

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL REVISION APPLICATION NO. 54 OF 2018**

Sanjay Harmalkar Petitioner
Versus
The Police Inspector, Anti Corruption
Bureau & 5 Others Respondents

Mr. S.G. Bhobe with Mr. Ryan Menezes, Advocates for the
Petitioner.

Mr. S.R. Rivankar, Public Prosecutor for the Respondent No. 1.

Mr. Raunaq Rao, Advocate for the Respondent No. 7.

CORAM:- C.V. BHADANG, J.

DATE:- 11th JANUARY, 2019.

ORAL ORDER:

The challenge in this criminal revision application, at the instance of the original complainant, is to the order dated 04.05.2018, passed by the learned Sessions Judge in Criminal Miscellaneous Application No. 1/2016. By the impugned order, the learned Sessions Judge has dismissed the application under Section 156(3) of the Code of Criminal Procedure (Code, for short), filed by the applicant, seeking a direction for registration of an FIR.

2. The petitioner filed a complaint to P.S. Panaji and P.S. Agassaim alongwith a copy to the Anti Corruption Bureau on

02.12.2015, alleging that Dr. A.M. Mesquita and others have conducted clinical trials on patients, without the approval as required. It is further alleged that Dr. A.M. Mesquita and others have received huge amount from certain pharmaceutical companies in conducting the said trials, which amount was received by Dr. A.M. Mesquita in his personal account, without seeking permission from the Government. It was claimed that there is misappropriation of the amount. The petitioner thus alleged offences under Section 420 of IPC and Sections 7 and 13 of the Prevention of Corruption Act (Act, for short).

3. As no action was taken on the said complaint, the petitioner approached the learned Additional Sessions Judge (Special Judge) with an application under Section 156(3) of the Code.

4. The learned Sessions Judge by an order dated 04.05.2018 has dismissed the said application.

5. I have heard Shri Bhobe, the learned Counsel for the petitioner, the learned Public Prosecutor and Shri Rao, the learned Counsel for the respondent no. 7. Perused record.

6. Shri Bhobe, the learned Counsel for the petitioner has referred to a letter dated 07.08.2015, from Dr. A.M. Mesquita addressed to the Dean, Goa Medical College (GMC) in order to submit that Dr. A.M. Mesquita has admitted that the amount was received from the pharmaceutical companies in his personal account. It is submitted that the learned Sessions Judge was in error in finding that even on merits, no case is made out. The learned Counsel however, did not dispute that after coming into force of the Prevention of Corruption (amendment) Act, 2018 w.e.f. 26.07.2018 (amendment Act for short), the principle ground of challenge about the non requirement of the sanction (as the concerned public servant has since retired), would not survive. It is submitted that even if, the petitioner is able to obtain the sanction, the observations in paras 7 and 8 of the impugned order, would come in the way of the petitioner. Except this, there are no other contentions raised.

7. Mr. Rao, the learned Counsel for the respondent no. 7 has pointed out the record of the proceedings of the disciplinary committee dated 28.08.2018, in which, the brother of Dr. A.M. Mesquita, namely, Dr. Wilfred Mesquita had produced the Vakalatnama of Advocate Khilji, signed by him as

Power of Attorney Holder of the petitioner. It is contended that the complaint is the outcome of a dispute between Dr. A.M. Mesquita and his brother, Dr. Wilfred Mesquita, as would be apparent from the fact that the petitioner had given the Power of Attorney to Dr. Wilfred Mesquita. The learned Counsel has also referred to the contents of the Power of Attorney.

8. It is submitted that the clinical trials were conducted in due observance of the procedure established under the Drugs and Cosmetics Act, 1940 and the Rules framed thereunder and the prevailing guidelines and practice followed at GMC. It is submitted that the clinical trials are conducted by a set of Principal Investigator, Co-investigator and a Study Coordinator and was approved by the Institutional Ethics Committee (IEC), as constituted by the Dean, comprising of Doctors, Legal Experts and Laymen. It is submitted that the trials were conducted during the period from 2009 to 2015 and even the funds have been properly utilised. It is submitted that the learned Sessions Judge has rightly held that no case on merits is made out.

9. I have carefully considered the rival circumstances and the submissions made and I do not find that any case for

interference is made out.

10. Dr. A.M. Mesquita was working as a Professor and Head of Department of Pulmonary Medicine, GMC and has since retired. It appears that all fourteen clinical trials were conducted during the period from 2009 to 2015, out of which, in 12 clinical trials, the respondent no. 7 was the Principal Investigator and Dr. Lalita Fernandes, a Lecturer at GMC was the co-investigator, while Dr. A.M. Mesquita was assisting her in the capacity of a Co-Investigator in two trials. The clinical trials pertained to Asthma, Chronic Obstructive Pulmonary Disease (COPD) and Pneumonia, relating to Pulmonary medicine. According to the respondent no. 7, all the fourteen clinical trials were conducted in due observance of the procedure established under the Drugs and Cosmetics Act, 1940 and the Rules framed thereunder and the prevailing guidelines and after obtaining the required permissions from the Drugs Controller General (India), Directorate General of Health Services, New Delhi. Further, according to the respondent no. 7, there is an IEC constituted by the Dean, comprising of Doctors, Legal Experts and Lay person as set out in para 16 of the affidavit in reply and the clinical trials, according to the respondent no. 7, were conducted after

obtaining approvals from the IEC of GMC. The petitioner on the other hand has not produced any material at this stage to show that the trials were conducted in breach of any legal provisions or guidelines. The petitioner has also not demonstrated as to how he is concerned or aggrieved in the matter. I have carefully gone through the impugned order and I do not find that it suffers from any infirmity so as to require interference in the revisional jurisdiction of this Court. The criminal revision is devoid of any merit and is hereby dismissed.

C. V. BHADANG, J.

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