Reportable

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1041 OF 2011
(Arising out of SLP (Crl.) No. 3449/2009)

KANWARJIT SINGH KAKKAR ..Appellant

Versus

STATE OF PUNJAB & ANR. ..Respondents

WITH

CRIMINAL APPEAL NO. 1042 OF 2011
(Arising out of SLP (Crl.) No.4010/2009)

DR. RAJINDER SINGH CHAWLA ..Appellant

Versus

STATE OF PUNJAB & ANR. ..Respondents

J U D G M E N T

GYAN SUDHA MISRA, J.

Leave granted.

2. These appeals by special leave had been filed against the order dated 2.4.2009 passed by the High Court of Punjab and Haryana at Chandigarh in two Criminal Miscellaneous Petitions Nos. M-15695/2007 and 23037-M

of 2007 for quashing FIR No.13 dated 9.4.2003 which was registered for offences punishable under Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 and under Section 168 of the Indian Penal Code, at Police Station, Vigilance Bureau, Ludhiana but were dismissed as the learned single Judge declined to quash the proceedings against the appellants.

3. Relevant facts of the case under which the two cases were registered against the appellants disclose that the appellants are Medical Officers working with the State Government of Punjab against whom first information report was registered on the statement of informant/Raman Kumar alleging that he knew the appellants Dr. Rajinder Singh Chawla who was posted as Government Doctor at Dhanasu and Dr. Kanwarjit Singh Kakkar who also was serving as Government Doctor in Koom Kalan in District Ludhiana. It was alleged that both the doctors were doing private practice in the evening at Metro Road, Jamalpur and charged Rs.100/- in cash per patient as prescription fee. While Dr. Rajinder Singh Chawla checked the blood pressure of the patients Dr. Kanwarjit Singh issued

prescription slips and medicines to the patients after checking them properly and charged Rs.100/- from each patient. The complainant Raman Kumar got medicines from the two doctors regarding his ailment and the doctor had charged Rs.100/- as professional fee from him. The informant further stated in his FIR that as per the government instructions, the government doctors are not supposed to charge any fee from the patients for checking them as the same was contrary to the government instructions. In view of this allegation, a raid was conducted at the premises of both these doctors and it was alleged that they could be nabbed doing private practice as they were trapped receiving Rs.100/- as consultation charges from the complainant. On the basis of this, the FIR was registered against the appellants under Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act and under Section 168, IPC which has registered at Police Station Vigilance Bureau, Ludhiana.

4. As already stated, the appellants felt aggrieved with the case registered against them and hence filed two Criminal Miscellaneous Petitions for quashing FIR No.13

dated April 9, 2003 before the High Court of Punjab and Haryana at Chandigarh wherein counsel for the appellants contended that no offence is made out from the allegations in the FIR even as it stands. Substantiating the arguments, it was submitted that neither any medical instrument was recovered nor any apparatus or blood pressure checking machine or even thermometer was recovered from the residence of the appellants. It was explained that the complainant had come to the house of Dr. Kanwarjit Singh Kakkar which was under renovation and requested for treatment. It was added that on humanitarian grounds, the appellant just scribbled down the prescription on a plain paper which does not even bear the signature of the appellant.

5. It was also contended by learned counsel for the appellants that there is no law prohibiting government doctor from doing any act on humanitarian ground and the appellants could be alleged to have indulged in private practice only if they have deviated from the rules laid down by the State Government in this regard. In the alternative, it was contended that even if there is a deviation from

these rules prohibiting private practice by government doctors contrary to the government instructions, it could warrant initiation of departmental proceeding and the punishment under the Punjab Civil Services (Punishment and Appeal) Rules and not under IPC much less under the Prevention of Corruption Act.

6. The learned single Judge, however, was pleased to dismiss the Criminal Miscellaneous Applications refusing to quash the FIR relying on Rule 15 of the Punjab Civil Medical (State Service Class I) Rules, 1972. As per Rule 15 of the said Rules, the Government may by general or special order permit any member of the Service to engage in private service on such terms and conditions and subject to such restrictions and limitations as may be specified in the order provided that such practice does not in any way interfere with the discharge of his or their official duties. Rule 15 of the aforesaid Rules states as follows:

> "15. **Private Practice:** (1) The Government may, by general or special order, permit any member of the Service to engage in private practice on such terms and conditions and subject to such restrictions and limitations as may be specified in the order, provided that such practice does not in any way

interfere with the discharge of his or their official duties.

(2) Nothing contained herein shall be construed to limit or abridge the power of the Government at any time to withdraw such permission or to modify the terms on which it is granted without assigning any cause and without payment of compensation."

7. The relevant question which requires determination in these appeals is whether a government doctor alleged to be doing practice can be booked within the ambit and purview of the Prevention of Corruption Act or under Indian Penal Code, or the same would amount to misconduct under the Punjab Civil Medical(State Service Class I) Rules, 1972 under Rule 15 which has been extracted above.

8. Learned counsel for the appellants submitted that the FIR was fit to be quashed as the case against the appellants who admittedly are government doctors could not have been registered under IPC or the Prevention of Corruption Act as Section 7 of the Prevention of Corruption Act explains 'corruption' as acceptance or 'demand' illegal gratification for doing any official act'. It was submitted that the demand/receipt of 'fee' while doing private

practice is not an illegal gratification for official duties. It was further submitted that even Section 13(1)(d) of the Prevention of Corruption Act does not apply since the main ingredients of this Section are:

(a) the accused must be a public servant at the time of the offence;
(b) he must have used corrupt or illegal means and obtain for himself or for any other person any valuable or pecuniary advantage; or
(c) he must have abused his position as a public servant and have obtained for himself and for any other person any valuable thing or pecuniary advantage; or
(d) while holding such office he must have obtained for any other person any valuable thing or pecuniary advantage without any motive.

9. Learned counsel for the respondents however repelled the arguments advanced in support of the plea of the appellants and it was contended that the provisions of Prevention of Corruption Act clearly apply as the government doctors in the State of Punjab have been specifically prohibited to carry private practice under the departmental rules and as such the act of the appellants were illegal.

10. By way of a rejoinder, it was again submitted by the counsel for the appellants that it is the 'departmental rules' which bar private practice by a government doctor, hence action if any, is liable to be initiated/taken under the departmental rules which in the present case are the Punjab Civil Services (Punishment and Appeal) Rules. Rule 15 of the Punjab Civil Medical (State Service Class I) Rules, 1972 states that a government doctor may engage in practice with prior permission from the government. It was still further submitted that the FIR against the appellant has also been registered under Section 168 of the Indian Penal Code which states as follows:

> "**168. Public servant unlawfully engaging in trade.—**Whoever, being a public servant and being legally bound as such public servant not to engage in trade, engages in trade, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both."

It was submitted that this Section makes it amply clear that 'private practice' cannot be termed as 'trade', as accepting of 'fee', does not involve profit making which is an essential ingredient of the term 'trade' as held in *State*

of Gujarat vs. *Maheshkumar Dheerajlal Thakkar*[1]. The counsel further took assistance from the Punjab Government Vigilance Department (Vigilance -3 Branch) which vide Memo No. 53/168/02-54/20094dated 23.12.2004 (T) instructed the Chief Director, Vigilance Bureau, Punjab, Chandigarh on 19.1.2005, that the cases pending against the government teachers for holding tuition classes should be withdrawn as these cases do not come within the purview of the Prevention of Corruption Act as fees demanded/accepted by a teacher in view of teaching private tuition classes can neither be termed as a corruption nor can it be said to be a demand for remuneration for some official act. It was submitted that this principle needs to be applied on all professionals on the basis of the principle of equity. The counsel also submitted on the merit of the case given out in the FIR, by urging that the appellants although wrote down the prescription on a plain paper for the complainant who had approached him for medical assistance at about 8.30 p.m. on 9.4.2003, he obliged him merely on humanitarian grounds and the raid which was conducted on the appellant's premises, no

[1] AIR 1980 SC 1167

recovery of medical instruments or medical apparatus was made. It was, therefore, contended that the impugned order of the High Court refusing to quash the FIR against the appellants is liable to be set aside and the FIR against the appellants should be quashed as the FIR alleging private practice by the government doctors/appellants herein is not criminal in nature but at the most would amount to a deviation from the departmental rules and hence at the most, it could be dealt with under the Punjab Civil Services (Punishment and Appeal) Rules only.

11. On a critical analysis of the arguments advanced in the light of the definition of 'corruption' defined under the Prevention of Corruption Act in its Preamble and under Section 7 of the Act, it clearly emerges that 'corruption' is acceptance or demand of illegal gratification for doing an official act. We find no difficulty in accepting the submission and endorsing the view that the demand/receipt of fee while doing private practice by itself cannot be held to be an illegal gratification as the same obviously is the amount charged towards professional remuneration. It would be preposterous in our view to

hold that if a doctor charges fee for extending medical help and is doing that by way of his professional duty, the same would amount to illegal gratification as that would be even against the plain common sense. If however, for the sake of assumption, it were alleged that the doctor while doing private practice as Government doctor indulged in malpractice in any manner as for instance took money by way of illegal gratification for admitting the patients in the government hospital or any other offence of criminal nature like prescribing unnecessary surgery for the purpose of extracting money by way of professional fee and a host of other circumstances, the same obviously would be a clear case to be registered under the IPC as also under the Prevention of Corruption Act which is not the case in the instant matter. The FIR sought to be quashed, merely alleges that the appellants were indulging in private practice while holding the post of government doctor which restrained private practice, and charged professional fee after examining the patients.

12. We however, came across a case of *Raj Rajendra Singh Seth alias R.R.S. Seth* vs. *State of Jharkhand And*

Anr.[2], wherein a doctor who had demanded Rs.500/- for giving proper medical treatment to the complainant's father resulted in conviction of the doctor as it was held in the circumstances of the said case that all the requisites for proving demand and acceptance of bribe were clearly established and the appellant therein was held to have been rightly convicted. However, the prosecution version in the said case disclosed that a written complaint was made to SP., CBI, Dhanbad that on 1.9.1985 one Raju Hadi, a Safai Mazdoor of the Pathological Laboratory Area -9, BCCL, Dhanbad, alleged therein that he had visited Chamodih Dispensary in connection with the treatment of his father who was examined by Dr. L.B. Sah who referred him to Central Hospital, Dhanbad. The complainant's father was admitted in the Central Hospital and the complainant visited his ailing father who complained of lack of proper treatment and he requested him to meet the doctor concerned. The complainant met Dr. R.R.S. Seth who was treating the complainant's father. It was alleged by the complainant therein that Dr. R.R.S. Seth demanded a sum of Rs. 500/- from the complainant for giving proper

[2] (2008) 11 SCC 681

medical treatment to his father and also insisted that the amount be paid to the doctor on 1.9.1985. The doctor also told the complainant Raju Hadi that in case he was not available in the hospital, he should pay the amount to his ward boy Nag Narain who would pass the amount to him. Since the complainant Raju Hadi was not willing to make the payment of bribe amount to the doctor and ward boy, he lodged a complaint to the SP, CBI, Dhanbad for taking necessary action.

13. On the basis of this complaint, which was finally tried and resulted into conviction, came up to this Court (Supreme Court) challenging the conviction. This conviction was upheld by this Court as it was held therein that there is no case of the accused that the said amount was received by him as the amount which he was legally entitled to receive or collect from the complainant. It was, therefore, held that when the amount is found to have been passed to the public servant, the burden is on public servant to establish that it was not by way of illegal gratification. This Court held that the said burden was not discharged by the accused and hence it was held that all the requisites

for proving the demand and acceptance of bribe had been established and hence interference with the conviction and sentence was refused. The learned Judges in this matter had placed reliance on the case of *B. Noha* vs. *State of Kerala*[3], wherein this Court took notice of the observations made in the said case at paras 10 and 11 wherein it was observed as follows:

> ".....When it is proved that there was voluntary and conscious acceptance of the money, there is no further burden cast on the prosecution to prove by direct evidence, the demand or motive. It has only to be deduced from the facts and circumstances obtained in the particular case."

14. The learned Judges also took notice of the observations made by this Court in *Madhukar Bhaskarrao Joshi* vs. *State of Maharashtra*,[4] (2000) 8 SCC 571 at 577, para 12 wherein it was observed that

> "The premise to be established on the facts for drawing the presumption is that there was payment or acceptance of gratification. Once the said premise is established, the

[3] (2006) 12 SCC 277
[4] (2000) 8 SCC 571

> inference to be drawn is that the said gratification was accepted "as motive or reward" for doing or forbearing to do any official act. So the word "gratification" need not be stretched to mean reward because reward is the outcome of the presumption which the court has to draw on the factual premise that there was payment of gratification. ……
> …..If acceptance of any valuable thing can help to draw the presumption that it was accepted as motive or reward for doing or forbearing to do official act, the word "gratification" must be treated in the context to mean any payment for giving satisfaction to the public servant who received it."

This decision was followed by this Court in *M. Narsinga Rao* vs. *State of A.P*[5]..

Thus in all the cases referred to hereinabove, the amount received was held to be by way of gratification as there could be no escape from the conclusion that it would amount to corruption within the meaning of Prevention of Corruption Act as also the offence under the IPC.

15. But the most important and vital check before a public servant can be booked under the Prevention of Corruption Act, the ingredients of the offence will have to be deduced from the facts and circumstances obtained in

[5] (2001) 1 SCC 691

the particular case. Judging the case of the appellants on this anvil, it is not difficult to notice that in the case at hand, the amount that is alleged to have been accepted even as per the allegation of the complainant/informant was not by way of gratification for doing any favour to the accused, but admittedly by way of professional fee for examining and treating the patients. However, no presumption can be drawn that it was accepted as motive or reward for doing or forbearing any official act so as to treat the receipt of professional fee as gratification much less illegal gratification. The professional fee even as per the case of the complainant/informant was that this act on the part of the accused appellants was, contrary to the government circular and the circular itself had a rider in it which stated that the government doctor could do private practice also, provided he sought permission from the government in this regard. Thus the conduct of the appellants who are alleged to have indulged in private practice while holding the office of government doctor and hence public servant at the most, could be proceeded with for departmental proceeding under the Service Rules but in

so far as making out of an offence either under the Prevention of Corruption Act or under the IPC, would be difficult to sustain as we have already observed that examination of patients by doctor and thereby charging professional fee, by itself, would not be an offence but as per the complaint, since the same was contrary to the government circular which instructed that private practice may be conducted by the government doctors in the State of Punjab provided permission was sought from the Government in this regard, the appellants were fit to be prosecuted. Thus, the appellants even as per the FIR as it stands, can be held to have violated only the government instructions which itself has not termed private practice as 'corruption' under the Prevention of Corruption Act merely on account of charging fee as the same in any event was a professional fee which could not have been charged since the same was contrary to the government instructions. Thus, if a particular professional discharges the duty of a doctor, that by itself is not an offence but becomes an offence by virtue of the fact that it contravenes a bar imposed by a circular or instruction of the government. In

that event, the said act clearly would fall within the ambit of misconduct to be dealt with under the Service Rules but would not constitute criminal offence under the Prevention of Corruption Act.

16. However, the question still remains whether the indulgence in private practice would amount to indulgence in 'trade' while holding the post of a government doctor and hence an offence under Section 168 of the IPC, so as to hold that it constitutes a criminal offence in which case that FIR could be held to have made out a prima facie case against the appellants under Section 168 of the IPC on the ground that the appellants who are public servants unlawfully engaged in trade. In our view, offence under Section 168 of the IPC cannot be held to have been made out against the appellants even under this Section as the treatment of patients by a doctor cannot by itself be held to be engagement in a trade as the doctors' duty to treat patients is in the discharge of his professional duty which cannot be held to be a 'trade' so as to make out or constitute an offence under Section 168 of the IPC. As already stated, there may be cases of doctors indulging in cases of

medical negligence, demand or accept amount in order to incur favour on the patients which would amount to illegal gratification and hence 'corruption', and in such cases offence can most certainly be held to have been made out under the Prevention of Corruption Act also. Cases of unlawful engagement in trade by public servants can also be held to be made out under Section 168 of the IPC if the facts of a particular case indicate that besides professional discharge of duty by the doctor, he is indulging in trading activities of innumerable nature which is not expected of a medical professional as was the fact in the case referred to herein before. But if the medical professional has acted in a manner which is contrary only to the government instructions *dehors* any criminal activity or criminal negligence, the same would not constitute an offence either under the IPC or a case of corruption under the Prevention of Corruption Act. In our considered view, the allegation even as per the FIR as it stands in the instant case, do not

constitute an offence either under the Prevention of Corruption Act or under Section 168 of the IPC.

17. For the reasons discussed hereinbefore, we are pleased to set aside the impugned orders passed by the High Court and quash the FIR No.13 dated 9.4.2003 registered against the appellants as we hold that no prima facie case either under Section 168 of the IPC or Section 13 (1)(d) read with 13(2) of the Prevention of Corruption Act is made out under the prevailing facts and circumstances of the case and hence proceeding in the FIR registered against the appellants would ultimately result into abuse of the process of the Court as also huge wastage of time and energy of the Court. Hence, the respondent – State, although may be justified if it proceeds under the Punjab Civil Services (Punishment and Appeal) Rules against the appellants initiating action for misconduct, FIR registered against them under IPC or Prevention of Corruption Act is not fit to be sustained. Consequently, both the appeals are allowed.

.....J
(MARKANDEY KATJU)

.....J
(GYAN SUDHA MISRA)

New Delhi,
April 28, 2011