

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

I.

Date of Decision: 27.4.2023
CRR-122-2018 (O&M)
Reserved on : 2.2.2023

Dr. Anil Kumar

....Petitioner

VERSUS

State of Haryana

....Respondent

II.

CRR-4892-2017 (O&M)

Kamlesh

....Petitioner

VERSUS

State of Haryana

....Respondent

CORAM:- HON'BLE MR. JUSTICE KARAMJIT SINGH

Argued by : Mr. R.S. Cheema, Sr. Advocate with
Ms. Sumanjit Kaur, Advocate,
for the petitioner in CRR-122-2018.

Mr. Tanvir S. Grewal, Advocate,
for the petitioner in CRR-4892-2017.
Mr. Mukesh Yadav, Advocate,
for the complainant in both the cases.
Mr. Vishal Kashyap, DAG, Haryana

KARAMJIT SINGH, J.

By this common judgment, two petitions bearing CRR-122-2018; Dr. Anil Kumar v. State of Haryana and CRR-4892-2017; Kamlesh v. State of Haryana shall be decided as both these petitions relate to same subject matter and relief sought in both the petitions is also the same. Facts are being taken from CRR-122-2018.

CRR-122-2018 has been filed by Dr. Anil Kumar while CRR-4892-2017 is filed by Kamlesh against judgment dated 15.12.2017 passed by Court of Additional Sessions Judge, Narnaul whereby the criminal appeals filed by the petitioners against the judgment and order dated 20.7.2016 passed by the Court of Judicial Magistrate, 1st Class, Mahendergarh wherein the petitioners were convicted and sentenced to imprisonment for a period of 2 years and to pay compensation of ₹ 20,000/- each to complainant-Dharambir under Section 304A IPC, were dismissed

The brief facts of the case are that a complaint dated 22.7.2011 was received in Police Station Kanina through the office of DSP Narnaul wherein complainant Dharambir alleged that his wife Monika was admitted in CHC Kanina on 17.1.2011, as she was having labour pain and she gave birth to a female child in the said hospital on the same day. That the staff of the hospital demanded ₹ 500/- from him on the birth of child and declined to accept ₹ 100/- offered by the complainant to them. Later on the complainant managed to arrange ₹ 500/- and handed over the same to petitioner Kamlesh Kumari who was working as a nurse in the said hospital. After sometime the condition of Monika started deteriorating on account of excessive bleeding. The complainant tried to call petitioner Kamlesh Kumari on which she replied that bleeding usually happens in such like cases and would stop after sometime and she did not check the patient even on the request made by the complainant. Thereafter, the condition of the wife of complainant further worsened, on which the complainant went to call the doctor on duty i.e. petitioner Anil Kumar but he also did not pay any heed to the request made by the complainant and rather the said doctor scolded the complainant and asked him not to enter the ward. On this

complainant again went back to his wife and found that her clothes and bed were smeared with blood and her tongue was protruding out and eyes were caved in. Thereafter, petitioner Kamlesh Kumari reached there and directed the complainant to bring injection but by the time the complainant brought the said injection from medical store, his wife had already expired. In the meantime, the hospital staff had already changed the blood stained clothes of his wife and she was referred to General Hospital Narnaul. The ambulance which was deputed to take his wife to Narnaul was having no medical facility and even no doctor or nurse accompanied the patient who appears to have died. On reaching the aforesaid hospital at Narnaul, Monika was declared brought dead by the concerned doctor. The complainant lodged complaint regarding medical negligence of Dr. Anil Kumar and concerned nurses namely Kamlesh Kumari and Raj Kumari in Police Station Kanina on 18.1.2011 but no action was initiated by the police officials. In the meantime, Dr. Anil Kumar started extending threats to the complainant and proclaimed that the complainant would not be able to do anything as the police is supporting the hospital staff. Subsequently on the basis of said complaint, FIR was registered under Section 304-A read with Section 34 IPC against Dr. Anil Kumar, Kamlesh Kumari and Raj Kumari. During investigation both the petitioners were arrested but were released on bail. However, Raj Kumari was found innocent and on completion of investigation, the police presented challan against Dr. Anil Kumar and Kamlesh Kumari.

A prima facie case under Section 304-A read with Section 34 IPC being made out against both the petitioners, charges were framed to which they had not pleaded guilty and claimed trial.

In order to prove its case prosecution examined PW1 Dharambir (complainant), PW2 Ramla, PW3 Virender Singh, PW4 HC Pawan Kumar, PW5 Saroj, PW6 Dr. D.K. Saini, PW7 ASI Satbir Singh, PW8 Raj Kumar Pharmacist, PW9 ASI Ram Karan, PW10 SI Rajender Singh, PW11 Virender Singh, PW12 ASI Kirori Lal, PW13 Daljinder Pal, PW14 Parveen Kumar Singh (Sub Divisional Officer, Civil) and PW15 Inspector Sadhu Ram.

Thereafter, both the petitioners were examined under Section 313 Cr.P.C wherein they pleaded innocence and denied all the incriminating circumstances appearing on record against them. However, the petitioners had not led any evidence in their defence.

Learned trial Court after hearing both the parties, convicted and sentenced the petitioners to simple imprisonment for a period of two years each and also awarded compensation of ₹ 20,000/- each to be paid by them under Section 304-A IPC to the complainant, vide judgment and order dated 20.07.2016.

Being not satisfied the petitioners filed separate appeals but the same were dismissed by the Court of learned Additional Sessions Judge, Narnaul vide two separate judgments dated 15.12.2017.

Still being not satisfied both the petitioners have filed the present revision petitions challenging the judgments/orders dated 20.07.2016 and 15.12.2017 passed by the Courts below.

I have heard the counsel for the parties.

Learned senior ounsel for the petitioners while challenging the impugned judgments has contended that at the relevant time petitioner Anil Kumar was working as a doctor while petitioner Kamlesh Kumari was

working as nurse in CHC Kanani and both of them were discharging their public duties and had not committed any negligence while performing their official duties. As in the instant case the act complained of is directly concerned with the official duties of the petitioners, sanction under Section 197 CrPC was required to prosecute them, even for the charges of alleged negligence on their part. In order to substantiate his contentions, the learned Senior Counsel has placed reliance on **Manorma Tiwari and others v. Surendra Nath Rai** (2016) 1 SCC 594 wherein the Hon'ble Supreme Court while allowing the appeal filed by the government doctors observed that it is a clear case where the appellants were discharging their public duties as they were performing surgery on the patient in the government hospital and it is not disputed that the appellants were the medical officers working in government hospital and as such, the criminal prosecution of the appellants initiated by the respondent(complainant) is not maintainable without the sanction from the State Government. Learned Senior Counsel also made reference to **Amal Kumar Jha v. State of Chattisgarh** (2016) 6 SCC 734, wherein the appeal filed by appellant who was incharge of Government hospital District Raigarh was allowed by the Hon'ble Supreme Court while observing that the omission complained of due to which offences stated to have been committed, was intrinsically connected with discharge of official duty of the appellant, as such the protection under Section 197 CrPC from prosecution without sanction of the competent authority is available to the appellant and thus he could not have been prosecuted without sanction.

Learned Senior Counsel for the petitioners has further contended that both the petitioners are convicted and sentenced to imprisonment on the basis of the alleged medical negligence committed by them. The learned

Senior Counsel has further contended that to prosecute a medical professional for negligence under criminal law it must be shown that the accused did something or failed to do something which in the given facts and circumstances no medical professional in his ordinary senses and prudence would have done or failed to do so as has been held by the Hon'ble Supreme Court in **Jacob Mathew v. State of Punjab** (2005) 6 SCC 1.

Learned Senior Counsel has further submitted that in the instant case the prosecution has miserably failed to prove any negligence on the part of the petitioners, from the very initial stage; that wife of the complainant was admitted in CHC Kanina at about 9.30 am on 17.1.2011 with history of labour pain and thereafter she gave birth to a female child in the said hospital on the same very day but due to post partum hemorrhage bleeding started and immediately thereafter at about 11.45 am the patient was referred to general hospital Narnaul and she died immediately after reaching the said hospital. It was further submitted that on the same very day Poonam Devi mother of the deceased made statement Ex.PW9/A that no one is responsible for death of her daughter Monika. Thereafter the inquest proceedings were conducted by the police and then post mortem examination of the dead body was also conducted on the same very day by the board of doctors constituted by Civil Surgeon. As per the post mortem report Ex.PW6/B death had occurred due to haemorrhage shock consequent upon birth of child. Again on 20.01.2011 the police moved an application to Chief Medical Officer, Narnaul (in short "CMO") to get opinion as to if the Monika died due to negligence of the doctor and nurse concerned. That on this, CMO constituted board of doctors comprising of PW6 Dr.D.K.Saini,

Dr. Alka Bishnoi and Dr. Ganender Singh and the said board of doctors gave opinion Ex.D1 (collectively) dated 24.1.2011 that in this case death had occurred as a result of post partum haemorrhage due to atony of uterus. Learned Senior Counsel has further contended that news regarding death of wife of complainant was also published in newspaper and on the basis of the said newspaper report, CMO gave direction to conduct an inquiry regarding cause of death of Monika. Resultantly, board of doctors comprising Dr. Alka Bishnoi and Dr. MR Makkar inquired into the matter and gave opinion Ex.D1 dated 11.3.2011 (collectively) that the cause of death in this case was not due to medical negligence. Learned Senior Counsel has further submitted that being not satisfied, complainant lodged a complaint Ex.PW1/A dated 28.3.2011 to DGP Haryana to conduct probe regarding death of his wife, which as per him was a result of medical negligence on the part of the petitioners. Again police sought opinion vide application dated 22.4.2011 on which CMO constituted board of doctors comprised of Dr. MR Makkar, Dr. Ashok Kumar and Dr.Jyoti Yadav and the said medical board vide its opinion dated 26.4.2011 came to conclusion that there was no negligence on the part of the doctor and staff nurse on duty. Learned Senior Counsel has further contended that in the meantime on the basis of legal notice dated 28.2.2011, PW14 Parveen Kumar Singh, the then Deputy Director in the office of Directorate of Health Services, Haryana conducted separate inquiry and gave his report dated 18.5.2011, Ex.PW14/A wherein the aforesaid inquiry officer came to the conclusion that the allegations of negligence leveled against the medical officer and the staff nurse of CHC Kanina are found to be correct and the FIR in the present case was registered on the basis of aforesaid inquiry report dated 18.5.2011. The

learned Senior Counsel has further contended that the aforesaid inquiry officer while appearing in the witness box as PW14 has admitted that he is not from medical science background and thus, is not an expert witness and consequently, inquiry report Ex.PW14/A submitted by him, did not constitute legal evidence. Learned Senior Counsel further submits that opinions given by different medical boards are very specific and the said consistent medical opinions given by different medical experts clearly shows that the death of Monika is not result of any medical negligence on the part of the petitioners. The learned Senior Counsel further submits that however, the learned Trial Court as well as the First Appellate Court ignored the said expert medical opinions and relied upon opinion/report Ex.PW14/A given by person having no expertise in medical science. The learned Senior Counsel has further contended that this was totally inconsistent to the law laid down by Hon'ble Apex Court in **Jacob Mathew's** case (*supra*) wherein the Hon'ble Apex Court while dealing with a case relating to medical negligence has laid down guidelines for prosecution of medical professionals as under:-

“52. Statutory Rules or Executive Instructions incorporating certain guidelines need to be framed and issued by the Government of India and/or the State Governments in consultation with the Medical Council of India. So long as it is not done, we propose to lay down certain guidelines for the future which should govern the prosecution of doctors for offences of which criminal rashness or criminal negligence is an ingredient. 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. 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. 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.”

Learned Senior Counsel further referred to judgments passed in **Dr.Suresh Gupta v. Government of NCT Delhi and another** (2004) 6 SCC 422, **Malay Kumar Ganguly v. Sukumar Mukherjee and others** (2009) 9 SCC 221 and **Jay Shree Ujwal Ingole v. State of Maharashtra and others** (2017) 14 SCC 571 and has submitted that it is well settled that so far as the negligence alleged to have been caused by medical practitioner is concerned, to constitute negligence, simple lack of care or error of judgment is not sufficient. The negligence must be of a gross or a very high degree to amount to criminal negligence. The learned Senior Counsel has further contended that the trial Court and the Court of learned Additional Sessions Judge passed the impugned judgments which are not in consonance with the aforesaid settled law. So prayer is made that the impugned judgments passed by the Courts below deserve to be set aside.

On the other hand, the State Counsel and the counsel for the complainant while supporting the findings recorded by the Courts below,

submit that ample evidence is there on record to show that the doctor and nurse on duty acted in irresponsible manner and there was negligence and lack of care on their part, when wife of the complainant was admitted in CHC Kanina and post delivery of child, condition of the patient deteriorated due to excessive bleeding but both the petitioners were negligent in doing their official duty and due to their negligence wife of the complainant died. In order to substantiate his contentions, the State counsel has referred to testimony of PW14 Parveen Kumar Singh who proved his inquiry report Ex.PW14/A. State counsel has further contended that sanction from the Government as mandated under Section 197 of Cr.P.C. was not required to prosecute the petitioners for their negligence and irresponsible acts which resulted in death of a lady.

I have considered the submissions made by the counsel for the parties.

In **Jacob Mathew's** case (*supra*) the Hon'ble Supreme Court laid down the 'test' for establishing medical negligence and opined that in every case where the treatment is not successful or the patient dies during surgery, it cannot be automatically assumed that the medical professional was negligent.

It is evident that in the instant case Monika wife of the complainant was admitted at about 9.30 am on 17.01.2011 in CHC Kanina having labour pain and she gave birth to a female child in the said hospital but thereafter her condition deteriorated and she was referred to General Hospital Narnaul and Monika died on reaching the said hospital. On the same day the mother of deceased made statement Ex.PW9/A to the effect that no one is responsible for death of her daughter. Thereafter the inquest

proceedings were conducted and the post mortem examination of the dead body of Monika was conducted by Board of Doctors constituted by the Civil Surgeon. As per the post mortem report Ex.PW6/B death had occurred due to haemorrhagic shock subsequent upon birth of child.

From the perusal of record, it is revealed that again on 20.01.2011 an application was moved by the police to Chief Medical Officer Narnaul seeking opinion as to if the death had happened due to negligence of the doctor and nurse concerned. On this the Chief Medical Officer concerned constituted Board of Doctors comprising of PW6 Dr.D.K. Saini, Dr. Alka Bishnoi and Dr.Ganender Singh and the said medical board gave its opinion Ex.D1 (collectively) dated 24.01.2011 to the effect that in this case death had occurred as a result of post partum haemorrhage due to atony of uterus.

The matter regarding untimely death of Monika was also reported in the local newspaper and on the basis of the said newspaper report, Chief Medical Officer Narnaul gave direction to conduct inquiry regarding exact cause of death of Monika and for that purpose another Board of Doctors comprised of Dr.Alka Bishnoi and Dr. MR Makkar was constituted and the said Medical Board gave opinion dated 11.3.2011 Ex.D1 (collectively) to the effect that death in this case was not due to medical negligence.

The complainant being not satisfied, lodged complaint Ex.PW1/A dated 28.3.2011 with DGP Haryana and again on the police request, fresh medical board comprised of Dr. MR Makkar, Dr. Ashok Kumar and Dr. Jyoti Yadav was formed and even the said Board of Doctors opined that there was no negligence on the part of the doctor and staff nurse

on duty and said opinion Ex.D1 (collectively) is dated 26.4.2011

It is also there on record that on the basis of legal notice served by the complainant, PW14 Parveen Kumar Singh the then Deputy Director, Health Services Haryana was deputed to conduct fresh inquiry and he inquired into the matter and gave his inquiry report dated 18.5.2011 Ex.PW14/A wherein he opined that the allegations of negligence leveled against the medical officer and the staff nurse concerned are established and resultantly FIR was registered against both the petitioners under Section 304-A IPC. PW14 while appearing in the witness box admitted that he is not a qualified doctor. So in the instant case its stands proved that the FIR was registered only on the basis of inquiry report submitted by officer of administrative branch of Haryana Health Services Department having no specialization in medical science, while ignoring consistent medical opinions given by different board of doctors regarding innocence of the doctor and staff nurse concerned.

In **Jacob Mathew's** case (*supra*) the concern of the Hon'ble Supreme Court was that a bona fide action of doctor may not be challenged in a civil or criminal proceeding unnecessarily. It was also directed that the Court could only proceed against the doctor after taking expert medical opinion in case of medical negligence.

Admittedly, in the instant case, reports of medical experts are there as has been discussed above, which go in favour of the doctor and staff nurse concerned, however, the said reports were not taken into consideration at the time of registration of FIR, rather it seems obvious that FIR in the present case was registered only when PW14 Parveen Kumar Singh, who is a civil servant, having no medical science background, gave

report Ex.PW14/A to the effect that both the petitioners have committed medical negligence. Thus, making it clear that FIR in the instant case was registered by the police in contravention to the law laid down by Hon'ble Supreme Court in **Jacob Mathew's** case (supra).

Another issue raised by learned senior counsel for the petitioners was that criminal prosecution of the petitioners by the complainant is not sustainable without the sanction from the State Government. Hon'ble Supreme Court in **State of Orissa v. Ganesh Chandra Jew; (2004) 8 SCC 40**, while laying down that protection under Section 197 Cr.P.c. would be available only when the act done by the public servant is reasonably connected with the discharge of his official duties, observed as follows : -

“7. The protection given under Section 197 is to protect responsible public servants against the institution of possibly vexatious criminal proceedings for offences alleged to have been committed by them while they are acting or purporting to act as public servants. The policy of the legislature is to afford adequate protection to public servants to ensure that they are not prosecuted for anything done by them in the discharge of their official duties without reasonable cause, and if sanction is granted, to confer on the government, if they choose to exercise it, complete control of the prosecution. This protection has certain limits and is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act. If in doing his official duty, he acted in excess of his duty, but there is a reasonable connection between the act and the performance of the official duty, the excess will not be a sufficient ground to deprive the public servant of the protection.”

Now adverting to the facts of the present case, there is no doubt that Dr. Anil Kumar and Kamlesh (nurse on duty) were discharging their public duties while performing delivery of child in a Government hospital. As has already been observed, medical opinions given by different doctors indicate that there was no medical negligence on the part of the petitioners while discharging their public duties while performing delivery of a child in the government run hospital. As such, criminal prosecution of the petitioners is not maintainable without the sanction of State Government as per provisions of Section 197 of Cr.P.C.

In view of above, the impugned judgments/orders passed by the learned trial Court and the Court of Additional Sessions Judge, Narnaul respectively are not legally sustainable and deserve to be set aside.

For the foregoing reasons, the aforesaid revision petitions are allowed. Impugned judgment/order dated 20.7.2016 passed by the Court of Judicial Magistrate, 1st Class, Mahendergarh and judgment dated 15.12.2017 passed by the Court of Additional Sessions Judge, Narnaul are set aside and both the petitioners are acquitted.

Both the criminal revision petitions are allowed in the aforesaid terms.

(KARAMJIT SINGH)
JUDGE

April 27, 2023
Puneet/Paritosh Kumar

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