



Judgment

903 apl 725.21

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY :
NAGPUR BENCH : NAGPUR.

CRIMINAL APPLICATION (APL) NO. 725/2021

Kailash Devideen Japsare,
aged about 52 yrs., Medical Practitioner,
R/o. near Bus Stand, Akot,
Tq. Akot, Dist. Akola.

... **APPLICANT**

VERSUS

1. The State of Maharashtra,
through the Police Station Officer,
Police Station, Akot, Tq. Akot,
Dist. Akola.
2. Prabhudas Gulabrao Telgote,
aged about 63 yrs., Occ. Retired,
Railway Servant, R/o. Railway
12 Quarters, Akot, Tq. Akot,
Dist. Akola.

...**NON-APPLICANTS**

Mr. A. S. Mardikar, Sr. Advocate assisted by Mr. J.B. Gandhi,
Advocate for applicant.
Mr. A.B. Badar, APP for non-applicant 1/State.
Mr. A.D. Tote, Advocated (appointed) for non-applicant No.2.

CORAM : **VINAY JOSHI AND**
M. W. CHANDWANI, JJ.

DATE : **07.11.2023.**

ORAL JUDGMENT (PER VINAY JOSHI, J.) :

Heard finally with the consent of both sides.

2. Admit.

3. By this application under Section 482 of the Code of Criminal Procedure, the applicant is challenging registration of the Crime No. 189/2018 registered with the Police Station Akot for the offence punishable under Sections 297, 468, 471 of the Indian Penal Code and related criminal proceeding bearing RCC No. 251/2019 pending on the file of the Judicial Magistrate First Class, Akot.

4. It is the prosecution case that informant's son Manoj (deceased) who was suffering from various ailment was serving with the Indian Railway. Initially, he was treated at Railway Hospital, but there was no improvement. On 21.04.2018 informant's son was admitted into the Hospital run by the applicant who is Medical Practitioner. It is alleged that on the very day in the evening though the health of Manoj deteriorated, it was not disclosed to the informant and other family members. According to the informant, Manoj died on the same day at 06.20 p.m. but it was not disclosed to

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him. On the other hand, after demise, dead body was referred to the ICON Hospital for further treatment by applying oxygen kit. The informant alleged that the applicant has also prepared a false medical record and thus, offence.

5. Though the First Information Report ('FIR') alleges about the medical negligence against the applicant and some other doctors, however crime has not been registered to that effect. It is primly alleged that the applicant has forged case papers for the purpose of cheating. The investigation is complete and charge-sheet has been filed.

6. Mr. Mardikar, learned senior counsel submitted that essential ingredients to constitute the offence are not made out even though material on record in the form of charge-sheet is accepted. He would submit that after demise of Manoj, it was duly intimated to the relatives on the very day about 06.20 p.m. Case paper bears entry to that effect as well as death certificate was also issued on the very day. He would submit that, at the behest of relatives of deceased, body was taken to the ICON Hospital at their own and thus, there is

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no element of cheating. Moreover, it is categorically submitted that, the applicant has not issued any reference letter to the ICON Hospital about admitting patient. Learned senior counsel would submit that the Police have obtained the report from the panel of Medical Practitioner which goes against the prosecution. Moreover, informant has also made a grievance to the Maharashtra Medical Council, Mumbai. After inquiry, Medical Council has opined that the treatment was proper and there was no medical negligence or violation of medical ethics.

7. The State as well as informant resisted the application by stating that statement of the Medical Practitioner of the ICON Hospital prima facie sets out that the applicant has referred the patient to the Hospital. It is pointed out that there is overwriting and insertion in medical case paper and thus, it amounts to forgery for the purpose of cheating.

9. Learned senior counsel would submit that even though the overwriting is accepted to be made by the applicant, still it cannot be said that the applicant did it dishonestly or fraudulently.

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Reliance is placed on the decision of the Supreme Court in case of **Jibrial Diwan Vs. State of Maharashtra, (1997) 6 SCC 499** to contend that unless the alteration of document is made with dishonest or fraudulent intention, the offence of forgery and use of forged documents is not complete. Moreover, reliance is placed on two decisions of this Court in cases of **Matin Ahmad s/o. Abdul Gani Qureshi & anr. Vs. The State of Maharashtra and anr.** (Criminal Application [APL] No. 969/2021, decided on 25.04.2022) and **Bharti w/o Sudhir Jambhulkar [expired] & anr. Vs. State of Maharashtra & anr.**, (Criminal Application [APL]) No. 791/2019, decided on 18.11.2022), wherein this Court took a view that in absence of intention to cause damage or injury to a person, the offence of forgery would not complete.

8. In the light of above submission, we have carefully examined the entire material in the form of charge-sheet. It is informant's case that though his son died on 22.04.2018 at 06.20 p.m., however by suppressing said fact, body was forwarded to the ICON Hospital for further treatment. In the light of said submission, we have gone through the entire record. The Patient Indore Case

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Card is a part of record. It bears the detailed account of the treatment given to the patient. At 06.00 p.m. there is entry that the patient has cardiac arrest, pulse not palpable, B.P. not recordable, pupils dilated and reacted. It was followed by another entry at 06.10 p.m. that general condition of patient is not satisfactory and patient is in cardiac arrest. The Case Card shows the entry at 06.20 p.m. that the patient was declared to be dead. Those entries have not been disputed which shows that the patient was declared dead at 06.20 p.m. itself. Death certificate has been produced on record which bears signature of informant towards receipt of certificate.

9. The said record runs against the informant's contention that the applicant has suppressed about the death of patient. Learned APP particularly took us through the statement of Medical Officer Javed Khan attached to the ICON Hospital. It is pointed that as per said statement, the applicant has telephonically informed that he is referring patient in serious condition. On that basis, it has been argued by the prosecution that the applicant has suppressed about the death of patient, but forwarded dead body to the ICON Hospital. Learned senior counsel would submit that there is every possibility

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that while patient was alive, the applicant has contacted to the ICON Hospital for further treatment, but after death, there was no reference. To substantiate said contention, our attention has been invited to the statement made by Dr. Jawed Khan who has stated that the applicant has contacted to the ICON Hospital in between 05.00 to 06.00 p.m. Admittedly, patient died at 06.20 p.m. and thus, the contention raised by learned senior counsel appears to be acceptable.

10. Particularly, our attention has been invited to some discrepancies of the patient's Indore Case Card. It is pointed that the case paper seized from hospital bears reference that patient's general condition was stable, however the same is altered as the condition was unstable and not satisfactory. Moreover, it is pointed that the column of final diagnosis has been filled up later on. More emphasis is laid on said alteration to contend that forged document has been created. If the entire Indore Case Card is read, rest of the entries depicts the history of treatment and declaration of dead.

11. The offences alleged against the applicant are under Sections 297, 468, 471 of the Indian Penal Code. So far as Section

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297 of the Indian Penal Code is concerned, it does not bear any relevance. Section 297 of the Indian Penal Code pertains to trespassing of burial place which is wholly irrelevant. The offences alleged against the applicant are under Sections 468 and 471 of the Indian Penal Code. Section 467 of the Indian Penal Code defines forgery of valuable security, will etc. To attract ingredients of Section 468, it is necessary to consider the definition of forgery defined under Section 463 and making of a false documents as defined under Section 464 of the Indian Penal Code. Sections 463 and 464 of the Indian Penal Code are read as under :

“463. Forgery — Whoever makes any false documents or false electronic record or part of a document or electronic record, with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.”

“464. Making a false document — A person is said to make a false document or false electronic record —

***First** — Who dishonestly or fraudulently –*

(a) makes, signs, seals or executes a document or part of a document;

(b) makes or transmits any electronic record or part of any electronic record;

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(c) affixes any electronic signature on any electronic record;
(d) makes any mark denoting the execution of a document or the authenticity of the electronic signature, with the intention of causing it to be believed that such document or part of document, electronic record or electronic signature was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or

Secondly — *Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with electronic signature either by himself or by any other person, whether such person be living or dead at the time of such alteration; or*

Thirdly — *Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his electronic signature on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or electronic record or the nature of the alteration.”*

12. Section 468 of the Indian Penal Code is a forgery for the purpose of cheating, which reads as under :

“468. Forgery for purpose of cheating — *Whoever commits forgery, intending that the document or electronic record forged shall be used for the purpose of cheating, shall be*

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punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

13. The analysis of Section 463 of the Indian Penal Code shows that it is necessary that a person should make false documents with intention to cause damage or injury to a person in support of his claim or title with an intention to commit fraud. Reading of these sections makes it clear that fraud is essential ingredient for the offence. In facts of the present case, the material does not show that there is any wrongful gain or wrongful lose to hold that the overwriting was made dishonestly with an intention to be deceive.

14. It is matter of record that the Police have initially referred the matter for seeking opinion of the Medical Board. After inquiry, it was found that death of patient was declared on 22.04.2018 at 06.20 p.m. itself. The hospital record does not show that the patient was referred to the ICON Hospital. Likewise, the Maharashtra Medical Council, after scanning the entire material also concluded that there is no substance in the complaint about medical negligence and forwarding deceased for treatment to the ICON Hospital. On over all

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consideration of the facts of the present case, we are satisfied that no prima facie case is made out. Hence, continuation of the prosecution against the applicant would amount to abuse of the process of the Court.

15. In view of above, by allowing the application, we hereby quash and set aside the criminal proceeding bearing RCC No. 251/2019 pending on the file of the Judicial Magistrate First Class, Akot arising out of Crime No. 189/2018 registered with the Police Station Akot for the offence punishable under Sections 297, 468, 471 of the Indian Penal Code.

16. Fees be paid to the appointed counsel as per Rules.

(M. W. CHANDWANI, J.)

(VINAY JOSHI, J.)