whether in a Court of first instance or in a Court of appeal or revision, against the offender is liable to be excluded. Section 470 of Cr.P.C. is akin to Section 14 of the Limitation Act. It is trite that Section 470 of Cr.P.C. and Section 473 of Cr.P.C. provide for two distinct contingencies and situations. While the former refers to exclusion of time, the later refers to extension of time on the ground of the delay being properly explained and the Court finding that it is necessary in the interest of justice to extend the period of limitation. Although, the learned Senior Counsel for the petitioner had raised certain contentions on the merits of the allegation in order to demonstrate that no case of

medical negligence is made out, I find that this is not the stage at which the said contentions can be gone into, or examined, as the question is limited only to the aspect of extension of the period of limitation.

16. A brief reference, at this stage, may be made to the decisions cited on behalf of the petitioner.

In the case of **State of H.P. Vs. Tara Dutt & Another, (2000) 1 SCC 230**, it was held that the powers of the Court to extend the period of limitation has to be exercised judicially and on well recognized principles and if, the Court decides to extend the period/condone the delay, it can only be by a speaking order. There cannot be any manner of dispute with the proposition that there is discretion vesting in the Magistrate, to extend the delay in an appropriate case, if the requirements are satisfied. The said discretion is a judicial discretion, which can be exercised in the facts and circumstances of each case and for reasons which may be ascertainable from the order passed.

In the case of **Sarah Mathew** (supra), the question was whether, the period of limitation has to be reckoned with reference to the date when the complaint is filed or from the date of institution of prosecution or it has to be reckoned from

the date when the Magistrate takes cognizance. In my considered view, the judgment turned on its own facts. Here it is not in dispute, that the period of limitation would start from the date of the offence and would have to be reckoned till the date of filing of the charge sheet, which in the present case is 01.08.2015.

17. I have carefully gone through the impugned order passed by the learned Magistrate and that of the learned Sessions Judge. It is trite that this Court would be slow in interfering with an order where the Magistrate in exercise of its discretion has condoned the delay, unless and until the exercise of discretion is found to be arbitrary or capricious. I do not find that the impugned order suffers from any infirmity, so as to require interference.

The petition is without any merit and is accordingly dismissed. It is made clear that this Court has not expressed any opinion on the merits of the matter.

C. V. BHADANG, J.