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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 11th October, 2018

+ CRL.M.C. 1158/2016 and Crl. M.A. 4966/2016

Dr. NEERAJ GOYAL

..... Petitioner

Through: Mr. Siddharth Aggarwal, Mr.
Kumar Vaibhav and Ms. Rupali Samuel,
Advocates

versus

STATE & ORS

..... Respondents

Through: Mr. Ravi Nayak, APP for the State
with Dr. Saba Naz, PNDT & MTP, Nodal
Officer, Central District

+ CRL.M.C. 1729/2016 and Crl. M.A. 7356/2016

Dr. H.K SINGH

..... Petitioner

Through: Mr. Anil Airi, Sr. Advocate with
Mr. Krishan Kumar, Ms. I. Grover, Ms.
Bindiya, Ms. Sadhna Sharma, Mr. Satyam
Bhatia and Ms. Sunita Arora, Advocates

versus

STATE & ANR.

..... Respondents

Through: Mr. Ravi Nayak, APP for the State
with Dr. Saba Naz, PNDT & MTP, Nodal
Officer, Central District

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. Both these petitions presented under Section 482 of the Code of Criminal Procedure, 1973 (Cr.PC) arise out of same proceedings that

are pending on the file of the Metropolitan Magistrate, they relating to a complaint case (CC No.56/G/2014), it being the complaint presented by the Chief District Medical Officer, she being the appropriate authority for North District in the office of the Chief District Medical Officer, Govt. of NCT of Delhi, alleging offences under Section 23 of the Pre-conception and Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 and Section 5 of Medical Termination of Pregnancy Act, 1971. Since it was a complaint presented by a public servant, no formal inquiry under Section 200 Cr. PC was held. The Metropolitan Magistrate, by order dated 28.10.2006, issued summons, *inter alia*, to the two petitioners herein, third person summoned by the same order being Dr. Anil Kumar Grover.

2. After the three aforesaid persons had been summoned as accused and had appeared before the Metropolitan Magistrate, pre-charge evidence was adduced on the basis of which the Metropolitan Magistrate, by a detailed order dated 25.07.2015, found no sufficient ground to frame the charge against Dr. Anil Kumar Grover and petitioner Dr. Neeraj Goyal and, thus, discharged both of them. By the same order, the Metropolitan Magistrate found sufficient material to frame charge against the petitioner Dr. H.K. Singh for the offence under Section 23 of Pre-conception and Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994. The said order was assailed before the court of Sessions invoking its revisional jurisdiction by petitioner Dr. H.K. Singh through his

revision petition (CR 30/15) and also by the complainant by its revision petition (CR 25/15). Both the said revision petitions were decided by a common judgment dated 05.03.2016. In terms of the said decision, the revision petition of the petitioner H.K. Singh was dismissed. The revision petition of the complainant was partly allowed, the order of discharge against Dr. Anil Kumar Grover having been upheld while it having been concluded that sufficient material had been adduced to put the petitioner Neeral Goyal on trial on the charge for offence under Section 5(3) of Medical Termination of Pregnancy Act, 1971.

3. Both these petitions have been brought by the two persons who remain in the fray facing criminal prosecution pursuant to the above mentioned orders of the courts of the Metropolitan Magistrate and the court of Sessions respectively.

4. These matters were heard on the last date of hearing i.e. 07.09.2018 and the following order was passed :-

“Heard for sometime.

At the hearing, it came to the fore that the woman named Neelam and her husband Surender were purportedly examined by the complainant (appropriate authority) on the date of the inspection of the premises where the impugned procedure was performed. It also came to the fore that neither of the said two persons, though cited as witnesses, were examined in the pre-charge evidence. It further appears that at least two other witnesses named Ms. Chand working as a safai-karamchari and Ms. Meenu working as a nurse in the said facility had also been examined by the complainant

but they were not formally examined in the pre-charge evidence.

The learned Additional Public Prosecutor is unable to explain this omission. The learned counsel for the petitioners are also clueless in this regard. A perusal of the trial court record would be required. It shall be requisitioned forthwith.

The learned Additional Public Prosecutor shall further clarify on the next date of hearing as to whether any other witnesses aside from the above four, though cited in the complaint, were left out from the pre-charge evidence procedure, and, if so, the reasons for the same.

Be listed on 11th October, 2018.”

5. The learned Additional Public Prosecutor submits, on instructions, that under some deficient legal advice, the list of witnesses that were submitted with the complaint did not include any of the four persons whose names are mentioned in afore-quoted order dated 07.09.2018 and, therefore, the Additional Public Prosecutor did not apply his mind to the need for them to be summoned or examined at the stage of pre-charge evidence. It has been pointed out during the hearing on the last date, as also today, and as is borne out, *prima facie*, upon perusal of the trial court record, that the statements of the aforementioned persons though recorded by the team which had inspected the hospital in question, they were not formally examined before the trial court, such statements as were reduced to writing by the complainant having been instead introduced in evidence in the course of deposition of the complainant herself. This, clearly, was not an appropriate course of action. The evidence of the said witnesses,

particularly, the woman named Neelam and her husband Surender are crucial to reach out to the truth of the matter. Against the said backdrop, the learned Additional Public Prosecutor submitted that permission may be now granted in terms of the provision contained in Section 311 Cr. PC for the said witnesses to be summoned additionally.

6. While fairly conceding to the above request of the Additional Public Prosecutor for the four above mentioned witnesses to be called and examined in the proceedings pending before the Metropolitan Magistrate, the learned counsel for the petitioners submitted that in that event the impugned orders would deserve to be set aside and vacated. It is also their request that liberty may be granted to them to make an appropriate prayer for recall of such witnesses as may have been examined earlier at the stage of pre-charge evidence for purposes of further cross-examination in light of additional material that is expected to come on record through the four aforementioned additional witnesses who are proposed to be examined by the complainant.

7. Thus, with the consent of all sides, the impugned order of the Metropolitan Magistrate dated 25.07.2015 and impugned order dated 05.03.2016 of the court of Sessions in revision to the extent thereby charges were found made out against the petitioners are hereby set aside. For clarity, it is added that this order will in any manner not disturb the order of discharge of Dr. Anil Grover. As a consequence to these directions, the proceedings before the Metropolitan

Magistrate in the aforementioned criminal case stand relegated to the stage of pre-charge evidence in so far as the case against the two petitioners herein is concerned. The Metropolitan Magistrate will summon the four persons mentioned in the afore-quoted order as additional witnesses and permit them to be examined by the complainant. Needless to add, each of them shall be tendered for cross-examination by the petitioners. The petitioners, after the said exercise has been completed, will have the liberty to move the Metropolitan Magistrate to pray for recall of any of the witnesses earlier examined for further cross-examination, if any, in light of the additional material that is being permitted to be brought on record.

8. All contentions of all sides are kept open. Both the petitions and the applications filed therewith are disposed of in above terms.

9. The trial court record shall be returned forthwith.

Dasti.

R.K.GAUBA, J.

OCTOBER 11, 2018

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