

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRR-3531-2018 (O&M)
Date of Decision: 11.04.2023

RAM ASHRAM

...Petitioner

Versus

KAILASH DHINGRA AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Pawan Attri, Advocate
for the petitioner.

HARSH BUNGER, J.

CRM-37815-2018

There is delay of 09 days in filing the present revision petition.

For the reasons recorded in the application, the same is allowed and delay of 09 days in filing the present revision petition is condoned.

Criminal Misc. Application is accordingly disposed of.

CRR-3531-2018

This revision petition filed by complainant, is directed against judgment dated 05.02.2018, passed by learned Chief Judicial Magistrate, Kurukshetra, whereby the complaint filed by the petitioner, alleging commission of offences punishable under Sections 304, 420, 201, 367, 368, 120-B, 465, 471 and 167 of the Indian Penal Code by the accused, has been dismissed.

2. Briefly stated, facts of the case are that petitioner-complainant filed a complaint under Sections 304, 420, 201, 367, 368, 120-B, 465, 471

and 167 of the Indian Penal Code, alleging therein that on 25.09.2008 at around 6:30 p.m., he hired a van to take his wife Rekha to Civil Hospital, Ladwa, due to pain in her stomach. It is further alleged that at about 7:00 p.m., the wife of the complainant was admitted by the Staff Nurse and at about 7:35 p.m., she gave birth to a child but because of medical negligence of doctors and staff nurses, she died on 26.09.2008. As per complaint, the medical reports of the patient had been tampered by respondents in order to conceal their act of negligence. It was also stated that when the petitioner/complainant sought information regarding the reports/tests under the Right to Information Act then in order to conceal the negligence, respondent No.1 in connivance with respondent No.3-Ravi Kumar (owner of Ravi Laboratory) fraudulently prepared HB and Urine Test Report and attached it with the medical file of Rekha (since deceased), whereas, the allegation of the petitioner-complainant is that the expenses of such reports were not asked from him and even he was not given any receipt thereof. It was further alleged that the report on the basis of which cause of death was given, was missing from the medical file and even false entries were made in out-patient register and dispatch register by accused in conspiracy with each other. In these circumstances, the petitioner/complainant moved a complaint before the learned Chief Judicial Magistrate, Kurukshetra and in his preliminary evidence, he examined himself as CW-1, Rajesh Pharmacist CW-2 and Sumer Chand as CW-3 and tendered documents regarding negligence of respondents No.1 to 9.

3. Learned counsel for the petitioner submitted that the petitioner is a poor person, who suffered mental agony and remained depressed on

account of sudden demise of his wife due to medical negligence of doctors and staff nurses. He further submitted that the petitioner got conducted the enquiry and as per enquiry report obtained under the Right to Information Act, it was wrongly opined that no negligence had been found so far as treatment part was concerned. Learned counsel further submitted that in the death register of Civil Hospital, Ladwa, the cause of death of wife of the petitioner was mentioned as *cardio pulmonary arrest* but the lab report on the basis of which cause of death was given, was missing from the medical file and even false entries were made in out-patient register and dispatch register by respondents in conspiracy with each other. Learned counsel for the petitioner further submitted that there was cutting in the medical record on file at Serial nos.2268, 2269, 2270 of Rekha (since deceased) and at Serial no.2270 on the file of new born baby; however, the trial Court had failed to appreciate that the medical reports were tampered with by making cuttings over the serial numbers, names etc. and lab tests reports. It is next submitted that the complaint moved by the petitioner for summoning the accused /respondents for commission of afore-said offences, has erroneously been dismissed by the learned trial Court vide its judgment dated 05.02.2018, on the ground that there is no incriminating evidence against them.

4. Feeling aggrieved, the complainant has approached this Court by way of filing the present revision petition.

5. I have heard learned counsel for the petitioner and perused the paper-book.

6. It is well settled that scope of revisional jurisdiction of this Court is quite limited and the Court is to interfere only if there is an

illegality or infirmity apparent on the face of the judgment under challenge.

7. The factum of powers of the revisional Court dealing with the revision against acquittal being extremely limited was stated by the Hon'ble Supreme Court in the case of ***K. Ramachandran v. V.N. Rajan & Anr.*** **2010(5) RCR (Criminal) 237**, wherein it was held as under:-

“This question has been considered in the celebrated judgment of Akalu Ahir & Ors. v. Ramdeo Ram [(1973) 2 SCC 583], where, after considering the judgments of D. Stephens v. Nosibolla [1951 SCR 284], Logendranath Jha v. Polailal [1951 SCR 676], K.C. Reddy v. State of Andhra Pradesh [(1963) 3 SCR 412] and MahendraPratap Singh v. Sarju Singh [(1968) 2 SCR 287] this Court came out with categories of case which would justify the High Court in interfering with the finding of acquittal in revision:

"(i) Where the trial Court has no jurisdiction to try the case, but has still acquitted the appellant-accused;

(ii) Where the Trial Court has wrongly shut out evidence which the prosecution wished to produce;

(iii) Where the appellate Court has wrongly held the evidence which was admitted by the Trial Court to be inadmissible;

(iv) Where the material evidence has been overlooked only (either) by the Trial Court or by the appellate Court; and

(v) Where the acquittal is based on the compounding of the offence which is invalid under the law."

Of course, these categories were declared by this Court to be illustrative and this Court observed that other cases of similar nature could also be properly held to be exceptional in nature where the High Court could justifiably interfere with the order of acquittal. In this

very judgment though in paragraph 10, this Court did not generally approve of the appreciation of evidence by the Trial Court Judge and held it to be not perfect or free from flaw and further observed "the Court of appeal may be justified in disagreeing with the conclusion, but it does not follow that on revision by a private complainant, the High Court is not entitled to re-appreciate the evidence for itself as if it is acting as a Court of appeal and then order a re-trial."

8. In the case of ***Hydru v. State of Kerala, {2004 (13) SCC 374}***, the Hon'ble Supreme Court has held as under:-

"3. From a bare perusal of the impugned order, it would appear that the High Court upon reappraisal came to a conclusion different from the one recorded by the appellate court. It is well settled that in revision against acquittal by a private party, the powers of the Revisional Court are very limited. It can interfere only if there is any procedural irregularity or material evidence has been overlooked or misread by the subordinate court. If upon reappraisal of evidence, two views are possible, it is not permissible even for the appellate court in appeal against acquittal to interfere with the same, much less in revision where the powers are much narrower. No procedural irregularity has been found by the High Court in the order of the Sessions Court whereby the appellant was acquitted. Therefore, we are of the view that the High Court was not justified in interfering with the order of acquittal in exercise of its revisional powers, as such the same is liable to be interfered with by this Court".

9. In ***Bindeshwari Prasad Singh alias R.P. Singh and others v. State of Bihar (now Jharkhand) and another, 2002(4) RCR (Criminal) 61 (SC)***, Hon'ble Apex Court has observed that in the absence of any legal

infirmity either in the procedure or in the conduct of the trial, there was no justification for the High Court to interfere in exercise of its revisional jurisdiction. It is further observed that the High Court should not re-appreciate the evidence to reach a finding different than the one arrived at by the trial court. In the absence of manifest illegality resulting in grave miscarriage of justice, exercise of revisional jurisdiction in such cases is not warranted. It is further observed by their Lordships that in exercise of revisional jurisdiction against an order of acquittal at the instance of a private party, the Court exercises only limited jurisdiction and should not constitute itself into an appellate court which has a much wider jurisdiction to go into questions of facts and law and to convert an order of acquittal into one of conviction. It cannot be lost sight of that when a re-trial is ordered, the dice is heavily loaded against the accused, and that itself must caution the Court exercising revisional jurisdiction.

10. Coming to the case in hand, the learned trial Court, after appreciating the entire evidence on record, dismissed the complaint filed by the petitioner, vide its order dated 05.02.2018 by observing as under:-

“9. I have heard learned counsel for the complainant and gone through record of the case.

10. Learned counsel for complainant contended that complainant was a poor person who suffered mental agony and remained depressed on account of sudden death of his wife. Everything happened with a blink of eye and complainant had a strong suspicion that his wife had died on account of negligence of accused in not giving her proper medical treatment. The complainant had got conducted the enquiry and as per enquiry report obtained under RTI Act it was wrongly opined that no negligence had been found so far as

treatment part was concerned. Learned counsel for complainant contended that medical reports were also tampered with by making cuttings over the serial numbers, names etc. and lab test reports were fabricated by accused in order to save their skin. With these submissions, learned counsel for complainant prayed for summoning of accused for commission of offences punishable under Sections 304, 420, 201, 367, 368, 120-B, 465, 471 and 167 IPC and relied upon Sibu versus Mohinder Singh 2002(1) RCR (Criminal) 165 (P&H).

11. In instant case complainant alleged that Rekha since deceased had died on account of medical negligence of doctors and staff nurses named in the body of complaint and alleged that the medical reports of patient had been tampered by accused in order to conceal their act of negligence. But there was no denying the fact that child was delivered on 25.09.2008 and there was no allegation of negligence in giving medical treatment to the child who was stated to be hale and hearty. As alleged by complainant he had obtained information under RTI Act and got conducted enquiry into the matter but the complainant remained dissatisfied all through as no negligence was found by the Enquiry Officers so far as treatment part was concerned. Minor clerical errors were detected in the hospital records but that in itself did not constitute an offence of fraud and forgery and fabrication of documents. However, in support of his version the complainant had examined himself as CW-1 besides examining his father-in-law as CW-3 and got produced attendance register etc. from Rajesh Pharmacist CW-2 but complainant's Bhabhi Salochana Devi remained unexamined. There was also no concrete evidence regarding cause of death of Rekha which could be

known from her post-mortem examination report. Admittedly post-mortem examination was not conducted for which the complainant again blamed the hospital authority. Therefore in the given factual matrix of the case coupled with preliminary evidence on record no sufficient ground was made out for proceeding against accused and as such the complaint in hand is hereby dismissed...”

11. A perusal of findings recorded by learned trial Court would show that the petitioner had failed to bring on record any evidence/circumstance so as to make out sufficient grounds for proceeding against the accused. Concededly, no post-mortem was conducted on the deceased.

12. In 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 a.m. 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)."

13. Keeping in view the legal position as indicated in foregoing paras, 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, while exercising its revisional jurisdiction. There is nothing on the record to show that the Court below has exceeded its jurisdiction or refused to exercise jurisdiction, while passing the impugned judgment/order. The impugned judgment/order is certainly not perverse or having been passed in violation of settled principles of criminal jurisprudence. No procedural irregularity or illegality has been pointed out. Impugned judgment/order is based upon proper appraisal and appreciation of evidence and as per law.

14. Therefore, there is no merit in the present criminal revision petition and the same stands dismissed accordingly.
15. All pending application/s, if any, shall stand closed.

April 11th, 2023
gurpreet

(HARSH BUNGER)
JUDGE

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