

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (APL) NO. 201 OF 2017

APPLICANT :- Mr. Vinay S/o Krishnarao Tule, Age 54
Years, Occupation – Medical Practitioner,
R/o. Laxmi Nagar, Nagpur.

...VERSUS...

NON-APPLICANTS:- 1. Ravindra S/o Dnyaneshwar Patil, Age 45
Years, Occupation – Service,

2. Sangita W/o Ravindra Patil, Age 41
Years, Occupation – Household, R/o. Plot
No.84, New Lok Kalyan, Narendra Nagar,
Nagpur.

3. The Health Officer / Appropriate
Authority, Nagpur Municipal
Corporation, Nagpur.

Mr. Rajnish Vyas, counsel for the applicant.
Mr. Y. B. Mandpe, counsel for respondent Nos.1 and 2.
Mr. S.M.Puranik, counsel for respondent No.3.

CORAM : MANISH PITALE, J.

DATE OF RESERVING THE JUDGMENT: 13.08.2021.

DATE OF PRONOUNCING THE JUDGMENT: 26.08.2021.

J U D G M E N T

The applicant has approached this Court invoking inherent powers under section 482 of the Code of Criminal Procedure (hereinafter referred to as “Cr. P. C.”) for quashing of a criminal complaint filed by respondent Nos.1 and 2. The applicant contends that the complaint filed by the said respondents under section 200 of the Cr.P.C. does not make out ingredients of alleged offences under section 415, 417, 420, 427, 467, 468 and 471 read with section 34 of the Indian Penal Code (hereinafter referred to as “IPC”). The said respondents have also arrayed respondent No.3 as accused No.2 in the said criminal complaint.

2. Respondent Nos.1 and 2 have been raising their grievances in various proceedings prior to filing of the aforesaid complaint before the Court of Judicial Magistrate First Class, Court No.2, Nagpur (hereinafter referred to as “Magistrate”). The record shows that the basic grievance of respondent Nos.1 and 2 is that the applicant had given a report, pursuant to collection of samples of fetus from the womb of respondent No.2 and certified that the fetus was not likely to suffer from the disease of sickle cell

anemia. According to respondent Nos.1 and 2, the report was inaccurate, fabricated, concocted and it led to respondent No.2 continuing with the pregnancy, resulting in birth of child on 20/01/2010, who was later found to be suffering from sickle cell anemia. It is alleged that since both the said respondents are carriers of sickle cell anemia disorder, they had consulted a gynecologist so as to avoid their child suffering from the said disease. The gynecologist had referred the said respondents to the laboratory run by the applicant herein. On 15/07/2009, respondent Nos.1 and 2 had approached the applicant and given sample for testing. The report carried the date of 13/07/2009 and certified that the fetus was not likely to suffer from the said disease, leading to grave harassment and suffering to respondent Nos.1 and. 2.

3. Respondent Nos.1 and 2 filed Writ Petition No.112 of 2013, before this Court claiming the following reliefs.

“i) issue writ of mandamus or any other form of writ or any other direction to the respondent declaring that:-

ii) the certificate issued by respondent no.2 to

unqualified Doctors for running a laboratory be declared as null and void.

- iii) direct respondent no.2 to verify if there are other Doctors who does not possess requisite qualification and are running the laboratories, and initiate action against the officers involved in granting registration certificate as annexed in Annexure-17 and 18.
- iv) direct the respondent nos.3, 4 and 5 to register an FIR and investigate the matter on the report lodged by petitioner on 23-10-2012.
- v) transfer the investigation to Central Bureau of Investigation by registering the FIR.
- vi) compensate the petitioner from Doctors who have issued invalid and bogus certificate to the tune of Rs.1 Crore as per Annexure-10.
- vii) any other order this Hon'ble court deems fit and proper under the circumstances of the case may kindly be passed in the interest of justice."

The Division Bench of this Court passed judgment and order dated 18/06/2013, dismissing the writ petition, holding that none of the reliefs could be granted. But, in paragraph-28 of the said judgment, the Division Bench of this Court observed that the

said respondents could very well file a complaint under section 200 of the Cr.PC.

4. The said respondents approached the Hon'ble Supreme Court by filing special leave petition against the said judgment. On 24/02/2014, the Hon'ble Supreme Court dismissed the special leave petition. Thereafter, respondent Nos.1 and 2 filed a complaint under the Consumer Protection Act, 1986, before the State Consumer Disputes Redressal Commission, Maharashtra, Nagpur Circuit Bench, Nagpur, on the same allegations, claiming compensation to the tune of Rs.1,04,05,000/- from the applicant.

5. By a detailed order dated 03/05/2017, the State Commission dismissed the complaint, holding that respondent Nos.1 and 2 had failed to make out any case of negligence or fabrication of report by the applicant. Aggrieved by the same, the said respondents filed first appeal before the National Consumer Dispute Redressal Commission, New Delhi. The said appeal was dismissed by order dated 17/07/2017. The National Consumer Disputes Redressal Commission concurred with the findings rendered by the State Consumer Disputes Redressal Commission.

6. In the meanwhile, respondent Nos.1 and 2 filed the aforesaid criminal complaint against the applicant, alleging that the applicant had not only cheated them, but he had indulged in forgery and fabrication of documents, for which he was criminally liable. Respondent Nos.1 and 2 alleged that the applicant did not hold the necessary qualifications to run the diagnostic laboratory and respondent No.3 had also falsely issued authorization and licence to the applicant to run the diagnostic laboratory.

7. On 09/03/2017, the Court of Magistrate by a cryptic order issued process against the applicant, observing that the allegations in the complaint *prima facie* disclosed offences punishable under sections 417, 420, 468, 471 of the IPC. At this stage, the applicant filed the instant application under section 482 of the Cr.P.C. On 23/03/2017, this Court issued notice and granted interim stay of the proceedings in the aforesaid Criminal Complaint No.3124 of 2014, pending before the Court of Magistrate. Thereafter, on 27/07/2017, the application was admitted and interim stay was continued. The application was listed for final hearing before this Court.

8. Mr. Rajnish Vyas, learned counsel appearing for the applicant, submitted that in the present case, the complaint filed by respondent Nos.1 and 2 deserved to be quashed for the reason that even if the contents of the complaint and the documents filed therewith were to be taken into consideration, not even a *prima facie* case was made out against the applicant. It was submitted that the ingredients of the offences alleged against the applicant were not made out at all and that therefore, the complaint deserved to be quashed. The learned counsel for the applicant referred to the judgment of the Division Bench of this Court, whereby the writ petition filed by respondent Nos.1 and 2 was dismissed, as also the orders passed by the State and National Consumer Commissions, whereby allegations of negligence, absence of qualifications of the applicant to run the diagnostic laboratory and tampering of the record, as also forged and fabricated reports, were rejected. It was submitted that the contents of the said criminal complaint were nothing but a repetition of the allegations made before the Division Bench of this Court and although liberty was granted to respondent Nos.1 and 2, when the writ petition was dismissed, considering the contents of the criminal complaint under section 200 of the Cr.P.C.,

they were not sufficient for the matter to proceed against the applicant.

9. The learned counsel for the applicant submitted that merely because remedy of filing revision application against the order of issuance of process was available, it could not be said that inherent powers of this Court could not be invoked under section 482 of the Cr.P.C. seeking quashing of the complaint. The learned counsel for the applicant submitted that although respondent Nos.1 and 2 had suffered as the child was found to be having the disease of sickle cell anemia, perusal of the report given by the laboratory of the applicant would show that possibility of errors was clearly stated in the report and that in the present case, it could not be said that the applicant was criminally liable for what eventually happened. On this basis, it was submitted that the applicant did not deserve to face further proceedings in the criminal complaint case and that the present application deserved be allowed.

10. On the other hand, Mr. Y. B. Mandpe, learned counsel appearing for respondent Nos.1 and 2, referred to the contents of

the criminal complaint in detail to demonstrate that the ingredients of the alleged offences were clearly made out and that further proceedings in the criminal complaint were warranted in the interest of justice. Much emphasis was placed on the liberty granted by the Division Bench of this Court in the aforesaid judgment while dismissing the writ petition of respondent Nos.1 and 2, to file criminal complaint under section 200 of the Cr.P.C.. It was submitted that, not only have the respondent Nos.1 and 2 alleged that the report given by the applicant in connection with the sample of the fetus was fabricated, inasmuch as the report was dated 13/07/2009, when the sample itself was given on 15/07/2009, but various versions of the very same report filed before this Court along with reply to the writ petition demonstrated that the applicant had repeatedly indulged in forgery and fabrication. On this basis, it was submitted that the said criminal complaint did not deserve to be quashed and that further proceedings were warranted in the interest of justice. It was submitted that, but for the said report given by the laboratory of the applicant, the said respondents would not have continued with the pregnancy and the child suffering from the disease of sickle cell anemia would not have been born. It was submitted

that respondent Nos.1 and 2 had been cheated by the applicant, for which he deserved to face trial. It was also alleged that respondent No.3 had falsely issued authorization and licence to the applicant to run the diagnostic laboratory when he did not possess the necessary qualifications. The learned counsel for the said respondents emphasized on the provisions of the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (hereinafter referred to as “PCPNDT Act”) to contend that in the present case sufficient material was on record to proceed against the applicant.

11. Heard learned counsel for the rival parties and perused the material on record. In order to examine whether the criminal complaint in the present case makes out even *prima facie* ingredients of the offences alleged, it would be necessary to peruse the said complaint in detail. Perusal of the same, shows that at the outset, the said respondents have alleged that while the sample in the present case was given on 15/07/2009, the report showed the date of 13/07/2009, indicating that the report was fabricated and false. It was not clear whether the sample taken from respondent No.2 was the one actually tested or whether the

report pertained to some other patient. Much emphasis has been placed on the observation in the report given by the applicant that fetus was not likely to suffer from the said disease.

12. Thereafter, respondent Nos.1 and 2 have alleged in the complaint that the said report was obviously wrong since the child actually suffered from the disease of sickle cell anemia. On this basis, it was alleged that the applicant cheated the said respondents. The complaint then narrates the nature of mental harassment suffered by respondent Nos.1 and 2 and the physical agony being suffered by the child born with the said disease, on the basis of which compensation to the tune of Rs.1,00,00,000/- (Rs.One Crore Only) has been claimed. The said respondents further state in the complaint that the applicant is not qualified to run the diagnostic laboratory and in support of the said statement, reliance is placed on the Indian Medical Council Act, 1956 and the Rules framed thereunder, read with the provisions of the PCPNDT Act. It is emphatically stated that the applicant was not qualified to run the said laboratory and equally, the respondent No.3 (accused No.2) was liable for having falsely issued registration certificate/licence to the applicant to run the diagnostic laboratory.

13. Thereafter, reference is made to the said writ petition filed by respondent Nos.1 and 2, which was dismissed, but much emphasis is placed on the liberty granted by the Division Bench of this Court to file criminal complaint under section 200 of the Cr.P.C.. The said respondents then rely upon documents filed along with the reply on behalf of the applicant in the said writ petition, to contend that further forgery and fabrication was indulged in by the applicant. After referring to the proceedings initiated under the Consumer Protection Act, 1986, respondent Nos.1 and 2 have repeated the charge of cheating against the applicant by referring to various provisions of the IPC and the PCPNDT Act. On this basis, respondent Nos.1 and 2 sought issuance of process against the applicant pertaining to various provisions of the IPC and PCPNDT Act.

14. An analysis of the said complaint filed on behalf of respondent Nos.1 and 2 would show that criminal offences have been alleged against the applicant under various heads. Firstly, absence of qualifications of the applicant to run the diagnostic laboratory, indicating that he cheated the said respondents and the

general public. Secondly, the allegation that the report given by the applicant in July, 2009, was a false and fabricated document, inasmuch as the sample was given on 15/07/2009, while the report was dated 13/07/2009, indicating that it was a report not pertaining to respondent No.2. Thirdly, that the report stated that the fetus was not likely to suffer from the aforesaid disease, while it was later found that the fetus was suffering from such a disease, because the child born in January, 2010, was indeed found to be suffering from the said disease. Fourthly, that the diagnostic laboratory of the applicant was being run on the basis of a false certificate issued by respondent No.3 i.e. Appropriate Authority of the Nagpur Municipal Corporation and fifthly, the applicant had indulged in tampering of the record before this Court by filing further fabricated copies of the said report of July, 2009, along with the reply to the writ petition.

15. On the first head of allegation levelled by respondent Nos.1 and 2, pertaining to qualifications of the applicant for running the said diagnostic laboratory, it is significant that identical arguments were raised before the Division Bench of this Court in Criminal Writ Petition No.112 of 2013. This is evident

from the contentions recorded on behalf of the applicant in paragraph-4 of the judgment and order dated 18/06/2013, passed by the Division Bench of this Court in the said writ petition. A perusal of the said judgment would show that such contentions were considered in detail by the Division Bench of this Court in the backdrop of the provisions of the PCPNDT Act. In paragraphs 14, 15 and 16 of the said judgment of the Division Bench of this Court, it was categorically found that the applicant was having the requisite qualifications for running the diagnostic laboratory and that he satisfied the requirements of the PCPNDT Act and the Rules framed thereunder. The said findings of the Division Bench of this Court were confirmed when the special leave petition filed by respondent Nos.1 and 2 was dismissed by the Hon'ble Supreme Court on 24/04/2014. Thus, positive findings in favour of the applicant are on record, which have not been disturbed, thereby indicating that respondent Nos.1 and 2 cannot claim that they were cheated because the applicant in the present case did not possess the requisite qualifications to run the diagnostic laboratory and that he had cheated them by posing to be a person qualified to run the laboratory in which the test was carried out. It is significant that the respondent nos. 1 and 2 have themselves

referred to the filing of the said writ petition and the judgement of the Division Bench of this Court holding in favour of the applicant. Thus, the ingredients of the offence of cheating cannot be said to be made out under the first head of allegations.

16. The second head of the allegations pertains to the alleged tampering of the said report issued in July, 2009, by the diagnostic laboratory run by the applicant for the reason that while the sample was given on 15/07/2009, the report was dated 13/07/2009. The record shows that an identical allegation was raised by respondent Nos.1 and 2 before the State Consumer Commission and the National Consumer Commission in the proceedings initiated under the Consumer Protection Act, 1986. Concurrent findings of the said Commissions show that difference in the date was found to be a typographical error and nothing more. Although, the findings were rendered in the proceedings initiated under the Consumer Protection Act, it can be said to be relevant for dealing with the contention of respondent Nos.1 and 2 that there was deliberate tampering of the report, which demonstrated that not only were respondent Nos.1 and 2 cheated, but the applicant had indulged in forgery and fabrication. The

applicant has not denied the difference in the dates, but the applicant stands by the said report, as the report pertaining to the sample collected from respondent No.2 and there does not appear to be sufficient material in this allegation to show the ingredients of offences under section 420, 468 and 471 of the IPC. Therefore, it cannot be said that the applicant deserves to face trial on the basis of the said allegation.

17. Insofar as the third head of the allegations is concerned, respondent Nos.1 and 2 claim that they were cheated because the report stated that the fetus was not likely to suffer from the disease and yet the child born in January, 2010 was found to be suffering from the disease of sickle cell anemia. It is significant that the report given by the applicant not only gave the opinion about the “likelihood” of the fetus to suffer from the said disease, but also stated as follows:

“Although all precautions are taken during DNA tests the currently available data indicate that the technical error rate for all types of DNA analysis is approximately 1%. It is important that all clinicians of persons requesting DNA diagnostic test are aware of these data before acting upon these results.”

This shows that the report itself stated about the possibility of technical error in such DNA analysis test. Apart from this, respondent Nos.1 and 2 would have to show on a bare reading of the complaint that the opinion given by the applicant could be said to be showing the ingredients of the offence of cheating as defined in section 415 of the IPC. The element of deception, fraud and dishonesty for inducing respondent Nos.1 and 2 is a vital ingredient, which should be *prima facie* found against the applicant on the basis of the nature of allegations made by respondent Nos.1 and 2. This Court is of the opinion that the allegations made in the complaint do not *prima facie* show the ingredients of the said offence on the basis of the said set of allegations made by respondent Nos.1 and 2.

18. Insofar as the fourth head of allegation is concerned, respondent Nos.1 and 2 appear to be indicating that the licence issued to the applicant by respondent No.3 (accused No.2) was itself false and therefore, the applicant as well as respondent No.3 were criminally liable. Such an allegation without any particulars is vague. Respondent No.3 (accused No.2) is only shown to be Health Officer/Appropriate Authority of the Nagpur Municipal

Corporation, which itself is vague. Even otherwise, in the said judgment and order dated 18/06/2013, the Division Bench of this Court has given categorical findings about the qualifications of the applicant to run the diagnostic laboratory and a reference is also made to the registration certificate/licence issued to the applicant on the basis of such qualifications under PCPNDT Act. With these findings holding the field and reference of the said Division Bench judgement of this Court made in the complaint itself, conceding that the said findings attained finality after dismissal of the special leave petition, there is hardly any substance in the said allegation to even *prima facie* show criminal liability on the part of the applicant and respondent No.3.

19. Insofar as the fifth head of the allegations is concerned, it pertains to alleged tampering of record in the said writ petition decided by the Division of this Court. It is alleged that different versions of the very same certificate issued in July, 2009, were placed on record with the reply filed by the applicant to the said writ petition. These allegations are also akin to the allegations made by the said respondents on the basis of the date mentioned in the report issued by the laboratory of the applicant.

The allegation is not that the contents of the report were in any manner different from the report given to the said respondents. Therefore, it cannot be said that the said allegation *prima facie* makes out the ingredients of the said offences.

20. Thus, it becomes evident that although an unfortunate incident has occurred in the present case, it needs to be examined whether the complaint filed by respondent Nos.1 and 2 before the Magistrate makes out even a *prima facie* case and whether it demonstrates the ingredients of the offences alleged against the applicant. The said aspect has to be examined in the backdrop of the aforementioned proceedings initiated by respondent Nos.1 and 2 for the very same grievances in the form of writ petition before this Court and the consumer complaint under the provisions of the Consumer Protection Act, 1986. Although, the Division Bench of this Court did grant liberty to respondent Nos.1 and 2 to file a complaint under section 200 of the Cr.P.C., that in itself would not show that the complaint would have to proceed against the applicant. The continuance of a criminal proceeding is a serious matter and a person cannot be forced to face such criminal proceeding, when the complaint in its

entirety does not sufficiently indicate that *prima facie* ingredients of the alleged offences are made out.

21. This Court has considered the entire material on record and it is found that the said complaint filed by respondent Nos.1 and 2, does not sufficiently make out a case for the matter to proceed further against the applicant. Although, process was issued by the Magistrate by a cryptic order on 09/03/2017, for the offences punishable under sections 417, 420, 468 and 471 of the IPC and a remedy of filing of a revision application was indeed available to the applicant, this Court is of the opinion that when the complaint itself is found to be insufficient for the criminal proceeding to be initiated and continued against the applicant, in the peculiar facts and circumstances of the present case, inherent powers under section 482 of the Cr.P.C. can be invoked for considering the reliefs sought by the applicant.

22. In view of the above discussion, this Court is of the opinion that the applicant has succeeded in making out a case for invoking inherent powers of this Court under section 482 of the Cr.P.C. for securing the ends of justice.

23. Accordingly, the application is allowed and the Criminal Complaint No.3124 of 2014, initiated by respondent Nos.1 and 2 and pending before the Court of Magistrate is quashed. Consequently, the order issuing process is rendered meaningless.

JUDGE