

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M-331 of 2017

Date of decision: 27.07.2018

Dr. Chandra Kanta Makkar and another

.. Petitioners

Versus

State of Haryana and another

.. Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Aditya Sanghi, Advocate
for the petitioners.

Ms. Dimple Jian, AAG, Haryana.

Mr. J.P. Sharma, Advocate
for respondent no. 2-complainant.

SURINDER GUPTA, J.

The petitioners have filed this petition under Section 482 Code of Criminal Procedure (for short, 'Cr.P.C.') seeking quashing of Criminal Complaint bearing No. 01-RT of 2013 dated 19.09.2013/19.04.2016 titled "Udmi Ram vs. Dr. Smt. Chandra Kanta and another" filed for offences punishable under Sections 269, 337, 304 Part II read with Sections 511 and 427 of Indian Penal Code (for short 'IPC') pending before Judicial Magistrate First Class, Narnaul as well as the summoning order dated 09.12.2016 (Annexure P-2) whereby petitioners have been summoned for offences punishable under Sections 269 and 337 IPC.

2. The present complaint was filed by respondent no. 2-complainant with the allegations against petitioners, who are doctors by profession, used unsterilized instruments during operation of wife of respondent no. 2, resulting in infection which spread to her body and this fact is proved from investigation report of Durlabhji Hospital, Jaipur.

3. As per case of respondent no. 2-Udmi Ram (complainant), his wife was suffering from pain in uterus and was taken to petitioner no. 1-Dr. Chandra Kanta Makkar, who after checking her gave opinion that she (wife of respondent no. 2) had swelling in uterus, as such, uterus had to be removed. On the same day petitioner no. 2-Dr. Mulkraj Makkar performed operation of his wife to remove the uterus and admitted her as indoor patient from 28.11.2012 to 03.12.2012. During this period, pain in the stomach persisted but it was termed as natural pain and she was discharged. Due to persistent pain, she was again admitted in the hospital of petitioners from 10.12.2012 to 13.12.2012 but there was no improvement. After her discharge, condition of wife of respondent no. 2 deteriorated and she was taken to Durlabhji Hospital, Jaipur, where she was kept in ICU for four days. The investigation report of Durlabhji Hospital, Jaipur proves that infection in the body of wife of respondent no. 2 had spread due to unsterilized instruments used in the operation. Respondent no. 2 has alleged that due to negligence and carelessness of petitioners life of his wife was endangered, hence they committed the offence punishable under Section 337 IPC.

4. Relying on allegations levelled in the complaint, petitioners were summoned for offences punishable under Sections 269 and 337 IPC by learned Judicial Magistrate Ist Class, Narnaul.

5. Learned counsel for petitioners has argued that wife of respondent no. 2 was treated and operated by petitioner no. 2-Dr. Mulakraj Makkar. Respondent no. 2 has alleged that unsterilized instruments were used during operation by petitioner no. 2. He had earlier moved complaint to SHO Police Station City Narnaul, wherein he had alleged that he made

enquiries about condition of his wife, who remained admitted in ICU from doctors of Durlabhji Hospital, Jaipur, who informed him that his wife has suffered as her operation has not been properly done. Respondent no. 2 intended that action be taken against petitioner no. 2-Dr. Mulakraj Makkar for his carelessness and negligence. In his complaint he has nowhere alleged or attributed any negligence to petitioner no. 1-Dr. Chandra Kanta Makkar. The above fact is clear from recital in last para of his complaint, which reads as follows:-

“New disease occurred/arose to my wife due to the operation done by Dr. M.R. Makkar, carelessly and negligently. In case, I failed to take her to Jaipur in time then she would had (have) died. Whereas, Dr. Makkar has not advised me to take my wife to some renowned/specialist doctor or other hospital. So, it is requested that legal action be taken against Dr. Makkar.”

6. On the complaint by respondent no. 2, opinion of Civil Surgeon, Narnaul was sought and vide letter dated 07.04.2013, written by Civil Surgeon, Narnaul to SHO, Police Station City Narnaul it was intimated that there was no carelessness and negligence on the part of Dr. Mulakraj Makkar. The report of Civil Surgeon, Narnaul reads as follows:-

“Letters were written to Dr. Karan Singh, Medical Officer, Physician and Dr. (Smt.) Vatika, Female Medical Officer, General Hospital, Narnaul for giving their opinion/advise on the subject cited above. Accordingly, these officers have submitted their reports after checking/scrutinizing the documents pertaining to the

treatment duly attached in this matter. As per this report, there is no evidence regarding any infection in the operation of the patient (female) having been done by Dr. M.R. Makkar and there is no carelessness/negligence on the part of Dr. Makkar in this respect.”

7. Opinion of Dr. Vatika, Gynecologist and Dr. Karan Singh, Physician, reads as follows:-

“I and Dr. Vatika have carefully gone through the complaint made by Udhmi Ram, statement of Dr. M.R. Makkar and documents pertaining to the treatment taken from Durlabhji Hospital, Jaipur.

Smt. Sumitra wife of Udhmi Ram had been operated in Makkar Hospital and she was discharged from the hospital after the operation but she suffered fever after 4-5 days for which, she had been admitted again in Makkar Hospital and the patient has been discharged from the hospital after four days on her request and antibiotic injections have been written by the doctor on the prescription. Thereafter, when pain started to the patient, they did not visit Makkar Hospital and got the treatment from Durlabhji Hospital, Jaipur. We have also seen the record of Durlabhji Hospital, Jaipur, where treatment has been given to ARDS disease and no infection has been shown in the operation wound nor has been shown to be discharged from (sic for) any reason. In the record of Durlabhji hospital, Jaipur, Typhoid positive has been shown.

According to our opinion, ARDS has been occurred due

to Typhoid as it is abundantly clear from the Tax book of Palmonary and Cartical Care Medicine (2 Vol.) page 2110 shown/submitted by Dr. Makkar.

There is no evidence regarding any infection in the operation. So the patient suffered from ARDS due to Typhoid and there is no carelessness on the part of Dr. Makkar.”

8. A short question, which arises for consideration in this petition is as to whether contention of respondent no. 2 that there was negligence on the part of petitioner no. 2-Dr. Mulakraj Makkar who used unsterilized instruments at the time of operation is supported by any expert medical opinion. Before learned Magistrate, there was no such opinion produced by respondent no. 2. Dr. Rajiv Patni consultant, SDMH, Jaipur had brought medical record of wife of respondent no. 2 and has stated that she had developed Sepsis with Ards (contracted infection) after surgical removal of her uterus. The doctor, who treats the patient, performs a very pious duty.

9. Hon'ble Apex Court in case of **Jacob Mathew vs. State of Punjab and another, (2005) 6 SCC 1** has observed as follows:-

“.....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. The investigating officer should, before proceeding against the doctor accused of rash or negligent act or omission, 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 applying Bolam's test to the facts collected in the investigation. A doctor accused of rashness or negligence, may not be arrested in a routine manner (simply because a charge has been levelled against him). Unless his arrest is necessary for furthering the investigation or for collecting evidence or unless the investigation officer feels satisfied that the doctor proceeded against would not make himself available to face the prosecution unless arrested, the arrest may be withheld.”

10. In this case, learned Magistrate has summoned two doctors in a very casual manner with the observation that at the time of summoning Court has only to look into allegations in the complaint. She has not observed that allegations levelled by respondent no. 2 that his wife has suffered infection due to use of unsterilized instruments at the time of operation is not *prima facie* made out from any evidence on record. Impugned order dated 09.12.2016 passed by learned Magistrate is perverse, illegal and not sustainable.

11. Here learned counsel for respondent no. 2 has argued that during course of arguments expert opinion can be produced to rebut expert opinion of Civil Surgeon and opportunity to respondent no. 2 to this effect may be allowed.

12. I find no merit in the submission of learned counsel for respondent no. 2 and I am of the opinion that complaint for want of any evidence in support of allegations levelled by respondent no. 2 deserves to be quashed to prevent abuse of process of court and to secure the ends of

justice. While there is expert opinion to prove that there was no negligence on the part of petitioners, learned counsel for respondent no. 2 could not point out to any expert opinion taken by respondent no. 2-complainant before filing the complaint that there was any negligence on the part of petitioner no. 2-Dr. Mulakraj Makkar, who performed operation for surgical removal of uterus of wife of respondent no. 2.

13. As a sequel of my above discussion, this petition has merit and the same is accepted. Criminal Complaint No. 01-RT of 2003 dated 19.09.2013/19.04.2016 titled “Udmi Ram vs. Dr. Smt. Chandra Kanta and another” and impugned order dated 09.12.2016, whereby petitioners have been summoned alongwith all consequential proceedings arising therefrom, qua petitioners, are quashed.

July 27, 2018

jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No