

CRM-M-35939 of 2014 (O&M)

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

CRM-M-35939 of 2014 (O&M)  
Date of Decision: 05.09.2018

Dr. Sunil Kumar Jain and another

....Petitioners

Versus

State of Haryana and another

....Respondents

**CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN**

Present: - Mr. B.R. Gupta, Advocate, for the petitioners.  
Mr. Vikramjit Singh, Addl. A.G., Haryana.  
Mr. R.S. Hooda, Advocate, for respondent No.2.

**RAMENDRA JAIN, J. (ORAL)**

Through this petition under Section 482 Cr.P.C prayer has been made for quashing FIR No.350 dated 24.05.2014 (Annexure P-1) registered under Section 304-A IPC at Police Station Nuh, District Mewat.

Briefly, in the day time of 22.02.2014 deceased Suman wife of respondent No.2 was brought to the clinic of petitioners for delivery. By that time, head of the child yet to be born had protruded. Though, petitioner No.2 had asked deceased Suman and her attendants to take her to Community Health Centre, but on their insistence, she helped deceased Suman in her delivery there only. After delivery, condition of both mother and child was perfect. Therefore, relations of the deceased took her home for some religious rituals to be performed immediately after birth of the child. However, in the evening of that very date, deceased Suman was again brought to the clinic of petitioner No2 with excessive bleeding.

Consequently, she was referred to higher centre for blood transfusion and further management. On checking, her blood pressure was found normal.

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Pulse and her general condition were fair. Thereafter, deceased Suman left clinic of petitioner No.2 in good condition along with her attendants and was taken to Shaheed Hasan Khan Mewati Government Medical College, Nalhar (Mewat), where she was got admitted and medical aid was provided to her by shifting her to the Intensive Care Unit (ICU). In her OPD card, time of her arrival was mentioned as 8:00 p.m. However, around 8:45 p.m., doctors attending deceased Suman in the said medical college recorded remarks that “patient was brought dead and relatives informed”. Respondent No.2 reported the matter to the police. Pursuant thereto, impugned FIR was got registered against the petitioners.

Learned counsel for the petitioners *inter alia* contends that during investigation, Superintendent of Police, Mewat, vide letter No.2803 dated 05.03.2014, requested Deputy Commissioner, Mewat, to seek enquiry report regarding negligence in the death of Suman after delivery. Consequently, Civil Surgeon, Mewat, constituted a committee under the chairmanship of Dr. Jatinder Kumar Sapra, Programme Manager (Mewat) (Retd. Civil Surgeon) with Dr. Poonam Lata, Gynaecologist Mewat, General Hospital Mandikhera (Mewat), asking it to submit its report within two days, which after making necessary enquiry, vide letter dated 21.03.2014 (Annexure P-21) reported to Civil Surgeon, Mewat, that the petitioners were not negligent in the treatment of Smt. Suman at the time of her delivery and thereafter.

Still, respondent No.2 was not satisfied with the aforesaid enquiry report. Therefore, he moved another application for second enquiry into the death of his wife Suman. Consequently, second enquiry was conducted by a

committee consisting of Additional Deputy Commissioner as its Chairman,

Civil Surgeon, Mewat, gynaecologist doctor from SHKM Medical College,

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Nalhar and two family members of respondent No.2, namely, Smt. Bhagwati and Sh. Leelu Ram. This time also, both the petitioners were exonerated by the enquiry committee, observing that like cause of death of deceased Smt. Suman was the blood loss from uterine cavity.

On the basis of aforesaid two reports, final report was given by Board of Doctors, which is reproduced hereunder for ready reference: -

*“Deceased died because of haemorrhage and shock due to the loss of blood from uterus after child birth, no injury found in uterus. Cause of death is Atonic Post Partum haemorrhage which was sufficient enough to cause death in natural course of life, ante mortem in nature.”*

Despite receipt of said enquiry report, investigating officer filed final report under Section 173(2) Cr.P.C. against the petitioners under Section 304-A IPC.

Learned counsel contends that cause of death of Smt. Suman was haemorrhage and shock due to loss of blood from uterus after birth of the child. There is no *iota* of evidence as on date on the record, raising any finger against the petitioners with regard to their alleged negligence and mis-conduct. Even there was no evidence before the investigating officer qua alleged negligence of the petitioners in delivery of deceased Suman or thereafter. Therefore, investigating officer ought to have filed cancellation report instead of filing final report against the petitioners. Both the enquiry reports, after due enquiry conducted by enquiry committees constituted on the directions of Civil Surgeon, Mewat, and Deputy Commissioner, Mewat, are in favour of the petitioners.

On the other hand, learned counsel for respondent No.2,

vehemently opposing the above submissions of learned counsel for the petitioners, pleaded the validity of action taken by the investigating officer

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of filing final report under Section 173(2) Cr.P.C. against the petitioners. Trial Court, after finding *prima facie* case, charge-sheeted petitioners under Section 304-A IPC on the basis of evidence collected by investigating officer. Therefore, at this stage, impugned FIR is not liable to be quashed.

Having considered the submissions made by both the sides and taking aid of ***Jacob Mathews v. State of Punjab and another***, 2005(6) SCC 1 and ***Martin F. D'souza v. Mohd. Ishfaq***, 2009(3) SCC 1, wherein the Hon'ble Apex Court has held that before prosecuting a doctor, it is required that matter qua negligence of a doctor be referred to a competent doctor or committee of doctors specialised in that particular field and thereafter if report comes against the doctor, then only he can be prosecuted for his negligence, I find merit in the instant petition for the reasons to follow.

As on date, there is no record or *iota* of evidence showing negligence of the petitioners in delivery of deceased Suman. Investigation officer after registration of the case on the complaint of respondent No.2 was required to obtain some report from the committee constituted by Civil Surgeon, Mewat, showing negligence of the petitioners during delivery of deceased Suman or thereafter.

It is not ascertainable as to on what basis or evidence investigating officer filed report under Section 173 Cr.P.C. against the petitioners under Section 304-A IPC and in what circumstances, the trial Court has charge-sheeted the petitioners under the aforesaid Section.

It seems that the learned Magistrate also did not go deep into the evidence collected by the investigating officer and straightaway without application of mind, charge-sheeted petitioners under Section 304-A IPC,

there being no evidence against them. Learned Magistrate also did not mention any reason in his impugned order for ignoring or disagreeing with

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reports (Annexures P-21 and P-22) given by the committees constituted under the orders of Civil Surgeon, Mewat, and Deputy Commissioner, Mewat, which are in favour of the petitioners, exonerating them of the charge of their negligence in delivery of deceased Suman.

It is paramount duty of the Courts to impart justice and not to scuttle the rights of the people on the basis of flimsy investigation done by the police officials.

Since as on date, after registration of FIR in the year 2014, despite elapsing four years, nothing has come on record showing negligence of the petitioners, therefore, it is evident they are unnecessarily being harassed, forcing them to face trial under Section 304-A IPC by filing an illegal report under Section 173(2) Cr.P.C. against them and charge-sheeting them by the trial Magistrate under the said Section.

In view of the discussion made above, petition is allowed. FIR No.350 dated 24.05.2014 (Annexure P-1) along with all consequential proceedings is quashed.

**September 05, 2018**  
R.S.

**(RAMENDRA JAIN)**  
**JUDGE**

|                           |        |
|---------------------------|--------|
| Whether speaking/reasoned | Yes/No |
| Whether Reportable        | Yes/No |