

HIGH COURT OF KARNATAKA**Bench: Honourable Mr. Justice M. Nagaprasanna****Date of Decision: 3rd June 2024**

CRIMINAL PETITION NO. 4868 OF 2024

DR. CHETHAN KUMAR S. ...PETITIONER**Versus****STATE OF KARNATAKA and XXXX ...RESPONDENTS****Legislation:**

Section 354A of the Indian Penal Code (IPC)

Section 482 of the Code of Criminal Procedure (Cr.P.C.)

Subject: Petition under Section 482 of the Cr.P.C. to quash the FIR in Crime No. 110/2024 for the alleged offence under Section 354A IPC registered by the Puttenahalli Police Station.**Headnotes:**

Criminal Law – Quashing of FIR – Petitioner, a doctor, accused of sexual harassment under Section 354A IPC – Alleged incident occurred during medical examination at petitioner's clinic – Court finds prima facie case for investigation based on complainant's detailed account [Paras 3-12].

Section 354A IPC – Sexual Harassment – Complaint alleges inappropriate conduct by doctor during chest examination – Doctor directed complainant to remove clothing and inappropriately touched and kissed her – Allegations found to fall under Section 354A(1)(i) IPC for unwelcome and explicit sexual overtures [Paras 7-11].

Decision: Petition dismissed – Court emphasizes the need for investigation given the serious nature of allegations – Findings limited to the petition under Section 482 Cr.P.C. and not binding on the investigation or subsequent proceedings [Para 12].

Referred Cases:

- State of Haryana v. Bhajan Lal (1992 Supp (1) SCC 335)

- Kahkashan Kausar v. State of Bihar (2022) 6 SCC 599
- Arnesh Kumar v. State of Bihar (2014) 8 SCC 273
- State of Punjab v. Subhash Kumar (2004) 13 SCC 719

Representing Advocates:

Sri. Afroz Pasha, Advocate for Petitioner

Sri. Harish Ganapathi, High Court Government Pleader for Respondent No. 1

ORDER

The petitioner is before this Court calling in question registration of crime in Crime No.110 of 2024 registered for offences punishable under Section 354A of the IPC.

2. Heard Sri Afroz Pasha, learned counsel appearing for the petitioner and Sri Harish Ganapathi, learned High Court Government Pleader appearing for respondent No.1.

3. Facts, in brief, germane are as follows:-

The 2nd respondent is the complainant. The petitioner is the sole accused. The petitioner is a doctor by profession. The complainant complaining of chest pain visits Orbsky Hospital in JP Nagar 7th Phase, Bangalore where the petitioner was the duty doctor. He treats the complainant and suggests to her to undergo ECG, X-ray of the chest and informed her to share the details on his whatsapp. The mobile numbers of the complainant and the doctor were exchanged. The reports of ECG and X-ray were forwarded by the complainant to the doctor on whatsapp. On seeing the reports, the petitioner directs the complainant to visit his personal clinic/Prasiddhi clinic at about 2.00 p.m. on 21.03.2024. The complainant visits the clinic of the petitioner, where it is said that the petitioner was alone. The doctor takes the

complainant into a room, asks her to lay-down and started checking her heart-beat by placing the stethoscope on the breast and directs the complainant to pull up the shirt and bra. It is the allegation that the doctor started to touch the breast by hands and even kissing the left breast. The complainant leaves the clinic and then informs the family members about the incident. It is then the next day i.e., on 22.03.2024 a complaint comes to be registered for offences punishable under Section 354A of the IPC. The registration of the crime is what has driven the petitioner to this Court in the subject petition.

4. The learned counsel for the petitioner submits that the petitioner was performing his duty as a doctor. He has only placed his stethoscope on the breast of the complainant as he does to every patient, as the complaint was congestion in the chest. The allegation that the complainant was directed to remove the shirt and the bra, is false and should not be accepted. It is his submission that the offence alleges is the one punishable under Section 354A of the IPC and none of the ingredients that are necessary to be present are not present in the case at hand. The learned counsel would seek quashment of the FIR.
5. The learned High Court Government Pleader would refute the submissions to contend that the crime is registered only on 22.03.2024. The complaint narrates minute details. Therefore, it is a matter of investigation in the least for the petitioner to come out clean. He seeks dismissal of the petition.
6. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

7. The afore-narrated facts are not in dispute and the issue lies in a narrow compass. The relationship between the complainant and the petitioner is that of a patient and a doctor. The complainant visits the hospital, in which the petitioner is a duty doctor, complaining about the pain in the chest. The petitioner suggests to undergo ECG and chest X-ray. He seeks the number of the complainant for communication of reports on whatsapp. All was well till the complainant was directed to come to the personal clinic of the petitioner at 2.00 p.m. It is then the complaint emerges. Since the entire issue has now sprung from the complaint, I deem it appropriate to notice the complaint. It reads as follows:

*“To
POLICE INSPECTOR
PUTTENAHALLI POLICE STATION INSPECTOR*

*FROM,
XXX*

Subject - Harassment

I am xxx, and I have been staying in the above mention address from past one year with my younger sister, Sejal and my friend Dechan. I work in Intouh Ex, electronic City phase 1.

On the 20th of March I had some cough issue where I was vomiting blood and then I went to nearby hospital it was at night around 9 to 9:30 p.m. we went to orbsky multispeciality hospital and the doctor on duty was Dr.Chetan S F Naidu he did some checkup and got my blood test then after that he ask me to lay down and check my breathing with stethoscope after that he ask me to lift my shirt and checked for any pain areas on my chest. I thought the checkup he was doing was normal because it could have been any kind of chest infection.

on the 21st of March I completed the remaining test that is ECG and chest X-ray after getting the chest results, I shared the results to doctor Chetan on WhatsApp because he had told me to share the results on WhatsApp. after that he called me to his clinic to see the results and give consultation. the name of the clinic is prasiddhi clinic in JP Nagar, 9th phase, I went to the clinic and it was about 1 to 1.30 pm, they were no staff present. he checks my test results and then he told me to lay down for further examination and then he started check my breathing through the stethoscope and then he uses his hand

to check for pain areas in my chest. Then he told my to left my shirt and bra to check if I have any kind of pain and after five minutes, he put his mouth on my left brest. I panicked and got up and told him that this is not right way to do any check up.

I am fear shock and traumatized by the incident and would like to seek justice the strict action should be taken upon the doctor so that he doesn't repeat the same thing with anyone else.

The reason of delay of filing official complaint was because I wanted to make the right decision and I was taking suggestions from my family.

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(Emphasis added)

The allegation of the complainant is that, when she goes to the personal clinic of the petitioner, she was informed to lie down for further examination to examine the complainant, for which he places the stethoscope on the breast of the complainant. Till this point in time, it was a clear case of the petitioner treating the patient - the complainant. There can be no qualm about that.

8. The further allegation is about the doctor directing the complainant to lift the shirt and bra for further examination. After 5 minutes of examination, it is the allegation, that he has put his mouth on the left breast. The complainant is said to have panicked and ran away being traumatized and then the next day, she registers the complaint. The whatsapp chats between the complainant and the doctor are also appended to the petition which would demonstrate that the doctor has called the complainant to his personal clinic. The aftermath of it is in the complaint.

9. The offence alleged is the one punishable under Section 354A of the IPC. Section 354A reads as follows:

“354-A. Sexual harassment and punishment for sexual harassment.—(1) A man committing any of the following acts—

- (i) physical contact and advances involving unwelcome and explicit sexual overtures; or**
- (ii) a demand or request for sexual favours; or**
- (iii) showing pornography against the will of a woman; or**
- (iv) making sexually coloured remarks,**

shall be guilty of the offence of sexual harassment.

(2) Any man who commits the offence specified in clause (i) or clause (ii) or clause (iii) of sub-section (1) shall be punished with rigorous imprisonment for a term which may extend to three years, or with fine, or with both.

(3) Any man who commits the offence specified in clause (iv) of sub-section (1) shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.”
(Emphasis supplied) Section 354A of IPC has four ingredients viz., physical contact and advances involving unwelcome and explicit sexual overtures. The other three ingredients are not relevant for the case at hand. The act of the doctor in directing the complainant to remove her shirt and bra and placing his mouth on the left breast would undoubtedly become the ingredients of Section 354A of IPC *qua* clause (i) of sub-section (1) of Section 354A of IPC as it is undoubtedly an unwelcome and explicit overture.

10. A doctor by profession has access to the body of the patient. If the access is utilized for the purpose of healing, it is an altogether different circumstance and a divine act. If it is utilized for some other feeling, it would clearly become advances which would attract Section 354A of IPC. A doctor should remember that the patients seek their help when they are in a vulnerable state – when they are sick, when they are needy and when they are uncertain about the needs to be done. The unequal distribution of power in the doctor-patient relationship may give rise to opportunities of sexual exploitation. This vulnerability should not be used as a weapon by the doctors, misusing the trust the patient reposes in the doctor. Due to such position of power and trust between the doctor and a patient, no alleged

sexual activity by the doctor on the patient is acceptable. If it happens or it is alleged to have happened, it represents sexual abuse. If any act of the kind emerges even as an allegation, the relationship of trust which is between the doctor and a patient gets eroded.

11. If the complaint quoted *supra* is noticed, it would become clear ingredient of Section 354A of the IPC. The petitioner cannot play doctor-doctor before this Court seeking quashment of the proceedings, as any such acceptance would amount to putting a premium on this doctor's allegation on his patient – the complainant. Certain guidelines for doctors on sexual boundaries, is notified on the website of the Indian Medical Council. The guidelines are drawn by Indian Psychiatric Society Task Force on such boundary guidelines. The guidelines that would become germane to be noticed are that, whenever a female patient is being examined by a male practitioner, the guidelines direct that it should be ensured that it would be one in the presence of a female person, particularly at the time of physical examination. There are several other guidelines laid down by the said Task Force including that, the doctor should ensure that they do not exploit the doctor-patient relationship for personal, social, business or sexual gain. The petitioner-doctor has *prima facie*, violated all the above. Therefore, an investigation in the least, should be permitted to be continued.

12. Finding no merit in the petition, the petition stands rejected. It is made clear that the findings rendered are only for the purpose of considering the case of the petitioner under Section 482 of the Cr.P.C. and cannot bind or influence any investigation or any proceedings against the petitioner.

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