

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No.349 of 2018

Order Reserved on : 28.6.2019

Order Passed on : 12.9.2019

Rakesh Khare, S/o Shri S.P. Khare, aged 54 years, permanent resident of Arya Colony, Tifra, Police Station Sirgitti, Bilaspur, Chhattisgarh

---- Applicant

versus

State of Chhattisgarh through Station House Officer, Police Station Chakarbhata, Bilaspur, District Bilaspur, Chhattisgarh

--- Respondent

and

Criminal Revision No.960 of 2018

Dr. Ramesh Kumar Gupta, S/o Shri A.R. Gupta, aged about 63 years, resident of Mungeli Naka, Near Green Park, Bilaspur, Civil and Revenue District Bilaspur, Chhattisgarh

---- Applicant

versus

State of Chhattisgarh through Police Station, Chakarbhata, Bilaspur, Chhattisgarh

--- Respondent

For Applicant Rakesh Khare

: Ms. Sharmila Singhai and
Shri Sanjay Agrawal, Advocates

For Applicant Dr. Ramesh Kumar Gupta : Shri Manoj Paranjpe and Shri
Bharat Sharma, Advocates

For Respondent/State

: Shri Shailendra Dubey, Additional
Advocate General and Shri
Devendra Pratap Singh, Deputy
Advocate General

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. ORDER

1. Since both the revisions arise out of a same sessions trial, they are decided together by this common order.
2. Criminal Revision No.349 of 2018 has been preferred by Applicant Rakesh Khare against the order dated 18.7.2017 passed by the Additional Sessions Judge, Bilaspur in Sessions Trial No.34 of 2015, whereby charges have been framed against Rakesh Khare for offence punishable under Sections 420, 468, 471, 270, 276, 304 Part II and 308 of the Indian Penal Code.
3. Criminal Revision No.960 of 2018 has been preferred by Applicant Dr. Ramesh Kumar Gupta against the order dated 16.7.2018 passed by the Additional Sessions Judge, Bilaspur in Sessions Trial No.34 of 2015, whereby charges have been framed against Dr. Ramesh Kumar Gupta for offence punishable under Sections 304 Part II, 308 and 269 of the Indian Penal Code.
4. Facts, in brief, are that a medical camp was conducted at Pendari, Sakri on 8.11.2014. The camp was conducted under the National Family Planning Programme meant for sterilization of women. Venue of the camp was decided to be Nemichand Jain Cancer Hospital. On 8.11.2014, i.e., the date of incident, Applicant Dr. Ramesh Kumar Gupta was posted as a Specialist Surgeon at District Hospital, Bilaspur. On 9.10.2014, the Block Medical Officer had issued a circular allotting duties to different doctors and nurses

for the camp to be conducted at Pendari, Sakri on 8.11.2014. Applicant Dr. Ramesh Kumar Gupta was one of the doctors who was allotted duty for performing operations. Other doctors and nurses were deputed for attending patients before operation and likewise a few doctors and nurses were also deputed for attending patients post operation in other rooms. The operation of the patients on the said date started in the post lunch session and in all Dr. Ramesh Kumar Gupta conducted 83 operations on the said date. After the operations, the patients were taken in recovery room and were attended by other doctors and nursing staff. They were also provided with 10 tablets each of the drug Ciprocil and Ibuprofen and were explained in respect of the medicines to be taken and all the patients were discharged. However, all the patients reached their respective homes and immediately after consuming the tablets, which were provided for recovery of the patients, started getting unwell. Many of the patients started suffering giddiness accompanied by vomiting. Thereafter, about 132 patients in all, who had undergone operation on the said date, were admitted to various hospitals in the city and in due course of time, 12 of the women, who had undergone sterilization on the said date, died and the other who were admitted to the hospitals underwent prolonged treatment and were later on discharged. First Information Report was lodged on 11.11.2014, wherein both the present Applicants and some other were made accused.

5. Allegations against Applicant/accused Dr. Ramesh Kumar Gupta are that the place where the sterilization of the women was done by him was not properly cleaned and dirt was spread everywhere. He did sterilization operations of all the 83 women within a short

span of 3 hours. If he had performed those operations properly and carefully, it would have taken approximately 20-30 minutes for him for each of the operations. It is also alleged that out of 12 patients, 3 died due to septicemia. Allegedly, Applicant Dr. Gupta conducted operations of 83 women in unhygienic conditions in a short span of time to gain more and more money and mark a record. Thus, he had knowledge that due to his act, patients could die.

6. Allegations against Applicant/accused Rakesh Khare are that being a partner of Kavita Laboratories, in pursuance of the tender orders dated 11.9.2014 and 12.9.2014, he supplied medicines Ciprocin 500 bearing batch No.1482-CD, 14101-CD to the Chief Medical and Health Officer, Bilaspur. Allegedly, Applicant Rakesh Khare had purchased those medicines from Amit Agencies, Raipur. Those medicines were manufactured by M/s Mahavar Pharma Private Limited, Raipur. It is further alleged that those tablets Ciprocin 500 were found to be of substandard and containing toxic elements such as phosphate which are used for killing rats as also containing poisonous substance like zinc phosphate. Further case of the prosecution is that Applicant Rakesh Khare had to give testing report obtained from Chouksey Laboratories, Indore regarding quality of the medicines supplied by him, but in place thereof he submitted a testing report of Alpa Analytical Laboratories, Indore. On verification, said Alpa Analytical Laboratories, Indore reported that the said testing report was not issued by them and thus the same was forged. Further allegation against Applicant Rakesh Khare is that over the packets of the medicines supplied by him 1482-CD Ciprocin was

mentioned, but inside those packets over the wrappers of the medicines 14101-CD was mentioned.

7. On completion of the investigation, a charge-sheet was filed against both the present Applicants and other accused persons. Vide the impugned orders dated 18.7.2017 and 16.7.2018, the Trial Court framed charges against the present Applicants as mentioned in the second and third paragraphs of this order. Hence, these revisions.

8. Learned Counsel appearing for Applicant/accused Dr. Ramesh Kumar Gupta submitted that there was no rashness or negligence on the part of Applicant Dr. Gupta. The death of 12 women took place due to poison which was contained in the medicines given to them. All 132 patients including the 12 died women were admitted to hospitals on consuming tablets of Ciprocin and Ibuprofen. The laboratory test conclusively proved that the medicine Ciprocin contained poisonous substance which is sufficient to kill a human being. Ciprocin was also found in the viscera of 5 died women. Therefore, from the evidence collected by the prosecution itself, it is established that death of the 12 women was not due to septicemia. Even assuming that the death was due to septicemia, no offence attaches to Applicant Dr. Gupta because he was not incharge of Nemichand Jain Hospital. This charge was with the Block Medical Officer. The job of preparing operation theatre was also not of Applicant Dr. Gupta. He was also not incharge of the recovery room from where infection could have come into contact of the women while they were recovering post operations. There is not an iota of evidence to hold that any of the women were infected

during the course of operation. Therefore, no offence is made out against Applicant Dr. Gupta and the Trial Court has wrongly framed the charges against him. Relying upon a judgment of the Supreme Court in **Jacob Mathew v. State of Punjab, (2005) 6 SCC 1**, it has been further submitted by Learned Counsel that as per the direction issued by the Supreme Court, in the present case, before initiating proceeding against Applicant Dr. Gupta, the prosecution has not obtained an independent and competent medical opinion of a qualified doctor. For this reason also, no case is made out against Applicant Dr. Gupta.

9. Learned Counsel appearing for Applicant Rakesh Khare submitted that as alleged by the prosecution, the medicines Ciprocin 500 were only supplied by Applicant Rakesh Khare pursuant to the tender orders dated 11.9.2014 and 12.9.2014. Applicant Rakesh Khare was not the manufacturer of those medicines. There is nothing on record on the basis of which it is *prima facie* established that the alleged forged testing report of Alpa Analytical Laboratories, Indore was submitted to the Chief Medical and Health Officer, Bilaspur by Applicant Rakesh Khare. Therefore, no offence punishable under Sections 420, 468, 471 of the Indian Penal Code is made out against Applicant Rakesh Khare. It is further submitted that since Applicant Rakesh Khare was not a manufacturer of the medicines Ciprocin 500 and Ibuprofen, he was not aware that those medicines were of substandard and they contained poisonous substance. Therefore, *prima facie*, no offence under Sections 304 Part II and 308 of the Indian Penal Code is made out against Applicant Rakesh Khare. With regard to the charges framed under Sections 270 and 276 of the Indian

Penal Code, it is submitted that there is no material available on record against Applicant Rakesh Khare on the basis of which these two charges could be framed against him. It is also submitted that Applicant Rakesh Khare was only a supplier of the medicines not a manufacturer thereof and there is nothing on record to show that he was aware of the fact that the medicines Ciprocine supplied by him did not contain the elements of Ciprocine and the medicines supplied by him were of substandard and they contained poisonous substance.

10. Learned Counsel appearing for the State submitted with regard to Applicant Dr. Ramesh Kumar Gupta that for framing of charges against Dr. Gupta there is sufficient material available on record, therefore, the Trial Court has rightly framed the charges against him. It was further submitted that from the evidence collected by the prosecution it is *prima facie* established that Dr. Gupta conducted sterilization operations of 83 women within a short span of 3 hours. It is also *prima facie* established that the operation theatre in which the operations were conducted was in unhygienic condition. There was all possibility of spreading of infection resulting death of the patients. But, even after knowing this fact, Dr. Gupta conducted the operations due to which 3 patients suffered septicemia and died and 9 patients also died due to other medical sufferings and several patients were also admitted to hospitals and treated later on. Therefore, the Trial Court has rightly framed the charges against Dr. Gupta. As regards Applicant Rakesh Khare, Learned Counsel for the State submitted that since medicines Ciprocine 500 were supplied by Applicant Rakesh Khare even after knowing the fact that the medicines were of substandard

and contained poisonous substance, he is also responsible for the death of the 12 patients and for the diseases suffered by other patients who had undergone the operations. It was further submitted that according to the statement of Storekeeper Chandrika Prasad recorded under Section 161 of the Code of Criminal Procedure, whenever a supplier supplies medicines, the supplier also submits a certificate regarding quality of the medicines supplied by him and the said certificate is kept by the storekeeper in record. Thus, the certificate of Alpa Analytical Laboratories, Indore submitted by Applicant Rakesh Khare was seized during investigation which was found to be forged. Therefore, there is sufficient evidence available on record on the basis of which the Trial Court has rightly framed the charges against Applicant Rakesh Khare.

11. I have heard Learned Counsel appearing for the parties and perused the case diary minutely.
12. As regards Applicant Dr. Ramesh Kumar Gupta, it is alleged that he, in unhygienic conditions and in a short span of time, conducted sterilization operations of 83 women as a result of which 12 patients died. Out of the 12 patients, 3 patients died due to septicemia and rest 9 patients died due to cardiac failure and other medical sufferings. From the evidence collected by the prosecution, it is *prima facie* established that Nemichand Jain Hospital where the operations were conducted by Applicant Dr. Gupta was not clean and was in unhygienic condition. The said hospital was basically a hospital for cancer patients and was closed for the last 3-4 months. The operation theatre of the

hospital was also not properly sterilised. From the record, *prima facie*, it is also established that normally one operation of sterilization takes about 20-30 minutes, but Applicant Dr. Gupta performed said operations of 83 women in a short span of 3 hours. As alleged by the prosecution, patients were distributed Ciprocin 500 and ibuprofen tablets after their operations. Those medicines were found to be containing poisonous substance and after consumption of those medicines by the patients, they fell ill at their homes. Disease septicemia was suffered by 3 patients due to the operation performed on them by Applicant Dr. Gupta, no direct evidence is available on record in this regard. From the material available on record (case diary), it reveals that Applicant Dr. Gupta was a senior doctor who had already performed number of such operations on many occasions. Being a senior and experienced doctor, Applicant Dr. Gupta intentionally or knowingly performed those operations with an intention to cause homicidal death of the patients is not acceptable. Therefore, *prima facie*, no offence under Section 304 Part II or Section 308 of the Indian Penal Code is made out against Applicant Dr. Gupta. However, the prosecution has collected sufficient material to show that Applicant Dr. Gupta conducted the operations of 83 women in the hospital in unhygienic conditions and rashly and negligently in a short span of time. Therefore, in my considered view, the act of Applicant Dr. Gupta falls within the ambit of causing death of persons by his negligent act punishable under Section 304A of the Indian Penal Code, under Section 337 of the Indian Penal Code for causing hurt to persons by doing his act rashly and negligently and under Section 269 of the Indian Penal Code for doing his act negligently knowing that his said act could result into spreading of infection of

any disease dangerous to life.

13. With regard to Applicant Rakesh Khare, the material collected by the prosecution itself shows that Applicant Rakesh Khare only supplied medicine Ciprocin 500 to the Chief Medical and Health Officer, Bilaspur pursuant to the tender orders dated 11.9.2014 and 12.9.2014. The record also shows that Applicant Rakesh Khare is not a manufacturer of medicine Ciprocin 500. Rather, manufacturer of the medicine Ciprocin 500 was M/s Mahavar Pharma Private Limited, Raipur. As per the prosecution story, after test, the medicine Ciprocin 500 supplied by Applicant Rakesh Khare to the Chief Medical and Health Officer, Bilaspur was found to be of substandard and containing poisonous substance. There is nothing on record to presume that Applicant Rakesh Khare was aware that the medicine Ciprocin 500 did not contain the elements of Ciprocin and the medicines supplied by him were of substandard and they contained poisonous substance and knowing this fact he supplied the said medicine. Therefore, there is no material on record on the basis of which charges under Sections 304 Part II, 308, 270 and 276 of the Indian Penal Code could be framed against Applicant Rakesh Khare.

14. As alleged by the prosecution, Applicant Rakesh Khare had to submit a testing/quality certificate issued by Chowksey Laboratories, Indore along with the medicines supplied by him, but, in place thereof, he submitted a testing certificate issued by Alpa Analytical Laboratories, Indore, which was allegedly found to be forged. There is no mention in the tender/purchase orders that Applicant Rakesh Khare, being a partner of M/s Kavita Pharma,

was to supply a testing certificate of Chowksey Laboratories, Indore or of any other specific laboratory. As per the tender orders dated 11.9.2014 and 12.9.2014, Applicant Rakesh Khare had to submit only a certificate regarding quality of the medicines being supplied by him. There is a document available on record which is a certificate of renewal of licence to manufacture for sale of drugs. The certificate is dated 29.5.2013 which was issued in the name of Rajesh Khare, Proprietor of M/s Kavo Pharma for manufacturing of categories of drugs. According to this licence, testing laboratory for the drugs would be Chowksey Laboratories, Indore. From the above itself, it is clear that this licence is for M/s Kavo Pharma not for M/s Kavita Pharma and testing report of Chowksey Laboratories was to be submitted along with the medicines manufactured by M/s Kavo Pharma. But, Applicant Rakesh Khare was a partner of M/s Kavita Pharma only and supplied the medicines in that capacity to the Chief Medical and Health Officer, Bilaspur and, therefore, he was bound to submit a testing/quality certificate issued by Chowksey Laboratories, Indore is *prima facie* not established. But, as per the tender orders dated 11.9.2014 and 12.9.2014, Applicant Rakesh Khare had to submit a certificate regarding quality of the medicines supplied by him. According to the prosecution story, he submitted a testing certificate issued by Alpa Analytical Laboratories, Indore. As stated by Storekeeper Chandrika Prasad in his statement under Section 161 of the Code of Criminal Procedure, he used to keep the testing/quality certificates in record submitted by suppliers of medicines. Vide seizure memo dated 15.11.2014, along with the bill of M/s Kavita Pharma, a testing certificate of Alpa Analytical Laboratories, Indore, allegedly submitted by Applicant Rakesh Khare, was also

seized from Storekeeper Chandrika Prasad. Prosecution witnesses Sujata Jain and Pravin Shah, in their statements recorded under Section 161 of the Code of Criminal Procedure, have categorically stated that the testing certificate of Alpa Analytical Laboratories, Indore is forged and the same does not bear their signatures. When the said forged testing certificate was sent to Alpa Analytical Laboratories, Indore, they also informed in writing to the Investigating Officer of this case that the said certificate was forged and was not issued by them. Thus, there is sufficient material available on record on the basis of which *prima facie* charges under Sections 420, 468, 471 of the Indian Penal Code are made out against Applicant Rakesh Khare.

- 15.** In the result, both the revisions are allowed in part to the extent indicated above. The Trial Court is directed to frame the charges against both the Applicants as observed above and proceed further in accordance with law.

Sd/-

(Arvind Singh Chandel)
JUDGE