

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO.4591 OF 2021

- 1) Amit Bharat Shah; and
2) Dr. Mukul Vijay Dwivedi .. Petitioners

Versus

Mrs.Dr.Elizabeth Chyyo Sada and Anr. .. Respondents

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Mr.Abhishek R. Avachat, Advocate for the Petitioners.

Mr.Amey Deshpande, Advocate for Respondent No.1.

Mr.A.R. Patil, APP for the Respondent No.1-State.

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CORAM : PRAKASH D. NAIK J.

DATED : JUNE 23, 2022.

P.C. :

The petitioner has challenged the order issuing process dated 17th June, 2019, passed by learned J.M.F.C. Court-I Pune in RCC No.3104 of 2018, for offences punishable under Sections 304-A, 420, 468, 471 and 474 read with 34 of Indian Penal Code ("IPC", for short).

2 The order issuing process was challenged before the Court of Sessions Court by preferring criminal Revision Application No.398 of 2019. The revision application was dismissed by the Sessions Court by order dated 26th October, 2020.

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This order is corrected pursuant to Speaking to the Minutes order dated 18th July, 2022.

3 Respondent no.1 has lodged the private complaint alleging that petitioner/accused no.1 is running clinic at Sangli. The accused no.2 is assistant of accused no.1. Accused no.1 is holding degree of MBBS, D.V.D., D.N. Band having registration No.88681/1999. However, the website depicts his degree as M.D. along-with his photographs. The deceased was the only child of the complainant. She was aged around 13 years old at the time of incident. In April 2016, the complainant and her daughter visited their relatives at Sangli. At that time she noticed some discoloration. The complainant visited the clinic of accused no.1. Accused no.2 was also present in the clinic. Accused no.1 examined the deceased in the presence of accused no.2. It was diagnosed that the deceased was suffering from Vasculitis. Accused no.1 than prescribed tablets Dapsone 100 mg once a day for 30 days and creams. He was also prescribed other medicines. On 29th April, 2016, G6PDT Test and Liver Function Test was conducted. On 30th April, 2016, reports of tests were received. Accused no.1 was approached on the cell phone and informed about the report. The accused no.1 recommended administering Dapsone 100 mg. per day to victim/deceased. On 21st May, 2016, she developed fever, body ache and running nose. She was taken to another doctor on 22nd May, 2016. Doctor's advised to stop tablet Dapsone 100 mg. On 22nd May, 2016, the deceased developed Jaundice with skin rashes and she was taken

to another doctor at Rubby Hall Clinic. Urine test was advised. On 25th May, 2016, she was again taken to Rubby Hall Clinic for consultation. The doctor therein advised immediate admission of the deceased in the Intensive Care Unit (ICU) for high volume investigation and monitoring. It was revealed that the deceased was suffering acute hepatic failure with anemia with developing skin rash. Senior Hepatologist was called for the treatment. On 27th May, 2016, the patient was shifted from Rubby Hall Clinic . She was discharged in order to prevent cross infection and shifted to another hospital. Thereafter on 21st July, 2016, the deceased was again shifted to Rubby Hall Clinic and admitted in ICU. Thereafter she was shifted to KEM hospital, Pune on 24th July, 2016. She suffered Cardio Respiratory Arrest due to drug induced sever hypersensitivity reaction with respiratory failure with exfoliative dermapitis leading to toxic epidermal necrolysis syndrome. Doctor at KEM hospital opined that the condition of deceased was due to consumption of tablet Dapsone 100 mg. The patient was passed away on 27th July, 2016. The complaint was filed. Statements of witnesses were recorded and the process was issued for the aforesaid offences.

4 Learned advocate for the petitioner submits that there was no material to issue process for the offences against the

petitioner. Petitioner no.2 was allegedly assistant to petitioner no.1. No role has been attributed to him. The order issuing process is cryptic and does not elaborate reasons for issuing process. The Sessions Court while dismissing the revision application has observed that the order of process is cryptic. The offence punishable under Section 304 is not made out. Only on account of adverse health condition, Doctor cannot be charged for medical negligence. The parameter laid down in the decision of the Apex Court in the case of ***Jacob Mathew Vs. State of Punjab and Anr.***¹, were required to be considered. In the said decision, the Apex Court had observed that the word “gross” has not been used in Section 304-A of IPC, yet it is settled that in criminal law negligence or recklessness, to be so held, must be of such a high degree as to be “gross”. The expression “rash or negligent act” as occurred in Section 304-A of IPC has to be read as qualified by the word “grossly”. It is also observed that no sensible professional would intentionally commit an act or omission which would result in loss or injury to the patient as the professional reputation of the person is a stake. A single failure may cost him dear in his career. It is submitted that administering tablet as alleged will not amount to medical negligence or commission of the alleged offence. Such prescription is permissible relied upon the published article on tablet Dapsone.

1 2005 AIR SCW 3685

5 Learned counsel for the respondent complainant submitted that *prima facie* case was made out. On the basis of the material on record, the learned Magistrate had issued the process against the accused. The complainant had examined witnesses whose evidence was considered by the Court and process has been issued. The revision application preferred by the petitioners is dismissed by the Court of Sessions. The material on record supports the allegations made in the complaint. The victim was administered tablet Dapson. She was required to be admitted repeatedly in various hospitals. She died subsequently. At this stage, the submission of the petitioners cannot be considered. The arguments advanced by the counsel for the petitioners cannot be appreciated at this stage. It will be matter of evidence. Even the decision of Jacob Mathew Vs. State of Punjab and Anr. (Supra) would not help the petitioner in view of the observations made therein.

6 Having gone through the contents of the complaint and the five witnesses examined by the complainant before the trial Court. The learned Magistrate was satisfied that the process was required to be issued and thereby *vide* order dated 17th June, 2019, the Court was pleased to issue process for the aforesaid offence. Learned Sessions Judge while adjudicating the revision application has dealt with the

submissions of both the sides in detailed and dismissed the revision application. Although it was observed that the order of process was cryptic, learned Sessions Judge has considered the material on record and also observed that the trial Court has examined almost all doctors who had treated the deceased, after she suffered complications due to over dose of Dapsone 100 Mg tablet. Death summary was issued by KEM hospital was produced on record. In death summary, the cause of death is mentioned as, "Cardio Respiratory Arrest due to drug induced severe hypersensitivity reaction with respiratory failure with exfoliative dermatitis leading to Toxic Epidermal Necrolysis Syndrome". Thus, there is sufficient material on record to make out *prima facie* case of negligence and rashness on the part of the accused in prescribing the disputed medicine Dapsone 100 MG. There is no postmortem report.

7 I do not find any reason to deviate from the reasoning and the order passed by the Sessions Court dismissing the revision application as well as the order issuing process. At the stage of process, the Court is required to consider, *prima facie* view, and it is not necessary to pass lengthy order. I do not find any infirmity in the order passed by the learned Magistrate. The Court has taken into consideration the depositions of the witnesses adduced before issuing

process. Hence, no case is made out for setting aside the impugned order of process as well as the order dismissing the revision application. Hence, the writ petition stands dismissed and disposed of accordingly.

(PRAKASH D. NAIK, J.)