

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM No.M-19151 of 2013 (O&M)
Date of decision: March 18, 2016.

State of Punjab

... **Petitioner**

v.

Dr. Sangita Sharma

... **Respondent**

CORAM: **HON'BLE MR. JUSTICE KULDIP SINGH**

Present: Mr. APS Gill, Assistant Advocate General, Punjab.

Mr. Naveen Gupta, Advocate for the respondent.

1. *Whether Reporters of local papers may be allowed to see the judgment ? yes*
2. *Whether to be referred to the Reporters or not ? yes*
3. *Whether the judgment should be reported in the Digest? yes*

Kuldip Singh, J. (Oral):

Impugned in the present petition is the order dated 5.12.2012 passed by learned Additional Sessions Judge, Sangrur vide which the order dated 21.11.2011 passed by Sub Divisional Judicial Magistrate, Sunam, framing the charge against the respondent Dr. Sangita Sharma under Section 304-A IPC, was set aside.

The short facts which are required to be noticed by this Court are that as per the prosecution case, on 25.3.2009, one Rimpay Rani was brought to Vishwas Hospital, Jakhal Road, Sunam at around 2.30 A.M. Dr. Sangita Sharma treated her. Rimpay Rani died in the said hospital at about 3.10 p.m. on the same day after a gap of 12 hours. It was later on found that the said Rimpay Rani had consumed organo phosphorous compound. The allegations are that a Board of Doctors consisting of three doctors formed by the Civil Surgeon, found that Dr. Sangita Sharma did not refer

the patient to the higher institution and informed the police late, therefore, she was negligent in not saving the life of said Rimpay Rani.

I have heard Learned Counsel for the parties.

It comes out that the FIR against Dr. Sangita Sharma is wholly misconceived. To attract Section 304-A IPC, the prosecution must prove that the act is rash or negligent. Here, the patient was brought to the hospital of respondent Dr. Sangita Sharma on 25.3.2009 at 2.30 A.M. Admittedly, since the patient had consumed organo phosphorous and was in a serious condition, Dr. Sangita Sharma started treating her. The act of the doctor in treating the patient cannot be called rash or negligent act. The mere fact that the doctor did not refer the patient to a higher institution and decided to treat the patient herself, is no ground to hold that she was rash or negligent in treating the patient, which resulted in her death. The nature of organo phosphorous is such that most probably the patient was unlikely to survive even if she had been taken to the higher institution. Therefore, Dr. Sangita Sharma merely performed her duty with dedication and tried to save the life of the patient.

There is another aspect of the matter. The time taken in removing the patient to the higher institution would have also proved fatal for the patient as there is no higher institution in the immediate vicinity of Sunam.

Consequently, I am of the view that the act alleged by the prosecution does not make out a rash and negligent act on the part of Dr. Sangita Sharma. She merely performed her duty with dedication and the fact that the patient could not survive, is no ground to hold that she was rash or negligent. It is not the requirement of law that when a patient is brought to a doctor, the doctor in place of treating the patient shall first

report the matter to police and the doctor must refer the patient to the higher institution. That is the perversity of the thinking of the Civil Surgeon or the police authorities. The duty of the doctor was to first attempt to save the life of the patient. The police should be informed later on.

It being so, I do not find any merit in the petition. After hearing both the parties, I am of the view that Dr. Sangita Sharma was unduly harassed by the act of the State in challaning her for no fault on her part. There was no criminal negligence recorded even by the Civil Surgeon for which she had to face trial in the lower court. Then, she had to approach the learned Additional Sessions Judge. Thereafter, the state preferred to come to this Court. The act of the police in challaning the doctor and the State prosecuting the doctor upto this Court will only deter the doctors from trying to save the life of critically sick patients and they will rather try to save their own skin without caring for life of patients.

It is pointed out that this petition is pending since the year 2013. In these circumstances, the State is directed to pay compensation of Rs.50,000/- to Dr. Sangita Sharma for harassing her within a period of three months from the date of receipt of a certified copy of this order.

The petition is dismissed.

March 18, 2016.
kadyan

[Kuldip Singh]
Judge