

## GRASP/NOVEMBER 2013/DOS AND DON'TS / LALIT KAPOOR

### THE ORDEAL AND REDEMPTION OF DR PRAFUL DESAI

The medical profession heaved a collective sigh of relief when the doyen of Oncosurgery Dr Praful Desai was finally acquitted of all criminal charges last month by the Supreme Court of India, the highest judicial body of the country.

Emerging from the saga of Dr Desai, are a number of dos and don'ts which I propose to identify and which I feel can be usefully stored in one's memory.

The facts of the case may not be fully known to most of you. So let me recapitulate the same, a long and tortuous narration though it may be, spanning as it does over a quarter of a century!

A patient Mrs. Leela Singhi was treated for Breast Cancer at Bombay Hospital in **1977** by Dr J.C. Paymaster and his assistant Dr Mukherji. In **1984**, she developed lung metastasis for which she was treated at Bombay hospital. In **1985**, on the advice of Dr Paymaster, her husband Mr. P.C.Singhi took her to Sloan Kettering hospital in New York for further treatment of the metastatic breast cancer. In **1987**, she developed abdominal pain and the patient was again taken to Sloan Kettering hospital for treatment. While in USA, she developed vaginal bleeding and a Gynecologist did a pelvic exam under GA and took a biopsy from a growth in the cervix. A diagnosis of metastasis in the cervix was made. A hysterectomy was proposed but since the bleeding stopped with hormones, medical treatment, etc the American doctors, Dr Greenberg and Dr Brockunier, decided, surgery was not indicated presently, though she would have to be re-evaluated subsequently.

In the meantime, Dr Paymaster retired from Bombay hospital. On her return to India, the patient continued to consult his assistant Dr Mukherji and take his advice since he had been involved in her treatment for several years. Within just a week of return from USA, the patient developed recurrence of uterine bleeding. Dr Mukherji made a home visit and examined the patient at her residence and gave an admission note on his own letter head for admission to Bombay hospital. Dr Mukherji was Asstt. Honorary Surgeon at the Bombay hospital. As per the prevalent practice at Bombay hospital, the Asst Honorary surgeons could treat and operate patients independently. However, there was no provision to admit them under their own name and had necessarily to do so under the name of the senior surgeon. Accordingly, the patient was admitted to the hospital under the name of Dr Praful Desai, being the senior surgeon, but

without his prior consent, knowledge or approval. Apparently, it was possible to do so as per the existing hospital protocol.

Following admission, Dr Mukherji commenced treatment and initiated various investigations including CT scan. etc., A week after admission, Dr Mukherji decided to take a second opinion from Dr Praful Desai. Accordingly, he wrote a note on the case paper requesting Dr Praful Desai's opinion on the case. Dr Desai saw the patient for the first time after he was referred the patient. After examination, Dr Desai opined that Exploratory Laparotomy was indicated to ascertain whether hysterectomy could be carried out so as to stop the bleeding. There was no question of Dr Desai operating the patient as he had merely been asked to give his opinion by another independent surgeon. It was not as if the case had been handed over to Dr Desai for further treatment nor had he been requested by Dr Mukherji or the patient to assist him in the operation.

Quite clearly, there was no need for Dr Mukherji, a cancer surgeon himself, to 'refer' the patient to Dr Desai if she was Dr Desai's patient to begin with.

in conformity with the code of ethics and professional etiquette, it is expected, that no doctor get involved in the treatment of the patient of another doctor / colleague unless it is specifically requested / solicited by that doctor. Even a patient's request for opinion of a particular doctor ought to be routed through the treating doctor. Not following this norm could easily be construed as being unwarranted interference, unethical and at the worst, an attempt to 'snatch' another doctor's patient.

Dr Mukherji duly obtained certificate for fitness for surgery from a Physician of Bombay Hospital and took prior appointment from an anesthetist for the surgery.

On opening the abdomen, Dr Mukherji found extensive plastering of the intestines and plenty of ascitic fluid all over the abdomen and felt further dissection would be hazardous. He sought the opinion of Dr Praful Desai who happened to have just concluded another surgery in the adjoining operation theatre. Upon being told of the findings by Dr Mukherji, Dr Desai advised him to close the abdomen, this being the best course in the circumstances.

A few days later, the patient developed a faecal fistula which was managed by Dr Mukherji with the help of other consultants in Bombay Hospital. In the course of the 3 month post-op stay in Bombay hospital, Dr Desai was never asked by Dr Mukherji to see the patient again. The Patient died at home 14 months after the surgery due to disseminated malignancy.

The husband of the patient Mr. Singhi wrote a complaint to the Chairman of Bombay hospital making allegations against the doctors and hospital. His allegation against Dr Desai was that though the patient had been admitted under Dr Desai, and Dr Desai was supposed to operate

the patient, this did not happen and all subsequent problems were due to this. This was a breach of contract. Additionally; he alleged this amounted to unethical practice on the part of Dr Desai.

He also sent a legal notice demanding compensation of Rs 15 lakhs from the management of Bombay hospital and the doctors.

Dr Desai gave an appropriate reply to the management stating that he had no duty to operate the patient as her surgeon was Dr Mukherji. It was only account of the technical requirement of Bombay hospital that his name figured on the case paper.

Another issue which was vociferously argued by Mr. Singhi was that Bombay hospital had raised a bill in favor of Dr Praful Desai for Rs 5000, being his professional fees. This proved that Mrs. Singhi was Dr Desai's patient. Bombay hospital clarified in the court subsequently, that this amount was wrongly credited to Dr Desai. When this was detected by the Accounts staff that Mrs. Singhi was not Dr Desai's patient and he had not operated her, the bill was corrected and the entry was deleted. Dr Desai never received this amount. Such errors essentially occurred on account of the practice of putting the senior surgeon's name on the case paper and not the operating surgeon's name.

In May **1988** Mr. Singhi filed a complaint against Dr Desai before the Maharashtra Medical Council.

In September **1988**, Mr. Singhi filed a criminal complaint against Dr Desai to the DGP Maharashtra who forwarded it to the Azad Maidan Police station.

In Feb **1991**, MMC delivered its verdict and held Dr Desai guilty of misconduct and issued him a warning. Soon after, armed with the MMC judgment, Mr. Singhi approached the Police again, wrongly representing that Dr Desai had been found guilty of criminal negligence by the Medical Council and hence criminal proceedings must be launched against him. Accordingly, Police filed criminal charges against Dr Desai and Dr Mukherji under section 338 and the proceedings were initiated in the court.

In June **2009** Mr. Singhi wrote to the Joint Police commissioner and the Magistrate hearing the case that Dr Mukherji's name should be dropped as an accused. In Nov **2010**, just when the trial was about to conclude and the stage of evidence had closed, the magistrate passed an order dropping the name of Dr Mukherji as an accused, effectively acquitting him. The case against Dr Desai continued.

In July **2011** the metropolitan magistrate convicted Dr Desai for offences punishable under sec 338. In March 2012 the session's court judge upheld the conviction of Dr Desai by the lower

court. In October **2012**, Dr Desai's appeal in the Bombay High Court was rejected and the conviction upheld.

In November **2012**, Mr. Singhi again wrote to The MMC asking them to cancel Dr Desai's registration in view of his conviction by the court.

In November **2012** Dr Desai filed a Special Leave Petition in the Supreme Court challenging his conviction..

In September **2013**, the Supreme Court acquitted Dr Desai of all criminal charges and expressed surprise at discharge of Dr Mukherji by the lower court even though he was the surgeon who had actually operated the patient.

### **Comments on complaints made by Mr. Singhi before MMC**

The patient's husband complained to the MMC against Dr Desai twice viz in **1988** and in **2012**.

In the complaint filed in **1988**, MMC gave its verdict in Feb 1991. The manner in which the inquiry was conducted is an intriguing story by itself and needs to be told at length some day in the future. Be that as it may, Dr Desai was found guilty of professional misconduct by the MMC under Para 15 of MMC code of ethics and Para 3 of MCI code of ethics. He was told: "... You are therefore strictly warned and you should therefore be careful in future in observing the code of ethics strictly while practicing medical profession" (exact words)

Considering the manner in which the inquiry had been conducted and the reasoning of the verdict (not reproduced here), had Dr Desai challenged the MMC order in the Bombay High Court, it was a certainty that he would have got a stay on the order. The subsequent course of events could have been quite different, since the criminal charges were initiated on the basis of MMC finding Dr Praful Desai guilty (though of misconduct and not criminal negligence). Incidentally, the MMC itself had strongly condemned the practice of Bombay hospital of admitting patients under the name of a senior surgeon. A stay order from the Bombay HC, which Dr Desai would have got for the asking, would have prevented the criminal proceedings.

Ironically, in 1988 itself, when the complaint against Dr Desai was made to MMC, a judgment was passed by MMC against another senior surgeon, Dr Bhanu R. Shah, de-registering him following a complaint in a case of death of a 75 year old patient several days after being operated for Piles. Being aggrieved by the order and finding it to be perverse, the surgeon moved the Bombay HC. The High court judge Justice S.C. Pratap not only stayed the MMC order but passed severe strictures against the MMC for the shoddy manner in which they had conducted the inquiry. A copy of this judgment is in my possession.

Justice Pratap castigated the MMC and advised it to first learn how to conduct an enquiry. The net effect was that Dr Shah's de-registration was quashed.

**The first lesson in the Praful Desai saga therefore is that no Court, Council or Forum is infallible,. In case you feel aggrieved by an Order and perceive it be perverse or capricious, and as the lawyers say, 'appears to be against the principles of natural justice', please knock the doors of the superior court. It could change the course of events in your favour.**

**Also, 'a mere warning' from MMC should not be brushed away lightly. If you feel it is unreasonable, it should be challenged.**

In **2012**, Mr. Singhi again approached the MMC and wanted MMC to de register Dr Desai on the grounds that he had been convicted by the High Court and had undergone imprisonment for 1 day till the rising of the court and paid a fine of Rs 50,000. He also wrongly claimed that Dr Desai's application for SLP in Supreme Court had been rejected. This was clarified by Dr Desai and MMC decided to await the SC verdict before deciding on its response. To the credit of MMC, it took this fair decision despite Mr. Singhi exerting tremendous pressure on MMC through political and bureaucratic sources.

### **Comments on conduct of Dr Mukherji**

In the sequence of events that unfolded from **1988**, it is very obvious that Dr Mukherji developed very cordial relations with the complainant Mr. Singhi. So much so, that eventually the case virtually got converted into Singhi and Mukherji Vs Dr Desai.

In **2009**, as a result of this friendship, Mr. Singhi wrote to the Joint Police Commissioner and informed the Court that he would like to drop the name of Dr Mukherji from his complaint. This request was put at an advanced stage in the proceedings when all evidence had been adduced and the case was nearing conclusion. Mr. Singhi's request was granted and Dr Mukherji's name was removed from the complaint.

Subsequently, Mr. Singhi and Dr Mukherji formed an NGO **SOCIETY FOR PUBLIC HEALTH AWARENESS AND ACTION AGAINST MEDICAL MALPRACTICES**. Mr., Singhi –Founder Chairman, **Dr Mukherji –Hon Secretary**. The avowed aim of the organization, among other things was to help patients take action against "...the many medical personnel who behave as 'merchants of death and disease'"

Thus the transformation of Dr Mukherji from Accused No 2 to Collaborator with the complainant was complete.

The Hon'ble Supreme Court, in its Sept 2013 judgment, took note of this fact and drew relevant conclusions and incorporated them in the judgment.

I do not know what the compulsions of Dr Mukherji were, but his conduct is truly deserving of the strongest condemnation.

### **Comments on conduct of Mr., Singhi**

Mr. Singhi, a former IAS officer, convinced himself, and a lot of other people, that a grave malpractice had occurred in the treatment of his wife, a patient with end-stage malignant disease and disseminated metastasis. His perceived grievances charged him to go hammer and tongs after Dr Praful Desai with a doggedness (and viciousness) which was as incredible as it is unprecedented. Somewhere down the line it became for him a massive ego trip and his past experience in positions of power in the Government only had an additive effect.

He utilized all his resources and clout to mount an offensive against Dr Desai to pursue his single-point agenda of 'teaching Dr Desai a lesson'.

Apart from filing a host of legal cases in various fora , he resorted to despicable methods to distort the facts. He used his influence to adopt extra-legal methods like promoting trial by media, despite the matter being *sub judice*. His aim was to sensationalise the issue and create a bias against Dr Desai.

In September **1996**, Singhi gave an interview to a magazine HEALTH AND NUTRITION in which he made the following statements:

“Dr Desai has murdered my wife. He is a naked murderer in the guise of a doctor. He is also a cheat, because Bombay hospital charged Rs 5000 in his name. I have filed an FIR against Dr Desai for cheating and forgery also.”

He also wrote to all the possible authorities making libelous statements against Dr Desai. Dr Desai initiated contempt proceedings against Singhi in Bombay High Court for his interview to HEALTH AND NUTRITION. Justice Jhunjhunwala passed strictures against him and he was compelled to render an apology to the court . The judge had labeled Singhi's behavior as “unwarranted, baseless and motivated”

ON 15<sup>th</sup> December 2012, Singhi got ABVP Hindi news channel (Ex-Star news) to air a highly damaging and libelous TV programme called SECOND OPINION on his case. It was a horrifying travesty of facts. I have a recording of the same with me.

The programme converted the events of the case into a drama with professional actors and actresses (with Dr Mukherji thrown in as a guest artiste) Facts and fiction were cleverly mixed resulting in complete distortion of the story.

Dr Desai sent a notice to the TV Channel and made a complaint to the News Broadcasters Association (NBA). AMC too sent a notice to the channel and NBA. The matter was in the Supreme Court and not yet been disposed off and the Channel had no business to defame Dr Desai. The last word on this has yet to be heard.

### **Comments on Dr Praful Desai**

Throughout the ordeal Dr Desai conducted himself with great dignity, like a gentleman. He had the courage of his convictions that he had done no wrong and fought for the principles though he was offered short-cuts many a time. His stand was vindicated and he got justice at last when the Supreme Court cleared him of all criminal charges. In spite of his advanced age, he continued to fight with grit and determination convinced as he was of the rightness of his cause.

To conclude:

- Hospital managements need to be sensitized to devise transparent systems so that patients have unequivocal understanding of their protocol. Any scope for ambiguities in the minds of patients ought to be clarified consciously. Specific lacunae in the system must be brought to the notice of the Management by Consultants of the hospital in **writing**.
- Medical organizations must endeavor to develop greater rapport with and better access to the Media so as to be in a stronger position to assist a member in getting an opportunity to clarify his or her stand. In absence of this, the one-sided versions would get credence of the public merely by default. This becomes especially important if the opposite party is well-connected, as in the above case.
- Doctors being treated as criminals indiscriminately, in complaints against them following medical complications, needs to be challenged legally. A couple of Supreme court judgments, putting this issue in the proper perspective, are being followed, in

reality neither in the letter nor in the spirit in which these judgments have been delivered . AMC ought to take up the challenge of righting this wrong by knocking at the right doors.

- After being witness to the medico-legal problems of our members , at close quarters for nearly 3 decades, I have come to the sad conclusion that the worst enemies of Doctors are-----Doctors. It is often claimed, especially by the lay public that doctors protect each other. I think this is the biggest myth. The reality is quite the opposite. We need to realize that though one may derive vicarious pleasure in the problems of a colleague, and worse, even contribute to the intensity of these problems, in the long run it damages the entire profession of which you are part. As a matter of fact , Associations need to be more proactive in resisting unwarranted and highly motivated assaults on medical professionals who , in my opinion ,can presently be categorized among the ' weaker sections of society'.

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