



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

308

CRM-M-60630-2023

Date of decision: May 23, 2024

VIKAS VERMA

.....Petitioner

Versus

STATE OF HARYANA AND ANOTHER

.....Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. R.S. Rai, Senior Advocate
with Mr. Gurmohan Singh Bedi, Advocate,
Mr. Pawandeep Singh, Advocate,
Mr. A.V. Khanna, Advocate,
Mr. Rishav Singla, Advocate,
and Mr. Akash Arora, Advocate
for the petitioner.

Ms. Deepshikha Chauhan, Assistant Advocate General, Haryana.

Mr. Arjun Dosanj, Advocate
for respondent No.2.

MANJARI NEHRU KAUL, J.

1. The instant petition has been filed under Section 482 Cr.P.C. for quashing of FIR No.0639 dated 09.12.2017 (Annexure P-1) under Section 304-A of the Indian Penal Code, 1860 and all the consequential proceedings arising therefrom, *inter alia* on the ground that no *prima facie* offence is made out.

2. Learned Senior counsel, at the outset, has drawn the attention of this Court to the allegations levelled in the FIR in question, which has been annexed as Annexure P-1. Learned Senior counsel has argued that on 31.08.2017, respondent No.2-father of the deceased (hereinafter referred to as 'patient') brought her to Rockland Hospital, Dwarka from the hospital. The

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patient was suffering from Dengue Shock Syndrome with Acute Respiratory Distress Syndrome (ARDS) and Multiple Organ Dysfunction Syndrome (MODS). She was immediately admitted to the Pediatric Intensive Care Unit (PICU) under the care of Dr. Kirshan Chugh and Dr. Vikas Taneja. Despite being placed on ventilator support and made to undergo dialysis for kidney failure, the patient's condition continued to be critical. An MRI of her brain showed mild restricted diffusion in bilateral thalami, basal ganglia and left frontal cortex, indicating irreversible brain damage. Respondent No.2 sought second opinion from another hospital. After learning that the petitioner had no chances of survival, respondent No.2 decided to have the patient discharged against medical advice, thereby withdrawing consent from further treatment. Finally on 14.09.2017, respondent No.2 insisted on discharging the patient, which was recorded as Leave Against Medical Advice (LAMA). The patient was then discharged at 10.30 p.m. Despite being explicitly advised by the treating doctors to arrange an ambulance equipped with Advanced Life Support (ALS), respondent No.2 arranged a Basic Life Support (BLS) ambulance instead. The petitioner was on duty in the hospital as an Associate Consultant that night, and he merely assisted in transferring the patient from PICU to the BLS ambulance arranged by respondent No.2. The patient was then taken to Rockland Hospital, Dwarka, where an ECG confirmed that she had been brought dead. Following this tragic death, the Government of Haryana constituted a Committee to investigate potential medical negligence. The Committee, comprising of doctors and a representative of the Deputy Commissioner, conducted a thorough inquiry, wherein they concluded that there was no negligence in the treatment provided to the patient during her stay at the

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hospital. However, the Committee also noted that the petitioner should have raised concerns regarding the inadequacy of the ambulance and that the hospital should have been more supportive in arranging a suitable ambulance as per the needs of the patient. Subsequently, the FIR in question i.e. FIR No.0639 dated 09.12.2017 under Section 304-A of the IPC was registered. A final report under Section 173 of the Cr.P.C. was filed on 22.09.2018, leading to charges being framed under Section 304-A of the IPC against the petitioner.

3. Learned Senior counsel has vehemently argued that it is undisputed by the prosecution as well as respondent No.2 that the petitioner was neither the treating doctor of the patient nor had in any manner, been responsible for arranging the ambulance, in which respondent No.2 shifted his daughter i.e. the patient to Rockland Hospital against LAMA. The discharge of the patient from the hospital and the choice of ambulance were solely the discretion of respondent No.2, who ignored specific medical advice to use a fully equipped ambulance, which could have prevented serious repercussions. The involvement of the petitioner, who no doubt is a Doctor, was limited to assisting in the patient's transfer to another hospital. Learned counsel has thus asserted that there is not a shred of evidence on record, which could even remotely attract the mischief of negligence under Section 304-A of the IPC. By placing reliance on ***State of Haryana Vs. Ch. Bhajan Lal, AIR 1992 SC 604***, learned Senior counsel has submitted that it is a fit case for quashing of the FIR as it would be nothing but a gross misuse of process of law.

4. *Per contra*, learned State counsel, assisted by learned counsel for respondent No.2, has not disputed that the patient was discharged against LAMA by respondent No.2 and despite being advised and cautioned by the

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hospital that Advanced Life Support (ALS) ambulance be arranged for taking the patient to Rockland Hospital, respondent No.2 still arranged for Basic Life Support (BLS) ambulance. However, it has been argued that since the petitioner was a Doctor, who was present in the ambulance at the time when the patient was being shifted to Rockland Hospital, he should have been vigilant enough to monitor the condition of the patient, who was in a critical condition and thus, he had been negligent, for which he could not escape being prosecuted under Section 304-A of the IPC. It has been further submitted that since charges have been framed, the potential contribution of the petitioner to the death of the patient would now be a matter of trial, when both the parties lead their evidence, and should not be preemptively decided in a petition under Section 482 of the Cr.P.C.

5. I have heard learned counsel for the parties and perused the relevant material placed on record.

6. The Hon'ble Supreme Court in ***State of Haryana vs. Ch. Bhajan Lal, AIR 1992 SC 604***, while dealing with the inherent powers of this Court under Section 482 Cr.PC, has carved out certain exceptions to the general rule that criminal proceedings/FIR should not be quashed in a routine manner. It would be relevant to reproduce the exceptions carved out to the general rules by the Supreme Court, which reads as under:

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be



possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable 42 PART E offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

7. Before proceeding further, it would be relevant to reproduce the relevant contents of the FIR in question, which is as under:-



“E-mail from Director General Health Services Haryana To, Civil Surgeon Gurugram Memo No. 4PM (Inquiry Gurugram)-2017/14735 dated 09.12.2017. Subject-Supply of inquiry report of committee in the case of Adya Singh-Fortis Memorial Research Institute Gurugram in reference to the subject cited above. The copy of the inquiry report submitted by the committee on the subject mentioned above is being forwarded to you along with legal opinion taken in the matter by the Government for further urgent necessary action you are hereby directed to send the copy of the inquiry report to the following 1. Parents of Adya Singh complainant 2. Fortis Memorial Hospital Research Institute (FMRI) Gurugram 3. Deputy Police Commissioner Gurugram. You are further directed to take action against Fortis Memorial Research Institute (FMRI) Gurugram under the provisions of Epidemic Act and to co-ordinate with the police department for further necessary action as per legal opinion tendered by District Attorney O/o Chief Secretary Government of Haryana (Annexure-A) and to send the action taken report to this head quarter today itself. Please treat it as most urgent.

Deputy Director (PM) for Director General Health Services Haryana. Today in the Police Station Today the aforesaid letter no. CS-Stano-2017/1309 dated 09.12.2017 Civil Surgeon Office Gurugram was received in the police station through letter no.9578/DCP/HQ dated 09.12.2017 office of the Deputy Commissioner of Police Headquarters Gurugram, Deputy Commissioner of Police Gurugram East Assistant Commissioner of Police D.L.F. Gurugram in which on the inquiry report of the committee formed in Adya Singh Fortis Hospital Sector 44 Gurugram through the Memo No. 4PM (Inquiry Gurugram)-2017/14735 dated 09.12.2017 of the Office of the Director General Health Services Haryana the Civil Surgeon Gurugram had been instructed to get a FIR registered U/s 304 IPC against Dr. Vikas Verma Senior Consultant Department of Paediatrics Fortis Memorial Research Institute Sector 44 Gurugram as per the legal opinion of DA/CS on which FIR No.0639 dated 09.12.2017 U/s 304 Part-2 IPC was registered in Police Station Sushant Lok Gurugram.”

8. Adverting to the case in hand, a perusal of the allegations levelled in the FIR in question, which has been reproduced hereinabove, leaves no manner of doubt that the essential ingredients to attract the mischief of Section

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304-A of the IPC are clearly absent *qua* the petitioner. As not disputed by learned counsel for respondent No.2, firstly, despite being duly informed by the doctors at the hospital that the patient was in a critical condition, he chose to get her discharged against LAMA; secondly, it has also not been disputed by learned counsel for respondent No.2 that the petitioner was not even the treating doctor but had only accompanied the patient in the BLS ambulance for routine assistance in transporting the patient to Rockland Hospital; thirdly, the hospital had explicitly advised respondent No.2 to arrange an ALS ambulance but instead, against medical advice, respondent No.2 had himself arranged for BLS ambulance. It is not even the case of the complainant that a choice had been given to him that he could choose either of the ambulances. Further, it is also not the case of the complainant that during the transportation of the patient to Rockland Hospital, the condition of the patient worsened but the petitioner chose not to render any medical assistance during her journey. This Court has, therefore, no hesitation that the allegations levelled in the FIR against the petitioner do not even remotely hint towards his culpability in the death of the patient.

9. As a sequel to the above, the instant petition is allowed, and the aforesaid FIR along with all consequential proceedings arising out of it, are quashed *qua* the petitioner.

May 23, 2024
Jaspreet Kaur

(MANJARI NEHRU KAUL)
JUDGE

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