
(2010) 02 MP CK 0044
In the Madhya Pradesh High Court

Aliya Amma (Smt.)

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 02-02-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 304A, 420

Citation : (2010) 2 MPHT 371

Hon'ble Judges : N.K. Mody, J

Bench : Single Bench

Final Decision : Allowed

Judgement

N.K. Mody, J.—This petition is filed by the petitioner u/s 482 of Cr.PC for quashment of FIR registered at Crime No. 165/09 for the offence alleged to have been committed under Sections 304-A and 420 of IPC at Police Station, Kumbhraj, District Guna.

2. Short facts of the case are that the petitioner is a Nurse by profession and is working at Civil Hospital, Chachoda, Kumbhraj. On 3-7-09, the complainant Dheraj Singh Meena lodged a complaint that Suvitabai, daughter-in-law of the complainant was pregnant lady and she was due for delivery, therefore, she was admitted at Civil Hospital, Chachoda, Kumbhraj. It was alleged that because of the fact that the Nurse on duty did not refer Suvitabai to District Hospital, Guna, therefore, she died. It was alleged that the Nurse on duty committed an offence which is punishable. Upon complaint, a case has been registered against the petitioner for the offence under Sections 304-A, 420 of IPC.

3. Shri Sameer Kumar Shrivastava, learned Counsel for the petitioner submits that the deceased Suvitabai was admitted in the hospital early in the morning, at that time, petitioner was on duty. It is submitted that petitioner remained on duty till evening. By that time, no delivery took place. It is submitted that thereafter, another Nurse was in charge and as per the allegation made against the petitioner, it is evident that in the night the second Nurse asked the

complainant whether any delivery has taken place earlier by operation. Upon giving information, the second Nurse who was incharge, asked the complainant to take the deceased to Guna. It is submitted that in the facts and circumstances of the case, no offence has been committed by the petitioner. It is submitted that even otherwise, no patient can be referred to other hospital unless and until it is recommended by the concerned Doctor. It is also submitted that no criminal case can be registered against the persons who are in medical profession unless and until the medical opinion of independent body has been obtained. For this contention reliance placed in the matter in the case of Jacob Mathew Vs. State of Punjab and Another, , wherein it is held that,:

The Investigating Officer should, before proceedings against the doctor accused of rash or negligent act of 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. A doctor accused of rashness or negligence, may not be arrested in a routine manner (simply because a charge has been levelled against him). Unless his arrest is necessary for furthering the investigation or for collecting evidence or unless the Investigating Officer feels satisfied that the doctor proceeded against would not make himself available to face the prosecution unless arrested, the arrest may be withheld.

It is submitted that petition be allowed and the proceedings initiated against the petitioner be quashed.

4. Ku. Nutan Saxena, the learned Counsel for the respondent/State submits that challan has been filed and charge has yet to be framed. It is submitted that at the stage of charge, petitioner can bring the notice to the Court that no offence has been committed by the petitioner under Sections 304-A and 420 of IPC. It is submitted that the petition be dismissed.

5. From perusal of the evidence on record, it is evident that the petitioner is a Nurse by profession and she was on duty when deceased Suvitabai was admitted to the hospital. It is also on record that petitioner completed her duty in day time and, thereafter, another Nurse was in-charge of the patient. It is also evident that no Doctor has been impleaded as an accused. In the facts and circumstances of the case, even if the story of the prosecution is accepted to be true, no case is made out against the petitioner for the offence under Sections 304-A and 420 of IPC.

6. In view of this, the petition filed by the petitioner is allowed and the criminal case registered against the petitioner in Crime No. 165/09 stands quashed so far as it relates to the petitioner.