

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Pronounced on: 6th May, 2022**

+ **CRL.M.C.1249/2018**

KAMLA

..... Petitioner

Through Mr. Siddharth Dutta and Ms. Gunjan
Malhotra, Advocates

versus

NCT OF DELHI & ANR.

..... Respondents

Through Ms. Manjeet Arya, APP for
respondent/State
Mr. Kunal Yadav, Advocate R-2

CORAM:

HON'BLE MS. JUSTICE ASHA MENON

J U D G M E N T

1. This petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (for short, "**Cr.P.C.**") seeking the quashing of the order dated 17th May, 2016, passed by the learned Additional Sessions Judge-III, North District, Rohini Courts, Delhi (hereinafter referred to as "**learned ASJ**").

2. The facts of the case as are relevant for the disposal of the present petition are that on 30th June, 1999, the husband of the petitioner took ill and the petitioner/Kamla accompanied him to the clinic of the respondent No.2/Prem Shanker, where he was given some injection by the respondent No.2. The husband of the petitioner started feeling restless and uncomfortable and collapsed in the *gali* outside the clinic and died there.

An FIR was lodged at Police Station Narela, being FIR No.280/1999 under Section 304A IPC.

3. Mr. Siddharth Dutta, learned counsel for the petitioner, submitted that after the charge had been framed, the respondent No.2 filed an application under Section 468 Cr.P.C. submitting that the case was time barred. Vide order dated 2nd November, 2015, the learned Metropolitan Magistrate dismissed the application as being not maintainable. The accused/respondent No.2 then filed a revision petition before the learned Sessions Court. Vide the impugned order dated 17th May, 2016, the learned ASJ allowed that revision petition and held that the cognizance could not have been taken under the Delhi Bharatiya Chikitsa Parishad Act, 1998 (for short, “**DBCP Act**”), without a complaint from an officer empowered under the Rules framed under the DBCP Act, which was missing in the present case, and further, since cognizance has been taken later than three years from the date of the incident i.e., with a delay of more than 11 years, and there being no specific order of condonation of delay, the accused/respondent No.2 was discharged.

4. The learned counsel for the petitioner submitted that even in the State Commission, Delhi, an observation had come that the respondent No.2 was not qualified to practice medicine, whether Allopathic or Ayurvedic. Moreover, when the learned MM had taken cognizance and proceeded to frame the charge, the clock could not be set back to the stage of cognizance to determine whether delay existed, and if so, whether it ought to be condoned. It was submitted that the initial reports filed by the I.O. was one for cancellation, which was submitted to the learned MM

only on 11th February, 2002 and thereafter, the learned MM had directed further investigations and then the charge-sheet had been filed in 2013. Thus clearly, if there was any delay, it stood condoned by the various orders of the learned MM even if no application for condonation of delay had been filed along with the charge-sheet or the matter was not specifically dealt with by the learned MM. In fact, no objection had been taken by the respondent No.2 at the time he was summoned to face trial. Such belated objections ought not to have been entertained by the learned ASJ. Hence, it was submitted that the order dated 17th May, 2016 be set aside and the matter be remanded back for trial. Reliance has been placed by the learned counsel on the judgments of the Supreme Court in *Arun Vyas v. Anita Vyas* (1999) 4 SCC 690 and *Bharat Damodar Kale and Anr. v. State of A.P.* (2003) 8 SCC 559.

5. Mr. Kunal Yadav, learned counsel for the respondent No.2, submitted that without an application accompanying the delayed charge-sheet, and an explicit order, the learned MM could not have taken cognizance and the revision petition had been rightly allowed by the learned ASJ.

6. Ms. Manjeet Arya, learned APP for respondent/State however, submitted that the orders of the learned MM clearly indicated that delay stood condoned and there was no occasion for the learned ASJ to have held otherwise. It was also submitted that the complaint of the concerned authority had also been obtained by the I.O. and there was no technical flaw in the case. It was also submitted that once charge had been framed,

all such objections stood waived and the discharge of the accused, at this stage, was not correct.

7. I have heard the submissions of learned counsel for the parties as also the learned APP for the State and have considered the material on record. The husband of the petitioner died on 30th June, 1999 after he was stated to have been given some injection by respondent No.2. The FIR No.280/1999 was registered with P.S. Narela on 1st September, 1999. There was thus no delay on the part of the petitioner in lodging the FIR. In the year 2000, she also moved the State Commission, New Delhi, against the respondent No.2 for deficiency in service. Thus, clearly no delay has occurred on her part.

8. In the application filed under Section 468 Cr.P.C., the stand taken was that not only was the prosecution under Section 304A IPC but also under Section 17(5)/29/39 of the DBCP Act included on the complaint of Sh. K. Natrajan, Assistant Registrar of Central Council of Indian Medicine vide complaint dated 28th May, 2013, were time barred. Further, the filing of a criminal complaint under Section 200 Cr.P.C. on 22nd July, 2010 for the offence allegedly committed on 30th June, 1999 was also time barred and the taking of cognizance by the learned MM on 23rd September, 2013 was therefore bad in law.

9. The learned ASJ seems to have accepted these contentions. But, in the process, it has overlooked a very material fact, which is that after the FIR had been registered on 1st September, 1999, the first I.O. had submitted a Cancellation Report on 11th October, 2000 under Section 173

Cr.P.C., about which the petitioner came to know only when such a stand was taken by the respondent No.2 in his reply to the appeal filed by the petitioner before the National Consumer Disputes Redressal Commission (NCDRC). It is then that the petitioner preferred a complaint under Section 200 Cr.P.C. against the Cancellation Report, which actually amounts to a protest petition to the Cancellation Report no doubt, taken as a complaint case by the Magistrate. Thus, this is not as if a fresh complaint had been filed after a lapse of the limitation period.

10. What is even more significant is the order of the learned MM dated 3rd April, 2013, passed in a Complaint Case No.210/2001, P.S. Narela, Delhi registered under Section 200 Cr.P.C. titled Kamla v. Dr. Prem Shanker. The learned MM noted that a Cancellation Report had been filed by the I.O. ASI Umed Singh stating that the *'husband of the petitioner had died because of myocardial insufficiency due to coronary artery insufficiency and there was no inflammatory reaction at injection site and since he died a natural death, no offence seemed to be made out'*. However, on 3rd April, 2013, the learned MM rejected this Cancellation Report and concluded that the matter required further investigation and hence, directed the concerned SHO to depute some other competent I.O., not below the rank of Sub-Inspector, for conducting *"an effective investigation encompassing all the aspects and the contentions raised by the complainant"* in the present case.

11. The Cancellation Report was supposedly filed in 2000, but it was only in 2013 that it was rejected and further investigations directed. As soon as the petitioner came to know about the submission of the

Cancellation Report after the filing of the reply by the respondent before the NCDRC, on 15th April, 2009, she filed a protest petition, which has been treated as a complaint case in 2010. It is clear that she was not notified by the I.O. about the filing of the Cancellation Report by him on 11th February, 2002. The complaint filed before the court cannot be rendered infructuous because of the I.O. or on account of the time taken to reject the Cancellation Report. Delay that occurred in the court cannot inflict a suffering on an innocent party. In the present case, the learned MM rather, had acted in the interest of justice when it directed further investigations, not accepting the closure report filed in 2000. Though the protest petition had been filed much later, it has to be seen to be in continuity of the FIR, which was lodged timely. The orders on the Cancellation Report took, unfortunately, time; further investigations also took time; and therefore, the taking of cognizance by the learned MM on 23rd September, 2013 has to be held to be in continuation of the original FIR, as also the filing of the complaint in 2010 as a corollary to the filing of the Cancellation Report, being an assertion of the right of the complainant to be heard before the FIR is cancelled.

12. The faulty investigation conducted by the ASI Umed Singh, the initial I.O., has been commented upon by the learned MM in the order dated 3rd April, 2013. It noted that (i) *no detailed investigations had been conducted into what actual treatment had been given by the respondent No.2 to the deceased;* (ii) *what medicine was administered to the deceased;* (iii) *whether the injection given could have, in any way, aggravated the ill health of the deceased;* (iv) *whether the respondent No.2*

had proper qualification and competence to administer the said treatment to the deceased; and, (v) whether the accused was administering allopathic medicines without having requisite qualifications, and rejected the mere placing of the certificate from the Council of Ayurvedic and Unani Medicines for the purposes of complete investigations. It even observed that the death of the husband of the petitioner could not have been taken so lightly by the I.O. as very serious allegations had been levelled against the accused. It also noted and required a more detailed and complete investigations into not only the cause of death, but whether there was any medical negligence in the conduct of the accused i.e., respondent No.2.

13. The order also highlights the conduct of the first I.O., ASI Umed Singh, who submitted the Cancellation Report, recording that he disobeyed the summons of the court and warrants of arrest had to be issued against him. Further, when ASI Umed Singh did finally appear in the court on 3rd April, 2013, he was unable to give any satisfactory answer to any query raised by the court pertaining to the Cancellation Report.

14. These important and relevant facts could not have been overlooked by the learned ASJ while considering whether a time-barred cognizance had been taken by the court. In fact, there is force in the contention of the learned counsel for the petitioner as well as the learned APP for the State, that the orders of the learned MM directing further investigation, while rejecting the Cancellation Report, and the order on charge sufficiently condoned whatever delay had taken place in the filing of the charge-sheet on a subsequent date i.e., on 23rd September, 2013.

15. The continued investigations were part of the investigations that commenced with the timely registration of the FIR. It was only by the second I.O. that the complaint had been obtained from Sh. K. Natrajan, Assistant Registrar (Siddha), Officiating Secretary of Central Council of Indian Medicine. It contains an important information that the Registration Certificate issued by the Bihar State Council, Patna certifying that the respondent No.2 is the holder of “Ayurved Ratna” qualification awarded by the Hindi Sahitya Sammelan, Allahabad in the year 1988, is not included in the Second Schedule to the IMCC Act, 1970 and as such is not recognized for any purpose (Annexure P-5). It conclusively informed the SHO, P.S. Narela, that the respondent No.2 is not eligible to prescribe any type of Ayurvedic Medicines in the Indian Systems of Medicine. The Delhi Bhartiya Chikitsa Parishad on 5th June, 2013 recommended the prosecution of the respondent No.2 under Sections 29/30 of the DBCP Act. These crucial facts have been completely ignored by the learned ASJ.

16. Clearly, the improper investigations by the initial I.O. cannot lead to interpretation of law in favour of the respondent No.2, at the expense of the victim. While rejecting the application under Section 468 Cr.P.C., the learned MM rightly observed, that the question of limitation could not be considered once cognizance had been taken. It is also to be noted that on 15th July, 2015, a detailed order was passed before framing of the charge. At that time also, the plea that without a complaint Section 31 of the DBCP Act barred taking cognizance, was turned down, as being relevant only at the stage of cognizance, which had already been taken. Thereafter, the charge was also framed under not only Section 304A IPC, but also

under Section 30 read with Sections 17(5) and 29 of the DBCP Act. After three months of the framing of the charge, the application for discharge was moved on the grounds of limitation, which was rightly dismissed by the learned MM, whereas, the learned ASJ failed to consider all the material facts and fell into error in accepting the contention of limitation, as belatedly raised, by the respondent No.2, to discharge him. The decision of the learned ASJ has resulted in serious miscarriage of justice.

17. In the circumstances, the impugned order is set aside. The trial shall proceed from the stage it was, when the impugned order was passed, namely, recordal of prosecution evidence, and shall proceed to its logical end.

18. The respondent No.2 is directed to appear before the learned Trial Court on 20th May, 2022, when the learned MM shall fix further dates for the trial. It may also require the respondent No.2 to furnish bail bonds on terms as considered appropriate.

19. The petition is accordingly allowed.

20. The judgment be uploaded on the website forthwith.

(ASHA MENON)
JUDGE

MAY 06, 2022

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