

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CRM-M-3809-2012 (O&M)

Date of decision: October 01, 2015

M.S. Talekar and others

...Petitioners

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA

Present: Mr. J.S. Bedi, Senior Advocate with
Mr. Harpreet Multani, Advocate for the petitioners.
Mr. Gaurav Dhir, DAG, Haryana.

Rajan Gupta, J.

In this petition under section 482 Cr.P.C., petitioners have impugned order dated 1.2.2012, passed by Sessions Judge, Gurgaon whereby application under Section 391 Cr.P.C. filed by the petitioners has been dismissed.

Learned counsel for the petitioners has vehemently argued that the court below has erred in rejecting the application preferred by the petitioners under section 391 Cr.P.C. None of the petitioners was incharge of the hospital at the relevant time. Thus, they were wrongly convicted by the trial court. Even the complaint does not contain any allegations against the petitioners. Instant application was moved by the petitioners during the pendency of appeal to show that they were gainfully employed elsewhere. Appellate court erred in rejecting the

same. He has relied upon judgments reported as *State of Gujarat vs. Mohanlal Jitamalji Porwal and another*, 1987 AIR (SC) 1321 and *Rambhau vs. State of Maharashtra*, 2001 (2) R.C.R. (Criminal) 721.

Prayer has been opposed by State counsel. According to him, prosecution produced evidence to show that petitioners were Directors of the Hospital in question. None of them denied this fact. At the time they sought pre-arrest bail, they themselves claimed to be Directors of the Hospital in question. According to him, trial continued for considerable period. Petitioners never produced any such evidence, now sought to be produced before the appellate court.

I have heard learned counsel for the parties and given careful thought to the facts of the case.

It appears, a complaint under the Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 (hereinafter referred to as “the Act”) was filed by the appropriate authority against seven accused. It was alleged that a secret information was received that Dr. J.L. Mahajan is conducting pre-natal diagnostic technique/procedures i.e. Ultrasonography on pregnant females. A raid was conducted at Albega Hospital, Udyog Vihar Phase III, Gurgaon by a team of doctors and decoy customer was sent for ultrasonography. It was found that one of the accused namely, Dr. J.L. Mahajan conducted the test on payment of Rs.500/-. Two doctors namely, Dr. K.K. Saraswat and Dr. D.B. Lal left the place of occurrence and did not cooperate with the inspection team. Dr. M.S. Talekar and Dr. P.B. Lal were also shown as Directors of

hospital in complaint Ex.P7/A. The trial court came to the conclusion that accused were guilty of offences under the Act and sentenced them accordingly. Petitioners preferred appeal before the court of Sessions at Gurgaon. During pendency of appeal, instant application under section 391 Cr.P.C. was moved. The appellate court found that the application was not bonafide as no such defence had been taken by the accused since the complaint was instituted in the year 2002. Besides, additional evidence sought to be led, would not be relevant for the purpose of decision of the appeal. Petitioners merely wanted to prolong the decision thereof.

I find no infirmity with the order passed. It is evident that the trial continued from the year 2002 to 2011. After statement of the accused under section 313 Cr.P.C. was recorded, 21 opportunities were granted to the accused to lead defence evidence. Ultimately, judgment was pronounced on 25.01.2011. During pendency of appeal, instant application was moved to show that petitioners were gainfully employed elsewhere. In my considered view, the case can be decided on the basis of evidence already on record. The application appears to be totally misconceived and filed with a view to delay the proceedings. There can be no dispute with the proposition of law laid down in *Mohanlal Jitmalji's* case and *Rambhau's* case (supra). However, they are not relevant in the facts and circumstances of the present case. All the pleas sought to be raised by the accused can easily be considered by the appellate court on the basis of material available on record. Proceedings

before the appellate court have remained stayed for almost three years during the pendency of the present revision petition. Incident pertains to the year 2002. In my considered view, no case for interference in inherent jurisdiction is made out. The petition is without any merit and is hereby dismissed.

(RAJAN GUPTA)
JUDGE

October 01, 2015
'Rajpal'

Whether to be referred to reporter? Yes / No