

Vidyadhar Prabhakar Sarfare Vs State Of Maharashtra And Anr

Court: Bombay High Court

Date of Decision: Feb. 4, 2025

Acts Referred: Indian Penal Code, 1860 – Section 34, 415, 418, 420

Hon'ble Judges: Sarang V. Kotwal, J; S.M.Modak, J

Bench: Division Bench

Advocate: Niranjana Mundargi, Harshad Sathe, Akshay Petkar, B.V.Holambe Patil, Shreyas S. Adyanthya

Final Decision: Disposed Of

Judgement

Sarang V. Kotwal, J

1. This is a Writ Petition for quashing of the FIR lodged vide C.R. No.98 of 2020 at Bhosari Police Station and the consequent charge-sheet arising

out of the same.

2. While issuing notice to the Respondent No.2 – Complainant, this Court vide the order dated 3rd July 2023, had observed, that the matter shall

be taken up for final disposal at the admission stage, particularly having regard to the Civil Suit initiated by the informant for recovery of the amount

of Rs.53,11,652/- (Rupees Fifty Three Lakh Eleven Thousand Six Hundred Fifty Two) being Special Civil Suit No.1161 of 2018. Pursuant to the said

order, the learned counsel for the Respondent No.2 is present before the Court. We have, therefore, heard the parties for finally deciding this Writ

Petition.

3. The FIR is lodged by the Respondent No.2 on 22nd February 2020. She has stated, that she was a cancer consultant and at the time of registration

of the FIR, was working as consultant/surgeon with Rubi Hall Clinic. Since 2003, she was attached with Sant Dnyaneshwar Hospital Private Limited

and Sant Dnyaneshwar Medical Foundation, Heera Plaza, Pune-Nashik Road, as surgeon and consultant. It was a multi-speciality hospital. The FIR

mentions that the present Petitioners were connected with M/s.Accord Private Limited and they were managing the hospital at the time of lodging the

F.I.R.. It is mentioned in the F.I.R., that the Petitioner – Vidyadhar was the president and director, Anjali was the secretary and the Petitioner

Deepali was the treasurer of the Medical Foundation and director of Accord Mediplus. The informant was treating the patients of the said hospital for

cancer and breast related ailments. Initially, she used to get her dues on time in respect of the bills submitted by her. After some time, there used to be

some delay in getting the payment. She discussed this fact with the Board of Directors. She came to know that the said institute was in financial

difficulty and therefore, the payments were not made regularly.

The FIR mentions that since 2003 upto 2017, the Director Board controlling the hospital consisted of Dr.Jawahar Bhalgat, Dr.Vilas Sable, Dr.Anil

Khade, Dr.Suhas Kamble, Dr.Anu Gaikwad, Dr.Vinayak Mane and Dr.Rohidas Aalhat. The then Board of Directors requested for financial aid from

the informant herself. Therefore, the informant gave substantial amount to help the institute. She has given the details of the financial aid extended by

her between 25th March 2013 to 28th August 2015 to the tune of Rs.24,00,000/- (Rupees Twenty Four Lakh). She has specifically stated in the FIR,

that the said amount was not returned by the earlier Board of Directors. The Board of Directors handed over the control of the hospital to the

Petitioners's company. The Petitioners were part of the Board of Directors from the year 2017. It is her case that, apart from this financial aid of

Rs.24,00,000/- (Rupees Twenty Four Lakh) which was payable to her, the hospital did not pay her dues of Rs.15,16,651/- (Rupees Fifteen Lakh

Sixteen Thousand Six Hundred Fifty One). Thus, the total amount of Rs.39,16,651/- (Rupees Thirty Nine Lakh Sixteen Thousand Six Hundred Fifty

One) was not paid to her.

It is her case, that the new Board of Directors had promised to return that amount. For that purpose, one meeting was held on 24th August 2017. At

that time, the old Board of Directors had told the Petitioners to pay the dues of the informant and other doctors. According to her, the Petitioners had

accepted that responsibility. There is a reference to an agreement between the old Board of Directors and the new Directors. However, the

documents pertaining to those agreements were not given to the informant. It is her case, that the present Petitioners deliberately and in collusion with

each other, did not return her amount. On these allegations, the FIR is lodged. The investigation was carried out and the charge-sheet was filed.

4. Learned counsel for the Petitioners submitted, that the FIR itself mentions that the present Petitioners took over the control of those hospitals in the

year 2017. Her specific case is, that the financial aid was given by the informant between 2013-2015. Her dues for treating the patients to the tune of

Rs.15,16,651/- (Rupees Fifteen Lakh Sixteen Thousand Six Hundred Fifty One) were also demanded by her from the old Board of Directors. All this

had taken place before the present Petitioners took over the control of the hospital and therefore, they cannot be said to have committed any offence.

It is purely a commercial transaction for which the informant has already instituted a Special Civil Suit No.1161 of 2018 before the Civil Judge Senior

Division, Pune. The informant had instituted that suit on 14th, August 2018. She has filed the present FIR on 22nd February 2020 and yet, there is

absolutely no reference to the said suit in this F.I.R.

He further submitted, that no offence alleged against any of the Petitioners is made out. The continuation of the proceedings is an abuse of the

process of law and therefore, the entire proceedings are required to be quashed and set aside. The FIR is lodged under Sections 418, 420 read with 34

of the Indian Penal Code, 1860 (IPC) and the charge-sheet is also filed under the same Sections. None of the ingredients of any of the Sections

are made out. He submitted, that one of the members of the Board of Directors Dr. Vinayak Mane is her husband. He submitted, that therefore, she

has deliberately not arraigned the earlier Board of Directors as accused in this case.

5. Learned counsel for the Respondent No.2 submitted, that in a given case, there could be civil proceedings as well as criminal proceedings

maintainable at the same time. He referred to a judgment of the Hon'ble Supreme Court in case of Vishnu Dutt Sharma V/s. Daya Sapa (Smt)

(2009) 13 Supreme Court Cases 729.

6. He submitted, that there are Whats-App chats which show that the informant was constantly demanding her dues from the present Board of

Directors and the Petitioner No.3. They had promised to return her money. He, therefore, submitted that the offence of cheating is made out because

they had promised to make her director in that hospital. But, no steps were taken in that behalf.

7. Learned APP supported the submissions of learned counsel for the Respondent No.2.

8. We have considered these submissions and we have perused the charge-sheet. The charge-sheet contains the statements of one Swapnil Bhalgat

whose dues were also not paid by the said hospital. He was working with the said hospital from 2011 to 2018. Similar is the statement of Dr. Jhaade.

She was working in the hospital between 2015-2016. Even, her dues were not paid.

The charge-sheet thereafter contains the bills and details of the treatment given by the informant to her patients. There are Whats-App messages

between the informant and the Petitioner No.3 wherein there are indications that the informant was asking for her dues. Those chats are from the

year 2017-2018.

There is a statement of Rohidas Aalhat who was one of the members of the Board of Directors from 2003 to 2017. According to him, the present

Petitioners had taken over the hospital since 25th January 2017 through a share purchase agreement, and that the new Board of Directors was

expected to pay the dues of the doctors. Rohidas Aalhat himself was a doctor and he had around Rs.25,00,000 (Rupees Twenty Five Lakh) as his

dues which were not paid.

The statement of Dr.Vinayak Mane is recorded. According to him, he had invested Rs.51,00,000 (Rupees Fifty One Lakh) when the hospital started.

He was associated with the hospital from 2003 to 2017. His dues were not paid.

9. It can be seen, that the hospital ran into financial difficulties during the tenure of the earlier Board of Directors. All these issues were from the

period, when the earlier Board of Directors were in control and therefore, there is a substance in the submissions, that the Petitioners had taken over

the control of the hospital afterwards. The dues payable to the Doctors were outstanding during the tenure of the earlier Board of Directors. At that

point of time, the present Petitioners had nothing to do with the management of the hospital. They assumed the charge only after 2017 and all these

allegations about non-payment of dues and about financial help was pertaining to the years prior to 2017.

10. Similarly, another submission of the learned counsel for the Petitioners deserves consideration is, about filing of Special Civil Suit No.1161 of 2018

before the Civil Judge Senior Division, Pune. This suit was instituted on 14th August 2018 i.e. much prior to the registration of FIR. In the said suit,

the amount of Rs.53,11,652/- (Rupees Fifty Three Lakh Eleven Thousand Six Hundred Fifty Two) including the interest was demanded by the First-

Informant. There is a reference to her financial aid of Rs.24,00,000/- (Rupees Twenty Four Lakh) and her dues on professional charges to the tune of

Rs.15,16,651/- (Rupees Fifteen Lakh Sixteen Thousand Six Hundred Fifty One). Thus, it is a clear commercial civil suit between the parties. The

Petitioners had not made any inducement before the dues even arose. None of the ingredients of Section 415 punishable with 420 of IPC is made out.

There is no force in the submissions of learned counsel for the Respondent No.2, that in the present case, the civil suit and the criminal proceedings

can go on simultaneously. The reliance placed on Vishnu Dutt Sharma case does not help the Respondent No.2 in the facts of the present case as we

do not find any criminality whatsoever involved in the entire transaction and in the allegations made against the present Petitioners. It is purely a civil

dispute which is pending before the appropriate civil forum.

11. No criminal offence is made out against any of the Petitioners. Therefore, the continuation of the criminal proceedings will be an abuse of process

of law. Hence, those are liable to be quashed and set aside. Hence, following order:-

ORDER

(i) The FIR No.98 of 2020 registered with Bhosari Police Station and the consequent proceedings arising out of the same, are quashed and set aside,

qua the Petitioners.

(iii) The Petition stands disposed of in the aforesaid terms.