



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

118 (I) CRM-M-53648-2024 (O&M)
Date of Decision : November 14, 2024

DR. SANJEEV GUPTA -PETITIONER
V/S

STATE OF HARYANA AND ANR -RESPONDENTS

(II) CRM-M-53672-2024 (O&M)

DR. PRANJIT BHOWMIK -PETITIONER
V/S

STATE OF HARYANA AND ANR -RESPONDENTS

CORAM: HON’BLE MR. JUSTICE KULDEEP TIWARI

Argued by: Mr. Amar Vivek Aggarwal, Advocate
for the petitioner(s).

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

KULDEEP TIWARI, J.

1. The amenability of both these petitions for being decided through a common verdict originates from their genesis being embodied in a common FIR, besides originating from common reliefs being yearned therein.
2. Through both these petitions cast under Section 528 of the B.N.S.S., the petitioners crave for the hereinafter extracted reliefs:-

(i) Quashing of FIR No.317 dated 27.06.2008 (Annexure P-1), under Sections 304-A and 506 read with Section 34 of the IPC, registered at P.S. Central, District Faridabad, along with all the consequential proceedings arising therefrom, including the Final Report dated 11.09.2008;

(ii) Quashing of order dated 18.09.2024 (Annexure P-7),



whereby, the learned trial Court has framed charges against the petitioners for commission of offence punishable under Sections 304-A and 506 read with Section 34 of the IPC;

(iii) Quashing of order dated 16.10.2024 (Annexure P-8), whereby, the learned revisional court has dismissed the petitioner's criminal revision preferred against the order dated 18.09.2024;

3. It would be apt to record here that, this is the third round of litigation launched by the petitioners with the only attempt to thwart the ongoing criminal proceedings arising out of the present FIR, origin whereof dates back to the year 2008. Strangely enough, the petitioners have somehow remained successful too in scuttling the ongoing criminal trial by instituting one or the another motion either before the revisional court, this Court or the Hon'ble Supreme Court.

4. Since the case at hand has a chequered history, therefore, it is deemed imperative to initially capture an overview of the previous rounds of litigation launched by the petitioners.

5. The first round of litigation commenced in the year 2009, when the petitioners instituted CRM-M-15149-2009, CRM-M-369-2009 and CRM-M-12502-2024 before this Court, thereby claiming the hereinafter extracted reliefs:-

“(i) Quashing of FIR No.317 dated 27.06.2008, under Sections 304-A and 506 read with Section 34 of the IPC, registered at P.S. Central, District Faridabad;

(ii) Quashing of criminal complaint No.941 dated 21.07.2008;

(iii) Quashing of summoning order(s) dated 10.11.2008.”

6. The institution of the petitions (supra) resulted in the further proceedings before the learned trial Court becoming ordered to be stayed



and the petitioners continued to reap the fruits of the interim stay until the petitions (supra) were finally dismissed by this Court on 31.05.2024.

7. Fetching grievance from the dismissal order dated 31.05.2024 (Annexure P-3), one of the petitioners Sanjeev Gupta knocked the doors of the Hon'ble Supreme Court by instituting Special Leave Petition (Criminal) Diary No(s).47402/2024, however, his efforts did not yield the desired fruits inasmuch as the Hon'ble Supreme Court, through drawing the order dated 18.10.2024 (Annexure P-9), declined to examine the correctness of the dismissal order (supra) on account of dismissal of petitioner's discharge application. It was also specifically observed by the Hon'ble Supreme Court that its dismissal order shall not preclude the petitioner to question order of dismissal of the discharge application before the appropriate forum in accordance with law. Notably, during the interregnum, charges became framed against the petitioners vide order dated 18.09.2024 (Annexure P-7). Moreover, during the interregnum, the petitioners made yet another attempt by filing CRM-M-40990-2024, thereby seeking the hereinabove extracted reliefs but on the basis of compromise. However, this petition was withdrawn by the petitioners' counsel on 25.09.2024, but, with liberty to raise all the pleas before the learned trial Court at appropriate stage of trial. On the same day itself, i.e. 25.09.2024, the petitioners preferred a statutory revision against the order dated 18.09.2024 (Annexure P-7) but the said revision did not earn any affirmative order, rather was dismissed vide order dated 16.10.2024 (Annexure P-8).

8. Now, the petitioners have again instituted the petitions at hand, thereby assailing the orders enclosed in Annexures P-7 and P-8, besides



assailing the present FIR.

9. The petitioners ought to have, instead of making attempts time and again to thwart the criminal proceedings pending against them, waited to raise all their pleas and claims before the learned trial Court at appropriate stage of trial inasmuch as most of these issues require appreciation of evidence.

10. Nonetheless, the thrust of the arguments advanced by the learned counsel for the petitioners is comprised in: (i) flagrant abuse of the mandate and ratio laid down by the Hon'ble Supreme Court in "**Jacob Mathew V. State of Punjab & Anr.**", 2005 (3) RCR (Criminal) 836; (ii) the petitioners becoming absolved from medical negligence in the subsequent inquiry report, which was anchored on the opinion of two senior consultants; (iii) there being no evidence, even remotely suggestive available on record that, either the petitioners were not possessed of the requisite skill, which they professed to have possessed, or that, the conduct of the petitioners was grossly negligent, or that, the element of *mens rea* was in existence. Therefore, he argues that, without there being any inculpatory material, subjecting the petitioners to face trial for medical negligence is sheer abuse of the process of law.

11. It is important to note here that, the petitioners' counsel has reiterated all the pleas, which have already been considered and declined by this Court through drawing the order dated 31.05.2024 (Annexure P-3). The mere framing of charges against the petitioners does not confer any right upon them to reiterate all the previously considered and declined pleas in the instant motion, especially when now this Court is examining only the



legality of the order of framing of charge (Annexure P-7).

12. Insofar as legality of the order of framing of charge (Annexure P-7) is concerned, the test to check the legality thereof is somewhat different inasmuch as at the time of framing of charge, the probative value of the material cannot be gone into. It is a trite law that, at this stage, the learned trial Court is neither to examine and appreciate in detail the material placed on record by the prosecution, nor to consider the sufficiency of the material to establish the offence alleged against the accused, rather the Court is required to see as to whether, *prima facie*, the ingredients of offence under which the accused is to be charged are present or not.

13. This Court has examined the legality of the order of framing of charge (Annexure P-7) as well as of the declining order (Annexure P-8), as became rendered on petitioners' criminal revision preferred against the order of framing of charge, however, does not find any illegality or perversity therein.

14. At this juncture, this Court feels it imperative to also quote the observations of the Hon'ble Supreme Court, as became rendered 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.”

15. In summa, when all the pleas raised by the petitioners have already been considered and declined by this Court by passing a detailed order dated 31.05.2024 (Annexure P-3), coupled with the fact that this Court does not find any illegality or perversity in the orders enclosed in Annexures P-7 and P-8, therefore, both these petitions are **dismissed**. However, liberty is reserved to the petitioners to raise all their pleas and claims, as raised before this Court, before the learned trial Court at appropriate stage of trial.

16. Pending application(s) stand disposed of accordingly.

17. It is made clear that anything observed hereinabove shall neither be construed to have any bearing on the outcome of the trial, nor the trial Court concerned shall be influenced by any of the said observations.

18. A photocopy of this order be placed on file of connected case.

November 14, 2024
devinder

(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No