

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

RESERVED ON: 22.05.2012
% PRONOUNCED ON: 31.05.2012

+ CRL.REV.P. 64/2006

DR.R.R.RANA Petitioner

Through : None.

versus

STATE Respondent

Through : Mr.Navin Sharma, APP.

CORAM:
HON'BLE MS. JUSTICE PRATIBHA RANI

1. By this revision petition filed under Section 397 read with Section 401 Cr.P.C. the petitioner is impugning the order dated 14.09.2005 whereby the learned M.M ordered to frame charge against the petitioner Dr.R.R.Rana (accused in case FIR No.48/2000, under Sections 338/420 IPC, registered at P.S. Seema Puri, Delhi) for committing the offence punishable under Section 338/420 IPC.

2. In brief the case of the prosecution is that Smt. Kusum Pahwa, wife of the complainant Manmohan Pahwa was pregnant and she along with her husband contacted the petitioner for medical termination of pregnancy (MTP). On 07.01.1997 the wife of the complainant visited the clinic of the petitioner to get the pregnancy terminated in his clinic i.e. Munpee Clinic and Fertility Centre. After keeping the wife of the complainant in the clinic for a few hours, the petitioner

informed the complainant and his wife that the MTP has been done. He charged Rs.1,500/- and discharged the patient Smt. Kusum Pahwa.

3. After discharge from the clinic, since certain complications developed, the complainant got the ultrasound test of his wife conducted at Bhupender Clinic, Bulandshahr (U.P.) on 03.02.1997 and the ultrasound report confirmed pregnancy of 13 weeks.

4. It is also the prosecution case that the complainant again contacted the petitioner on 05.02.1997 and confronted him with the ultrasound report. On this, Dr.R.R.Rana, the petitioner admitted his mistake and offered to conduct the case at Rajdhani Nursing Home, A-5, Jagatpuri, Shahdara, Delhi on 06.02.1997. The complainant along with his wife reached Rajdhani Nursing Home where his wife was admitted and operated. The complainant was sent to bring some injections and by the time he returned, his wife was unconscious but doctor informed him about the operation being performed. In the evening when his wife regained consciousness, she was in acute pain. The complainant consulted his brother Dr. Baldev Pahwa about the condition of his wife and his brother also talked to the petitioner in this regard. The patient was discharged on 10.02.1997, but the condition of the patient continued deteriorating. Dr.Rana was also made to pay home visit and he left after giving an injection. When the condition of the wife of the complainant became very serious she was

removed to GTB Hospital where the Doctors informed that during operation a hole has been made in the uterus and a cut has been made in the intestine through which the stool passes off the body. Wife of the complainant was again operated in GTB Hospital and remained hospitalized for a long time and suffered from many complications.

5. The complainant also expressed suspicion on the genuineness of the degree of MBBS and MS in Obstetrics and Gynaecology and qualifications of Dr.R.R.Rana, petitioner and prayed for legal action against him. On the basis of complaint and medical record, FIR was registered against the petitioner for committing the offences punishable under Sections 420/120-B/338 IPC. During investigation, it was revealed that Rajdhani Nursing Home had no role in the matter except that space was provided by the said Nursing Home due to personal relations with the petitioner Dr.R.R.Rana who claimed Smt.Kusum Pahwa to be related to him closely and that no amount was charged by Rajdhani Nursing Home for this surgery at its premises.

6. After hearing arguments and discussing relevant case law on the point of charge, the learned M.M, vide the impugned order dated 14.09.2005, formed an opinion that prima facie a case for committing the offences punishable under Sections 420/338 IPC is made against the accused and charged him for the said offences.

7. When the petition came up for hearing, since none had appeared for the petitioner, court notice was directed to be issued to counsel for the petitioner. However, despite service of court notice on counsel for petitioner, he preferred not to appear and argue the case. Learned APP for the State was heard and three days time was given to the petitioner for filing brief written synopsis. The matter was reserved for orders, but till date synopsis has not been filed by the petitioner.

8. The impugned order has been challenged by the petitioner on the ground that no offence under Section 420 IPC can be made out in this case as he has charged the professional fee and irrespective of failure or success of the procedure, charging professional fee does not come within the purview of cheating. Further, the certificate and degrees of the petitioner were found to be genuine during investigation. It is also stated in the petition that the petitioner did not perform MTP on 07.01.97 and the said prescription is not in his handwriting. Even if for the sake of argument it is assumed that the MTP was done on 07.01.97 then there was no possibility of foetus being remained in the womb after MTP. Not only that at the time of admission in GTB Hospital on 11.02.97, the patient gave history of only one MTP conducted about 5-6 days back and not of MTP being done twice. It has been stated that there is no evidence/medical opinion that it was due to medical negligence on the part of the petitioner that the wife of the

complainant suffered complication and pain, hence he may be discharged.

9. On behalf of the State it has been submitted that from the statement of the complainant it has come on record that the petitioner conducted first MTP of wife of the complainant at his clinic for about 5-6 hours and thereafter claiming the operation to be successful, he charged Rs.1,500/- from the complainant. Since the wife of the complainant had continuous abdominal pain, she got the ultrasound done which revealed that despite MTP she was still carrying a pregnancy of 13 weeks. Then accused was again contacted who operated Mrs.Kusum Pahwa for medical termination of pregnancy at Rajdhani Nursing Home and in that process due to his medical negligence the patient suffered a hole in her uterus and cut in the lower part of the intestine and her condition became so critical that she was rushed to GTB Hospital where she had undergone surgery and separate passage had to be made for passing the stool off the body.

10. I have considered the submissions and gone through the record.

11. The legal position is almost settled that at the stage of charge, the Court is not required to consider pros and cons of the case. The Court can only sift and weigh the material for the limited purpose of finding whether or not a prima facie case for framing the charge has been made out. In my opinion, the learned M.M has taken into account all the relevant material

and passed the order impugned herein following the parameters laid down in various judgments referred to by him in the said order.

12. In the case ***Sajjan Kumar vs Central Bureau of Investigation, JT 2010 (10) SC 413***, after considering the numerous judgments, the Apex court laid down the following guidelines to be considered by the Courts while framing charge:-

(i) The Judge while considering the question of framing the charges under Section 227 of the Cr.P.C. has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

(ii) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing a charge and proceeding with the trial.

(iii) The Court cannot act merely as a Post Office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the Court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the Court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the Court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value discloses the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal."

13. In the instant case from the statement of the complainant as well as prescription slip of Munpee Clinic which is printed on the letter head of the petitioner, prima facie it is revealed that on 07.01.1997 by falsely representing to the complainant that medical termination of pregnancy has been done, he induced the complainant to part with Rs.1,500/-. The ultrasound report dated 03.02.1997 revealed 13 weeks pregnancy meaning thereby that the petitioner had cheated the complainant by falsely misrepresenting about the termination of pregnancy. The contention made on behalf of the petitioner that irrespective of the success or failure of the procedure charging of professional fee does not attract the provisions of Section 420 IPC, is not applicable in this case. Had it been the case where the termination of MTP had been done but thereafter some other complication had arisen, the petitioner could have taken the plea that irrespective of success or failure of the procedure, he was entitled to his professional fee. But here in

this case, MTP was not done at all as was revealed from ultrasound report certifying 13 weeks pregnancy. The petitioner by falsely representing that the MTP has been done made the complainant to pay Rs.1,500/- which the petitioner knew that he has not done and also stood confirmed from the ultrasound report confirming 13 weeks pregnancy. This prima facie makes the petitioner liable to be charged for commission of the offence punishable under Section 420 IPC.

14. Another contention of the petitioner that at the time of admission in GTB hospital, wife of the complainant did not mention about the first MTP or there was only one MTP conducted about 5-6 days back, does not cut much ice for the reason the complainant knew that MTP had been done only 5-6 days back at Rajdhani Nursing Home and prior to that he had been cheated by the petitioner by falsely misrepresenting that the MTP had been done.

15. Now the question arises whether for making a hole in the uterus and making a cut in the intestine through which the stool passes off the body, the petitioner can be charged for commission of offence punishable under Section 338 IPC.

16. The decision of ***Indian Medical Association vs. V.S.Shantha (1995) 6 SCC 651*** has adopted Bolam test as guidelines for the Courts to adjudicate the medical negligence. In ***Jacob Mathew vs. State of Punjab*** and Anr. (2005) SCC (Cri.) 1369, the legal principles laid down in ***Dr.Suresh Gupta vs Govt. of NCT of Delhi and Anr. (2004) 6 SCC 422*** were

re-affirmed by the Supreme Court. While summing up the conclusion, it was held as under:-

“(3). A professional may be held liable for negligence on one of the two findings: either he was not possessed of the requisite skill which he professed to have possessed, or, he did not exercise, which reasonable competence in the given case, the skill which he did possess. The standard to be applied for judging, whether the person charged has been negligent or not, would be that of an ordinary competent person exercising ordinary skill in that profession. It is not possible for every professional to possess the highest level of expertise or skills in that branch which he practices. A highly skilled professional may be possessed of better qualities, but that cannot be made the basis or the yardstick for judging the performance of the professional proceeded against on indictment of negligence.

(4) The test for determining medical negligence as laid down in Bolam’s case [1957] 1 W.L.R. 582, 586 holds good in its applicability in India.”

17. In the instant case, the nature of injuries suffered by the wife of the complainant have been described as major which can be termed as grievous. While treating a patient for medical termination of pregnancy, the nature of injuries which the wife of complainant allegedly suffered at the hands of the petitioner are such that no professional or skilled person in his ordinary senses and prudence could have caused. It appears that the petitioner did not have even the ordinary skill to perform the MTP.

18. *Prima facie*, taking into consideration the material adduced by the prosecution against the petitioner which is to be proved during trial, I am of the considered view that while ordering for framing of charge against the petitioner for committing offences punishable under Sections 420/338 IPC,

no illegality or infirmity has been committed by the learned M.M. The impugned order requires no interference by this Court.

19. The revision petition is hereby dismissed with no order as to costs. Trial Court record along with copy of this order be sent forthwith. The petitioner is directed to appear before the concerned Trial Court on 04th July, 2012 to face the trial.

(PRATIBHA RANI)
JUDGE

MAY 31, 2012
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