

(2012) 05 MP CK 0035

Madhya Pradesh High Court (Gwalior Bench)

Case No: M. Cr. C. No. 6080 of 2011

Raj Kumar Pandey

APPELLANT

Vs

State of M.P. and
Others

RESPONDENT

Date of Decision: May 10, 2012

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 389, 439, 482
- Penal Code, 1860 (IPC) - Section 147, 148, 149, 247, 294

Citation: (2012) ILR (MP) 1788 : (2012) 3 MPLJ 536

Hon'ble Judges: G.D. Saxena, J

Bench: Single Bench

Advocate: Y.K. Pathak and Prashant Sharma, for the Appellant; Pramod Pachori, Public Prosecutor for the Non-applicants Nos. 1, 2, 4, 5 and 6/State and Ankur Maheshwari for the Non-applicant No. 3, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

G.D. Saxena, J.

By this petition preferred u/s 482 of the Code of Criminal Procedure 1973, the petitioner is praying for issuing appropriate directions having exercised inherent jurisdiction by this Court for preventing the abuse of the process of law to secure the ends of justice so as to deprecate the practices for filing false and fake medical certificates by the accused with intend to seek temporary bail on the ground of serious ailment, being a grave offence in the eyes of law. Under these circumstances, suitable directions to prevent such irregularities in issuing the fake and false certificate by the erring officials in future with an enquiry into such serious lapses committed by them during the period from 1st January, 2011 till 31st December, 2011 year 2011 to be conducted by some competent authority within a stipulated time are solicited from this Court. The facts leading to filing this petition are that the accused Puchchi @ Himanshu Gupta/respondent No. 3, involved in Crime

No. 141/2011 for committing offence punishable under Sections 302, 247, 323, 294, 147, 148 and 149 of I.P.C. During custody, the respondent/accused filed an application u/s 439 of Cr.P.C. being Misc. Cri.C.No.4735/11. Meanwhile, due to sickness, he moved I.A.No. 7325/2011 for his temporary release on bail before this Court. Alongwith the application (I.A.No. 7325/2011) filed with the main bail application, the accused furnished certain medical prescriptions from J.A. Hospital, Gwalior for perusal of this Court. While considering his prayer, this Court by an order dated 21st July, 2011 directed the State to submit a medical report regarding ailment of the applicant, within ten days.

2. It is submitted by the learned Counsel for the petitioner that after passing the order aforesaid, the report from Jail doctor was filed on 25th July 2011 and as per report, the accused/respondent was found to have been suffering from Hepatitis-B infection. On raising objection by the learned Public Prosecutor on the report of the Jail doctor dated 25th July, 2011, this Court again vide order dated 1st August 2011 came to hold as under:-

Learned P.P. is directed to get applicant examined by medical board and his blood sample is to be taken in presence of specialist of Microbiological Department. Medical report of the applicant be submitted within ten days.

3. In compliance of the aforesaid directions of this Court dated 1st August 2011, a Medical Board was constituted consisting of Dr. Vaibhav Mishra, Dr. Mahendra Garg and Dr. Rishika Khetan working in the Microbiological Department of J.A. Hospitals. After examination by the Medical Board, the report dated 6th August 2011 was forwarded to the Superintendent of Central Jail Gwalior. As per the opinion contained in the report of the Department of Microbiology dated 6th August 2011 at col. No. 6 Australia-Antigen(HBsAg)-- was seen Negative. The said report was filed on behalf of State before this Court.

4. At the time of arguments in the main bail application (Misc. Cri. Case No. 4735/2011), learned Counsel appearing for the petitioner seeks permission to withdraw the bail application on behalf of present petitioner which was accorded. Consequently, the application was dismissed as withdrawn vide order dated 10th August, 2011. Thereafter, an inquiry was conducted on 19th August, 2011 into the documents by the Prof. & Head of the Department of Biochemistry, G.R. Medical College, Gwalior. It is mentioned in the report dated 19th August, 2011 that during inspection of the routine test report register and L/9 test report register kept in the Microbiology Department, at Sr. No. 9 there was no name of Puchchi @ Himanshu mentioned and name of other patient was mentioned which means that accused Himanshu was not examined on the said day and time by the concerned department. It is also mentioned that on perusal of the disputed report of the accused Himanshu, signatures of the Test Officer conducting the tests were found false. Therefore, it was opined that the report of the accused was false and frivolous.

5. Learned Counsel appearing on behalf of petitioner, as well as the learned Panel Lawyer representing the State is of the same grievance that the matter under consideration in this petition is of serious nature. It is submitted that in all cases relating to the serious crime where the relief of bail or suspension of sentence u/s 389 of Cr.P.C. are refused on merits, then after connivance with the authorities concerned and having some ulterior motive, the false medical certificates without examination by the proper Experts are prepared only for achieving the release of the accused detained under custody of Central/District/Sub Jails of the area and under the shelter of such false and fabricated certificates, it is prayed that the prisoners/detainue be bailed out temporarily/permanently on medical grounds. Learned Counsel submitted that it is a need of time that the enquiry be ordered to be conducted by some efficient Judicial/Administrative officials with the assistance of the senior officials of the concerned departments to find out the truthfulness or otherwise of the test reports and the medical reports/certificate issued by the medical authorities appointed/posted in jails, duly signed by the authorities/ members of Medical Board working including the test reports prepared after tests conducted and examination by the authorities of the Medical College/Hospitals within a stipulated period.

6. After considering the advisory and suggestive parameters to check and deprecate such practices, with the consent of the learned Counsel for the parties, this Court deems it proper to appoint the District Judge (Inspection and Vigilance) Gwalior Region to enquire into the matter relating to seriousness of the crimes.

7. As per suggestions, the team of the following members is constituted to make a thorough prob to find out the truthfulness of issuing false and fabricated certificates by the jail/hospital authorities under the garb of which, the prisoners are benefited wrongfully keeping the courts in dark:-

(i) The Additional District Magistrate, district Gwalior;

(ii) The Additional S.P. of Gwalior City;

(iii) The Administrative Officer/Jail Superintendent of the Central Jail;

(iv) The Administrative Officer of G.R. Medical College; and

(v) The Chief Medical Officer posted in the J.A. Hospital Gwalior.

8. The aforesaid team shall assist the Enquiry Officer to hold an enquiry. All the documents and information in relation to the enquiry shall be made available by the concerned departments well in time to the Enquiry Officer. They shall render their full co-operation and would also provide Technical Experts from their respective departments, if required. The Enquiry Officer so appointed shall convene and conduct the meeting of the officers mentioned above and other Technical Officers for collecting the necessary information subject to the enquiry and for further discussion, as and when required.

NATURE OF THE ENQUIRY

9. The nature of the enquiry is to gather as to in how many cases the relief of bail or suspension of sentence u/s 389 of Cr.P.C. was refused on merits and after that interim bail applications on the ground of serious ailment were filed during the period from 1st of January, 2011 till 31st December, 2011, on the basis of false and fake certificates issued by the Hospital Authorities, which were produced before the court with an ulterior motive to get the interim bail for further advance treatment of serious ailment, not available in Jail Hospital or local/JA Hospital/Medical College Gwalior. Under such circumstances, the following directions in the opinion of this Court are necessary to be issued to conduct an enquiry into those matters:-

(1) The enquiry shall be made in relation to the suspected false and fake certificates and medical prescriptions/pathological reports on serious ailment of prisoners issued by the Medical Officers of the jail or hospitals concerned, during the period from 1st of January, 2011 till 31st of December, 2011 in relation to the cases referred to by this Court on filing applications for bail/ temporary suspension of sentence by the accused;

(2) The Enquiry Officer shall also suggest the safety measurements to prevent the unhealthy tradition of issuing the false and fake treatment papers and certificates in future;

(3) The Enquiry Officer shall also ascertain the erring officials involved in issuing such fake and false certificates and the medical prescription and pathology reports in relation to cases of serious ailing persons detained in jails;

(4) The place of enquiry will be the office of the District Judge ((Inspection and Vigilance)) Recourse Road Gwalior. He shall adopt the procedure for enquiry like criminal courts, as per provisions of criminal law;

(5) It is hereby directed that the Registrar of this bench shall sort out such cases and provide the relevant information in tabulation form for the period mentioned above to the Enquiry Officer within a period of one month from the date of this order with respect to such accused who remained unsuccessful in obtaining bail/suspending sentence on merits before this Court and ultimately moved on the ground of ailment and succeeded to remain on bail or suspend his sentence with further extension of bail period from time to time after filing fake and false medical certificates from the hospital/jail authorities;

(6) The Administrative Officer from the Central Jail/District Jail Gwalior shall provide necessary information to the Enquiry Officer within a period of one month from the date of order of this Court to the effect that in compliance of the order of this Court/other courts concerned, they referred the prisoners/detenues to the respective Hospitals for their medical check-up/examination on serious ailment and after getting the reports from concerned hospitals, such reports were submitted before the court for consideration;

(7) It is directed that the Dean of the G.R. Medical College, Gwalior or any other officer appointed in that behalf shall make relevant information available in tabulation form to the Enquiry Officer within a period of one month from the order of this Court to the effect as to how many under trial/ convicted prisoners in the light of the orders of the courts were medically and pathologically examined with the results of the examination/tests;

(8) The Principal Registrar of this Bench and the Dean of G.R. Medical College including the Supdt. of the Central Jail shall extend their full cooperation to the Enquiry Officer, as and when required by him during enquiry;

(9) All the documents, records and the registers relating and subject to the enquiry shall be delivered/made available in a sealed cover to the Enquiry Officer as and when required by him;

(10) The enquiry shall be concluded within a period of six months from the date of this order positively;

(11) The proceedings of the enquiry or its conclusion shall not in any way effect the prisoners/under trials, who are seriously ill or admitted for their treatment by the Medical Specialist posted in the J.A. Hospitals/G.R. Medical College, Gwalior or outside by the Experts in the medical field. On the other hand, the enquiry report shall suggest safety measurements as a guideline for future precautions to the authorities, which shall be strictly followed;

(12) In case of any difficulty arises in conduction of the enquiry, the Enquiry Officer shall report to the Bench and on the direction of this Court, the Additional Advocate General shall provide necessary aid to the Enquiry Officer so as to win over the difficulties well in time.

10. Subject to above directions, the instant petition shall stand disposed of finally. The Registry is directed to communicate the order to the Principal Secretary Law and Legislation, Medical Sciences, Jails of the State for their information and issuing necessary instructions to the concerned officers within a period of one week therefrom so as to enable the Enquiry Officer to conclude the enquiry within a fixed time period.