

2. The applicant is seeking quashing of FIR No. 90 of 2016 of Navghar Police Station, Mumbai. The said case is under Section 354, 354 (A) and 509 of the Indian Penal Code. The said case is now numbered as C.C.No.729/PW/2016 and is pending before learned Metropolitan Magistrate, 27th Court, Mulund, Mumbai.

3. The applicant is a Doctor by profession. It is the case of the complainant that since six months she had problem with nerves in her left and right hand, hence, on advise of her friend she went to the clinic of the present applicant. The complainant went to the clinic on 29/4/2016, at about 7.15 p.m., along with her son Ashwin. It is the case of the complainant that Doctor i.e. the applicant made her sit on the check up table, then he told her to hold his fingers with both her hands which she did. Thereafter, the applicant pressed her hands as well as her shoulders. Due to this she got embarrassed. Then the applicant – Doctor told her that Vitamin D-3 and D-12 injections are to be given in the hip. The case of the complainant is that she did not

feel touch of the applicant – Doctor appropriate, hence, she lodged FIR.

4. It is pertinent to note that when the complainant was being examined by the applicant, the son of the complainant lady was very much present in the consulting room along with his mother as well as lady compounder Asma Patel was present in the said room.

5. Looking to the medical problem as stated by the complainant to the applicant who is Doctor, we are of the opinion that whatever was done by the doctor was appropriate to the medical situation. In fact, during investigation the police have collected the report dated 19/5/2016 from Police Hospital at Nagpada in which it is stated that the applicant was competent to medically check the complainant. The medical report further states that looking to the medical complaint as stated by the complainant to the applicant, the check up which was done by the doctor in which it is required to touch her hands and shoulders was appropriate. The advise given by the

doctor to give injections on the hip was found appropriate looking to the medical complaint made by the complainant. Similar report has been given by the Expert Medical Committee consisting of three Doctors of Sir J.J. Hospital, Mumbai. These reports are taken on record and marked as 'X' and 'X-1' respectively for identification.

6. Looking to the facts and circumstances of this case, it cannot be said that any offence under Section 354, 354(A) and 509 of Indian Penal Code is made out. It cannot be said that the conduct of the applicant – Doctor was something which in the given facts and circumstances no medical professional in his ordinary senses and prudence would have done.

7. The Supreme Court in the case of **State of Haryana and others Vs. Bhajan Lal and others** reported in **1992 Supp (1) SCC 335**, in para 102 has observed that “ (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)

(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, then in such cases the FIR can be quashed.”

8. As stated earlier, looking to the medical complaint with which the complainant lady approached the applicant – Doctor, it was necessary for the Doctor to hold her hands and to touch her shoulders. Hence, we are of the view that no offence is made out and the case is clearly covered by the observations of the Supreme Court in the case of **Bhajan Lal** (supra). In this view of the matter, we are inclined to quash the FIR and the proceedings relating thereto.

9. The application is allowed in above terms.

(M.S.KARNIK, J.)

(ACTING CHIEF JUSTICE)