

Court No. - 10

Case :- CRIMINAL MISC. WRIT PETITION No. - 8640 of 2023

Petitioner :- Dr. Parvez Ahmad And Others

Respondent :- State Of U.P. Thru. Prin. Secy. Home Lko. And Others

Counsel for Petitioner :- Mohd. Tabrez Iqbal

Counsel for Respondent :- G.A.

Hon'ble Mrs. Sangeeta Chandra,J.

Hon'ble Narendra Kumar Johari,J.

Heard learned counsel for the petitioners and learned A.G.A. for the State-respondents.

This petition has been filed praying the following reliefs:-

(a) Issue a writ, order or direction in the nature of certiorari thereby quashing the impugned first information dated 1.11.2023, vide case crime no. 149 of 2023 under Section 304 IP.C. and 15 (3) of the Indian Medical Council Act, 1956, lodged at Police Station- Sadullah Nagar, District- Balrampur as contained in Annexure-1 to this writ petition.

(b) Issue a writ, order or direction in the nature of mandamus commanding the opposite party not to harass, detain or prosecute the petitioner in pursuance of the impugned F.I.R.

It has been submitted by the learned counsel for the petitioners that as per prosecution story the wife of the was pregnant and on 31.10.2023 at about 7:00 p.m. the opposite party no. 3 brought his wife to Roshan Hospital, Sadullah Nagar, Rehra Road for ultrasound. The petitioner no. 1 informed him that the condition of his child is not good and his wife should be admitted in hospital.

He got his wife admitted in the hospital. At about 9:00 p.m. Dr. Parvez Ahmad told him that his wife have to undergo surgery. Blood sample of informant's wife was sent to Raj Pathology for testing and her hemoglobin was reported at 8/5. The informant raised an objection that hemoglobin of his wife being less she should not be operated upon. The petitioner scolded him and told him that he was the doctor and not the informant and directed him to arrange Rs. 20,000/- for surgery. The informant deposited Rs. 20,000/- and, thereafter accused persons i.e. all

the petitioners operated the wife of the informant at around 10:26 p.m. Later on the condition of the wife became serious and she died on reaching District Hospital Gonda.

The doctor on duty told the informant that she should not have been operated on such low hemoglobin level. The informant enquired into the medical decree of the petitioners and found that the petitioner no. 1, who is BUMS Doctor along with Aftab Ahmad and Sadab Ahmad and one other doctor Karsaz, who are also BUMS have conducted surgery without being authorized to do so, therefore, the wife of the informant died. It has been argued by the learned counsel for the petitioners that petitioner nos. 1 and 2 who possess BUMS degree. The petitioner no. 1 in association with one Dr. Sarfarz Ansari MBBS (MS, Surgery) run the hospital by the name of Roshan Hospital as Maternity Centre at Rehra Road, Balrampur. There are at least two doctors i.e. Dr. Sarfarz Ansari and Dr. R.P. Singh, who are MBBS and MS (Surgery), who are associated with the hospital and no surgery is conducted by the petitioners. All the surgery are being conducted by Dr. Sarfarz Ansari MBBS (MS, Surgery).

Dr R. P. Singh has also given a certificate/ affidavit. A copy of the same has been filed as Annexure-5 to the writ petition wherein he says that he is MBBS (MS) and he had conducted the surgery and that no other person including the petitioners was involved in the same and they have been falsely implicated.

This Court has perused the affidavit filed as Annexure- 5 to the writ petition wherein Dr. R.P. Singh MBBS (MS) has stated that knowledge of F.I.R. being registered against Dr. Parvez Ahmad, Dr. Krsaz, Dr. Aftab and Dr. Sadab, which cases false. Dr. Sadab Ahmad and Dr. Aftab Ahmad are not doctors. The patient Reena Kumari was operated upon on 31.10.2023 after all investigation by Dr. R.P. Singh himself, who is authorized to conduct such surgery. The risk involved in such surgery was informed to the informant and their relatives. They agreed to operation being conducted. Thereafter, the operation was conducted with utmost care by Dr. R.P.Singh.

The counsel for the petitioners place reliance upon the judgment rendered by Hon'ble Supreme Court in the case of **Jacob Mathew Vs. State of Punjab (2005) 6 SCC 1** and paragraphs nos. 50, 51 and 52 thereof, which are being quoted hereinbelow:-

"50. As we have noticed hereinabove that the cases of doctors (surgeons and physicians) being subjected to criminal prosecution are on an increase. Sometimes such prosecutions are filed by private

complainants and sometimes by police on an FIR being lodged and cognizance taken. The investigating officer and the private complainant cannot always be supposed to have knowledge of medical science so as to determine whether the act of the accused medical professional amounts to rash or negligent act within the domain of criminal law under Section 304-A of IPC. The criminal process once initiated subjects the medical professional to serious embarrassment and sometimes harassment. He has to seek bail to escape arrest, which may or may not be granted to him. At the end he may be exonerated by acquittal or discharge but the loss which he has suffered in his reputation cannot be compensated by any standards.

51. We may not be understood as holding that doctors can never be prosecuted for an offence of which rashness or negligence is an essential ingredient. All that we are doing is to emphasize the need for care and caution in the interest of society; for, the service which the medical profession renders to human beings is probably the noblest of all, and hence there is a need for protecting doctors from frivolous or unjust prosecutions. Many a complainant prefers recourse to criminal process as a tool for pressurizing the medical professional for extracting uncalled for or unjust compensation. Such malicious proceedings have to be guarded against.

52. Statutory Rules or Executive Instructions incorporating certain guidelines need to be framed and issued by the Government of India and/or the State Governments in consultation with the Medical Council of India. So long as it is not done, we propose to lay down certain guidelines for the future which should govern the prosecution of doctors for offences of which criminal rashness or criminal negligence is an ingredient. A private complaint may not be entertained unless the complainant has produced prima facie evidence before the Court in the form of a credible opinion given by another competent doctor to support the charge of rashness or negligence on the part of the accused doctor. The investigating officer should, before proceeding against the doctor accused of rash or negligent act or omission, obtain an independent and competent medical opinion preferably from a doctor in government service qualified in that branch of medical practice who can normally be expected to give an impartial and unbiased opinion applying Bolam's test to the facts collected in the investigation. A doctor accused of rashness or negligence, may not be arrested in a routine manner (simply because a charge has been levelled against him). Unless his arrest is necessary for furthering the investigation or for collecting evidence or unless the investigation officer feels satisfied that the doctor proceeded against would not make himself available to face the prosecution unless arrested, the arrest may be withheld."

This Court having gone through the F.I.R. and also the instruction sent by the Investigating Officer -Kamlesh Kumar Yadav, Police Station- Sadullah Nagar, District- Balrampur is of the opinion that from the instruction it has come out that CCTV footage of the hospital having been examined from 8:00 p.m. of 31.10.2023 up to 1:00 am of 1.11.2023 i.e. for a period of 5 hours and it was found that Dr. Parvez Ahmad alone was present in hospital.

Dr. Parvez Ahmad-petitioner no. 1 is a BUMS. The petitioner-

Dr. Karsaz Ahama no. 2 is also BUMS and the petitioner no. 3-
Aftab Ahamd is not a doctor at all.

The Court having perused the impugned F.I.R. finds no ground
to show interference.

The writ petition is, accordingly, **dismissed**.

Order Date :- 8.11.2023

Anuj Singh