IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRM-M-2772-2018
Reserved on: 08.11.2023
Date of Decision: 21.12.2023

DR. GURINDER SINGH -Petitioner

Versus

STATE OF HARYANA AND ANR. -Respondents

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Argued by: Mr. P.S. Ahluwalia, Advocate and
Ms. Bhavi Kapur, Advocate
for the petitioner.

Mr. Bhupender Singh, D.A.G., Haryana.

Mr. Deepak K. Bartia, Advocate and
Mr. S.S. Kaintha, Advocate
for the complainant.

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KULDEEP TIWARI, J.

1. Through the instant petition, as instituted under Section 482 of the Cr.P.C., the petitioner, a qualified doctor and E.N.T. specialist possessing experience of 3 decades in his profession, seeks grant of the hereinafter extracted reliefs:-

(a) Quashing of FIR No.731 dated 21.12.2016 (Annexure P1), registered at P.S. City Yamuna Nagar;

(b) Quashing of Order dated 27.09.2017 (Annexure P4), whereby, the learned Magistrate concerned charge-sheeted the petitioner under Section 304-A of the IPC;

(c) Quashing of charge-sheet dated 27.09.2017 (Annexure P5);

(d) Quashing of order dated 15.11.2017 (Annexure P6), whereby, the learned Sessions Judge concerned, dismissed the

revision petition of the petitioner, as instituted against the order dated 27.09.2017;

2. The petitioner craves the hereinabove extracted reliefs primarily on the ground that the instant FIR has been registered in gross violation of the directions, as issued by the Hon'ble Supreme Court, in case titled as ***"Jacob Mathew V. State of Punjab & Anr.", 2005 (3) RCR (Criminal) 836.***

FACTUAL MATRIX

3. The FIR in question derives its genesis from a statement dated 13.06.2015, made by complainant/respondent No.2 Ravinder Kumar, alleging therein, that his nephew, namely, Vishal had died owing to negligence on the part of the present petitioner. The relevant extract of his statement, as extracted in the instant FIR, is reproduced hereinafter:-

> *"...On 10.06.2015, my sister-in-law (bhabhi) Sudesh Rani has come to Sahit Hospital, Near Kammani Chowk, Yamuna Nagar with her son Vishal, as my nephew Vishal has a problem of nose bone. After check up, doctor has advised for surgery and asked her to come on 12.06.2015 at 11:00 a.m. Accordingly, I along with my bhabhi and nephew reached at Sahit Hospital at 11:30 am. After checking up my nephew by Dr. Gurinder Singh, he sent my nephew along with one staff member in OT. Thereafter, at about 2:00 p.m., Dr. Gurinder Singh reached in OT and started the surgery process, which took about 5 hours. After conducting the surgery, Dr. Gurinder Singh came out from OT and then I asked from the doctor regarding operation, on which, he said that everything is okay. Thereafter, I and my bhabhi asked the doctor to meet the son, but the doctor replied that you will have to wait for some more time. Thereafter, at about 07:00 p.m., doctor came and told us that condition of Vishal is very critical and we have to refer him at PGI, Chandigarh and he also called ambulance for the same and we left for PGI Chandigarh, at about 07:30 p.m. In the way, we find that glucose was not being administered to our son and the doctor has asked us that he will also*

> *reach along with fine. On account of suspicion, we got checked our son at Rai Hospital, Mahesh Nagar, Ambala, where the doctors declared him dead. Thereafter, we left for Sahit Hospital, Yamuna Nagar but on reaching we found the same closed. We stood outside the hospital premises and the police party also reached at the spot. Thereafter, we left for Civil Hospital, Yamuna Nagar, where the dead body was kept at Dead House, Yamuna Nagar for postmortem purpose…"*

4. Consequent to the making of the hereinabove extracted statement, a D.D.R. No.4 dated 13.06.2015 was registered, whereupon, postmortem of the deceased was conducted and proceedings under Section 174 of the Cr.P.C. were carried out. Thereafter, a Board of Doctors, comprising of Dr. Vipul Goel, Dr. Chavi Mehta and Dr. Vishal Kalra, was constituted, which opined the cause of death, in its report (Annexure P-7), to be *"Aspiration"*. However, dissatisfied with the above report, inasmuch as, it did not revealed any negligence, the investigating officer sought another opinion from the Civil Surgeon, Yamuna Nagar. Accordingly, a new Board of Doctors, comprising of Dr. Anoop Goel, Dr. Puneet Kalra and Dr. Kuljeet Singh, was constituted, which opined the cause of death, in its report dated 11.02.2016 (Annexure P-8), to be *"Aspiration, which is a known unfortunate intraoperative complication when any surgical procedure is undertaken. However, timely help from an Anesthetist or Physician could have saved the life of the patient"*.

5. However, the report dated 11.02.2016 did not prove satisfactory, inasmuch as, it did not opine the petitioner to be negligent for death. Therefore, yet again the Superintendent of Police, Yamuna Nagar wrote letter (Annexure P-12) to the Civil Surgeon, Yamuna Nagar, thereby seeking a definite opinion that "the cause of death is negligence on the part

of the doctor concerned".

6. Accordingly, the Civil Surgeon, Yamuna Nagar addressed a letter (Annexure P-13) to Dr. Kuljeet Singh and Dr. Anoop Goel, thereby asking them to give a definite opinion in their inquiry report as to whether the cause of death was negligence on the part of the petitioner or not.

7. Ultimately, the Board of Doctors, comprising of Dr. Kuljeet Singh and Dr. Anoop Goel, submitted its inquiry report dated 16.11.2016 (Annexure P-3), with the following conclusion:-

> *"The cause of death in this case is Aspiration, which is a known unfortunate intraoperative complication of any surgical procedure. However, timely help from an Anesthetist or Physician could have saved the life of the patient, which is lacking in this case."*

8. Consequently, based upon this report, the instant FIR was registered against the petitioner, under Section 304-A of the IPC, at P.S. Yamuna Nagar City, District Yamuna Nagar.

9. After registration of the FIR, investigation commenced and upon its completion, the Final Report under Section 173 Cr.P.C. was presented against the petitioner on 11.05.2017.

10. Thereafter, finding a prima facie case, the petitioner was, vide order dated 27.09.2017, charge-sheeted for commission of offence punishable under Section 304-A of the IPC, to which he pleaded not guilty and claimed trial.

11. However, the framing of charge caused grievance to the petitioner and triggered him to institute a revision against the order dated 27.09.2017, whereby, charges were framed against him. To the misfortune of the petitioner, the revision petition was dismissed by the learned Sessions Judge concerned, through drawing an order on 15.11.2017.

12. Consequently, the hereinabove extract events have constrained the petitioner to access this Court, thereby seeking the reliefs, as extracted in the leading paragraph of this verdict.

SUBMISSIONS OF LEARNED COUNSEL FOR THE PETITIONER

13. The learned counsel for the petitioner, in his asking for the hereinabove extracted reliefs, submits that despite there being availability of three different inquiry reports, furnished by three different sets of medical boards, yet none of the inquiry reports carry any inculpatory opinion against the petitioner. There is no evidence, even remotely suggestive, available on record that either the petitioner was not possessed of the requisite skill, which he professed to have possessed, or, the conduct of the petitioner was grossly negligent, or, the element of *mens rea* was in existence. Therefore, despite there being lack of any inculpatory material against the petitioner, yet the investigating agency proceeded to register the instant FIR against the petitioner, resultantly, its action was violative of the directions, as issued by the Hon'ble Supreme Court in ***Jacob Mathew's case*** and consequently, the instant FIR warrants its being quashed.

SUBMISSION OF LEARNED COUNSEL FOR THE RESPONDENTS

14. Per contra, the learned State counsel and the learned counsel for the complainant have vociferously opposed the grant of asked for reliefs to the petitioner, on the ground, that the inquiry report dated 16.11.2016 (Annexure P-3) elucidates that had the patient received timely help from an Anesthetist or Physician, his life could have been saved, however, such help was lacking. Therefore, in light of this inquiry report, the act and conduct of the petitioner falls within the ambit of grave negligence, which renders the registration of the instant FIR to be valid.

15. The learned counsel for the complainant has also placed on record some study material relating to "Acute Intraoperative Pulmonary Aspiration", whose relevant extract is reproduced as under:-

> *"While anesthesia is generally safe, respiratory complications such as anesthesia-related aspiration can be fatal. Occurring as often as 1 in every 2-3,000 operations requiring anesthesia, almost half of all patients who aspirate during surgery develop a related lung-injury, such as pneumonitis or aspiration pneumonia…"*

16. On the strength of the hereinabove extracted portion of the study material, he has raised an argument that the petitioner ought to have knowledge about the ill effects of anesthesia, besides he should have been well equipped to tackle the complications, if any, arising during surgery or post surgery. Therefore, owing to negligence on the part of the petitioner, the instant FIR has rightly been registered after obtaining medical opinion from a Board of Doctors, thereby meteing compliance of the guidelines/ principles, as laid down in ***Jacob Mathew's case.***

17. Concluding their arguments, the learned State counsel and the learned counsel for the complainant argues that the instant petition is a misconceived motion, as the plea(s) raised by the learned counsel for the petitioner relates to highly disputed questions of facts, which can only be adjudicated during trial.

ANALYSIS

18. This Court has heard the arguments advanced by the learned counsels for the parties and has made a meticulous survey of the record. However, before commencing to pen down any opinion as regards the validity of the FIR and the consequent thereto drawing of charges against the petitioner, this Court deems it imperative to, at this juncture, capture a

glimpse of the definition, as assigned to Section 304-A of the IPC, and, various precedent laws.

19. Section 304-A of the IPC, which prescribes the punishment for death of any person, by an act which is either rash or negligent, is extracted hereinafter:-

> ***[304A. Causing death by negligence.****--Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.*

20. The Hon'ble Supreme Court in ***Jacob Mathew's case*** has laid down in extenso the law dealing with the criminal negligence of a medical practitioner. In this case, the Hon'ble Supreme Court, while placing reliance upon ***Bolam v. Friern Hospital Management Committee [1957] 1 W.L.R. 582,*** has held that a medical practitioner cannot be held criminally liable, unless the negligence is reckless and gross. In case, negligence is not reckless and gross, a medical practitioner may be liable only in tort. In this landmark judgment, it has been held that the test for determining medical negligence, as evolved in ***Bolam's case,*** is the adequate parameter applicable in India. The relevant discussion, as made in this regard, in ***Jacob Mathew's case*** is reproduced hereinafter:-

> *"20. The water of Bolam test has ever since flown and passed under several bridges, having been cited and dealt with in several judicial pronouncements, one after the other and has continued to be well received by every shore it has touched as neat, clean and well-condensed one. After a review of various authorities Bingham L.J. in his speech in* ***Eckersley v. Binnie, [1988] 18 Con.L.R. 1, 79*** *summarised the Bolam test in the following words:-*
>
> > *"From these general statements it follows that a professional man should command the corpus of knowledge which forms*

> *part of the professional equipment of the ordinary member of his profession. He should not lag behind other ordinary assiduous and intelligent members of his profession in knowledge of new advances, discoveries and developments in his field. He should have such an awareness as an ordinarily competent practitioner would have of the deficiencies in his knowledge and the limitations on his skill. He should be alert to the hazards and risks in any professional task he undertakes to the extent that other ordinarily competent members of the profession would be alert. He must bring to any professional task he undertakes no less expertise, skill and care than other ordinarily competent members of his profession would bring, but need bring no more. The standard is that of the reasonable average. The law does not require of a professional man that he be a paragon combining the qualities of polymath and prophet." (Charlesworth & Percy, ibid, Para 8.04)*

21. The essence of the conclusions, as summed up by the Hon'ble Supreme Court in ***Jacob Mathew's case***, is in the hereinafter extracted manner:-

> *"(i) A professional may be held liable for negligence on one of the two findings: either he was not possessed of the requisite skill which he professed to have possessed, or, he did not exercise, with reasonable competence in the given case, the skill which he did possess.*
>
> *(ii) For negligence to amount to an offence, the element of mens rea must be shown to exist. For an act to amount to criminal negligence, the degree of negligence should be much higher i.e. gross or of a very high degree. Negligence which is neither gross nor of a higher degree may provide a ground for action in civil law but cannot form the basis for prosecution.*
>
> *(iii) The expression 'rash or negligent act' as occurring in Section 304A of the IPC has to be read as qualified by the word 'grossly'.*

22. Ultimately, the Hon'ble Supreme Court had framed the hereinafter extracted guidelines for registration of FIR, against a medical

practitioner, under criminal offence(s):-

> *"(i) A private complaint may not be entertained unless the complainant has produced prima facie evidence before the Court in the form of a credible opinion given by another competent doctor to support the charge of rashness or negligence on the part of the accused doctor.*
>
> *(ii) The investigating officer should, before proceeding against the doctor accused of rash or negligent act or omission, obtain an independent and competent medical opinion preferably from a doctor in government service qualified in that branch of medical practice who can normally be expected to give an impartial and unbiased opinion applying Bolam's test to the facts collected in the investigation.*
>
> *(iii) A doctor accused of rashness or negligence, may not be arrested in a routine manner (simply because a charge has been levelled against him). Unless his arrest is necessary for furthering the investigation or for collecting evidence or unless the investigation officer feels satisfied that the doctor proceeded against would not make himself available to face the prosecution unless arrested, the arrest may be withheld."*

23. Furthermore, in ***"A.S.V. Narayanan Rao V/s Ratnamala and another", 2013(4) ECrC 332,*** the Hon'ble Supreme Court has held that *"doctors are not immune from legal proceedings in the event of their negligence in discharging their professional duties, however, in the interest of the society, it is necessary to protect doctors from frivolous and unjust prosecution"*. Also, while concurring the observations rendered in ***Jacob Mathew's case***, it has been reiterated that *"for an act to amount to criminal negligence, the degree of negligence should be much higher, i.e. gross or of a very high decree, and, the expression "rash or negligent act" as occurring in Section 304-A of the IPC has to be read as qualified by the word "grossly"*. The relevant extract of this judgment reads as under:-

> *"11. This Court further opined that though doctors are not immune*

> *from legal proceedings in the event of their negligence in discharging their professional duties, in the interest of the society, it is necessary to protect doctors from frivolous and unjust prosecution."*

24. On the touchstone of the law laid down by the Hon'ble Supreme Court, let's evaluate: (i) whether the prosecution had made compliance of the guidelines (supra), as evolved by the Hon'ble Supreme Court, prior to registration of FIR against the petitioner/doctor, and, (ii) whether there was any negligence on the part of the petitioner, and if so, whether such negligence has been declared, by the Board of Doctors, as "gross negligence" or "negligence of a very high degree", which consequently warrants the prosecution of the petitioner under Section 304-A of the IPC.

25. To evaluate the above controversy, this Court has, with the able assistance of all the learned counsels appearing for the contesting parties, made a meticulous scrutiny of the entire record. The record unveils that consequent to the making of a statement by complainant/respondent No.2 Ravinder Kumar, a Board of Doctors, comprising of Dr. Vipul Goel, Dr. Chavi Mehta and Dr. Vishal Kalra, was constituted, which authored the initial report (Annexure P-7) with the hereinafter extracted opinion:-

> *"After receiving the reports of Chemical Examiner and Histopathology, we board members are of the opinion that the cause of death is due to aspiration. This is for you kind information and necessary action."*

26. However, since the above report did not reveal any explicit negligence on the part of the petitioner, the investigating officer again approached the Civil Surgeon, Yamuna Nagar, thereby seeking a fresh report. Accordingly, a new Board of Doctors, comprising of Dr. Anoop

Goel, Dr. Puneet Kalra and Dr. Kuljeet Singh, was constituted, which authored the second report dated 11.02.2016 (Annexure P-8) by rendering the following opinion:-

> *"The cause of death in this case is Aspiration, which is a known unfortunate intraoperative complication when any surgical procedure is undertaken. However, timely help from an Anesthetist or Physician could have saved the life of the patient".*

27. Since the newly constituted Board of Doctors also did not, in its report (Annexure P-8), opine the act of the petitioner to fall either within the domain of "negligence" or "gross negligence", resultantly, the investigating officer sought a specific opinion from the newly constituted Board of Doctors as to whether a criminal case should be registered against the petitioner or not. Upon this specific query of the investigating officer, the Board of Doctors concerned, as is evident from Annexure P-10, refused to make any comment, rather suggested that it is for the police to take the final decision.

28. Since this response of the Board of Doctors concerned did not render the desired and favourable opinion to the investigating officer, the latter was driven to, through the Superintendent of Police, Yamuna Nagar, again requisition a specific opinion from the Board of Doctors concerned as to whether the cause of death of Vishal was due to negligence on the part of the doctor concerned or not. The said requisition/query is enclosed in Annexure P-12, which is a letter addressed by the Superintendent of Police, Yamuna Nagar, to the Civil Surgeon, Yamuna Nagar. The relevant extract of Annexure P-12 is reproduced hereinafter:-

> *"…..Thus, no further action in the matter can be taken. So, you are hereby required to make it clear while mentioning in the inquiry report that cause of death of Vishal in this case is due to negligence*

> *on the part of doctor concerned, so that, further action can be taken in the matter."*

29. Consequent upon receipt of letter (Annexure P-12), the Civil Surgeon, Yamuna Nagar addressed a letter (Annexure P-13) to the Board of Doctors concerned, thereby asking them to give a definite opinion on the query (supra), as raised by the Superintendent of Police concerned. However, since one of the members of the Board of Doctors concerned had left for higher studies, therefore, the remaining two members of the said Board of Doctors, through writing a letter (Annexure P-14), requested the Civil Surgeon concerned to nominate a new member, for enabling them to submit the asked for report. In response to Annexure P-14, the Civil Surgeon concerned wrote a letter (Annexure P-15), whereby, the remaining two members of the Board of Doctors concerned were directed to prepare inquiry report in the absence of third doctor. In this way, the third inquiry report dated 16.11.2016 (Annexure P-3) was procured from a two members' Board of Doctors. However, the third inquiry report (Annexure P-3) also neither did establish any negligence on the part of the petitioner nor furnish any ground for holding the petitioner culpable, as besides reiterating the opinion evinced in the second inquiry report (Annexure P-8), only a few words were added therein, i.e. *"which is lacking in this case"*. The relevant extract of the third inquiry report (Annexure P-3) is extracted hereinafter:-

> *"The cause of death in this case is Aspiration, which is a known unfortunate intraoperative complication of any surgical procedure. However, timely help from an Anesthetist or Physician could have saved the life of the patient,* ***which is lacking in this case****."*

30. Interestingly, despite three inquiry reports being procured by the investigating agency, and, despite neither of them lending any aid to the

investigating agency to achieve its desired opinion, vis-a-vis, the act and conduct of the petitioner being declared to be grossly negligent and rash, yet the investigating agency proceeded to register the present FIR against the petitioner and that too, after lapse of 18 months from the date of incident.

31. Therefore, from the above, an inference can be drawn that the principal objective of the investigating agency concerned, behind seeking a number of inquiry reports, in the manner elaborated hereinabove, was to exert pressure upon the Boards of Doctors concerned to declare the petitioner to be negligent for causing the death of the deceased. However, despite its ceaseless and futile efforts, the investigating agency could not secure any concrete report to establish the culpability of the petitioner, as the final inquiry report, at the most, indicates that "*timely help from an Anesthetist or Physician could have saved the life of the patient, which is lacking in this case"*. Even otherwise, this claim of the investigating agency also does not aid it in establishing the culpability of the petitioner, as Dr. Ajay Dabra has made categoric admission, in Annexure P-16, qua the presence of both a physician, i.e. himself, and, an anesthetist, i.e. Dr. Yash Jain, at the relevant time.

32. In ***A.S.V. Narayanan Rao's case (supra),*** the Hon'ble Supreme Court has held that *"for an act to amount to criminal negligence, the degree of negligence should be much higher, i.e. gross or of a very high decree, and, the expression "rash or negligent act" as occurring in Section 304-A of the IPC has to be read as qualified by the word "grossly"*.

33. In the instant case, when none of the three inquiry reports neither assign any inculpatory role to the petitioner, nor even remotely

suggest that either the petitioner was not possessed of the requisite skill, which he professed to have possessed, or, the conduct of the petitioner was grossly negligent, there does not arise any occasion for this Court to declare the act of the petitioner, in discharge of his professional duty, to be grossly negligent, thereby constituting criminal negligence. This inference gains strength from the *ratio decidendi* of ***A.S.V. Narayanan Rao's case (supra),*** which is *"Doctors are not immune from legal proceedings in the event of their negligence in discharging their professional duties, however, in the interest of the society, it is necessary to protect doctors from frivolous and unjust prosecution"*.

34. Moreover, the prime intent behind framing of the hereinabove extracted guidelines by the Hon'ble Supreme Court in ***Jacob Mathew's case*** was also to protect medical practitioners from malicious prosecution, as casual prosecution of medical practitioners would severely affect the interest of society.

35. Also, a Large Bench of the Hon'ble Supreme Court in ***"Lalita Kumari V/s Govt. of U.P. and others", 2014(1) SCC(Cri) 524,*** has held that a preliminary inquiry is required to be conducted in a case of medical negligence, and, the very object of pressing for preliminary inquiry is to save the medical practitioners from superfluous prosecution. The relevant extract of directions, as enclosed in ***Lalita Kumari's*** judgment, is reproduced hereinafter:-

> *"111. In view of the aforesaid, we hold:*
>
> *XX XX XX*
>
> *(vi) As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:-*

XX XX XX

(c) Medical negligence cases

XX XX XX"

36. In view of the above legal propositions, coupled with the facts elaborated hereinabove, this Court has no hesitation to conclude that there is not an iota of evidence available on record to substantiate the claim of the prosecution that the act of the petitioner, in discharge of his professional duties, falls within the sphere of gross negligence or rashness, which may warrant his being prosecuted under Section 304-A of the IPC. Consequently, this Court can safely hold that the present FIR has been registered in violation of the guidelines rendered in ***Jacob Mathew's case***.

FINAL ORDER

37. For all the reasons (supra), this Court finds merit in the instant petition and is constrained to allow it. Consequently, the instant petition is **allowed** and the FIR No.731 dated 21.12.2016 (Annexure P1) is hereby quashed. In addition, the order dated 27.09.2017 (Annexure P4), whereby, petitioner has been charge-sheeted Section 304-A of the IPC, the charge-sheet dated 27.09.2017 (Annexure P5), and, the order dated 15.11.2017 (Annexure P6), whereby, the learned Sessions Judge concerned, dismissed the revision petition of the petitioner, as instituted against the order dated 27.09.2017, are also hereby **quashed**.

(KULDEEP TIWARI)
JUDGE

21.12.2023
devinder

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No