

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-25733-2011 (O&M)
Reserved on 11.02.2015
Date of decision : 27.04.2015

Daljit Singh Gujral and others

...Petitioners

Versus

Jagjit Singh Arora and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Arjun Partap Atma Ram, Advocate,
for the petitioners.

Mr. Jagjit Singh Arora,
respondent No.1-in person.

JITENDRA CHAUHAN, J.

The present petition under Section 482 of the Code of Criminal Procedure, (for short, 'the Cr.P.C.') is for quashing of criminal complaint No.7506/09/2011 dated 09.06.2008, titled as 'Jagjit Singh Arora Vs. Dr. Jayant Bannerji and others', pending in the Court of learned Judicial Magistrate 1st Class, Chandigarh (Annexure P-4) as well as summoning order dated 26.07.2011 (Annexure 12).

Brief background of the case in hand which requires necessary mention for deciding the controversy is that the impugned complaint dated 09/06/2008 (Annexure P-4) had been filed by Sh.

Jagjit Singh Arora in the Court of Chief Judicial Magistrate, Chandigarh against the accused persons on account of professional misconduct, wrong medication, wrong scientific diagnosis, non availability of requisite life saving equipments, fabrication and forgery of documents, unfair trade practices and criminal medical negligence conducted in the treatment of his wife Mrs. Inderjeet Singh Arora. The complainant had gone to INSCOL Multispeciality Hospital, Sec 34, Chandigarh for a systematic medical checkup and treatment upon physical discomfort being experienced by his wife who was admitted under the scare of suspected ailment of Pulmonary Embolism without any adequate scientific tests being carried out for the same. Initially, the complainant had approached the accused no.1 Dr Jayant Banerjee at his clinic Medi- hub, Madhya Marg, Sector 8-C, Chandigarh for medical treatment after which she was referred to the private clinic of Dr Sudhir Saxena, Cardiologist who on preliminary checkup advised her hospitalisation and the rest of the treatment was referred as per the advice of Dr Banerjee. Upon their advice, Mrs Inderjeet Arora was referred to INSCOL Multispeciality, Hospital, Sector 34, Chandigarh where Dr Banerjee was later found to be positioned as Medical Superintendent. Mrs Arora was not attended by any specialist at INSCOL Hospital but by Resident Medical Officer Dr Paramjeet Singh Mann, accused no.4. Due to inadequate medical attendance and

unnecessary administration of injection, the condition of Mrs Arora worsened and a highly potent TPA (Tissue Plassiminogin Activator) injection meant for acute Pulmonary Embolism was arbitrarily given as a result of which she was almost driven to the brink of death, mental agony and whooping costs which had to be borne by the family on account the strict treatment being conducted in expensive hospitals i.e. Fortis and PGI, Chandigarh for around two and a half years for her treatment .

Henceforth, the impugned complaint (Annexure P-4) which was presented before the learned CJM, Chandigarh was assigned to the court of the learned JMIC, Chandigarh who after appreciating the evidence entrusted the concerned SHO for the registration of case and for conducting investigation vide order dated 13/06/2008 (Annexure P-5). An FIR no. 316 dated 15/06/2008 (Annexure P-7) was registered at P.S. Sector 34, Chandigarh u/s 107, 114, 120-B, 197, 191/192, 338, 405, 406, 419, 420, 464, 465, 468, 470 and 471, Indian Penal Code and Section 15(2)(3), Indian Medical Council Act. Thereafter, a petition was presented before this Hon'ble High Court i.e CRM M- 17013/2008 titled as "Daljit Singh Gujral vs. U.T., Chandigarh" (Annexure P-6), wherein it was challenged that the learned Magistrate had failed to consider the delay in the matter and had totally ignored the law laid down by Hon'ble Supreme Court in medical negligence cases. Thereby,

order dated 13/06/2008 (Annexure P-5) and FIR (Annexure P-7) were quashed vide order dated 19/02/2009 by this Hon'ble High Court and the complainant was directed to re-appear before the court of Judicial Magistrate(1st Class), Chandigarh in the complaint case.

In the impugned complaint case which was filed by Sh. Jagjit Singh Arora in the court of JMIC, Chandigarh, it was thereafter held that a prima facie case is made out against the accused persons 1-4 namely Dr Jayant Banerjee u/s 420/120-B, IPC, Daljit Singh Gujral, Ms. Nimrat Gujral and Dr Parminder Singh Mann u/s 420/467/468/471/326/120-B, IPC and Section 15 of Indian Medical Council Act respectively. No case was made out against accused no. 5 and 6.

Thereafter, CRM M- 25733/2011 was filed in this Hon'ble High Court by Daljit Singh Gujral, Nimrat Gujral and Dr Paramjeet Singh Mann against the complainant and accused no 1 and accused no 5 and 6 for the quashing of the impugned complaint (Annexure P-4) pending in the court of the learned JMIC, Chandigarh and the summoning order dated 26/07/2011 (Annexure P-12) u/s 482, CrPC, whereby notice of motion was issued and proceedings were stayed. The petition CRM M-25733/ 2011 u/s 482, CrPC was dismissed on 16/11/2012 by a co-ordinate Bench of this High Court, wherein the petitioners had challenged the impugned complaint (Annexure P-4) on

the ground that as per the report of Punjab Medical Council dated 03/10/2006 (Annexure P-3), the injection was rightly administered to the patient keeping into account the circumstances and the set up available at that point of time. Moreover, it was contended by the petitioners that the doctors adopted standard medical protocol and procedure in treating and referring the patient and thereby the case of medical negligence as alleged by the complaint is totally ruled out. The respondents on the other hand contended that the Medical Council of India vide letter No. MCI-211(2) (530)/2006-Ethics/18176 dated 03/12/2007 had ordered enquiry through the Senior Superintendent of Police, Chandigarh during pendency of appeal against the order dated 03/10/2006 passed by the Punjab Medical Council on the complaint made by respondent no 1. The respondent no. 1 further contended that the petitioners no.1 and 2 being the Administrators had recruited an unqualified doctor i.e. petitioner no.3 who could not provide the requisite treatment and that the specific evidence of Mr Rajpaul Kapoor (CW-2), Punjab Medical Council (CW-5) and the Chandigarh Police (CW-6) clearly make out the case against the petitioners. After hearing both the sides, this Hon'ble Court held that medical profession being a noble profession where doctors are treated as equivalent to Lord Vishnu, the hospital can't delegate duty to render competent services to the patients in their emergency departments and is supposed to employ

a competent staff specifically the doctors/physicians. There is a lapse on the part of hospital administrators i.e. petitioner nos. 1 and 2 as they failed to exercise both care and skill that any reasonable person would be expected to show in such a profession. The liability of the petitioner stems from the failure to use reasonable care in the maintenance of safe and adequate facilities and equipment i.e. ventilator which was unavailable at the time of emergency. The petitioner no. 3 was not having State Medical Council license to practice medicine as per the Medical Council of India Act, 1961. Thus, the petitioners can't be permitted to practice fraud and play with the innocent lives of patients by cheating them and indulging in touting for procuring the patients which is clear from the affidavit filed before the Income Tax Authorities signed by petitioner no.1 which has been placed on file of trial court as Ex. D3. Thus, it was held by this Hon'ble High Court that the petitioners have been rightly summoned and a prima facie case is made out for various offences against them by the court of learned JMJC on account of the categorical evidence on record in the form of the statement of complainant (CW9) regarding cheating, charging excessive amount for the medicines which were never administered to the patient and the evidence of CW-1 Dr. Sudhir Saxena with regard to the preparation of false and fabricated documents by the accused. In addition to it, there is evidence of the complainant (CW-9) that

signatures of A.S. Arora, complainant's son, have been forged and fabricated on the consent form. CW3, a witness from the Income Tax Department has proved that INSCOL hospital is engaged in illegal touting in medical profession. It is further stated the Expert cardiologist was not even present when the highly potent TPA injection was administered to the patient, false invoices had been prepared by fraud, forgery and cheating. Thus, no illegality or perversity was found in the impugned summoning order. Thereafter vide CRM- 7776/2013 dated 11/02.2013 correction was ordered in the judgment dated 16/11/2012 of this Hon'ble High Court.

However, the petitioners then filed a criminal appeal No. 506-508/ 2014 in the Hon'ble Apex Court which was allowed and the impugned judgment dated 16/11/2012 and subsequent order dated 11/02/2013 were set aside with a direction to re-hear the CRM-25733/2011 afresh. Now, on 11/02/2015, the petition CRM 25733/2011 was listed before this Hon'ble High Court in which arguments were heard and judgment was reserved.

The learned counsel for the petitioners contends that on 01.08.2005, the wife of the respondent No.1 visited Dr. Jayant Bannerjee with the complaint of breathlessness and physical discomfort at the latter's clinic in Sector 8, Chandigarh. She was suffering from Diabetes Mellitus and was under continuous treatment of Dr. Bannerjee

for the last about eight years. It is asserted that Dr. Bannerjee is an M.D. (Medicine) and engaged as a part-time Medical Superintendent with Inscol Hospital. The patient was examined and prescribed urgent blood tests. She was also referred to Prime Diagnostic Centre, Sector 8, Chandigarh, for ECHO and further was also referred to Dr. Sudhir Saxena, a Cardiologist, who is also employed with Inscol Hospital, as Consultant Cardiologist. After examination, the patient was diagnosed with DVT, Pulmonary Thrombosis Embolism and Pulmonary Hypertension and he also noted the words 'acute'. Dr. Sudhir Saxena, in fact, advised hospitalization of the patient and on the same very day, she was admitted to Inscol Hospital. There, she was re-examined by Dr. Bannerjee and the treatment was started. The consent form for the treatment was signed by A.S. Arora, the son of the patient (Annexure P-1). On 02.08.2005, the patient was re-examined by Dr. Banerjee, Dr. Sudhir Saxena and Dr. Ashutosh. After examination and perusing the test reports, the doctors diagnosed the possible element of sepsis and recurrent embolism and an injection TPA was advised. Every aspect of the health problem was discussed and explained to the respondent No.1-husband of the patient, her son and other relatives. It is further averred that the respondent No.1 was duly informed that due to the low SPO2 and hypertension the patient could need ventilator support and as all the ventilators in the hospital were already engaged, so an option

was given to shift the patient to some other hospital. Accordingly, she was discharged on 02.08.2005 on the written request of the son of the patient (Annexure P-2).

The learned counsel, thus, submits that the entire course of the treatment was as per set medical standards and protocol prescribed. The patient was also treated by qualified doctors. On discharge, the hospital had raised a Bill of Rs.1,01,858/-. As against this, the respondent No.1 paid only Rs.30,000/- in cash and for the rest of the bill, a cheque was issued by him. Upon presentation, the cheque was dishonoured on 09.08.2005, 12.11.2005 and 16.11.2005. Thereafter, the respondent No.1 was served with a legal notice and only then, the hospital received the balance amount on clearance of the said cheque on 27.12.2005. As a counter-blast, the respondent No.1 filed a complaint dated 06.12.2005, with the Medical Council of Punjab, i.e. after a delay of about four months. An enquiry was conducted into the said complaint and vide its order dated 03.10.2006 (Annexure P-3), the Medical Council of Punjab exonerated Dr. Bannerjee from the charges levelled against him in the complaint. It was held thus:-

“The doctor has adopted standard medical protocol and procedure in treating and referring the patient. From the record submitted and on the basis of opinion of Dr. Jagmohan Verma, Dr. Rupinder

Singh and Dr. N.P. Singh at no stage medical negligence has been proved against Dr. Jayant Bannerji.”

The learned counsel contends that fact of exoneration of the petitioners by the Medical Council of Punjab vide Annexure P-3 has been concealed in the present complaint with a mala fide intention. It is further stated that respondent No.1 also filed a complaint in the Police Station, Sector 34, Chandigarh in April 2007. The matter was inquired into by the police and the petitioner were found innocent, hence, no FIR was lodged against them. The present complaint has been filed after a lapse of more than three years by concealing the complete facts. The allegation that Dr. P.S. Mann, treated the patient is false as she was treated by the team consisting of Dr. Jayant Bannerjee, Dr. Sudhir Saxena and Dr. Ashutosh. This fact is also substantiated by Annexure P-12, the invoice receipt. As far as Dr. P.S. Mann is concerned, he is posted as Medical Officer in the hospital and he only looks after the administrative work.

Lastly, it is submitted that the patient was treated at the Inscol hospital by qualified doctors/specialists. The treatment was done according to the condition of the patient. He cites ***Jacob Mathew Vs.***

State of Punjab, 2005 (6) SCC 1. and contends that no case of

negligence is made out against the petitioners.

On the other hand, respondent No.1, appearing in person, refers to the statement of Dr. Sudhir Saxena, CW-1, wherein, he has stated that after preliminary examination, he sent the patient back to Dr. Bannerji and thereafter, he was not associated in any way with the treatment of the patient. He was not paid any fee by the Inscol hospital. Thus, the statement of Dr. Sudhir Saxena belies the stand of the petitioners that it was Dr. Sudhir Saxena who referred the patient to the Inscol Hospital. In the process of enquiry before the Punjab Medical Council, it has been stated on behalf of Inscol hospital that “injection ACTILYSE was given under the supervision of Dr. Sudhir Saxena to Inderjit Arora (Regn. No.2010) by Kapil Nayar (Staff Nurse)” whereas, vide Ex.CW1/5, Dr. Sudhir Saxena has specifically denied this assertion stating that “the injection ACTILYSE, alleged to be administered at INCSOL on 02-08-2005 to your wife Mrs. Inderjit Arora, was neither given under my supervision nor I was present at the time when procedure of giving the injection was carried out.”

Respondent No.1 further refers to the statement of CW-8, Satinder Sharma, Manager, Administration and Accounts, Inscol Hospital, to contend that the treatment had been given by Dr. P.S. Mann, and even the discharge summary was issued by him. Dr. P.S. Mann, in fact, is not a qualified doctor to practice allopathy system of

medicines in India. He refers to order dated 03.12.2007 passed by the Medical Council of India (Annexure E-23) addressed to the Senior Superintendent of Police, Chandigarh, to constitute an enquiry against Dr. P.S. Mann, whose qualification is not recognized and as such, is not registered with the Medical Council of India or any State Medical Council. Thus, it is averred that the accused have not only fleeced the respondent financially, but also endangered the life of his wife by engaging quacks like Dr. P.S. Mann. He prays for dismissal of the present petition.

I have heard learned counsel for the petitioners as well as respondent No.1 (in person) and perused the case file carefully.

The short issue that arises for consideration of this Court is whether the learned trial Court, while issuing criminal process against the petitioners that prima facie case against them is made out or that the JMIC has followed the proper procedure prescribed by law.

For exercise of inherent discretionary jurisdiction under Section 482 Cr.P.C., this Court is guided by Asmathunnisa Vs. State of A.P. and another, SC 2011(2), Recent Apex Judgments (RAJ) 388, wherein some of the guidelines have been framed by the Hon'ble Supreme Court which are as under:-

- (i) Where the allegations made in the first information report or the complaint, even if they are taken at their face value

and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(ii) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(iii) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can even reach a just conclusion that there is sufficient ground for proceeding against the accused.

(iv) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

The case has undoubtedly a long history. The manner in which the complainant is fighting for his perceived cause tends to evoke sympathy, which must be avoided at all costs if an objective decision is to be arrived at. Therefore, without going into the apparent

hard fight put in by the complainant against medical malpractices rampant in our society, this Court will confine its findings within the narrow compass of 'due process' and whether the same has been followed by the learned trial Court in issuing criminal process against the petitioners.

This case is marked by numerous allegations and counter allegations, highly disputed facts, documentary evidence as well as counter evidence. This is all at the preliminary stage since the full trial is yet to commence. At first brush, the pleadings in the criminal quashing petition make out a simple case of medical negligence not warranting a criminal prosecution at all. Heavy reliance is placed by the petitioners on the ratio of Jacob Mathew's case (supra) and on the report of the Punjab Medical Council regarding the treatment followed by Dr. Jayant Bannerji.

It is important to highlight here that Dr. Bannerji is not a petitioner before this Court. The petitioners are the Directors of INSCOL Hospital and Dr. Paramjit Mann, i.e. petitioner No.3. Allegations against them are not of medical negligence alone but also of forgery, fraud, fleecing patients and improper medical infrastructure. Especially, Dr. Paramjit Mann, who was recruited and employed by petitioner Nos.1 and 2 to work in INSCOL is not even authorized to practice allopathy system of medicine in India. In additions, there are

serious allegations of fabricating records against petitioner Nos.1 and 2. One such allegations deserves mention, not for the purpose of giving any conclusive finding on the allegations so made in the complaint but to highlight the nature of offence with which the petitioner Nos 1 and 2 have been charged. In the inquiry conducted by Punjab Medical Council, an affidavit was given on behalf of INSCOL regarding an injection having been given by Dr. Saxena to the patient, Mrs. Inderjeet Arora. However, Dr. Saxena, by way of a counter-affidavit has completely denied that he ever treated Mrs. Inderjeet Arora after her admission in INSCOL. Similarly, there are serious allegations of fabricating consent forms bearing signatures of the son of Mrs. Inderjeet Arora.

At the same time, the conduct of respondent No.1 is also to be seen. The first complaint was moved by respondent No.1 to the Medical Council of Punjab, after a delay of more than four months from the date of discharge of her wife. As against the total bill of more than a lac of rupees, he only paid Rs.30,000/- in cash and for the balance amount, a cheque was issued. The said cheque after being dishonoured on 09.08.2005, 12.11.2005 and 16.11.2005 and upon service of legal notice upon him, was finally cleared on 27.12.2005.

Thus, it could be possible that both the parties, to prove each other wrong, have come out with exaggerated versions. Be that

as it may, disputed questions of facts are involved in the present case, which are to be determined by the trial Court after leading of evidence by both the parties.

As regards the impugned summoning order, Annexure P-12, is concerned, the learned trial Court has deeply applied its mind to the entire complainant evidence and thereafter, issued process. No doubt, some of the allegations in the complaint directly relate to improper medical treatment given to Mrs. Inderjeet Arora, but such allegations do not constitute the core of the complaint. The law laid down by Hon'ble Supreme Court in Jacob Mathew's case (supra) was a reflection of a genuine concern shown by the Hon'ble Court regarding misuse of criminal justice system against Medical professions. In my understanding, the complaint involved in the present petition rests on a different footing and raises serious questions not related to medical negligence alone. It is of course reasonable to guide the learned trial Court at this stage that insofar as purely allegations of medical negligence are concerned, as made in the complaint, the trial Court should be guided by adequate and medical evidence from independent sources. If the parameters laid down by the Hon'ble Supreme Court are applied to the facts of the present case, it can't be said that the impugned order of summoning passed by the JMIC, Chandigarh, suffers from any illegality or perversity. In view of the above, this

Court deems it proper to dismiss this petition and direct the petitioners to face trial.

Ordered accordingly.

This order is not an expression of opinion on the merits of the case.

The record of the trial Court be returned immediately. Parties are directed to appear before the summoning Court, Chandigarh on 27.05.2015.

27.04.2015
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(JITENDRA CHAUHAN)
JUDGE