

CRM-M-56140-2018

1

2024:PHHC:029861

260-A

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

CRM-M-56140-2018

Date of decision : 29.02.2024

Dr. Aradhana Dawar

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present : Mr. Abhilakh Grover, Advocate for
Mr. K.S. Sodhi, Advocate
for the petitioner.

Mr. Sidharth Sandhu, Assistant Advocate General, Punjab.

Mr. A.S. Manaise, Advocate
for respondent No.2.

HARKESH MANUJA, J. (ORAL)

1. By way of present petition filed under Section 482 Cr.P.C., prayer has been made for setting aside an order dated 09.07.2018 passed by the Judicial Magistrate 1st Class Jalandhar, whereby the petitioner was summoned as an additional accused in FIR No. 155 dated 15.10.2013 under Sections 420, 465, 468, 471 and 120-B and Section 15 of the Indian Medical Council Act, 1956 registered at Police Station Division No.6. Jalandhar.
2. Having been implicated as one of the accused in the aforesaid FIR, upon investigation, the petitioner being found innocent was placed in Column No.2 and the charge sheet was filed against co-accused Dr. Vareesh

Kumar.

3. After framing of charges, the complainant-victim appeared as PW-1 and reiterated the allegations against petitioner qua the alleged offence, followed by filing an application under Section 319 of the Code of Criminal Procedure for summoning her as an additional accused. The said application came to be allowed vide order dated 09.07.2018 which has been assailed in the present revision petition. The relevant portion from the examination in chief of respondent No.2-complainant is reproduced here under:-

“xxx xxx. Thereafter Dr. Vareesh Kumar and Dr. Aradhana Dawar jointly operated my wife and during complications Dr. Vareesh Kumar called Dr. Rajnish Sharma. My wife was discharged on 10.07.2013 from Vardaan Hospital. xxx xxx.

“xxx xxx Dr. Aradhana Dawar and Dr. Vareesh Kumar took my signatures on many papers and suddenly my mother in law witnessed that Raashi was being taken in a hidden manner directly into some ambulance and she told me that I should rush out side and inquire as to where they were taking my wife. No one disclosed us in which hospital where they were taking her. I and my mother in law hurriedly chased the ambulance by our Car as before leaving the hospital Vareesh Kumar and his Junior Doctor Aradhana Dawar only said that some minor complication has occurred and she is being shifted to come multi specialty. xxx”

4. Impugning the aforesaid, learned counsel for the petitioner relies upon the decision dated 07.06.2023, passed by the Court of Judicial Magistrate 1st Class Jalandhar, whereby the co-accused Dr. Vareesh Kumar, stands acquitted and thus submits that no case was made out for summoning

the petitioner as an additional accused. The relevant discussion from the judgment dated 07.06.2023 is reproduced here under:-

“.....Prosecution further examined complainant Amit Kumar Sharma as PW4 (wrongly mentioned as PW3), who has reiterated the prosecution version in his examination-in-chief and proved and record his statement Ex.PW3/A, complaint moved by him to the Police Commissioner, Jalandhar as Ex.PW3/B and statement made by him during the enquiry as Ex.PW3/C. However, he failed to appear in the court after recording his partial examination-in-chief, hence his testimony cannot be read into evidence. Thereafter evidence of the prosecution was closed by order of the court.

10 After appreciating the evidence adduced on record of the prosecution, this Court of the confirmed and considered view that the prosecution has miserably failed to prove the guilt of accused person beyond shadow of reasonable doubt.

The Present FIR was lodged on the complaint moved by the complainant Amit Sharma to the Commissioner of Police, Jalandhar against accused Vareesh Kumar and Dr. Anuradha Dawar on the allegations of negligence in the treatment given to his wife namely Rashi Sharma on 30.09.2013. Not even a single allegation was levelled against the accused Vareesh Kumar that he proclaimed himself to be doctor and accordingly treated his wife without any degree or qualification. Rather, the complainant in his complaint has stated that his wife Rashi Sharma was admitted in the hospital on 06.07.2013 and had undergone diagnostic hysteroscopy and also diagnostic laproscopy on 06.07.2013. She was hospitalized and discharged from

Vardaan Infertility on 10.07.2013. On 30.09.2013, i.e. approximately after 3 months, complainant alongwith his wife Rashi Sharma and mother-in-law Shashi Sharma visited the said hospital for routine checkup. His wife was quite healthy, but for routine checkup complainant went to said hospital on 30.09.2013. So, the allegations of the complainant that the accused Vareesh kumar was negligent in the treatment of the deceased Rashi Sharma does not hold water. The prosecution story is silent about the fact as to for which treatment the patient namely Rashi Sharma visited the Vardhan Hospital on 30.09.2013 rather contrary to it, the complainant has stated that he took Rashi Sharma to hospital on 30.09.2013 for routine check up.

It is pertinent to mention here that it is only during the inquiry, this fact surfaced that accused Vareesh Kumar is proclaiming himself to be the doctor and has forged his qualifications and degrees. He further induced the patients by proclaiming himself to be doctor on the basis of false and forged degrees and thus cheated them. However, not even a single witness has been joined by the investigating officer who could have proved that accused Vareesh Kumar used to proclaim himself as doctor and used to treat the patients as doctors. The investigating officer could have procure the record of all the patients from the record of the hospital and could have joined them in the investigation in order to establish the allegations leveled against the accused person. Further more, nothing has come in the evidence during the trial that accused Vareesh Kumar had treated Rashi Sharma as doctor or has conducted any surgery on her or has given any medical advice to her or had referred her to Johal Hospital on 30.09.2013. No Education

qualification and professional certificates alleged to be forged by the accused has been brought or proved on record. The inquiry report in which all these facts were inquired into and on the basis of which the instant FIR for the offences punishable under section 420, 465, 468, 471, 120-B 1PC and section 15 of Indian Medical Council Act, 1965 was registered has gone unproved on the file. The complainant also failed to come present in this case to prove the allegations against the accused Vareesh Kumar and hence, his partial testimony cannot be read into evidence.”

5. Learned counsel for the petitioner submits that once the complainant failed to appear for his cross-examination, resulting into acquittal of the co-accused namely Dr. Vareesh Kumar, initiation of proceedings against the petitioner, based on that very deposition would be an abuse of process of law and thus the impugned order was liable to be set aside.

6. The prayer made on behalf of the petitioner has been vehemently opposed by learned State counsel as well as the learned counsel representing respondent No.2. It has been submitted that the acquittal of the co-accused Dr. Vareesh Kumar, would not come to the rescue of the petitioner as the impugned order was passed upon appreciation of deposition made by the complainant and thus, the same warrants no interference.

7. I have heard learned counsel for the parties and gone through the paper book. I find substance in the submissions made on behalf of the

petitioner.

8. Once, the prosecution has failed to establish the case put-forth in the charge sheet against the co-accused Dr. Vareesh Kumar, identically, the same evidence only being available against the petitioner, no useful purpose would be served with continuation of present proceedings against him in pursuance to the order dated 09.07.2018 passed by the trial Court, summoning the petitioner as an additional accused and to make her face the uncalled for agony of trial. The same would tantamount for misuse of process of law. In this regard, the observations made by the Hon'ble Apex Court in case of **"Vikas Rathi Vs. State of U.P. and another"** case 2023(2) RCR (criminal) 55 can be relied upon. Paragraphs No. 13 and 14 of the said judgment are reproduced here under:-

"13. The aforesaid material was not sufficient if examined in the light of the law laid down by this Court for summoning of an additional accused in exercise of power under Section 319 of the Cr.P.C. to establish complicity of the appellant in the crime.

14. After conclusion of the entire evidence and examination of the material produced on record even against the charged accused, the trial court had acquitted them vide judgment dated 15.03.2017. It shows that material produced on record was not even sufficient for conviction of the accused against whom charge sheet was filed."

9. Further more, as per the examination in chief of the complainant, her wife was operated upon by Dr. Vareesh Kumar, assisted by

the petitioner Dr. Aradhan Dawar and due to their negligence, the patient died. Once, the negligence against the Senior i.e. Dr. Vareesh Kumar was not established upon trial summoning the petitioner as an additional accused would not be justified. Especially when the opinion given by the Medical Board, led by Assistant Civil Surgeon, Jalandhar, on 28.11.2013 about the cause of death of patient-Ms. Rashi Sharma was not even proved on record. Besides it, there have been no allegations against the petitioner qua she being not having the requisite qualification or having cheated the complainant in any manner, thus no offence even is made out against her.

10. In view of the discussion made hereinabove and as well as in terms of the proposition of law in case of Vikas Rathi (supra), finding merit in the present petition, the same is allowed and the order dated 09.07.2018 is hereby set aside.

11. All pending applications disposed of.

(HARKESH MANUJA)
JUDGE

29.02.2024
monika

Whether speaking/reasoned ? Yes/No
Whether Reportable ? Yes/No