

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision: 15.05.2019

1. CRM-M-9792 of 2016 (O&M)

Pramod Kumar

..... Petitioner

Versus

State of Haryana and another

..... Respondents

2. CRM-M-30029 of 2016 (O&M)

Parmod Kumar

..... Petitioner

Versus

M/s Global Health Pvt. Ltd. Gurgaon and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. K.S. Nalwa, Advocate and
Mr. Yuvraj Singh Tiwana, Advocate
for the petitioner (in both petitions).

Mr. Kuldeep Tiwari, Addl. AG, Haryana.

Mr. R.S. Cheema, Sr. Advocate with
Mr. Akshay Bhan, Sr. Advocate with
Mr. A.S. Cheema, Advocate and
Mr. Amandeep Singh Talwar, Advocate and
Mr. Satish Kumar, Advocate
for respondent No.2 (in CRM-M-9792-2016).

ANIL KSHETARPAL, J.

Vide this judgment, two petitions bearing CRM-M-9792 of 2016 and CRM-M-30029 of 2016 shall stand disposed of as both the petitions under Section 482 of the Code of Criminal Procedure have been filed against a common judgment passed by learned Additional Sessions

Judge while deciding various revision petitions arising from a criminal complaint filed by the petitioner complaining medical negligence.

In CRM-M-9792 of 2016, the petitioner-complainant has challenged the orders passed by the learned Magistrate refusing to summon respondent No.2 in a criminal complaint whereas in CRM-M-30029 of 2016, the petitioner has challenged the judgments through which the Court has summoned the accused for lesser grave offences.

Some facts are required to be noticed.

It is unfortunate that wife of complainant Smt. Chandermukhi Verma died on 28.01.2011 while she was undergoing treatment in hospital-respondent No.1/accused in the complaint. It is the case of the petitioner-complainant that the ailment of the patient was grossly wrongly diagnosed and she was given wrong treatment. It has also been alleged that she was never been treated for her actual ailment namely Bowel Ischemia. It has further been alleged that the private medical experts arrayed as accused exhibited gross negligence and they acted in a conspiracy leading to the death/murder of late Smt. Chandermukhi Verma. It has been pleaded that on the advice of accused No.3-Dr. R.R. Kasliwal, from whom she was getting her treatment for long, admitted in the accused No.1-hospital on the midnight of 24/25.01.2011. Initially, the patient was not attended and thereafter, the entirely wrong treatment was given and temporary pace maker was unnecessarily installed. It has further been alleged that the tests which were required to be conducted to find out the ailment were not conducted. In spite of repeated complaints of the petitioner, Doctors did not bother to correct their line of treatment.

Now let us notice the facts of CRM-M-9792 of 2016.

By the impugned judgment/order, learned trial Court refused to summon accused No.2 in individual capacity who is alleged to be Chairman and Managing Director of the company-accused No.1.

This Court after hearing learned counsel for the parties at length and with their able assistance after going through the paper book has come to a conclusion that there is no substance in the present petition for following reasons:-

1. No doubt, power of High Court while entertaining a petition under Section 482 of the Code of Civil Procedure is wide and inherent but such wide and inherent jurisdiction is to be exercised in rare and exceptional cases particularly when the bar under Section 379(3) of the Code of Criminal Procedure specifically bars maintainability of second revision by the same party. It is well settled that there is no absolute bar in entertaining a petition under Section 482, Cr.P.C. after dismissal of revision petition, however, no second revision under the garb of petition under Section 482 of the Code of Criminal Procedure is maintainable.

2. Still further, it is not the case of the complainant that his wife was ever examined by accused No.2. Although, in the complaint, it has been alleged that in spite of oral promise made by respondent No.2, he did not visit the patient, however, that itself would not be sufficient to implicate accused No.2 personally for medical negligence particularly in the facts of the present case. It will be noted here that when complainant appeared in preliminary evidence, the petitioner has deposed against accused No.2 in the following manner:-

“Accused No.2 claims himself to be a cardiologist of international repute maintaining very high standard of medical practice is incharge of the day to day affairs and working of the

accused No.1 and the Hospital Medhanta Medicity Gurgaon. Rather than providing relief to the patients they are running of business in the health care contrary to the noble profession in conspiracy with each other.”

It will be noted that although in the complaint filed, assertions have been made that accused No.2 on being complaint called a meeting of Dr. R.R. Kasliwal and Dr. Manish Paliwal-accused No.5 and thereafter, promised to visit the patient himself, however, assertions in the complaint are not supported by evidence.

3. Still further, it is by now well settled that in criminal jurisprudence, the concept of vicarious liability does not normally exist unless there is a statutory provision which makes an accused liable. Reference in this regard can be made to the judgment of the Larger Bench of the Hon'ble Supreme Court in the case of S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla and another, 2005(8) SCC 89 and series of judgments thereafter.

Although, learned counsel for the petitioner has vehemently submitted that at the stage of summoning, the Court is only required to see prima facie case and since the assertions made in the complaint, accused No.2 has been specifically implicated which is supported by evidence of the complainant, therefore, the Judicial Magistrate was in error refusing to summon accused No.2, however, the summoning of an accused in a criminal complaint is not like summoning of a defendant in a suit. It is apparent that Section 200 lays down that what a Magistrate shall do on taking cognizance of an offence on receipt of a complaint whereas Section 202 provide that the Magistrate may, if he thinks fit, for the reasons to be recorded in writing, postpone the issue of process and direct an enquiry for

the purpose of ascertaining the truth behind the complaint. In other words, scope of enquiry under this section is limited to finding out the truth or falsehood of the complaint in order to determine the question of the issuance of process to the accuse. The enquiry is for ascertaining as to whether there is evidence in support of complaint so as to justify the issue of process and commencement of the proceeding against the person concerned. Thus, it is apparent from reading of Section 202 of the Code of Criminal Procedure that the concerned Magistrate is required to appreciate the evidence/material which has been produced for his consideration and thereafter arrive at a conclusion as to whether such material is sufficient to pass an order to issue process against the accused or not. In the present case, learned Magistrate as well as Revisional Court have concurrently found that the material which was brought before the Magistrate was not sufficient to summon accused No.2. Learned counsel could not draw attention of the Court to any perversity or material irregularity in the orders passed. No doubt, the complainant has lost his wife, however, on that consideration alone, accused No.2 cannot be summoned. Accused No.2 is a Managing Director/Chairman and once he has not examined the patient or treated the patient, in absence of sufficient material, the Courts have rightly refused to summon accused No.2.

Now let us deal with CRM-M-30029 of 2016.

In this petition, the complainant-petitioner prays that the Magistrate has chosen to summon the accused under Sections 304-A, 337, 420, 468 read with Section 34 of the Indian Penal Code and not under Sections 201, 204, 302, 357, 386, 506 read with Section 34 and 120-B of the Indian Penal Code. Learned counsel appearing for the petitioner has

submitted that from the assertions made in the criminal complaint filed before the Magistrate, it is apparent that the respondent-accused who has been summoned are guilty of murdering his wife, therefore, learned Judicial Magistrate committed a grave error in refusing to summon the accused for graver offences. He submitted that at the time of summoning, the learned Magistrate was to see prima facie case only.

This case has gone through the order passed by the Judicial Magistrate affirmed by Additional Sessions Judge dismissing the revision.

As noticed above, the jurisdiction of the High Court under Section 482 of the Code of Criminal Procedure against the order passed by the Sessions Judge dismissing the revision is very limited and it can be exercised only in rare and exceptional cases. In any case, learned Magistrate after appreciating the evidence and the material which has come on record has passed a detailed order after examining all aspects of the matter. Learned Additional Sessions Judge in revision has upheld the same with regard to the prayer made in the petition. The argument of learned counsel that at the stage of summoning, the Court is only to prima facie examine the material brought on file, does not mean that the process should be issued by the Court without application of mind or without examining the material which has been produced. On careful examination of the allegations made in the criminal complaint, it is apparent that the major part of the allegations are with regard to the negligence of the accused-Doctors for not properly diagnosing 'Bowel Ischemia'. It will be a matter of evidence to be determined during the trial as to what would be the fate of the reports of the Doctors CW-2 and CW-3. On the one hand, the petitioner complains of medical negligence during treatment by the Doctors but in the

same breath, he also alleges that he was duped by the Doctors and delay in proper treatment resulted into death and therefore, accused-doctors should be tried for murder. After examining the file, this Court does not find any illegality or perversity in the orders passed by the Courts on this aspect also.

In view of the discussion made above, both the petitions are dismissed.

The pending miscellaneous application, if any, shall stand disposed of in view of the above-said judgment.

15.05.2019

Dinesh Bansal

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No