

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

[1] Criminal Misc.-M No.16863 of 2018(O&M)
Date of Decision: January 15, 2019.

Max Hospital, Gurgaon and othersPetitioners

versus

MonishaRespondent

[2] Criminal Misc.-M No.31935 of 2018(O&M)
Date of Decision: January 15, 2019.

MonishaPetitioner

versus

Dr.Ritesh Aggarwal and othersRespondents

CORAM: HON'BLE MR.JUSTICE RAMENDRA JAIN.

Present: Mr.V.K.Jindal, Senior Advocate with
Mr.D.K.Singal, Advocate, for the petitioners.

Ms.Monisha-respondent-in-person.

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RAMENDRA JAIN, J. (Oral)

Vide this order, two petitions bearing Nos.CRM-M-16863 of 2018 and CRM-M-31935 of 2018 under Section 482 Cr.P.C. are being disposed of as in both, challenge has been laid to judgment dated 18.12.2017 of the Revisional Court, whereby order dated 29.02.2016 of the Trial Court was partly set-aside, dismissing the complaint of respondent under Section 156(3) Cr.P.C. For brevity, the facts are being extracted from CRM-M No.16863 of 2018.

Briefly, in the evening of 12.12.2009, the father of the respondent-complainant was got admitted in Max Hospital, Gurgaon, on feeling breathlessness. He was kept for over 30 hours, according to the respondent, negligently without providing any proper treatment. Thereafter, Doctors there referred him to their own branch at Saket (New Delhi). Since, it was a emergent situation, as condition of the respondent's father was deteriorating very fast and no Ambulance was made available to the respondent-complainant, therefore, she took her father to a nearby Artimis Hospital, where he breathed his last.

The respondent-complainant thereafter ran pillar to post raising her grouse about negligence of the petitioners in the treatment of her father, but could not get any redressal to her grievance. Consequently, she moved a complaint under Section 156(3) Cr.P.C. before Judicial Magistrate, 1st Class, Gurgaon, against the petitioners and three more doctors, who dismissed her complaint vide order dated 29.02.2016 (P-3).

Being aggrieved, the respondent-complainant approached the Revisional Court, who, after notice and hearing both the parties, set-aside the order of JMIC dated 29.02.2016 (P-3) partly, accepted the revision petition vide impugned order dated 18.12.2017 (P-4), thereby directing the trail court to proceed further against the petitioners.

Learned counsel for the petitioners, referring the cases of Jacob Mathew versus State of Punjab and another, 2005 SCC (CrI.), 1369 and Martin F. D'Souza versus Mohd. Ishfaq, 2009(1) SCC (CrI.), 958, urges that the order of learned JMIC is perfectly legal, because the opinion sought by the respondent-complainant in her favour for the alleged negligence of the petitioners is not from any Government Doctor or Committee of Doctors

duly constituted by the Government, pursuant to the directions of the Apex Court in above referred cases. Even, it is not clear as to whether the doctor, who has given opinion in favour of the respondent-complainant, was specialized in the field for which her father was treated by the petitioners.

On the other hand, the respondent-complainant in person refuted the above submissions.

Having given thoughtful consideration to the rival submissions & taking into account the directions of the Hon'ble Supreme Court in the above referred authorities, the trial Court at Gurgaon is directed to refer the case of respondent-complainant to a District Level Board constituted by the State of Haryana vide notification No.25/10/2017-6HBI dated 31.05.2017, to seek opinion as to whether the allegations of the respondent-complainant against the petitioners in the impugned complaint with respect to their medical negligence are substantiated.

In turn, the Chief Medical Officer, Gurgaon, shall take care and ensure that impartial and unbiased opinion is given by the District Level Board, after joining the respondent-complainant.

The respondent-complainant is granted liberty to produce her entire evidence qua alleged negligence of the petitioners available with her, plead and prove her case before District Level Board.

The matter has already been delayed much. Therefore, the District Level Board is directed to submit its report to the trial court within two months from the date of receipt of reference positively.

Till then, the orders of both the courts below shall remain in abeyance. After receipt of the report from the District Level Board, the trial Court shall proceed further in the matter, accordingly.

CRM-M Nos.16863 and 31935 of 2018. [4]

Both the parties are directed to appear before the trial Court on 22.1.2019, who shall act accordingly and objectively in compliance to the directions issued vide this order.

Both the petitions stand disposed of accordingly.

January 15, 2019
mohinder

(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No