

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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Date of Decision: 12.07.2017

1. CRM No.M-16382 of 2014 (O&M)

Dr. Vijay Kher

..... Petitioner

Versus

Bishan Singh

..... Respondent

2. CRM No.M-16383 of 2014

Dr. Shyam Bihari Bansal

..... Petitioner

Versus

Bishan Singh

..... Respondent

3. CRM No.M-16384 of 2014

Dr. Rajesh Ahlawat

..... Petitioner

Versus

Bishan Singh

..... Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present:- Mr. Akshay Bhan, Sr. Advocate with
Mr. Amandeep Singh, Advocate for the petitioner.

Mr. B.S. Baath, DAG, Punjab.

Mr. Surender Singh, AAG, Haryana.

Mr. Sukant Gupta, Addl. PP for UT, Chandigarh.

Mr. Sarfraj Hussain, Advocate for the complainant.

RAMENDRA JAIN, J. (ORAL)

By this common order, three criminal miscellaneous petitions
bearing No.CRM-M No.16382 of 2014 titled 'Dr. Vijay Kher Vs. Bishan

Singh', CRM-M No.16383 of 2014 titled 'Dr. Shyam Bihari Bansal Vs. Bishan Singh' and CRM-M No.16384 of 2014 titled 'Dr. Rajesh Ahlawat Vs. Bishan Singh' are being disposed of.

Invoking Article 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, the petitioners, namely, Doctors Vijay Kumar, Shyam Singh Bansal and Rajesh Ahlawat, have filed the instant petitions, seeking quashment of Criminal Complaint No.599 dated 20.7.2013 titled as “Bishan Singh Vs. Naresh Trehan and others and impugned order dated 10.1.2014, whereby the aforesaid petitioners were summoned by Civil Judge (Junior Division)-cum-Judicial Magistrate 1st Class, Gurgaon, except Dr. Naresh Trehan under Sections 420/336/304-A and 34 of the Indian Penal Code.

Learned counsel for the petitioners, at the very out-set has contended that the learned Magistrate ought not to have entertained the complaint unless the complainant had produced evidence in the form of a credible opinion given by a competent Doctor to support the charge of medical negligence and rashness on the part of the petitioners in view of the guidelines laid down by the Hon'ble Apex Court in ***Jacob Mathews Vs. State of Punjab and another 2005(6) SCC, 1*** and further that in view of ***Martin F. D'souza Vs. Mohd. Ishfaq 2009(3) SCC, 1***, the learned Magistrate before summoning the petitioners was required to refer the complaint to a competent Doctor or Committee of Doctors specialist in the field relating to which medical negligence has been alleged and only after that Doctors' or Committees' report that there was a case of prima facie negligence of the petitioners, the petitioners could have been summoned.

On the other hand, learned counsel for the complainant

strongly refuted the above submissions of learned counsel for the petitioners and urged that the petitioners were also summoned under Section 420 of IPC for the offence of cheating, which is altogether different from medical negligence and rashness, therefore, the petitioners have rightly been summoned without referring the matter to some Doctor or Committee of Doctors.

I have heard learned counsel for the parties at length and perused the record available on the file minutely.

While resolving the controversy involved in the case in hand, it would be appropriate to refer to observations made by their Lordships of the Hon'ble Apex Court, in Jacob Mathew's case (supra) that a private complaint may not be entertained, unless the complainant has produced prima facie evidence before the Court in the form of a credible opinion given by a competent Doctor to support the charge of medical negligence and rashness on the part of the accused Doctors.

In the instant case, it is not denied that the complainant did not produce any prima facie evidence along with his complaint before the trial Court in the form of a credible opinion given by a competent Doctor in support of his allegations against the petitioners regarding their medical negligence and rashness. In these circumstances, this Court is of the considered view that it was incumbent upon the trial Court to refer the complaint to some Doctor or 'Committee of Doctors' to obtain an independent and competent medical opinion, preferably from a Doctor in Government Service qualified in that branch of medical practice, who can normally be expected to give an impartial and unbiased opinion in compliance of the guidelines laid down by the Hon'ble Apex Court in

Martin F. D'souza's case (supra).

Non adoption of the above procedure and any such exercise by the trial Court before proceeding with the complaint and summoning the petitioners, amounts to non-compliance of the guidelines of the Hon'ble Apex Court laid down in the above referred citations.

During the course of arguments, it has been brought to the notice of this Court that now both State Governments of Punjab and Haryana have issued their respective notifications No.6/91/17-4HB5/982986/1 dated 22.05.2017 and No.25/10/2017-6HBI dated 31.05.2017 in compliance of the above mandate of the Hon'ble Apex Court. Further, it has been pointed out that the Union Territory, Chandigarh, while adopting the guidelines laid down by the Hon'ble Apex Court, has also constituted a Medical Board, which fact finds mention in order dated 10.1.2017 passed by a Co-ordinate Bench of this court.

There is no merit in the contention of learned counsel for the respondent-complainant that the complaint cannot be referred to District Level Board as the same is being constituted after filing of the complaint, because the said Board has been constituted in compliance of the guidelines laid down by Hon'ble Apex Court, in years 2005 and 2009 respectively, whereas the impugned complaint was filed, in year 2013.

In view of the above discussion, the instant petitions are partly accepted. So far as the impugned complaint no.599 dated 20.7.2013 filed by the complainant is concerned, the trial Court is directed to refer it before the District Level Board constituted by the State of Haryana vide notification No.25/10/2017-6HBI dated 31.05.2017, to seek opinion as to whether the allegations against the petitioners in the impugned complaint with respect

to the medical negligence are substantiated.

As regards the summoning order dated 10.1.2014 passed by the trial court, at this stage, it is liable to be quashed. Since the impugned complaint has now been ordered to be referred for seeking opinion from the District Level Board, therefore, in the event, any expert opinion being given by the District Level Board or a report from the doctor, so appointed, comes against the petitioners qua their negligence and rashness, the impugned complaint dated 20.7.2013 as also order dated 10.1.2014, whereby the petitioners were summoned, shall stand revived and the learned trial court shall proceed further with the matter, in accordance with law.

12.07.2017
Dinesh Bansal

(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned	Yes / No
Whether Reportable	Yes / No