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Case Study

Violence Against Doctors: Kerala High Court Refused Pre-Arrest Bail of Accused: A Case Study

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ABSTRACT

The definition of the word ‘**violence**’ in the statute is clearly indicative of the purpose behind the Act. The preamble to the aforementioned Act states that it is enacted to prohibit violence against healthcare service persons and to prevent damage and loss to property in healthcare service institutions. Petitioner is alleged to have wrongfully restrained a doctor (the defacto complainant) on 12.04.2022 and threatened her while she was on her way from the doctor’s room to the casualty of the hospital, thereby causing obstruction to her official duty and committing the offences under sections 341, 353 and 506 of the Indian Penal Code, 1860 (for short ‘the IPC’) and section 3 and 4(1) of the Healthcare Act. The petitioner vehemently contended that petitioner is innocent of the allegations and that he had not committed any of the offences alleged. It was further contended that as per the FIR, no injury or assault had taken place, and hence the allegation constitutes only a minor offence, petitioner ought to be released on pre arrest bail. Learned Public Prosecutor on the other hand submitted that, though the offences under the IPC are bailable, the provisions under the Healthcare Act, are non-bailable and that granting pre-arrest bail to the petitioner would prevent the custodial interrogation, which is essential in the peculiar circumstances. Kerala High Court concluded that bearing in mind the objective of the Act, if pre-arrest bail is granted to the petitioner, a wrong message will also be sent to the public. Reckoning the nature and gravity of the offence committed by the petitioner, High Court is not inclined to exercise the discretion of granting pre-arrest bail to the petitioner. There is need to create awareness among patient community about the purpose of the Healthcare Act and its impact on perpetrator of violence against doctors and damage to property is not good for society and ultimately loser would be themselves.

Keywords: Violence, Offence, Pre-arrest bail, Bailable offence, Non-bailable offence

INTRODUCTION

Attacks against doctors and medical institutions have been on an unprecedented rise in the last one and half decade. Mindful of the pernicious effect of such attacks, Kerala became the pioneer in enacting a law on violence

against doctors. **The Kerala Healthcare Service Persons and Healthcare Service Institutions (Prevention of Violence and Damage to Property) Act, 2012** (‘the Healthcare Act’) was enacted to curb the evil of such violence.

The definition of the word ‘**violence**’ in the statute is clearly indicative of the purpose behind the Act. The preamble to the aforementioned Act states that it is enacted to prohibit violence against healthcare service persons and to prevent damage and loss to property in healthcare service institutions. [Para 1]

Facts of the Case

Petitioner is alleged to have wrongfully restrained a doctor (the defacto complainant) on 12.04.2022 and threatened her while she was on her way from the doctor’s room to the casualty of the hospital, thereby causing obstruction to her official duty and committing the offences under sections 341, 353 and 506 of the Indian Penal Code, 1860 (for short ‘the IPC’) and section 3 and 4(1) of the Healthcare Act. [Para 2]

Case before Kerala High Court for Pre-Arrest Bail

In application for pre-arrest bail, petitioner pleads that he had met with a motor vehicle accident on 10.04.2022 and though there were no external injuries, due to pain in his body, he went to the Taluk Hospital, Pattambi on 12.04.2022 and on consultation with the casualty Doctor, he was advised to take an X-ray of his spine.

Despite waiting for more than 1½ hours, since his X-ray was not taken, he approached the Public Relations Officer of the hospital, who directed the petitioner to meet the duty Doctor at casualty. Due to the pain, petitioner could not wait further and therefore he met the defacto complainant and apprised her about the painful condition.

However, unmindful of petitioner’s condition, defacto complainant is alleged to have reacted in a hostile manner and threatened not to treat him and later petitioner learnt that a complaint was filed against him, resulting in the registration of the present crime. Thus, it was contended that petitioner had not committed any offence as alleged. [Para 3]

The petitioner vehemently contended that petitioner is innocent of the allegations and that he had not committed any of the offences alleged. It was further contended that as per the FIR, no injury or assault had taken place, and hence the allegation constitutes only a minor offence, petitioner ought to be released on pre-arrest bail. [Para 4]

Ld. Public Prosecutor on the other hand submitted that, though the offences under the IPC are bailable, the provisions under the Healthcare Act are non bailable and that granting pre-arrest bail to the petitioner would prevent the custodial interrogation, which is essential in the peculiar circumstances. [Para 5]

Purpose of the Healthcare Act

As mentioned in the exordial of this judgment, the Healthcare Act has been enacted with a specific purpose. An abstract of the **Statement of Objects and Reasons** of the Act is apposite in this context and is extracted as below:

1. Various organizations complained that there were attacks against doctors, hospitals and other employees working in hospitals and submitted representations before the Government to enact a separate law to protect doctors and other employees working in healthcare service institutions and hospitals in the wake of attacks on them at various parts of the State.
2. The Government became convinced that there is situation necessitating a legislation to be made to prohibit violence against healthcare service persons and to prevent damage and loss to property in healthcare service institutions. Hence, Government decided to define violence against hospitals and to bring such activities within the ambit of a separate law.” [Para 6]

Observations of Kerala High Court

The aforesaid abstract of the **statement of objects**

and reasons, indicate that the Act has been enacted to curb violence against doctor and medical institutions.

Widest possible meaning of word Violence:

The definition of the word ‘**violence**’ in Section 2(e) is enacted with the objective of giving the term the widest amplitude possible. It reads as below: “**Section 2(e) “violence”** means activities causing any harm, injury or endangering the life or intimidation, obstruction or hindrance, to any healthcare service person in discharge of duty in any healthcare service institution or damage or loss to property in healthcare service institutions.” [Para 7]

Thus, every harm, intimidation, obstruction or hindrance to a healthcare service person, in discharge of duty is treated as violence. Section 3 of the Healthcare Act prohibits violence against healthcare service persons and is made non-bailable as per section 4(4) of the Act. The intention of the legislature is unambiguous.

Any act of intimidation or obstruction or hindrance to a healthcare service person must be curbed. The salutary objective behind the Healthcare Act and the wide meaning ascribed to the word violence cannot be ignored while considering an application for pre-arrest bail. The legislative intent is manifest from the definition of the word ‘violence’ and the offence having been made non-bailable. The statute regards even an obstruction or hindrance, if committed on a healthcare person as a grave offence.

Thus, it cannot be held that absence of an assault on the doctor entails a person accused of an offence under the Healthcare Act to be released on pre-arrest bail. In this context this Court bears in mind that, by granting pre-arrest bail in a non-bailable offence, the court is in effect, converting a non-bailable offence into a bailable offence. [Para 8]

SUMMARY AND CONCLUSIONS

A physician with trepidation, a surgeon with trembling

hands and a disquiet nurse can lead to wrong diagnosis, failed surgeries and improper nursing care. Life of several patients could fall into peril consequently; the public at large can become prejudiced. If the Act is to achieve its purpose, Courts must bear in mind the wide definition of the term ‘**violence**’, which is nestled under the umbrella of a non-bailable offence. [Para 9]

Protecting an accused that is alleged to have committed an offence under the Healthcare Act, with an order of pre-arrest bail, will be incongruous to the legislative mandate. Bearing in mind the objective of the Act, if pre-arrest bail is granted to the petitioner, a wrong message will also be sent to the public. Reckoning the nature and gravity of the offence committed by the petitioner, High Court is not inclined to exercise the discretion of granting pre-arrest bail to the petitioner. [Para 10]

However, if the petitioner surrenders himself before the Investigating Officer within seven days, the officer shall subject him to interrogation. If after interrogation petitioner is arrested, the Investigating Officer shall produce him before the jurisdictional Magistrate immediately, and if any application for bail is preferred, the same shall be considered by the Magistrate in accordance with law. This bail application is dismissed. [Para 11]

REFERENCES

- [1] Bechu Kurian Thomas, J. Arun P. vs. State of Kerala and Ors., Bail Appl. No.3186 of 2022 (Crime No.143/2022 of Pattambi Police Station, Palakkad), Date of Judgment: 20.06.2022. Kerala High Court (Ernakulam).
- [2] The Kerala Healthcare Service Persons and Healthcare Service Institutions (Prevention of Violence and Damage to Property) Act, 2012.

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