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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CRM-M-37139-2022 (O&M)
Date of Decision: 19.05.2023.

Gurjeet Singh ..... Petitioner

Versus

State of Haryana and another ..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Vijay Kumar Agarwal, Legal Aid Counsel (HCLSC)
for the petitioner.

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HARSH BUNGER J.

The petitioner has filed the present petition under Section 482 Cr.P.C. seeking quashing of order dated 24.05.2018, passed by Judicial Magistrate Ist Class, Faridabad (Annexure P-1), whereby the criminal complaint filed by the petitioner under Sections 304(II) 419, 420, 336 of the Indian Penal Code and under Section 15(2), 15(3) of the Indian Medical Act and under Section 18(A) of the Drugs Act, 1940 was dismissed. The petitioner has further sought quashing of the judgment dated 24.03.2022 (Annexure P-2), passed by Additional Sessions Judge, Faridabad vide which the revision petition filed by the petitioner against the aforesaid order dated 24.05.2018 was dismissed.

2. Briefly, the petitioner filed a complaint before the Court of

Judicial Magistrate Ist Class, Faridabad alleging that his brother namely Anil Singh was suffering from normal fever and acidity, accordingly, on 22.07.2016 at about 11.00 A.M, the complainant and his sister took their brother Anil Singh to respondent No.2/accused-Dr. S.K Manocha for treatment. It was alleged that after examination, respondent No.2/accused got an ECG and X-ray done on the patient-Anil Singh along with a blood test. It was stated in the complaint that upon seeing the ECG/ X-ray, the respondent No.2/accused confirmed that the brother of the complainant was suffering from T.B. disease and prescribed the medicines of T.B. disease for 15 days and he charged Rs.1500/- as his fee. It was further alleged that on the same day in the evening, the complainant visited the clinic of respondent No.2/accused (Manocha Clinic) situated at Faridabad to collect the blood report of his brother-Anil Singh which showed no symptom of T.B. Since, there was no improvement in the complainant's brother, however, respondent No.2/accused is alleged to have advised to continue the medicine as prescribed him. It is alleged that the brother of the complainant was given the prescribed medicines and in the night of 24.07.2016, the condition of the complainant's brother became serious and he felt serious breathing problem and became very weak. It is stated that on 25.07.2016, the complainant took his brother to QRG Central Hospital, Ajronda, Faridabad where the doctors enquired about the illness of the patient, whereupon the complainant narrated the fact of disease of T.B. as told by respondent No.2/accused and the test report, prescription slip and medicine etc. were handed over to the doctor at QRG Hospital, who admitted the complainant's brother in emergency ward and further conducted the test and found that the

complainant's brother was suffering from pneumonia and not from T.B. disease. It is stated that as per the said doctor, due to wrong medicine prescribed by respondent No.2/accused, the entire body of the patient had become infected and even his kidney was damaged. It is further stated that when the doctor of QRG Hospital further got conducted the test relating to T.B. disease, the report was found negative. It is stated that the complainant's brother remained admitted in QRG Hospital upto 05.08.2016 and since the complainant was a poor person, accordingly, requested the doctors of QRG Hospital to discharge the patient, whereupon, the complainant's brother was discharged with advise to take the medicines. It is further stated that on 07.08.2016, the condition of the complainant's brother again became critical and he was again admitted in QRG Hospital, Faridabad where he remained admitted upto 12.08.2016. It is alleged that the condition of complainant's brother again became critical and he was admitted in the said hospital on 16.08.2016 in general ward and after conducting tests it was found that due to prescription of wrong medicines by respondent No.2/accused, the patient's both kidneys had failed upto 80% and the entire body was infected. Thereafter, the patient was kept on ventilator on 21.08.2016 and on 22.08.2016 at about 12:45 the complainant's brother expired.

3. In the aforementioned circumstances, the petitioner filed a criminal complaint before the Judicial Magistrate Ist Class, Faridabad alleging wrong medical practice, medical negligence, wrong medicine prescription leading to the death of petitioner's younger brother, whereupon, the petitioner is stated to have allegedly suffered financial loss of

Rs.7,50,000/- and accordingly prayer was made to summon respondent No.2/accused person under Sections 304(II), 419, 420, 336 of the Indian Penal Code, Sections 15(2) and 15(3) of the Indian Medical Act and Section 18(A) of the Drugs Act, 1940.

4. In preliminary evidence the complainant examined the following witnesses:-

CW-1 : Gurjeet Singh
CW-2 : Amarjeet Kaur
CW-3 : Gurdeep Singh

5. After appreciating the material available on record, the learned trial Court dismissed the complaint filed by the petitioner by wording as under:-

> *"13. In the present case, perusal of the record reveals that the complainant had approached the CM Window, pursuant to which the matter was referred for the report of Board of Doctors and inquiry report dated 06.12.2016 was filed. It has been contended by the complainant. that in the said report it has been admitted by the accused doctor that the treatment of Tuberculosis was given to the brother of the complainant which is an incorrect diagnosis for the patient of actually suffering from bilateral fungal pneumonia and due to the wrong treatment given by the proposed accused the patient died. However, perusal of the inquiry report reveals that patient Anil Singh died due to disease process having B/L Pneumonia with invasive Aspergillosis with acute on CKD with septic shock and as per the said report there was no negligence by Dr. S.K. Manocha. Hence, clearly the medical Board has ruled out negligence of the part of the proposed accused, the doctor S.K. Manocha and hence no action was taken on the complaint lodged in the CM window.*

14. At this stage it is relevant to discuss the landmark judgment of Hon'ble Supreme Court in Jacob Mathew Vs. State of Punjab and Another 2005 (5) Supreme 297 wherein the Supreme Court laid down guidelines with regard to culpability of doctors in offences under Section 304A of the IPC.

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"15. It is pertinent to mention here that the complainant has not examined any other doctor or medical expert in his pre-summoning evidence to give a contrary opinion from the one given in the enquiry report. Further, no document of the QRG Hospital adduced on record shows any negligence on the part of the proposed accused. Further, even the final ATR states that there are no negligence on the part of the proposed accused. Further, there is nothing on record to disbelieve the enquiry report produced along with the report under Section 202 Cr.P.C. filed by the police. Hence, in the present case, no prima facie evidence has been adduced before the Court in the form of credible opinion given by another competent doctor to support the charge of rashness or negligence on the part of the accused doctor.

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17. In light of this judgment the complainant should prima facie show gross negligence on the part of the accused doctor but in the facts and circumstances of the present case the complainant has himself stated that the death of the patient occurred not while he was under immediate treatment of the accused doctor and rather the patient also underwent the medical treatment in QRG Hospital, Faridabad where the caused of his death due to disease process having B/L Pneumonia with invasive Aspergillosis with acute on CKD with septic shock and as per the said report there was no negligence by Dr. S.K. Manocha. The allegations of wrong diagnosis do not prima facie show that the accused doctor was grossly negligent when there is a history of Military TB as per the

discharge summary appended with the report under Section 202 Cr.PC. Moreover, in the report under Section 202 Cr.P.C. no negligence has been found on the part of the accused doctor. Hence, the complainant has not been able to prima facie show high degree of negligence on the part of the accused doctor and therefore prima facie no offence under Section 336, 304A IPC is made out and neither offence under Section 304 (ii) IPC is made out as there was no prima facie intention or knowledge of causing death of the patient.

18. The complainant has further alleged commission of criminal offences under Sections 419 and 420 IPC but since there are no allegations of any cheating, no offence is prima facie made out under Section 419 and 420 IPC against the proposed accused.

19. The complainant has further alleged commission of criminal offences under Sections 15 (2) and 15 (3) of the Indian Medical Act and Section 18 (a) of the Drugs Act 1940 but since there are no allegations pertaining to the said sections in the present complaint, hence no offence is prima facie made out under Sections 15 (2) and 15 (3) of the Indian Medical Act and Section 18 (a) of the Drugs Act 1940 against the proposed accused.

20. Hence, in light of the foregoing discussion the complaint stands dismissed being devoid of merits.

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6. Being dissatisfied with the aforesaid judgment, dated 24.05.2018, passed by the Judicial Magistrate Ist Class, Faridabad, the petitioner referred a revision petition before the Additional Sessions Judge, Faridabad, however, the same was dismissed vide judgment dated 24.03.2022, passed by Additional Sessions Judge, Faridabad by holding as under:-

"14. Accordingly, applying the above settled proposition of laws to the facts in hand, it is to be seen whether the trial court is rightly passed the impugned order vide which learned lower court refused to issue process against the respondents or exceeded its jurisdiction and thereby the impugned order is liable to be set-aside. However, when the evidence alongwith circumstances leading to this complaint was considered it comes out that there is no illegality or irregularity in the impugned order and present revision is without any merit and totally misconceived.

15. To prove his allegations, complainant has himself appeared as ***CW1*** *but failed to prove a prima facie case against the accused persons. Admittedly, the revisionist- complainant approached CM window, on which the matter was referred for the report of Board of doctors and inquiry report dated 6.12.2016 was filed. The revisionist-complainant has not examined any other doctor or medical expert in his pre-summoning evidence to give a contrary opinion from the one given in the enquiry report. No document of QRG Hospital produced on the record to show the negligence of the respondent-accused. Perusal of final ATR reveals that there are no negligence on the part of the respondent-accused. Thus, there is nothing on the record to disbelieve the enquiry report produced alongwith the report under section 202 Cr.P.C. filed by the police. So, prima facie neither offence under sections 336,304A IPC is made out nor under section 304 (ii) IPC is made out as there was no prima facie intention or knowledge on part of respondent-accused of causing death of the patient.*

16. So far as offence under sections 419 and 420 IPC is concerned, no cheating has been done by the respondent-accused, so prima facie no offence under aforesaid sections is made out.

17. The revisionist-complainant has alleged commission of criminal offence under section 15(2) and 15(3)

of the Indian Medical Act and Section 18(a) of the Drugs Act, 1940 but no allegations pertaining to the said sections have been mentioned in the complaint. So, prima facie no offence under these sections has been made out against the respondent-accused.

*18. After evaluating the evidence placed on the file, there is no prima facie evidence found against the accused persons to drag them in the criminal trial. This court would like to refer a case titled as **M/s Pepsi Foods Limited Vs. Special Judicial Magistrate reported in 1998-1 CJ 49**, wherein it has been held by Hon'ble Supreme Court of India that- "in a criminal complaint summoning of an accused is a serious matter. The order of Magistrate summoning the accused must reflect application of mind. Mere examination of two witnesses to support the allegations in the complaint, not enough. Magistrate has to carefully scrutinize the evidence on record".*

19. In case titled Jacob Mathew Versus State of Punjab and others 2005(5) Supreme 297 Hon'ble apex court observed that "a private complaint may not be entertained unless the complainant has produced a 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."

20. At the same time, the very object of conferring revisional jurisdiction upon the superior criminal courts is to correct the miscarriage of justice arising from misconception of law or irregularity of procedure and the discretion in exercise of revisional jurisdiction should be exercised within the four corners of Section 397 Cr. PC whenever there has been miscarriage of justice or violation of the procedure. In the present case, as per the discussion made above, it transpired that there is no incriminating evidence on the file placed by the complainant to tinker with the order passed by learned lower court, which is based on the reasoned findings."

7. Accordingly, the petitioner has filed the present petition. Learned counsel for the petitioner submits that learned trial Court has erred in law and fact in dismissing the criminal complaint filed by the petitioner and that too without considering the documents/material available on record of the case. It is submitted that even the learned Revisional Court has failed to consider and appreciate the material available on the record and has wrongly dismissed the revision petition. Learned counsel for the petitioner submits that the petitioner's brother expired due to prescription of wrong medicines by respondent No.2/accused and it was a case of medical negligence by respondent No.2/accused for which he is liable to be tried.

8. I have heard learned counsel for the petitioner and gone through the paper book as well as the impugned order/judgment.

9. Before considering the submission of counsel for petitioner, it is apposite to refer to the case of ***Anjana Agnihotri v. State of Haryana 2020(2) RCR (Criminal) 83***, Hon'ble Apex Court while dealing with a case of medical negligence, held as under:-

> *"3. The main allegation against the appellants in the case is that they did not attend to Santosh Rani from 2.30 p.m. to 2.00 am. The Trial Court on the application of the accused discharged them relying upon the judgment of this Court in* ***Jacob Mathew v. State of Punjab & Anr. (2005) 6 SCC 1: 2005(3) RCR (Criminal) 836*** *case. The Additional Sessions Judge set aside the order of discharge and the order of Additional Sessions Judge in revision has been upheld. In Jacob Mathew's Case this Court clearly held that in criminal law medical professionals are placed on a pedestal different from ordinary mortals. It was further held that to prosecute the medical professionals for negligence under criminal law,*

something more than mere negligence had to be proved. Medical professionals deal with patients and they are expected to take the best decisions in the circumstances of the case. Sometimes, the decision may not be correct, and that would not mean that the medical professional is guilty of criminal negligence. Such a medical profession may be liable to pay damages but unless negligence of a high order is shown the medical professionals should not be dragged into criminal proceedings. That is why in Jacob Mathew's case (supra) this Court held that in case of criminal negligence against a medical professional it must be shown that the accused did something or failed to do something in the given facts and circumstances of the case which no medical professional in his ordinary senses and prudence would have done or failed to do. Therefore, this Court also directed in such cases an independent opinion of a medical professional should be obtained in this regard. We may make reference to the following observations in Jacob Mathew's case (supra). While concluding the judgment this Court gave certain guidelines. We need not refer to all, however Para 48(7) which is relevant is as under:

> *"(7) 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. The hazard taken by the accused doctor should be of such a nature that the injury which resulted was most likely imminent."*

4. Further this Court held in para 52 as under:

> *"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 the Bolam test to the facts collected in the investigation."*
>
> *5. In the present case the appellants failed to obtain any opinion of an independent doctor. The postmortem report does not show that the death of Santosh Rani had occurred due to the transfusion of blood. The only negligence that could be attributed to the accused is that they carried out the blood transfusion in violation of some instructions issued by the Chief Medical Officer that blood should be obtained from a licensed blood bank and that no direct blood transfusion from the donor to the patient should be done. In our opinion even if this is true the negligence is not such as to fall within the ambit of Jacob Mathew's case (supra)."*

10. Coming to case in hand, a perusal of the impugned judgments show that the petitioner had failed to bring on record any evidence/circumstance so as to make out sufficient grounds for proceeding against respondent No.2/accused. The petitioner is alleging medical negligence on the part of respondent No.2/accused and in order to support his allegation, the petitioner has sought to rely upon an Enquiry Report (Annexure P-3) submitted by a board comprising of Dr. Shashi Gandhi, SMO-cum-Nodal Officer, CM Window, Dr. Ramesh Chander, Deputy Civil Surgeon and Dr. Yogesh Gupta, MO.

11. However, after going through the said Enquiry Report, it is revealed that the following opinion has been recorded therein:-

> *“Patient Mr. Anil Singh died due to disease process having B/L Pneumonia with Invasive Aspergillosis with acute on CKD with septic shock. So it appears that there is no negligence by Dr. S.K. Manocha.”*

12. A perusal of the said enquiry report would rather suggest that the petitioner's brother namely Anil Singh died due to disease process having B/L pneumonia with Invasive Aspergillosis with acute on CKD with septic shock and it has also been opined that there was no negligence by Dr. S.K. Manocha.

13. Keeping in view the legal position as indicated in foregoing paras and also the above discussion, I do not find any illegality or infirmity with the impugned judgment/order, apparent on the face of the same, which may call for any interference by this Court.

14. Therefore, there is no merit in the present petition and the same stands dismissed accordingly.

15. All pending application/s, if any, shall stand closed.

19.05.2023 **(HARSH BUNGER)**
Himani **JUDGE**

1. Whether speaking/reasoned : Yes/No
2. Whether reportable : Yes/No