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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 3277 OF 2015

Dr. Gautam Allahabadiya and Ors. ... Petitioners

Versus

State of Maharashtra ... Respondents

Mr. Raja Thakare i/by Mr. A.M. Chimalkar a/w Mr. Bharat Manghani for the petitioners.

Mrs. M.M. Deshmukh, APP for the State.

CORAM: NARESH H. PATIL &
A.M. BADAR, JJ.
DATED : APRIL 01, 2016.

P.C.

1. Petitioners state that they are qualified Obstetricians and Gynecologists having a number of years of practice to their credit. Petitioners pray for quashing and setting aside their implications in the Crime bearing CC NO. 1499/PW/2011 arising out of CR No. 329 of 2010 registered with Sakinaka Police station for the offence punishable under sections 304, 363, 328 of Indian Penal Code. The contentions of the petitioners is that petitioner no.1 is director of Rotunda, the centre for Human Reproduction, Mumbai, a clinic situated at Bandra, Mumbai.

Petitioner No.2 is working as full time Consultant in the Assisted Reproduction Centre of the Seven Hills Hospital at Marol, Andheri East, Mumbai. She was working with the Rotunda Hospital from 21st January, 2009 to 31st October, 2011. Petitioner no. 3 is a qualified Obstetrician and Gynecologist and a fertility and IVC Specialist. She is a medical director of Corion Fertility Clinic at Lokhandwala, Andehri Mumbai. She joined the Rotunda Fertility Clinic and Keyhole Surgery Centre at Andheri in January, 2002 and worked there till October, 2009 and thereafter started her own fertility clinic.

2. On 03.02.2009, one Sushma Pandey attended the Rotunda Clinic with a social worker by name Noorjahan. She had given her name in the hospital records as Sushma Pramod Dubey for the purpose of Egg (Ovrn) Donation. On 22.10.2009 after obtaining the signature on the consent form of Sushma and also the signature of a guardian, she underwent follicular aspiration for egg retrieval at the hands of petitioner no.3 when Dr. Mrs. Heta Deepak Kenia nee Chabra was the attending anesthetist. On 15.2.2010, Sushma came to the clinic for her follicular aspiration for egg retrieval. Once again her signature on consent form was obtained which was also signed by her guardian. The procedure on this occasion was carried out by

petitioner no.2 as an assistant of petitioner no. 1 and assisted by Dr. Kiritkumar Sankleshwar Trivedi as an anesthetist. On 7.8.2010 Sushma came to the clinic with guardian at about 8.30 am. Once again she underwent the same follicular aspiration. Petitioner No.1 conducted the procedure with Dr. Yogen Bhatt in attendance as anesthetist. It is the contention of the petitioners that till about 7.30 pm her pulse, B.P. was recorded at regular intervals. She was examined. The doctors did not find abnormality. At about 7.30 pm she was discharged after her vital parameters were found to be stable and there were no complaints as such with instructions to follow up next morning. On 08.08.2010 Sushma came back at about 9.00 am with complaint of weakness. She was started with IV fluids and after she felt better, as per advice of the doctor she was discharged at about 1.00 pm. On 10.08.2010, as there was no respite she was again taken to some doctor who administered some injection and she was thereafter taken to Rajawadi Hospital. Sushma was declared dead on admission. On 11.08.2010 an offence came to be registered at Sakinaka Police Station vide CR No. 329 of 2010 under sections 363 and 328 of Indian Penal Code. By an order dated 30th March, 2012, the learned Single Judge of this Court discharged other accused Sunil Chomal in Revision Application No. 89 of 2012. The application for

discharge of accused Sanaulla Mohammed Mustakinkhan was rejected by the learned Single Judge of this Court by order dated 22.01.2014 in Criminal Application No. 157 of 2012.

3. Mr. Raja Thakare, learned counsel for the petitioners placed reliance on the various documents placed on record and the chargesheet. In substance, the learned counsel submits that no offence alleged against the petitioners is made out. Petitioners are pioneers in the field of Production and Fertility. They are running fertility clinic at Bandra. It is submitted that the issue was referred to the Experts Committee constituted by the Administration of JJ Hospital. The Forensic Medicine Department of JJ Hospital, Grant Govt Medical College, Mumbai submitted its report to the Dean, Sir JJ Hospital on 9th December, 2013. The learned counsel placed heavy reliance on the final observations of the Committee in which it is stated that there is no evidence suggestive of medical negligence on the part of the doctors of Rotunda Hospital. Counsel submits that the record reveals that it was not for the first time the girl reached the hospital for donating eggs. On earlier two occasions, the deceased girl visited the Hospital, out of her free will, along with the guardian. After completing necessary formalities and signing necessary papers, necessary procedure was followed and the deceased girl

was discharged. It is gathered from the submissions of the counsel that in case some complication had arisen that was not due to the procedure adopted by the petitioner doctors but due to some extraneous reasons which occurred outside the hospital at some other places for which petitioners cannot be held responsible. The counsel had referred to the statement of Pramila Pande, the mother of the deceased Sushma recorded on 11.08.2010 and the statements of the other witnesses. Reference was also made to post mortem report and the opinion as to the cause of death. The learned counsel submits that standing for trial on the basis of the allegations of this nature, would be stigmatic in nature for the professionals like petitioners. The only way to wave their ordeal of standing for trial would be to approach this Court by invoking its extraordinary jurisdiction for getting the proceedings quashed and set aside.

4. Learned APP on instructions from the Deputy Commissioner of Police and the Investigating Officer who are present in the Court, submits that the investigating agency has thoroughly investigated the matter and brought on record that without their being any legal sanction for removal of ovarian eggs, the petitioners had performed the procedure not only once

but thrice. Even if on some forms consent was obtained of the deceased and so called guardian Noorjahan, the petitioners would not be absolved from their responsibility and the legal liability in respect of conducting of such procedure. She submits that as on today, there is no law governing or permitting donation of ovarian eggs. The investigating agency has collected the material based on which the learned APP submits that fake PAN card was created to facilitate such procedure and it is possible that in many such cases the medical officers must have indulged into in conducting such procedure on minor girls. It is the prosecution case that the deceased was below eighteen years of age. It is alleged that petitioners did not bother to take consent of the mother of the deceased and that Noorjahan was not at all related to the deceased and could not be a legal guardian for consenting such serious procedure by the petitioners. The learned APP has referred to the medical opinion which is annexed at Page 285 of the paper book, which was given by the experts regarding the death of Sushma. The opinion is signed by three Assistant Professors attached to Sir JJ Hospital. It is further contended that this is not a fit case to quash the proceedings at the threshold. It is submitted that the petitioners are not remedy-less and they can prove their innocence in the trial.

5. We have perused the entire record and considered the submissions. We have seen two opinions given by the experts committee of Sir JJ Hospital, one is dated 9.12.2013 and another is dated 17.4.2013. In both these opinions, prima facie, we have noticed that the deceased Sushma had undergone procedure for removal of ovarian eggs. The medical experts state that the Ovarian Hyper stimulation Shock Syndrome is known remote complication of the process of the egg donation. It is further opined that the deceased died due to brain hemorrhage and pulmonary hemorrhages due to Ovarian Hyperstimulation shock Syndrome. It is stated that it is an ovarian hormonal syndrome due to excess amount of the hormone Estradiol in blood circulation which causes various changes in the body but in this case, pain in the abdomen and vomiting are in favour of this and post mortem findings of the size of the ovarian confirms it.

6. In the facts, following aspects need to be looked into :

(a) whether deceased Sushma was minor or major who had visited the hospital run by the petitioners for donation of ovarian eggs.

(b) Whether consent of Noorjahan obtained by the petitioners for conducting the procedure on the

deceased Sushma could be treated as a valid consent by a guardian.

(c) Whether Noorjahan could be legal guardian for giving consent for such procedure conducted on Sushma.

(d) For what purposes eggs donation was made by Sushma is also required to be looked into.

(e) Whether such procedures are routinely conducted in the hospital with or without consent is a matter of evidence.

(f) The complaint is filed by Pramila, mother of deceased Sushma.

(g) Whether the petitioners have taken abundant caution and care to conduct the procedure on deceased Sushma would be a matter for consideration as and when necessary evidence is led.

7. Certainly for any professional to stand for the trial against such serious charges would be uncomfortable situation to face. But considering the nature of allegations made and the evidence collected by the investigating agency, in the facts and surrounding circumstances of the case, we are not inclined to exercise our writ jurisdiction at the threshold for setting aside the entire proceedings.

8. For the reasons stated above, petition is dismissed. The observations made by us in this order shall be considered to be of prima facie in nature and shall not affect the proceedings of the trial.

9. We direct the learned Metropolitan Magistrate, Andheri to take necessary steps in accordance with law consequent to filing of the chargesheet.

(A.M. BADAR, J.)

(NARESH H. PATIL,J.)