IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-9790-2016 (O&M)
Reserved on: December 18th ,2017
Pronounced on: January 24th 2018

Parmod Kumar ..Petitioner

versus

State of Haryana and others ..Respondents

CORAM: HON'BLE MR JUSTICE RAMENDRA JAIN

Present: Mr. K.S.Nalwa, Advocate and
Mr. Adhiraj Thind, Advocate,
for the petitioner.

Mr. Surender Singh, AAG, Haryana
for respondent no.1.

Mr. Ishan Bhardwaj and
Mr. B.R. Gupta, Advocates
for respondent no.2.

RAMENDRA JAIN, J.

1. Through this instant petition under section 482 of the Code of Criminal Procedure, the petitioner has assailed order dated 13.10.2015 of learned Additional Sessions Judge, Gurgaon, accepting revision filed by revisionist-respondent no.2 Mukesh Kumar Gupta, thereby reversing order dated 14.7.2014 of the learned trial court, whereby he along with respondent nos. 3 to 9 was summoned under sections 304-A, 337, 420 and 468 read with section 34 IPC in a complaint case filed by the petitioner under sections 190 read with section 200 of the Code of Criminal Procedure for commission of offences under sections 201/204/279/302/304-A/337/357/386/420/464/468/506/34 read with section 120-B IPC.

2. The brief facts according to the petitioner necessary for disposal of this petition are that during the intervening night of

24/25.01.2011, the petitioner got his wife, namely, Chandermukhi Verma, aged about 72 years admitted in the Medanta Hospital, Gurugram on account of her sudden acute abdominal pain with frequent bowel movement, nausea and vomiting, where she died in the evening of 28.01.2011 at 8.40 PM. Earlier to this, she was leading a healthy and active life except for age related minor diseases, like diabetes and hypertension etc. She was regularly checked up by Dr. R.R.Kasiwal, a known cardiologist on whose advice, she was got admitted there. However, after almost three hours of her admission at 3.14 A.M., no endeavor was made to diagnose and cure the excruciating pain suffered by the deceased in her abdomen, wasting precious time. Even after remaining in emergency ward, she was not treated on account of indifferent attitude shown by the doctors. It was only at 7.30 A.M on 25.01.2011, on direction of Dr. Samir Malhotra, a cardiologist, deceased was shifted to Cath Lab at 7.30 A.M and a temporary pacemaker was installed to her, which, in fact, was not required. Thereafter, for the whole day, since 9.00 A.M to 6.30 P.M., she was not once examined by a Gastroenterologist in the emergency ward, except for Dr.R.R.Kasliwal, a Nephrologist. It was only after making repeated requests that Dr.Manish Paliwal, Gastroenterologist, came to examine the deceased and raised doubt about the possible bowel Ischemic condition of the patient. He advised serum lipase and X-ray examination of abdomen of the deceased. However, in the evening, echo was performed to know about the condition of the deceased, which ought to have done before the pacemaker was inserted. It was, in fact, a gross negligence on the part of the doctor. Thus, the condition of the patient started deteriorating. She turned pale as she was highly anemic, but nothing was done except for making suppression,

alteration and interpolations in the medical records, thereby amounting to forgery and destruction of evidence. It is further averred in the complaint that though the patient was suffering with the acute intestinal Ischemia or acute bowel Ischemia and she never complained of chest pain nor she sweated at the time of her admission, but the doctors could not be able to diagnose the disease, thereby making unreasonable delay. The disease, being serious and painful, if is not treated immediately, the blood supply in the intestine suddenly stops, which results in grave injury to the intestine. Therefore, it was the bounden duty of the doctors to start treatment under the guidance of a specialist, but with a view to enhance the medical bill of the hospital, which is being run under the guidance and control of Board of Directors and especially of respondent no.2 Dr. Naresh Trehan, who is a cardiologist of international repute, and is incharge of day-to-day affairs of the hospital, who had even met the petitioner and his family to have a discussion on the line of treatment. But shockingly, the hospital is being run as a business house rather than cooperating the ailing patient.

3. It is further case of the petitioner that a C.T.Angio or MRI Angio scan or an exploratory laparotomy (surgery of the abdomen) was required to be done to ascertain the cause of abdominal pain in order to save the life of the deceased, but no such step was taken, thereby respondent nos. 2 to 10 acted grossly, negligently and recklessly in treating the deceased in a right direction. The deceased was removed to heart command centre, rather examining her for her abdominal pain. One Dr. Fatima, who was from the team of Dr. Manish Paliwal, opined the need for CT Angio, but nothing was done. On 26.1.2011 Dr. T.P.Bohra, merely suggested the investigation by way of CT Angio abdomen and he noticed the onset of Metabolic Acidosis.

It is averred that Dr. Mukesh Kumar Gupta forcibly intubated (putting on mechanical ventilator) the deceased against her will and no specific permission, in this regard, was sought from the petitioner or his family members. Dr. P.N. Gupta, a Nephrologist, turned down the opinion of conducting Angio/CT scan in consultation with Dr. Manish Paliwal. Dr. R.R.Kasiwal did not bother to visit the patient till 27.1.2011. It was only after the threat given by the petitioner that he would evict the deceased from the hospital, Dr. R.R Kasiwal visited the deceased and made the petitioner and his family members to sit in a room next to heart command centre, but did not meet them.

4. It is further the case of the petitioner that inhuman treatment was meted out to the deceased as her hands and feet were tied to the bed. Consequently, the petitioner and his family members made a complaint to Dr.Naresh Trehan, who convened a meeting, consisting of Dr. R.R.Kasiwal and Dr T.P.Bohra. Petitioner and his family were asked to wait outside. They admitted that the patient had no heart problem as she was afflicted with acute bowel ischemia. On assurance being given to the petitioner that they shall provide best treatment, they did not turn up to examine the deceased and thus, failed to honour their promise. It has been further averred that when condition of the deceased started deteriorating rapidly and red blood cells were required to be administered urgently, Dr. Mansi, at 8.00 P.M., in conspiracy with Dr. Naresh Trehan and Dr. R.R.Kasiwal refused to administer RBC on that day and returned the blood to blood bank. Subsequently, the petitioner and his family were informed that the patient was being administered CPR (cardio pulmonary resuscitation), but they were not made aware of the procedure being adopted by them.

Ultimately, it was at 8.40 P.M., on 28.1.2011, the patient was declared dead. On hearing the demise of his wife, the petitioner and his family members were shocked and completely broken.

5. According to the opinion of Dr. R.K.Sharma, Professor, Dean, Saraswathi Institute of Medical Sciences Noida and Ex-Head of Department of Forensic Medicine AIIMS, New Delhi, the deceased died, because of gross negligence on the part of doctors of the hospital while treating the patient. The petitioner paid a sum of Rs.2,41,706/- which was extorted by respondent nos 2 to 10 and as Dr. Naresh Trehan is a influential person, therefore, there is every possibility of tampering with the record. As per averments made in para no.49 of the complaint, the death of deceased was, in fact, a murder on account of the acts and omissions on the part of the accused.

6. The petitioner, before the trial Magistrate, stepped into the witness box as CW1 and narrated the entire version as set out in his complaint. He, in support of his assertions, examined Dr. Kunal Saha, Professor, HIV/AIDS, Cener Columbia USA as CW2 and Dr. R.K.Sharma, Professor, Former Head of Department of Forensic Medicines AIIMS, New Delhi as CW3, who proved their respective reports as Ex. CW2/A and CW3/A.

7. Learned counsel for the petitioner restricting his arguments, has vehemently contended that learned lower revisional court committed a grave error in accepting the revision filed by respondent no.2 Dr. Mukesh Gupta, against order dated 14.7.2014, whereby he was summoned to face trial under sections 304-A, 337, 420 and 468 IPC. The wife of the petitioner was not required intubation, particularly when the deceased was awake,

conscious and breathing on her own, therefore, the intubation by Dr. Mukesh Kumar Gupta was done forcefully without seeking permission from the patient or his family members. Even the hands and feet of the patient were tied to carry out the process of intubation.

8. On the other hand, learned counsel for respondent no.2 refuted the submissions made by learned counsel for the petitioner contending that except for averments in the complaint and oral testimony of the petitioner, there is no other documentary evidence on record in support thereof. Therefore, the approach of the learned lower revisional court in accepting the revision filed by Dr. Mukesh Kumar Gupta and reversing the order dated 14.7.2014 passed by learned trial Magistrate, whereby he along with other respondent nos. 1, 3 to 9 was ordered to be summoned to face trial under sections 304-A, 337, 420, 468 read with section 34 IPC is correct. There was no role of respondent no.2 Dr. Mukesh Kumar Gupta in the entire incident, therefore, the learned Trial Magistrate committed a grave error in summoning him as an accused on the basis of allegations levelled in the complaint. The present complaint has been filed on the basis of opinion of two doctors, who are not even having specialty in the relevant field. Before the treatment of the deceased commenced, consent form was obtained from the family of the deceased.

9. After giving thoughtful consideration to the submissions made by learned counsel for the parties, this court is of the view that the instant petition, being without any merit, fails and deserves to be dismissed for the reasons to follow:-

10. Before delving into the matter deeply, it would be appropriate to refer to order dated 18.12.2017, whereby two other connected petitions,

bearing nos. CRM-M-9792-2016 and CRM-M-30029-2016 were segregated and adjourned to 29.1.2018, from the present one, for pronouncement of the judgment, which reads as follows:-

> " Learned counsel for the petitioner in all the above three quashing petitions as well as counsel for respondent no.2 in CRM-M-9790-2016 are ready with the arguments, whereas learned senior counsel in CRM-M-9792-2016 and CRM-M-30029-2016 pray for an adjournment. However, learned counsel for respondent no.2 in CRM-M-9790-2016 has vehemently opposing the prayer of Senior counsel in the connected petitions insisted to hear arguments for which learned counsel for the petitioner has acceded to. Therefore, CRM-M-9790-2016 is segregated from remaining two cases in which adjournment has been sought by learned senior counsel for the respondents. Arguments are heard in CRM-M-9790-2016.
>
> Judgment reserved.
>
> CRM-M-9792-2016 and CRM-M-30029-2016, are adjourned to 29.01.2018.
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> Photocopy of this order be placed on the files of other connected cases."

11. In view of the order, referred to above, the only question that requires to be gone into is, with respect to the allegations levelled by the petitioner in his complaint, duly corroborated by the testimony of witnesses examined before the trial Magistrate, reports of the experts and findings recorded by both the learned courts below on the strength of material available on the record to find out any glaring defect therein, which

needs to be set right, as also to the role ascribed to respondent no.2 Dr. Mukesh Kumar Gupta in the complaint filed by the petitioner.

12. The learned trial Magistrate, upon appraisal of evidence on the record, recorded specific finding in para no. 14 and 15 of its order dated 14.07.2014, which reads as follows:-

> "14 The perusal of oral as well as documentary evidence reflects prima facie that accused nos.1,3 to 9 were gross negligent and failed to prove adequate medical attention and proper diagnosis to the deceased Late Smt.Chandermukhi Verma and she died because of wrong treatment, and due to lack of ordinary skill diagnosis and due to the gross negligence by the doctor at Medanta Hospital. It is further prima-facie reflects that the accused persons had prepared the false documents and false documents were used to hide the negligence and to extract huge amount from the complainant.
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> "15 In view the aforesaid, prima facie case for summoning against accused No.1, 3 to 9, u/s 304A, 337,420,468 read with section 34 of IPC is made out. However, no prima facie case for summoning is made out against accused no.2 in his personal capacity as except the oral testimony of the complainant, there is no document to support this fact that he was approached by the complainant and he assured that he would attend the patient. Further it is not the case of the complainant that accused no.2 attended the patient and was also gross negligent. Further, no prima-facie case for summoning accused nos.1, 3 to 9, u/s 201, 204,302,357,386,506 read with section 34 IPC read with section

120B IPC is made out."

13. The lower revisional court, upon re-analysing the entire material available on the record, recorded specific and comprehensive findings concerning respondent no.2 Dr. Mukesh Gupta, ascribing his role in the entire episode, giving sound reasoning therein, in paras 26 and 27 of its order dated 13.10.2015, which read as follows:-

> "26 Now I switch over to the revision filed by revisionist Dr. Mukesh Kumar Gupta. Admittedly the said doctor was neither physician nor he treated the deceased, because neither he is from the Nephrology nor from the gestrology nor from cardiology department of the Medical hospital. No doubt he was the part of team of the doctors, but it is he who conducted the intubation and provided medical ventilation to the deceased. It is not the case that he removed the said breathing support system to pave the way for the death of the deceased, rather according to him, the said act done by him kept the deceased alive for considerable period of time and to diagnose the real cause of ailment of the deceased, was not his forte. Allegation levelled by the complainant is that despite the insistence of the deceased to remove the said support system, mechanical ventilation was done, but it is not the case of the complainant that because of the said particular act on the part of the said doctor, the deceased died. Experts' opinions of CW2 and CW3 prima facie indicate that the death of the deceased occurred because of medical negligence on the part of the doctors as bowel ischemia was not timely diagnosed and

was thus not properly treated. The medical condition of the deceased according to revisionist doctor was liable to be put on the life support system to save her life as an earnest measure. According to the revisionist, he provided best treatment as the vital parameters of the deceased were low, as she was in acute severe metabolic acidosis and as per the medical literature provided by him, there was no option with the revisionist except to put mechanical ventilation upon the deceased as her PH level was 6.876 and as per the medical literature the endotracheal intubation should be performed to provide evasive mechanical ventilation in nearly all patients with severe dyspneahypoxenia or persistent or worsen acideme (ph.< 7.30) as the said mechanical ventilation has the additional benefit of reducing the oxygen demand of respiratory muscles and decreased left ventrecular after load.

"27 There is merit in the submission of Sh. Rakesh Malhotra Advocate for the said revisionist when he vociferously argued that learned trial court ought not have passed the summoning order against his client inasmuch as he neither transfused the blood nor diagnosed or treated the deceased during her entire tenure of 4-5 days in the hospital except that he put the mechanical ventilation upon the deceased. Learned trial court ought to have taken into consideration the medical experts CW2 and CW3 'reports CW2/A and CW3/A, who no where commented in their reports that said mechanical ventilation and intubation on the part of the accused had something to

contribute in the death of the deceased. The sum and substance of the reports of the said mechanical experts has already been deliberated upon. Once learned trial court had appreciated as to the role played by accused No.2, it was expected from it to keep in mind the golden principle that the summoning of accused in a criminal case is a serious matter and accused cannot be summoned as a matter of course on the basis of allegations levelled in complaint. The court was required to be satisfied regarding the existence of prima facie case and sufficiency of grounds for proceeding against accused Dr. Mukesh Kumar Gupta, who in the entire episode except for providing mechanical ventilation and intubation upon the deceased, did not do any other thing.

14. The grievance of the petitioner, precisely, in his complaint is that, his wife, on the intervening night of 24/25.1.2011, complained of sudden acute abdominal pain with frequent bowel movement, nausea and vomiting. He, on the advice of Dr.R.R.Kasiwal, a known cardiologist, got admitted his wife in Medanta Hospital, Gurgaon at 3.14 A.M., the same night. According to the complainant, his wife was not diagnosed and cured properly by the doctors of the said hospital as his wife was afflicted with “acute intestinal Ischemia” or “acute bowel Ischemia”. She never complained of chest pain nor she sweated at the time of her admission, but the doctors delayed the treatment unreasonably, thereby wasting precious time in consultation, which, ultimately, resulted in death of his wife and thus, there were gross negligence on the part of the doctors while treating the deceased, which fact is apparent from reports CW2/A and CW3/A

submitted by the experts.

15. It is no doubt true that Dr. Mukesh Gupta, was a member of team of doctors, but the only question that needs to be considered is, as to whether intubation and mechanical ventilation, on seeing the critical condition of the patient were required. On visualising the critical condition of the patient, such a procedure is oftenly adopted by doctors for the purpose of saving his life. According to Dr. Mukesh Gupta, the act done by him was to keep the deceased alive for a considerable period. It was not within his domain to diagnose the real cause of ailment of the deceased. He provided best treatment to the deceased by putting her on the life support system with a view to save her life. There was no other option but to put the deceased on mechanical ventilation,keeping in view the emergency situation, particularly when her PH level was 6.876.

16. It is no-where the case of the complainant that on account of doing such particular act, his wife expired. He had only performed his duty while putting the patient on mechanical ventilator support with a view to avoid any further damage to the patient, which fact is further fortified by the comments dated 16.10.2016 (Annexure R-1) made by Dr. Yatin Mishra. That apart, in reports CW2/A and CW3/A, submitted by the experts, it has no-where been commented that intubation and mechanical ventilisation conducted by respondent no.2 Dr. Mukesh Gupta added to the misery of the deceased resulting in her death. It is worth mentioning that before adopting the procedure of intubation and mechanical ventilation, a consent form for surgical procedure or treatment was duly filled up and signed by the petitioner himself as the patient was drowsy, which was produced before this court during the course of hearing. Therefore, the argument of the

learned counsel for the petitioner that the consent was not obtained before such a painful procedure adopted by the doctor, has no legs to stand and is, therefore, outrightly rejected. The learned lower revisional court has dealt with this issue elaborately assigning well founded reasoning therein, which, in the considered opinion of this court, do not call for interference and as such, the same is affirmed.

17. During the course of arguments, learned counsel for the petitioner has not been able to point out any irregularity or negligence on the part of Dr. Mukesh Gupta nor any glaring defect in putting the patient on the mechanical ventilator support. Therefore, the approach of the learned lower revisional court in accepting the revision filed by Dr. Mukesh Kumar Gupta and setting aside order dated 14.7.2014 summoning him as an accused to face trial under sections 304-A, 337, 420 and 468 IPC read with section 34 IPC, especially when he was not involved in the alleged offence is perfectly legal and justified.

18. Whether or not proper diagnose or treatment, allegedly, was not given by the doctors or red blood cells were not administered, even after recommendation by the doctor concerned,while treating the deceased or certain other tests recommended by the doctors specialised in their respective fields, were also not got done, thereby amounting to gross negligence on their part, is a matter of evidence, that would be adjudicated upon only after the ocular as well as documentary evidence is adduced by both the parties in support of their respective claims before the learned trial Magistrate.

19. It is well settled principles of law by now that mere making allegations in the complaint and deposing before the learned trial

Magistrate, in verbatim, are not enough to establish a prima facie case against a person, unless they are supported by documentary evidence. This court, at this stage, does not make any comment upon medical opinions given by experts with respect to diagnose and treatment administered by the doctors of said hospital, inasmuch as this specific issue relates to the other two connected petitions segregated from the present one.

20. In view of what has been observed hereinabove, this court does not see any illegality or perversity in order dated 13.10.2015 passed by the learned lower revisional court, reversing the finding recorded by the trial court in its order dated 14.7.2014, in sofar as respondent no.2 Dr. Mukesh Kumar Gupta is concerned only. Consequently, the petition, being without any merit fails and is dismissed.

January 24th, 2018 (RAMENDRA JAIN)
VK/rishu JUDGE

1. Whether speaking/reasoned Yes/No
2. Whether Reportable Yes/No