

Before Sandeep Moudgil, J.

MAMTA RANI—Petitioner

versus

STATE OF HARYANA —Respondents

CRM-M 28211 of 2022

July 08, 2022

Code of Criminal Procedure, 1973—S.438— Indian Penal Code, 1860—Ss.338,406 and 420— Indian Medical Council Act,1956— S. 15— Second anticipatory bail— Father of complainant was suffering from gangrene on thumb and three fingers of left foot, who was diabetic and heart patient as well— Accused possessing qualification for acupressure and Electro-Homeopathy Medical System, and treatment given by accused for disease, which was beyond her knowledge and qualification, for which she was not authorised which has caused negligence— Hence, no grant of second anticipatory bail.

Held, that in the present case treatment has been given by the petitioner accused for a disease, which was beyond her knowledge and qualification, for which she was not authorised and none of her educational qualifications brought to the notice of this Court are recognized by the competent authorities like Medical Council of India or any State Medical Board to advance the practising in alternate medicine for the ailment of *gangrene*. It is evident from the record and also not disputed by the counsel for the petitioner-accused that the disease was initially in the thumb and fingers of the left foot only.

(Para 9)

Further held, that this Court is sanguine of the fact that the petitioner-accused, even according to her possessed qualification for acupressure and Electro- Homeopathy Medical System, has a duty to act with a reasonable degree of care and skill has an implied undertaking of not to give a chance for breach of such duty, has given a cause of action for negligence which resulted into huge damage to the father of the complainant, which cannot be compensated in any manner whatsoever. Such loss will not only disable a person from routine course of his life but will also keep on pricking in his mind to cause consistent mental cruelty and harassment apart from embarrassment in daily routine in the society at large.

(Para 10)

Ashwani Talwar, Advocate, *for the petitioner.*

Tanisha Peshawaria, DAG, Haryana.

Yashveer Kharb, Advocate, for the complainant.

SANDEEP MOUDGIL, J. (ORAL)

(1) The instant petition has been preferred under Section 438 Cr.P.C. to seek anticipatory bail in FIR No. 237, dated 28th May, 2022, under Sections 338, 406, 420 IPC and Section 15 of Indian Medical Council Act, registered at Police Station Model Town, Panipat, after the said relief has been declined by learned Additional Sessions Judge, Panipat to the petitioner vide order dated 01.06.2022 (Annexure P-13).

(2) The story set forth by the prosecution, as could be made out from the perusal of FIR in question is that father of the complainant was suffering from *gangrene* on the thumb and three fingers of left foot, who was a diabetic and heart patient as well. During a visit on 27.01.2022 to the house of complainant's sister at Panipat, a clinic of petitioner-accused came to the notice in the market on 28.01.2022. An advise of the petitioner-accused was sought, who had mentioned on the Board outside of her clinic as Dr. Mamta Kapoor. The petitioner-accused gave all assurance of curing the diseases and asked to get the father of complainant admitted in her clinic. The father of the complainant was treated from 28.01.2022 till 06.02.2022, the date on which he was discharged. At the time of discharge from the clinic, the petitioner-accused did not give any document despite asking time and again but promised to give the complete summary of treatment and discharge, later on. Even thereafter, the petitioner-accused made home visits till 13.02.2022 at the house of complainant's sister in Virat Nagar, Panipat and the petitioner-accused charged a sum of Rs.1,00,000/- for the complete treatment. Thereafter, the complainant along-with his father left for their house in Amritsar. However, the father of the complainant started having acute pain in the left foot and got him examined in Gupta Hospital, Siddharth Nursing Home, Amritsar. It was diagnosed at that stage that *gangrene* has infected the entire left leg, which has to be amputated failing which it will endanger his life. The reasons for such severe infection was the wrong and negligent medical treatment given by the petitioner-accused. At this stage inquiries were made by the complainant, which revealed that various other persons

have also been put at risk by the petitioner-accused, one Rehlan had suddenly died and another patient namely Mrs. Darshan Rani was noticed to be very serious. The petitioner-accused is already facing complaints in that regard, who is practising as a 'doctor' without having any licence as such and is being allowed to play with the life of innocent people.

(3) Mr. Ashwani Talwar, Advocate appearing for the petitioner contends that the petitioner-accused is having due qualification to provide Electro Homeopathy/Acupressure treatment and drew attention of this Court to the Result-cum-Detailed Mark Certificate (Annexure P-2) issued by the Council of Electro-Homeopathy System of Medicine (Punjab), apart from a certificate of M.D.Acu. issued by Acupressure Research, Training & Treatment Institute, Jodhpur, Rajasthan (Annexure P-6). It is further submitted that the petitioner-accused has completed Complimentary Medicine (Medicine Alternative) through correspondence course from an institute registered by the Punjab Govt. under S.R. Act & Govt. of India under T.M. Act, 1999 (Annexure P-7) along-with a Diploma in Community Medical Services & Essential Drugs (CC) granted by the Para Medical Council (Punjab) dated 28.07.2011.

(4) It has been further stated by the counsel for the petitioner that the petitioner has been registered as Community Health Worker with the Para Medical Council (Punjab) Mohali vide Registration Certificate dated 26.12.2013 (Annexure P-9), which was renewed as well on 25.01.2021 and in addition thereof, is duly equipped with the course of Diploma in Acupuncture, vide certificate dated 07.04.2019 (Annexure P-11).

(5) It is denied that the petitioner-accused is running a clinic with a display as Doctor before her name Mamta Kapoor, who is running a similar clinic in single storey dwelling unit consisting of three rooms as a small time alternative medicine therapist. There was no indoor admission arrangement in the clinic and neither there is any such facility to admit the father of the complainant. Therefore, FIR, in question, is absolutely false and having no *iota* of truth in it.

(6) On the other hand, Ms. Tanisha Peshawaria, Deputy Advocate General, Haryana appearing on advance notice has vehemently opposed the prayer made in the present petition by contending that the petitioner-accused was having a degree of BEMS (Master Degree Certificate in Acupressure) and is not qualified to treat the patient suffering from disease like *gangrene*. Moreover, the

petitioner-accused was duly made aware of the other medical issues like diabetes and heart ailments of the father of the complainant, still she choose to gave false assurance of curing the disease. As a result of medical negligence, the father of the complainant lost left leg which had been amputated below the knee. Even an inquiry was conducted by the Medical Board, consisting Dr. Sham Lal, SMO, Civil Hospital, Panipat, Dr. Pardeep, Medical Officer, Civil Hospital, Panipat, Dr. Ravinder Garg, IMA, Representative Panipat, Dr. Vishwajeet Singh, NIMA, Representative Panipat and Civil Surgeon, Panipat, which opined that the petitioner-accused was not a recognized medical practitioner and the treatment of already established disease of *gangrene* was beyond of her acumen and knowledge of medical science. The Committee has further concluded observing it to be a case of negligence on the part of the petitioner-accused due to which the left leg of the father of the complainant had amputated.

(7) Learned State counsel further submits that *prima-facie* offences under Sections 338, 406 and 420 IPC and Section 15 of Indian Medical Council Act, 1956 are found to be made out against the petitioner-accused. Till date the petitioner-accused is not traceable and the investigation in the FIR cannot be conducted until or unless the petitioner-accused is not taken into custody for interrogation.

(8) After hearing learned counsel for the parties and on perusal of record, it is evident that the present petition is a second application for anticipatory bail, which is not maintainable particularly, in view of the fact that earlier application bearing CRM-M-26032-2022 was withdrawn after arguing for some time by the counsel for the petitioner on 08.06.2022, i.e., only a month back. Admittedly, there is no change in circumstances to consider the present petition at this stage.

(9) In the present case treatment has been given by the petitioner- accused for a disease, which was beyond her knowledge and qualification, for which she was not authorized and none of her educational qualifications brought to the notice of this Court are recognized by the competent authorities like Medical Council of India or any State Medical Board to advance the practising in alternate medicine for the ailment of *gangrene*. It is evident from the record and also not disputed by the counsel for the petitioner-accused that the disease was initially in the thumb and fingers of the left foot only.

(10) This Court is sanguine of the fact that the petitioner-accused, even according to her possessed qualification for acupressure and Electro- Homeopathy Medical System, has a duty to act with a

reasonable degree of care and skill has an implied undertaking of not to give a chance for breach of such duty, has given a cause of action for negligence which resulted into huge damage to the father of the complainant, which cannot be compensated in any manner whatsoever. Such loss will not only disable a person from routine course of his life but will also keep on pricking in his mind to cause consistent mental cruelty and harassment apart from embarrassment in daily routine in the society at large.

(11) In the light of the afore-said discussions and the facts on record, this Court does not find any merit in the present petition and is fully convinced that the custodial interrogation of the petitioner is necessary to move the investigation in the case.

(12) Accordingly, the present petition is dismissed.

Ritambara Rishi