

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

CRM-M-2723-2014 (O&M)

Date of Decision:-24.7.2018

Atul Dhingra and another

... Petitioners

Versus

State of Haryana and another

... Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Dinesh Arora, Advocate for the petitioners.

Mr. Sandeep Vashisht, Deputy Advocate General, Haryana.

Mr. Rakesh Nehra, Advocate for respondent No.2.

GURVINDER SINGH GILL, J.(Oral)

By way of filing this petition, the petitioners seek quashing of complaint No.311 dated 27.7.2007 (Annexure P-2) filed against them for offences punishable under Sections 304-A, 466 and 341 of Indian Penal Code, 1860 as well as the summoning order dated 28.9.2013 (Annexure P-8) passed by learned Chief Judicial Magistrate, Rohtak.

A few facts necessary to notice for disposal of this petition are that Suman Devi filed a complaint against the petitioners alleging therein that her husband Shish Ram, who was serving as an Assistant Sub-Inspector in Haryana Police had suddenly developed chest pain on 24.8.2006 and was rushed to Post Graduate Institute of Medical Sciences, Rohtak (PGIMS), where somehow the doctors were negligent and did not take proper care resulting in his death on 27.8.2006. The complainant in her preliminary evidence herself stepped into witness box as CW-1 and also examined her

brother Mukesh Kumar as CW-2. CW-3 Dr. Vedpal from Department of Chest and T.B., PGIMS, Rohtak was also examined, who proved post-mortem report and other documents. CW-4 Ramphal, OTA, PGIMS, Rohtak, CW-5 Virender Kumar, MRC, PGIMS, Rohtak and CW-6 Harish Kumar were also examined by the complainant.

The learned trial Court vide impugned order dated 28.9.2013 came to a conclusion that there are sufficient grounds to proceed against the accused for offences under Sections 304-A and 466 read with Section 34 of Indian Penal Code, 1860 and consequently summoned the accused.

The learned counsel for the petitioners, while assailing the complaint as well as impugned summoning order has submitted that there is no credible evidence on record to show that Shish Ram had died on account of any negligence on part of the doctors at PGIMS, Rohtak and that he had infact died an natural death due to cardiac arrest. It has further been submitted that there is no opinion of any doctor much less a Medical Board to suggest that it was on account of any wrong treatment or any inaction on part of the doctors at PGIMS, Rohtak that Shish Ram lost his life. The learned counsel in order to hammer forth his submissions has pressed into service a judgment of Hon'ble the Supreme Court i.e. AIR 2005, Supreme Court 3180 (1) Jacob Mathew Vs. State of Punjab and another.

On the other hand, the learned counsel representing the complainant has submitted that the evidence on record *prima facie* suggests that it is a case of death on account of negligence of the doctors. It has further been submitted that since the matter is now at the stage of pre-charge evidence, the complainant would be making an application to the Court for

constituting a Medical Board so as to seek requisite opinion regarding the cause of death and the negligence of the doctors in question.

Having heard the learned counsel for the parties, this Court is of the opinion that, at the stage of summoning, the Court is required to satisfy itself regarding the allegations levelled in the complaint and should not proceed hurriedly to summon the accused especially professionals like doctors as in the present case. Hon'ble the Supreme Court in Jacob Mathew's case (supra) held as follows:-

- “51. As we have noticed hereinabove that the cases of doctors (surgeons and physicians) being subjected to criminal prosecution are on an increase. Sometimes such prosecutions are filed by private complainants and sometimes by police on an FIR being lodged and cognizance taken. The investigation officer and the private complainant cannot always be supposed to have knowledge of medical science so as to determine whether the act of the accused medical professional amounts to rash or negligent act within the domain of criminal law under Section 304-A of IPC. The criminal process once initiated subjects the medical professional to serious embarrassment and sometimes harassment. He has to seek bail to escape arrest, which may or may not be granted to him. At the end he may be exonerated by acquittal or discharge but the loss which he has suffered in his reputation cannot be compensated by any standards.
52. We may not be understood as holding that doctors can never be prosecuted for an offence of which rashness or negligence is an essential ingredient. All that we are doing is to emphasize the need for care and caution in the interest of society; for the service which the medical profession renders to human beings is probably the noblest of all, and hence there is a need for protecting doctors from frivolous or unjust prosecutions. Many a complainant prefers recourse to

criminal process as a tool for pressurizing the medical professional for extracting uncalled for or unjust compensation. Such malicious proceedings have to be guarded against.

53. Statutory Rules or Executive Instructions - Incorporating certain guidelines need to be framed and issued by the Government of India and/or the State Governments in consultation with the Medical Council of India. So long as it is not done, we propose to lay down certain guidelines for the future which should govern the prosecution of doctors for offences of which criminal rashness or criminal negligence is an ingredient. 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 another competent doctor to support the charge of rashness or negligence on the part of the accused doctor.....”

In the present case, I find that though the post-mortem report has been placed on record but from the post-mortem it cannot be said that Shish Ram had died on account of any negligence of the doctors. It would be only on the basis of some report of expert that such an opinion can *prima facie* be formed. In the present case, neither any expert has been examined nor any Medical Board had ever been constituted to solicit any such opinion.

In these circumstances, this Court is of the opinion that the summoning order, which is bereft of any such medical evidence cannot sustain. Accordingly, the summoning order dated 28.9.2013 (Annexure P-8) passed by learned Chief Judicial Magistrate, Rohtak is hereby set aside. However, in view of the specific allegations levelled in the complaint, this Court is of the opinion that some expert opinion ought to be there before proceeding further. As such, it is directed that a Medical Board be constituted by Civil Surgeon, Rohtak, which shall look into the matter and

furnish an opinion as regards the cause of death of Shish Ram. Such opinion shall be furnished to the trial Court, which shall thereafter proceed to examine the matter afresh to consider the summoning of the accused. A copy of this order be sent to Civil Surgeon, Rohtak immediately so as to enable him to do the needful. The Medical Board shall endeavour to submit its report expeditiously preferably within 3 months from its constitution.

The trial Court is directed to furnish a copy of the complaint and other requisite documents to Civil Surgeon concerned immediately. Upon receipt of report/opinion of the Board, the trial Court shall ensure that there is no further delay in the matter. The complainant is directed to appear before the trial Court on 13.8.2018.

24.7.2018

pankaj

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned Yes / No

Whether Reportable Yes / No