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

CRIMINAL REVISION APPLICATION NO.330 OF 2022

Dr. Sidhavaram Deepak Subramanyam,
Aged about 72 years, Occ. Medical Practitioner,
R/o. Nr. Zopadi Canteen, Nirmal Apartment,
Sawewadi, Mahavir Nagara, Ahmednagar,
Maharashtra 414 003 &
Also at : Deepak Hospital Savedi, Ahmednagar,
District Ahmednagar.

... Applicant

VERSUS

The State of Maharashtra
through Police Station Bhingar Camp,
Ahmednagar.

... Respondent

...

Mr. Siddhartha Dave, Senior Advocate a/w. Mr. Hrishikesh Chitale, Ms.
Pallavi Sharma and Mr. Kaustubh Kadasne, Advocate for the applicant.
Mr. K.S. Patil, APP for the respondent-State.

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CORAM : S.G. MEHARE, J.

DATED : APRIL 03, 2023

ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith and heard finally
by the consent of parties.

2. The applicant is a medical practitioner. He has been
arraigned as an accused in Crime No.97 of 2011 by Bhingar Camp
Police Station, Ahmednagar.

3. The prosecution case, in brief, is that the police called the
deceased to the police station for interrogation of the offence under

Section 395 of the I.P.C., and she was in the custody of the police. However, she was admitted to the hospital run by the applicant. He treated her for two days. She died on 16.05.2007. However, subsequently, the investigation was done. Her postmortem was also performed, and the other hospital on her person noticed no injuries. After a thorough investigation by the SID, the prosecution filed a case making allegations of screening the offence committed by the police and the doctor from Deepak Hospital run by the applicant. It has also been alleged that a false record of the injuries and treatment was prepared. It was also alleged that before she was taken to the hospital, she was tortured. Therefore, she consumed the poison and died. Specific allegations against the applicant were that he neither recorded on the case paper nor treated the injuries on the person of the deceased despite the knowledge that it was a medico-legal case. He conspired with other co-accuses, did not specify the injuries in the medical papers, and attempted to destroy the evidence to save the co-accused and fabricated evidence to be used in the judicial process. The applicant has been arraigned as an accused with a charge under Section 193, 201, 120-B of the Indian Penal Code.

4. The papers include the medical opinion of the Government Medical College, Aurangabad, which clearly states that the injuries were not externally visible and that death could not be caused due to any of those injuries. It was also opined that it was a

case of poisoning. The JJ Medical College Board of Medical Experts, in its report dated 19.01.2009, stated that the most likely cause of death was in the case is septic shock with pneumonia and pancreatitis in a case of poisoning (the most likely poison being organophosphorus compound), associated with multiple contusions as a contributory factor. The report further states that the committee understand that the major and most serious health problem needs prompt attention by treating doctor in such an emergency poisoning situation. The same seems to be done effectively at Deepak Hospital. The injury to the scalp was without any internal damage to the skull or brain. It cannot be immediately dangerous and fatal or sufficient in the ordinary course to cause death. In a nutshell, it was alleged that the deceased was admitted and treated in his hospital but overlooked visible external injuries.

5. The applicant has a case that he had no reason to suppress the fact. He honestly treated the victim, who was brought to the hospital by one of her relatives, Kangar Kale. He treated the deceased for two days with utmost care. When she was admitted to the hospital, his junior doctor examined her first and started treating her since she needed immediate medical aid. Her relative, in his statement, states that the deceased told him in the courtyard of the Office of the Superintendent of Police, Ahmednagar, that she was feeling giddy and vertigo. When he asked the deceased what

happened to her, she told him that she consumed the poison, i.e. lice killing medicine. He immediately brought her to his hospital.

6. Learned counsel for the applicant also referred to a letter addressed to his hospital dated 14.05.2007, by which the investigation officer asked him whether the patient was in a condition to give the statement. Considering her condition, he told him that she was not in a position to give a statement. He has a specific case that there were no complaints against the applicant during treatment in his hospital. All this was done after the dead body was handed over to them and the postmortem was done. The applicant has remotely no concerns with her death. He has no reason to support the police. The prosecution has no evidence to prima facie show that the applicant was a member of the conspiracy plotted to kill the deceased. The applicant did not suppress any documents. The record of his hospital was clean and clear and immediately supplied to the police. A crime under Section 309 of the Indian Penal Code was registered against the deceased on his papers. That supports the bonafide conduct of the applicant. The material on record is insufficient to frame or proceed with the charges likely to be framed against him. He argued that the order rejecting the discharge application was erroneous and without application of mind. Section 227 of Cr.P.C. has not been properly considered. Possibly, the matter was a media trial. Hence, on the basis of medical opinion only, his application has been rejected.

7. The applicant fairly conceded that he had filed a petition under Section 482 of Cr.P.C. before this High Court. However, he withdrew it on instructions. Lastly, he challenged the same order before the Hon'ble Supreme Court. The Hon'ble Supreme Court by order dated 15.02.2021 in Petition(s) for Special Leave to Appeal (Crl) No(s). 1227 of 2021 with other Special SLPs, granted permission to file the SLPs. Further, it has been observed that having heard the learned counsel for the petitioner, we are only inclined to clarify the obvious in law. Findings and observations by the High Court are tentative and not binding ruling on facts. The trial court would independently examine evidence and material against each accused, including the aspect of presumption, if any, which can be relied at the time of framing of the charge and subsequent stages. With these observations, the Special Leave Petitions were dismissed. The applicant was the petitioner in Special Leave Petition (Cri.) No.1464 of 2021.

8. Per contra, learned APP has vehemently opposed the submissions of the applicant. He would submit that the injured had several injuries on her person, but the applicant deliberately did not disclose it. Such conduct of the applicant is sufficient to prove that he was unfair in maintaining the record. He did not inform the police about her admission to the hospital. The medical opinion of J. J.

Hospital is very specific that she had a number of injuries cumulatively supporting the cause of her death. The police thoroughly investigated, and it transpired that the applicant was also a member of the conspiracy. With a view to screening the offence, he created a false record. The material aspects were before the Hon'ble High Court. The High Court was not inclined to quash the proceedings under Section 482; hence, he withdrew the Petition. However, he again went to the Supreme Court. The Hon'ble Supreme Court again declined to interfere. He has tried to argue that once the Hon'ble Supreme Court considered the facts, the applicant cannot claim the discharge on the same facts and material. He also argued that the matter is serious. Prima facie evidence sufficient to frame the charge against the applicant is available. Therefore, he does not deserve discharge.

9. The Hon'ble Supreme Court in the case of State of Haryana vs Bhajan Lal, 1992 (Suppl)(1) SCC 335, which was referred to by the Bombay High Court, in the case of Pankaj and Ors Vs The state of Maharashtra MANU/MH/4413/2022 dated 12.12.2022, has clarified that power under Section 482 and 227 of Cr.P.C. are distinct. Though the Petition under Section 482 of Cr.P.C. has been dismissed, the accused may approach the trial Court for discharge under Section 227 of Cr.P.C. Therefore, this Court is of the view that there is no substance in the argument advanced by the learned APP that once the

proceeding under Section 482 of Cr.P.C. has been dismissed, the accused cannot claim or seek the discharge under Section 227 of Cr.P.C.

10. Section 227 of Cr.P.C. is relevant that reads thus :

“227. Discharge. If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.”

11. The above section is so clear that before proceeding with the prosecution case, the Court or the Magistrate has to examine the record and satisfy itself that there are sufficient grounds for proceeding against the accused. After hearing the submissions of the accused and the prosecution and considering the record, if the Court considers that there is not sufficient ground for proceeding against the accused, the Court shall discharge the accused and record his reasons for so doing. The prosecution has to satisfy the Court before framing the charge that the evidence collected against him is sufficient to proceed against him.

12. The offences under Sections 193, 201 and 120-B of the Indian Penal Code have been registered. Section 193 of the Indian Penal Code is about creating false evidence. The prosecution has a case that after admitting the deceased into the hospital, he

deliberately did not disclose or mention on the record all the injuries on her person. Instead of eleven injuries, he recorded only one on his medical papers. Therefore, he has committed an offence punishable under Section 193 of the Indian Penal Code.

13. Normally, visible injuries are recorded on medical papers. The prosecution relies on the opinion of the team of doctors at J. J. Hospital. It has candidly opined that there was septic shock due to pneumonia and pancreatitis in case of poisoning. It is also opined by the team of doctors that head injury and injury to the brain are unnatural and non-accidental, but the injuries were sufficient to cause death in the ordinary course of nature. As against this, Government Hospital Aurangabad opined that the cause of death was shock due to multiple injuries on different parts of the body, including the head with poison. Here we are not concerned with what was the cause of death.

14. Considering the allegations levelled against the applicant, the prosecution must have to produce the material that medical papers were prepared falsely with intent to help or aid the person who allegedly committed the serious offence. The medical papers, prepared soon after the death of the deceased, were placed on record. It must not be ignored that the relative of the deceased brought her to the hospital. She was there for two days. The police came there and

inquired with the applicant's hospital whether she could give her statement. After her death, her dead body was handed over to her relatives, and then postmortem was performed. The statement of her relative is material who himself has admitted the deceased to the hospital of the applicant. Before she was brought to the hospital, he met her in the courtyard of the office of the Superintendent of Police. He had a dialogue with her about her giddiness and vertigos. That time, she told him that she had consumed the poison i.e. the lice-killing medicine. For two days when she was under treatment, there were no complaints against the applicant. Whatever the visible injuries the treating doctor i.e. the applicant, noticed, he has fairly mentioned in the record maintained by him. Many times it may happen that there may be injuries not externally visible.

15. It is alleged that the police had visited the house of the deceased, brought her to the police station and did some unauthorized and illegal acts. What happened before the deceased was brought to the hospital of the applicant has no concern with him. In order to bring home the guilt of the offence allegedly committed by the applicant, the charge sheet is not supported with reliable and prima facie evidence to believe that the applicant had deliberately prepared the false record. On the contrary, he treated the deceased soon after her admission to his hospital. In fact, he has discharged his duties to provide the patient with immediate treatment. The opinion

of the J J Medical College Board supports the applicant. Not mentioning the externally visible injuries cannot be considered as hiding the injuries and preparing a false record.

16. As far as a conspiracy is concerned, the prosecution has no material on record to satisfy the Court that any time before or after the death of the deceased, the applicant agreed to it or caused to be done any illegal act that constitutes the criminal conspiracy. Barely a patient was brought to his hospital by her relative. He admitted her, treated her for two days, and after her death, he handed over the dead body to her relatives. This was the only evidence on record. The prosecution is silent about when and where the conspiracy was plotted.

17. Considering the record and documents placed on record, the Court comes to the conclusion that there is no sufficient ground for proceeding against the applicant. Hence, he is liable to be discharged. Therefore, the petition deserves to be allowed.

18. Now, the Court proceeds to pass the following order:

ORDER

- (i) Criminal Revision Application is allowed.

- (ii) The impugned order of learned Additional Sessions Judge, Ahmednagar, below Exh.83 in Sessions Trial No.284/2013 dated 10.10.2022 is quashed and set aside.
- (iii) The applicant is discharged under Section 227 of Cr.PC. in Sessions Case No.284 of 2013 filed on the charge sheet of Bhingar Camp Police Station, Ahmednagar, in Crime No.97 of 2011.
- (iv) The copy of this order be returned to the learned Additional Sessions Judge, Ahmednagar.
- (v) Rule is made absolute in the aforesaid terms.

(S.G. MEHARE, J.)