

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRL. MISC. No.M-25305 OF 2014
DATE OF DECISION : 29th SEPTEMBER, 2017

Dr. Kuldeep Saini & another

.... Petitioners

Versus

State of Haryana & others

.... Respondents

CRL. MISC. NO.M-39779 OF 2014

Dr. Vikas Goyal

.... Petitioner

Versus

State of Haryana & others

.... Respondents

CORAM : HON'BLE MR. JUSTICE A. B. CHAUDHARI

* * * *

Present : Mr. Anurag Jain, Advocate for the petitioners.

Mr. Chetan Sharma, AAG, Haryana.

* * * *

A. B. CHAUDHARI, J. (ORAL)

By these two petitions, three Doctors working in Civil Hospital under the Government of Haryana, have put to challenge the summoning order dated 16.07.2013 (Annexure P-10) as well as the revisional order dated 21.04.2014 (Annexure P-12).

Rule.

Respondent No.2-Surender Kumar had lodged FIR No.259 dated 28.06.2009 registered under Sections 148, 149, 323, 324, 326, 285, 506 of IPC and Section 25/54/59 of Arms Act at Police Station Ratia against Nihal Singh and others about alleged assault on him on

17.06.2009. He was admitted in General Hospital, Ratia and was medico legally examined by one Dr. Makhan Lal, who opined that the injury was caused by sharp weapon. As a result offence under Section 326 IPC was registered. Accused Nihal Singh submitted application to Deputy Commissioner, Fatehabad stating that the injury report was concocted and false and pursuant thereto Civil Surgeon Fatehabad constituted a Medical Board of Doctors i.e. the present three petitioners to give report as to the injury. Accordingly, respondent No.2 was served with the notice under Section 160 Cr.P.C. but he refused to accept the notice and did not appear before the medical board. On 03.07.2009 the medical board then gave its opinion on the basis of the documents available on record. Then complainant made a complaint to the Deputy Commissioner objecting to the said report and further stating that no notice was served on him and therefore he should be examined by some other medical board. Then the complainant was referred to PGI Rohtak and another medical board was constituted. The board re-examined him on 30.07.2009 and gave its report on 12.08.2009 (Annexure P- 5).

Dr. Makhan Lal, who first examined the complainant is being prosecuted in the same matter upon sanction being given by the concerned authority under Section 197(1)(b) of the Code of Criminal Procedure. It is in the above background the complainant proceeded to file private complaint against these three petitioners and the trial Court took cognizance only under Section 167 IPC.

In support of these petitions, learned counsel for the petitioners submitted that the act of making report pursuant to the orders

made by the Chief Medical Officer by the present petitioners, was an official act performed in the course of the official business and there was no reason with the complainant to file private complaint against the petitioners-Doctors. The petitioners-Doctors are required to examine large number of patients everyday in the Civil Hospital and if such complaint is accepted by the Court and accused summons is issued that will cause hindrance in the working. He then submitted that no sanction was obtained from the specified authority and therefore, the complaint itself was not maintainable. He then contended that the ingredients of Section 167 IPC have not at all been satisfied for issuing of accused summons. He therefore, prayed for dismissal of the complaint and the quashment of the summoning order.

Per contra, learned counsel for respondent No.2 vehemently opposed the petition and submitted that the issue of sanction can be raised by the petitioners by participating in the trial and the during the course of trial and therefore the said argument is misconceived. According to him the petitioners-Doctors did not do their duty according to law and therefore they have committed the offence under Section 167 IPC under which the accused summons have been issued. Learned counsel for the respondent has placed reliance on judgment of Apex Court passed in the case of ***M. Gopalakrishnan versus State by Addl. S.P. CBI, B.S. & F.C., Bangalore***, reported as ***2009(2)RCR (Criminal), 534***. He submits that impugned order is legal, correct and proper and does not call for any interference and prayed for dismissal of the petitions.

Heard learned counsel for the rival parties at length and perused the impugned order carefully.

At the outset, it is necessary to State that the Apex Court has from time to time reminded the Courts to treat the Doctors with dignity and directed to be careful in the Court proceedings qua the Doctors. In the present case, the petitioners-Doctors who were the members of the medical board, were ordered to give the report by the Chief Medical Officer of the Civil Hospital, Ratia and accordingly, they have given the report. Whether the said report was right or wrong is a matter which could not form the subject of a private criminal complaint as the report was prepared in the official course of business by the petitioners-Doctors. The submission that the issue about sanction can be raised during the course of the trial in my opinion, is misconceived. Such a casual approach in relation to the working Doctors, who have to examine hundreds of patients in a civil hospital while performing the said sovereign function of the State, cannot be at all entertained. The Apex Court has deprecated such a practice right from the decision in the case of ***Jacob Mathew Versus State of Punjab & Anr. 2005(3) R.C.R.(Criminal) 836***. This Court cannot also ignore the fact that the alleged assault on the complainant was made on 17.06.2009 whereas the FIR was lodged on 28.06.2009 and thereafter, the medical examination was made. I am therefore of the firm opinion that sanction for prosecution was *sine qua non* for taking cognizance against the petitioners-Doctors, which admittedly was not obtained in the present case.

Section 167 IPC reads thus:

“167. Public servant framing an incorrect document with intent to cause injury.—Whoever, being a public servant, and being, as 1[such public servant, charged with the preparation or translation of any document or electronic record, frames, prepares or translates that document or electronic record] in a manner which he knows or believes to be incorrect, intending thereby to cause or knowing it to be likely that he may thereby cause injury to any person, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.”

Looked at the impugned order and the reasons therein and the preliminary evidence that was tendered by the respondent-complainant, I find that none of the ingredients of Section 167 IPC were at all satisfied in order that the accused summons could be issued to the petitioners-Doctors. The only complaint of the complainant is that the petitioners-Doctors had given report which according to the complainant was false report. At any rate the trial Court never raised the issue of sanction, which in such cases, particularly against the Doctors working in the Civil Hospitals, should have been the foremost issue. The decision of the Apex Court cited by the learned counsel for the respondent No.2 on the facts of the present case does not have any application.

In the result I find that there was no justification for the trial Court to issue accused summons by ignoring the ingredients of Section 167 IPC. As the petitioners-Doctors have performed their job in the official course of business, they cannot be allowed to be prosecuted in the manner sought to be done by the complainant when his alleged dispute was with the accused persons. This Court cannot continue the action on the impugned order to summon the petitioners-Doctors and ask them to face the trial instead of working in the Civil Hospitals to serve the patients. The impugned order is therefore clearly illegal. In the result, I make the following order:

ORDER

- (i) CRL. MISC. No.M-25305 OF 2014 & CRL. MISC. No.M-39779 OF 2014 are allowed.
- (ii) Impugned orders passed by the trial Court, challenged in both the petitions, are quashed and set aside.
- (iii) The complaint stands dismissed qua the petitioners in both the petitions.
- (iv) The complainant can continue with the complaint against the other accused persons.

29th SEPTEMBER, 2017
'raj'

(A. B. CHAUDHARI)
JUDGE

Whether speaking/reasoned: *Yes* *No*

Whether Reportable: *Yes* *No*