

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-40678-2015 (O&M)

Date of Decision:16.09.2019

Dr. Anshuman Mittal

...Petitioner

Versus

State of Punjab and another

...Respondent(s)

CRR-486-2018 (O&M)

Kavita and another

...Petitioners

Versus

State of Punjab and another

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.P.S.Ahluwalia, Advocate for the petitioner in
CRM-M-40678-2015.

Mr.K.D.Sachdeva, Advocate for the petitioners in
CRR No.486-2018.

Mr.Bhupinder Beniwal, AAG, Punjab.

Mr.R.S.Bains, Advocate for respondent No.2 in both cases.

ANIL KSHETARPAL, J.

By this judgment, two petitions i.e. CRM-M-40678-2015 [filed by Dr.Anshuman Mittal] and CRR No.486-2018 [filed by Kavita (Nurse) and Anil Kumar(Compounder)] working in a hospital, against the order summoning the petitioners shall stand disposed of.

Some staff members of the hospital (Doctor, Nurse and Compounder) have been summoned to face criminal prosecution in a murder case of a patient admitted in their hospital.

In the considered view of this Court, detailed facts as given in the complaint are not required to be repeated. It is suffice to notice that Late Shri Jaspal Singh got married with Manjit Kaur on 04.03.1999. As per the allegations in the complaint, on 21.05.2002 Jaspal Singh was given beatings by his wife, in laws' family along with respondent No.9. Thereafter, Jaspal Singh stayed with his father for some time but later on parties patched up and Jaspal Singh once again started residing with his wife in a separate accommodation. Jaspal Singh was got admitted on 04.12.2005 in the hospital i.e. Giana Lal Singh Memorial Hospital, Patiala by the complainant i.e. his father, where he died on 07.12.2005.

In the complaint, it has been averred that the complainant and his other relatives got the deceased admitted and accused Nos.1 to 5 i.e. wife, her family members and accused No.9 although were informed but did not visit to know about well being of Jaspal Singh. It is further averred that on 04.12.2005 at about 8.00-9.00 PM, he received a phone call from Jaspal Singh that accused Nos.1 to 5 and 9 gave him severe beatings. On which the complainant immediately came to Patiala along with relatives and Jaspal Singh was found lying outside the plot, covered with a cloth to save himself from the cold. Jaspal Singh was mentally upset.

On 07.12.2005 post-mortem was conducted in Rajindra Hospital (a Government run hospital) and thereafter on chemical examination of various parts of stomach, it was found that it is a case of death due to Aluminium Phosphide.

FIR No.99 dated 09.05.2007 was lodged by the complainant-respondent and police after investigation came to conclusion that there is no direct evidence with regard to allegations leveled against the accused. It

may be noted here that only Dr. Anshuman Mittal was nominated. Report of the police is part of the record. Thereafter, criminal complaint was filed impleading nine accused including petitioners.

After recording preliminary evidence, learned Judicial Magistrate 1st Class refused to summon the accused vide order dated 21.04.2012. It may be noted here that in the preliminary evidence, police official was summoned, who had brought the record of the previously registered FIR by the complainant with similar allegations. The complainant filed a revision petition before the Court of Sessions. Learned Court of Sessions, after prima facie finding that the order of the learned Judicial Magistrate with regard to the petitioners was correct, chose to direct Judicial Magistrate to apply his mind afresh to the facts and circumstances of the case. The prima facie finding recorded by the learned Additional Sessions Judge is extracted as under:-

“.....However, it is rightly observed that when the poison namely aluminum phosphide was found in the stomach then there was no likelihood of the same being injected into the body of the deceased and it must have been given to him orally. But even this fact has been mis-interpreted by the learned Magistrate to opine that in absence of any direct evidence none of the accused can be summoned to stand trial. All that can be concluded at this stage is that this fact would go to prove that the doctor who had treated the deceased before his death or the staff who attended the deceased during his treatment in the hospital can not be held to have connived with the other accused.”

Thereafter, complainant made a statement that he does not wish to proceed against nurse and compounder (Kavita and Anil) on 30.5.2013.

Pursuant thereto, names of nurse and compounder were deleted from the

array of accused.

Learned Judicial Magistrate, after the remand by the learned Additional Sessions Judge, passed an order summoning the petitioner and other accused vide order dated 01.05.2014. Petitioner-Dr. Anshuman Mittal filed a revision petition which has been dismissed. Thereafter, complainant filed an application for summoning the compounder (Anil) and nurse (Kavita) of the hospital which has been allowed by the learned Additional Sessions Judge under Section 319 Cr.P.C. and that is how both these petitions have come up for hearing.

This Court has heard the learned counsel for the parties and perused the comments filed.

Learned counsel appearing for the petitioner in CRM-M-40678-2015 has submitted that the learned Judicial Magistrate 1st Class committed an error in overlooking the prima facie findings arrived at by the learned Additional Sessions Judge while remitting the matter back to the Judicial Magistrate. He has submitted that it was incumbent on the Judicial Magistrate to have taken note of prima facie finding arrived at by the Judicial Magistrate earlier which has in fact been affirmed by the learned Additional Sessions Judge. He has further submitted that the order passed by the learned Judicial Magistrate is also erroneous, as the Judicial Magistrate did not take into consideration the final report submitted by the police after thorough investigation. He has also submitted that Judicial Magistrate should have at least considered the aforesaid report submitted by the police.

On the other hand, learned counsel for the complainant has submitted that prosecution evidence has been started and therefore, the court should not interfere at this stage. He has further submitted that the

jurisdiction of the Court, while entertaining the petition under Section 482 Cr.P.C., is limited, to be exercised only in rare and exceptional cases.

This Court has considered the submissions of the learned counsels carefully.

This Court finds substance in the argument of learned counsel for the petitioner-Dr.Anshuman. Learned Judicial Magistrate was obliged to take into consideration the order passed by learned Additional Sessions Judge while remitting the matter back to him. Once the prima facie finding passed by the Judicial Magistrate 1st Class on 21.04.2012 refusing to summon Doctor, Nurse and Compounder has been affirmed in revision, the Judicial Magistrate committed a manifest error in overlooking that fact.

Still further, Judicial Magistrate also committed a manifest error in not taking into consideration the final report submitted by the police after investigation in the previously registered FIR with regard to same incident. The summoning of accused in a criminal complaint is a serious matter. Accused are being summoned for facing criminal prosecution, trial whereof take years to decide. In such circumstances, Judicial Magistrates are under obligation and duty bound to take into consideration entire material available on the file and after application of judicial mind, the order should be passed. No doubt, in a criminal complaint at the stage of summoning, the court is only to arrive at a prima facie finding, however, such finding has to be after appreciating assertions made in the criminal complaint and preliminary evidence. Criminal law should not be set in motion as a matter of course, merely because complainant has brought few witnesses to support his allegations. It is obligatory on the part of the Magistrate to examine the nature of allegations made in the complaint,

consider both the oral and documentary evidence and then arrive at a prima facie finding as to whether the material brought by the complainant is sufficient to prima facie bring home the charge against the accused. Reference in this regard can be made to a celebrated judgment of the Hon'ble Supreme Court in the case of *M/s Pepsi Food Limited Vs Special Judicial Magistrate, (1998) 5 SCC 749*.

Still further, it was incumbent on the Judicial Magistrate to consider the report submitted by the police after investigation in a previously filed FIR with regard to same incident. It is apparent that police official was examined by the complainant in its preliminary evidence. In the complaint itself, it was averred that FIR was lodged previously. In such circumstances, the Magistrate clearly erred in overlooking that report. This Court is not laying down that the Judicial Magistrate is bound by the report of the police. The Magistrate is certainly not bound by the report. Judicial Magistrate can proceed with the criminal case and summon in appropriate cases even after the report of the police. But, the Judicial Magistrate was at least required to consider that report.

This Court has also gone through the allegations made in the complaint. It is averred in the complaint that complainant, i.e. father of the deceased, had got the deceased admitted in the hospital, where petitioners are working. The deceased was got admitted on 04.12.2015. It has also been averred that accused Nos.1 to 5 and 9 did not visit the hospital, where deceased was admitted, although, intimation was given. It has further been alleged that the deceased was given some injections. Dr. Anshuman Mittal, is a Psychiatrist. It has been pleaded in the complaint that the deceased was mentally disturbed. As per the report of Forensic Science Laboratory,

Aluminium Phosphide was found. It has also come in preliminary evidence that Aluminium Phosphide cannot be administered through injection. Once, accused No.1 to 5 and 9 never visited the hospital, how, doctor and staff of the hospital could have connived with them. Deceased died within three days of hospitalization.

Now let us examine the revision filed by Nurse and Compounder.

Detailed discussions have already been made with regard to hospital staff. Apart therefrom, complainant had given up their prosecution against petitioners i.e. Nurse and Compounder. Thereafter, learned Additional Sessions Judge summoned the petitioners only on the ocular evidence of the complainant. It is well settled that additional accused under Section 319 Cr.P.C. can only be summoned in exceptional cases and that also after the court finds that more than prima facie case is established against additional accused sought to be summoned. The order passed by the learned Additional Sessions Judge, to say the least, is passed in a casual manner.

For the reasons recorded above, both these petitions are allowed. Summoning orders of the Doctor as well as Nurse and Compounder of the hospital, in which the deceased was admitted, are quashed/set aside. However, trial Court would proceed against the remaining accused without being influenced by the order passed herein. Pending application(s), if any, shall also stand disposed of, in terms thereof.

16.09.2019
mks

(ANIL KSHETARPAL)
JUDGE

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