

IN THE HIGH COURT OF PUNJAB & HARYANA  
AT CHANDIGARH

Crl. Misc. No. M-6220 of 2011 (O&M)  
Date of decision : 11.02.2015

Dr. Anant Ram

.....Petitioner

versus

Arjun Dass Girdhar

...Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Abhishek Sethi, Advocate  
for the petitioner.

Mr. C.S. Bakhshi, Addl.A.G. Haryana

\*\*\*

RITU BAHRI, J.

Challenge in the present petition is to order dated 30.11.2010 passed by the learned Addl. Sessions Judge Fatehabad (Haryana), whereby the petitioner has been summoned as an additional accused in an application under Section 319 Cr.P.C to stand trial in case F.I.R No. 118 dated 17.04.2006 registered under Section 304-A IPC, at P.S City Tohana, Distt. Fatehabad (P-1)

At the very outset, learned counsel for the petitioner has placed on record the copy of judgment dated 03.01.2015 passed by JMJC, Tohana, District Fatehabad whereby the co-accused of the petitioner i.e Dr. Rajesh Kakkar and Dr. Abhishek Kakkar have been acquitted.

Brief facts of the prosecution case are that on

17.04.2006, Arjun Dass Girdhar has moved a complaint to SHO P.S. City Tohana for taking action against Dr. Sunil Bajaj, Dr. Rajesh Kakkar, Abhishek Kakkar and Dr. Anant Ram, Barwala with the allegations that the wife of the complainant namely Asha Girdhar was having pain in his stomach and to cure her on 14.12.2005, complainant got checked his wife from Dr. Rajesh Kakkar who after conducting Ultra Sound disclosed that she was having stone in her right kidney and her right kidney is not functioning, whereas another kidney is alright. On 15.12.2005, he had checked up his wife from Dr. Subhash Gupta who also found the same situation and advised to remove stone in the right kidney but due to heavy weight of wife of complainant, they avoided the operation and started taking medicine, since there was no improvement in the condition of the wife of the complainant, they on 28.01.2005 again consulted Dr. Subhash Gupta who after ultrasound disclosed that there was 18 mm stone in the right kidney of his wife and opined to remove the kidney in some hospital at Delhi, Patiala and Ludhiana because the operation was said to be complicated one. In the meantime, the complainant met with Dr. Sunil Bajaj who was working in Civil Hospital, Tohana and had gone America, the complainant showed the Ultrasound and other reports to him who after seeing the report asked that

there is no necessity to remove the kidney and he had undergone training at America, he will remove the stone from the kidney and will treat the kidney as well. At that time, Chiman Lal Malik, also accompanied the complainant. On 17.02.2006 on asking of Dr. Sunil Bajaj, they got coloured X-ray of his wife from Dr. Rajender Malik, Hisar who opined that the right kidney is not working. Thereafter, the wife of the complainant was advised to admit in the hospital of Dr. Rajesh Kakkar and the complainant was assured that all the arrangements are there for surgery. On 02.03.2006, the complainant got admitted his wife at the hospital of Dr. Rajesh Kakkar and deposited Rs.50,000/- of which no receipt was given. Operation was conducted and the condition of the wife of the complainant deteriorated. An attempt was made to shift the wife of the complainant to Delhi but Dr. Rajesh Kakkar and Dr. Sunil Bajaj did not allow to shift the patient and assured that they are treating her and till tomorrow her condition will be improved. Thereafter, the Doctors called Dr. Anant Ram from Barwala and asked that there was large machine of giving artificial respiration and everything would be alright, they got shifted the wife of the complainant to the hospital of Dr. Anant Ram where they taken Rs.3000/- as advance money and Rs.7000/- were taken for medicine, test etc and applied the machine. On

04.03.2006, condition of wife of complainant became more deteriorated and they got shifted her to Apollo Hospital, Delhi where she was treated and doctors found that Dr. Sunil Bajaj and Dr. Abhishek Kakkar had done the operation negligently and left some parts of stone in the kidney itself due to which infection spread in the whole body of wife of complainant and due to the condition of patient, now it was not possible to remove the right kidney from the body of patient. The wife of the complainant died on 06.04.2006 due to negligence of the accused.

After completion of the investigation, challan was prepared against the accused and copies thereof were supplied to the accused free of costs as provided under Section 207 Cr.P.C. The offence punishable under Sections 304-A34 IPC was made out against the accused and they were charge sheeted by the then learned JMJC, Tohana vide order dated 30.07.2008, to which they pleaded not guilty and claimed trial.

The proceedings qua the present petitioner was stayed by this Court whereas Sunil Bajaj was declared P.O vide order dated 21.03.2014.

The prosecution examined as many as 12 witnesses.

Statement of the accused Rajesh Kakkar and

Abhishek Kakkar was recorded under Section 313 Cr.P.C wherein the accused pleaded their complete innocence and false implications. No defence evidence was led by the accused.

The complainant in his cross examination has admitted that Dr. Abhishek Kakkar neither used any instrument nor conducted the operation upon his wife. He further deposed that Dr. Sunil Bajaj assured him that at time of operation Dr. Abhishek Kakkar and Dr. Rajesh Kakkar would remain with him/Dr. Sunil Bajaj but the said assurance was not true. He specifically deposed that the accused facing trial had neither conducted any proceeding regarding operation of his wife nor conducted the operation. He further denied that due to negligence committed by the accused during operation, his wife died.

As per deposition of P.W.1 Dr. Sunil Sethi, during his cross examination, he admitted that Dr. Sunil Bajaj had called him in the Kakkar Hospital and disclosed that operation has to be done and at the time neither Dr. Rajesh Kakkar or Dr. Abhishek Kakkar were present there only Dr. Sunil Bajaja and Dr. Sunil Bhatia were present there. He also admitted that he remained in hospital from 1989 to 1992 and at time there was no ventilator in the hospital and in the absence of ventilator, the Surgeon had done small or large

operation in the hospital.

After going through the evidence led by the parties, the Court below had acquitted Dr. Rajesh Kakkar and Dr. Abhishek Kakkar by extending them the benefit of doubt, no evidence was against them, which could lead to their conviction.

Learned counsel for the petitioner submits that as there was no evidence with the prosecution to show that Dr. Rajesh Kakkar and Dr. Abhishek Kakkar had performed surgery on the wife of the complainant, the case of the petitioner is on better footing, as he has been summoned to face a trial on an application filed under Section 319 Cr.P.C, vide order dated 30.11.2010 (P-5). The proceedings qua the present petitioner was stayed by this Court, vide order dated 03.08.2011.

Reference at this stage can be made to a judgment of this Court in a case of Harjinder Singh v. State of Haryana and others, 2013(1) RCR (Criminal) 1038 wherein in para 12 and 13, it has been held as under:-

*“12. As is evident from the impugned order (Annexure P1), the application filed by the prosecution u/s 319 Cr.PC was dismissed by the trial Court, vide impugned order. That means, no order to summon the CRR No.2535 of 2009 5 respondents as additional accused was ever passed by the Court before*

*conclusion of the trial of main case. Once, no such order for summoning the respondents as additional accused was passed before the conclusion of the trial of main case, in that eventuality, the aforesaid observations of Hon'ble Supreme Court are not at all attracted to the facts of the instant case, particularly when section 319 Cr.PC postulates that "where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the court may proceed against such person for the offence which he appears to have committed." The words "in the course of trial" are most important and carry a significant meaning in this relevant connection. In this manner, the course (pendency) of the trial is a condition precedent for summoning the additional accused u/s 319 Cr.PC and not otherwise. No person can legally be summoned as an additional accused to face the trial along with other co-accused under this section after the conclusion of the trial of main case. This matter is no more res integra and is now well settled.*

*13. An identical question came to be decided by this Court in CRR No.1194 of 2011 titled as "Tarsem Singh vs. State of Punjab & Ors" decided on 10.12.2012, wherein it was ruled that no person can legally be summoned as an additional accused to face the trial*

*along with other co-accused u/s 319 Cr.PC after the conclusion of the trial of main case.”*

In the impugned order dated 30.11.2010, it has been observed that the wife of the complainant had been admitted in the hospital of Dr. Anant Ram from 03.03.2006 to 04.03.2006. She was shifted thereafter to Apollo Hospital, New Delhi in critical condition. This evidence was considered sufficient to proceed against the petitioner. On the other hand, the two accused i.e Dr. Rajesh Kakkar and Dr. Abhishek Kakkar were acquitted by the Court below on 03.01.2015 on the ground that there was no evidence with the prosecution to show that Dr. Rajesh Kakkar and Dr. Abhishek Kakkar had performed surgery on the wife of the complainant. They were found merely present with Dr. Sunil Bajaj in the hospital where the surgery was conducted. There was no ventilator in the hospital and the surgery was conducted on the wife of the complainant on the advice of Dr. Sunil Bajaj. Post operation, her condition became critical and she was shifted to the hospital of the petitioner and from there, she was shifted to Apollo Hospital, New Delhi. The death of the wife of the complainant was on account of surgery conducted in the hospital of Dr. Sunil Bajaj. It is not the case of the prosecution that the complainant's wife had died on account of negligence in the hospital of the

petitioner. Once the trial Court had acquitted Dr. Rajesh Kakkar and Dr. Abhishek Kakkar who were present at the time of operation of the wife of the complainant. There is no evidence which the trial Court is required to examine against the present petitioner. The petitioner had not given any advice to the complainant to get the surgery nor he has any role to play in the surgery conducted by Dr. Sunil Bajaj. Once the prosecution evidence has been examined in detail, this Court is of the view that there is no evidence which can now be read against the present petitioner.

In view of the above, the present petition is allowed and order dated 30.11.2010 passed by the learned Addl. Sessions Judge Fatehabad (Haryana) is hereby set aside.

(RITU BAHRI)  
JUDGE

11.02.2015  
G Arora