

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 2076 OF 2020

1. Dr. Ganesh Shridharrao Dhawale

2. Archana Ganesh Dhawale

..APPLICANTS

VERSUS

1. State of Maharashtra

2. The Superintendent of Police, Beed

3. Dr. Pratibha Raosaheb Rakate

..RESPONDENTS

....

Mr. M.S. Bhosale, Advocate for applicants

Mr. M.M. Neralikar, A.P.P. for respondents

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CORAM : R.G. AVACHAT AND

SANJAY A. DESHMUKH, JJ

DATE : 19th AUGUST, 2023

PER COURT :

1. Heard.

2. This application, under Section 482 of Code of Criminal Procedure ('Cr.P.C.'), has been filed for quashment of the First Information Report ('F.I.R.'), being Crime No. 195 of 2020 registered with Neknoor Police Station, Dist. Beed for the offences punishable under Sections 18(c), 28-A of Drugs and Cosmetic Act, 1940, under Sections 2, 3 and 4 of Epidemic Disease Act, 1897 and under Sections 188, 269 and 270 read with Section 34 of the

Indian Penal Code and consequential charge-sheet, being R.C.C. No. 4 of 2021 pending on the file of J.M.F.C., Beed.

3. The F.I.R. has been lodged by Respondent No.3 – Medical Officer, Primary Health Center, village Limbaganesh, Tq. & Dist. Beed on 09th September, 2020. It is her case that on the directions of District Health Officer, Beed, she alongwith some police staff paid visit to the medical clinic of the applicants. Applicant No.1 – Dr. Ganesh behaved with her arrogantly. He even obstructed her in discharging her official duty. During her said inspection, following deficiencies were noticed :-

- (i) There were two indoor patients running fever;
- (ii) As those were corona pandemic days, those patients were not subjected first to the antigen test;
- (iii) Regional Medical Officer was not informed about admission of such patients;
- (iv) The clinic was not registered under the Mumbai Nursing Home Act;
- (v) Validity period of Biomedical Waste Certificate was over way back in 2012;
- (vi) A huge stock of medicines was found in the clinic, which was made unauthorisedly;
- (vii) No OPD register was maintained;
- (viii) Both the applicants did not provide for inspection their degree certificates;

As such, the applicants are alleged to have committed various offences punishable under Sections of the I.P.C., the Drugs and Cosmetics Act and Disaster Management Act. Accordingly, crime was investigated and the charge-sheet has been filed.

4. Learned counsel would submit that the indoor patients register was given to the investigating officer. Biomedical waste certificate was duly renewed. Both the patients found in the clinic were not afflicted with fever. The stock of medicines was made so as to meet an emergency situation in the corona pandemic. The District Health Officer had asked the applicants to run Covid Care Center at their hospital. Learned counsel would further submit that only out of vendetta crimes were registered against the applicants. A copy thereof has been placed on record. He, ultimately urged for allowing the application.

5. Learned A.P.P. would, on the other hand, submit that the inspection of the applicants' clinic was made six months after Applicant No.1 made a complaint against Respondent No.3 – informant. It has no relation with the same. Offences punishable under Sections 269 and 270 of the I.P.C. are the cognisable offences. The charge-sheet has already been filed since the averments in the F.I.R. prima facie make out a case to proceed against the applicants. Nothing more than averments in the F.I.R. are to be looked into.

Whatever stand the applicants have come with is in the nature of their defence. Learned A.P.P. took us through the police papers to ultimately urge for rejection of the application.

6. Considered the submission advanced. Perused the F.I.R. and related papers. Those were days of corona pandemic. The applicants are medical practitioners, one is B.A.M.S. and the other one is D.H.M.S. They run their medical clinic at village Limbaganesh. Respondent No.3 – informant is a Medical Officer at Primary Health Center, Limbaganesh. Applicant No.1 had admittedly made a complaint against her to the District Health Officer, Beed. It was his grievance that Respondent No.3 – informant did not stay at her headquarters. Her presence at the Primary Health Center was a must. Admittedly, based on the said complaint, the District Health Officer, Beed had issued her a notice to show cause as to why a disciplinary action be not initiated against her. There is also record to indicate that pathetic conditions at Primary Health Center, Limbaganesh were made public by Applicant No.1 – Dr. Ganesh. It had become a news item of local dailies. These facts lead us to infer Respondent No.3 – informant to have animus against the applicants. Possibility of the F.I.R. to be an outcome of malafides, therefore, can not be ruled out.

7. There are statements of those two patients, who were admitted in the clinic. Neither their statements nor there is any material to indicate both

of them were running fever. Those being pandemic days, the applicants were justified in keeping the stock of medicines. None of the medicines from the stock was found to be related in connection with unauthorised activities. Offences punishable under Sections 18(c) and 28-A of the Drugs and Cosmetics Act could only be taken cognisance of on a complaint made in that regard. Admittedly, the learned Magistrate took cognisance of these offences based on the police report. The same is unauthorised and without jurisdiction. So far as regards offence punishable under Section 188 of the I.P.C. is concerned, there is a bar under Section 195(1)(a) of the Cr.P.C. to take cognisance on police report. Cognisance of the said offence could only be taken on a complaint lodged by a public servant concerned or a person, who is administratively subordinate to such a public servant.

8. Then remain offences punishable under Sections 269 and 270 of the I.P.C. Both the sections read as under :-

“269. Negligent act likely to spread infection of disease dangerous to life. - Whoever unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

270. Malignant act likely to spread infection of disease dangerous to life. - Whoever maliciously does any act which is, and which he knows or has reason to believe to be, likely to spread the

infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”

9. Close reading of the police papers indicate there is no material except averments in the F.I.R. that those two patients were running fever and their admission to the clinic was likely to spread infection of corona virus. In our view, therefore, ingredients of the offence punishable under both these sections do not get invoked. It has already been observed that so far as regards other offences are concerned, cognisance could only have been taken on a complaint. Moreover, it is reiterated that possibility of lodging of the F.I.R. appears to have been actuated by malice. In this factual backdrop, directing the applicants to stand trial would be an abuse of process of Court. We are, therefore, inclined to allow the application.

10. In view of above, criminal application is allowed in terms of prayer clauses (B) and (F).

(SANJAY A. DESHMUKH, J.)

(R.G. AVACHAT, J.)

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