

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

115

CRM-M-1243-2020

Date of Decision:06.04.2022

Imran

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Deepanshu S. Matya, Advocate,
for the petitioner.

Mr. Kanwar Sanjiv Kumar, A.A.G., Haryana.

VINOD S. BHARDWAJ , J.(Oral)

By means of the instant petition, the jurisdiction of this Court under Section 482 Cr.P.C. has been invoked for seeking quashing of FIR No.449 dated 26.08.2016 under Sections 15(2), 15(3) of the Indian Medical Council Act, 1956 and Sections 336, 420 IPC, registered at Police Station Punhana, District Nuh(Annexure P-1) and all other consequential proceedings arising therefrom.

Learned counsel for the petitioner has vehemently argued that the case of the prosecution, as reflected from the FIR is to the effect that a raid was conducted by the Drug Inspector at Aastha Ultrasound Centre, Punhana Chowk, Near Govt. College, Hodal and the said Centre was run by Dr. Anurag Singh who is holding the degree of M.B.B.S. and M.S. Counsel contends that the petitioner was working in the said Centre as a Cashier.

However, in order to falsely implicate the petitioner, raid has been conducted by the Drug Inspector and a case under the aforementioned Sections has been registered against the petitioner. The allegations that the petitioner was found practicing as a doctor on the spot are false and malicious. He further submits that Dr. Anurag has also furnished an affidavit to the said effect-claiming himself to be the owner of the said Centre and stating that the petitioner had no concern with the alleged hospital and medicines. It is thus argued that the Centre being run by a qualified person, registration of FIR against the petitioner is bad.

Learned counsel for the petitioner has placed reliance upon a Division Bench judgment of this Court passed in Civil Writ Petition No.1696 of 1997 in the matter of **Dr. Barinder Singh, President, Ludhiana Medical Welfare Association Versus State of Punjab and others**, decided on 11.08.2009 to contend that the offences under the Indian Medical Council Act are not cognizable, hence, the FIR in the said incident could not be registered. He further points out that from the bare perusal of the instant FIR, offence under Section 420 IPC would not be attracted as no patient has given a complaint alleging that the petitioner had impersonated himself as a doctor and had prescribed any medicines or issued any prescription slips. He thus contends that even from a bare perusal of the FIR, offences under Sections 336 and 420 IPC are not made out against the petitioner.

Notwithstanding the ratio laid down in the judgment relied upon by learned counsel appearing on behalf of the petitioner, there are certain essential aspects that need to be noticed. It was pointed out by the learned counsel appearing on behalf of the State of Haryana that the FIR in question having been registered in the year 2016, final report in the matter had been

filed after conclusion of investigation on 02.12.2016 and charges against the petitioner had also been framed on 03.12.2018. Thereafter, even the evidence of the prosecution witnesses had been recorded. Out of total 07 witnesses, 02 witnesses have already been examined by the prosecution. The aforesaid aspects have not been disclosed by the petitioner in the instant petition, it is apparently a deliberate attempt on the part of the petitioner to mislead the Court so as to give an impression as if the proceedings are at an initial stage. The very fact that charges have been framed and the petitioner has not raised any challenge to the order framing of charge and continued to face the trial shows that challenge at this belated stage invoking the provisions under Section 482 Cr.P.C. through the present petition is an abuse of process of law.

Counsel for the petitioner was confronted with the said information and upon being confronted with the same, he accepted it to be correct. There was no valid explanation as to why the said information had not been disclosed in the petition considering that the FIR pertains to the year 2016 and there was no tearing hurry that may have dissuaded the petitioner from disclosing the facts. Besides, there could be no valid explanation as to why the final report under Section 173 Cr.P.C. was not appended once the investigation had already been concluded and the entire evidence relied upon by the prosecution was in the knowledge of the petitioner. His deliberate attempt to only refer to the FIR and not append the final report leads the Court to infer that there ought to be some material making out a case for prosecution and it is for the said reason that the final report has not been appended. Besides, there has been an application of judicial mind and charge already stands framed in the year 2018. No reason

has been assigned as to why the order vide which the charges were framed has not been disclosed and after having chosen not to challenge the charges, why should the present quashing petition be entertained at a belated stage.

Besides, the argument and reliance of the petitioner on the affidavit of Dr. Anurag Singh cannot be considered at this stage as it is a disputed question of fact and such an affidavit is not *per-se* admissible as evidence. The doctor has to step into the witness box to support the affidavit and has to be cross-examined regarding the same. Further, whether there is any witness before whom the petitioner represented himself as a doctor or not that would be part of the final report, which the petitioner has chosen not to append.

Considering the entire perspective, especially that the investigation has been concluded, the complicity of the offences, if any, has to be determined on the basis of final report so filed by the prosecution and the evidence collected and as to whether the offences in question are made out or not-upon consideration of the documents/evidence as well as the witnesses so recorded by the prosecution during the course of investigation. Even though learned counsel has contended that there is no evidence, however, the petitioner has not appended report under Section 173 Cr.P.C. along with the instant petition to help the Court to ascertain as to whether any offences are made out or not.

In any case, it is an essential position in law that once the offence in question is also punishable under the special statute, the same would not *ipso facto* render the FIR liable to be quashed. Once an offence falls under the Special Statute as well as under the general law, unless there is an express statutory prohibition, registration of FIR also under the general

law would not be prohibited and such an act would attract the protection under Section 26 of the General Clauses Act. The aspect as to the culpability of the offence and the applicability of statute has to be seen at the stage of imposing the sentence. Hence, even if the argument of the learned counsel for the petitioner that the offences under Indian Medical Council Act could not have been the basis for registration of the FIR is accepted, the fact that the offences under Sections 336 and 420 IPC were also attracted, the FIR in question would not be invalid and illegal *per se*. Even said offences may also be made out on the basis of evidence collected.

It is evident that the petition has been filed by concealing necessary and complete information that was in the knowledge of the petitioner. The conduct of the petitioner does not inspire confidence. Accordingly, the instant petition is dismissed with costs of ₹20,000/- to be deposited by the petitioner with the **District Legal Services Authority, Mewat** within a period of one month from the date of receipt of a certified copy of this order.

April 06, 2022
seema

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No