
(1991) 09 P&H CK 0038

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 2854-M of 1991

Anil Anant Pathak

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 05-09-1991

Acts Referred:

Citation : (1992) 2 RCR(Criminal) 189

Hon'ble Judges : G.S.Chahal, J

Advocate : B.N. Sharma, S.D. Sharma, Azad Singh, Govind Goel, J.N. Kaushal,
Advocates for appearing Parties

Judgement

G.S. Chahal, J.

1. This order will dispose of two connected Criminal Miscellaneous Nos. 2854/M/1991 and 2817/M/1991. Mahesh Chander Sharma and Anand Mohan Sharma, petitioners are the Directors of M/s Rusoma Laboratories Pvt. Limited, Indore (M.P.) while Anil Anant Pathak is an employee of the said company. They have moved the two criminal miscellaneous for quashing of FIR No. 570 dated 7.9.1990 under Sections 304A/420, IPC registered at Police Station City, Sonapat, Annexure P1.

2. The impugned FIR relates to the death of Sh. S.D. Aroara, who was working as Additional District and Sessions Judge, Sonapat, registered on the basis of an application moved by his widow Smt. Raj Rani Arora. The allegations made by the complainant, briefly stated, are :

"On 10.8.1990 Sh. S.D. Arora was suffering from fever. He was being treated by Dr. Murari Lal Taneja who runs Pooja Clinic at Sonapat. After administering the medicine, the temperature came down, but he was not completely cured. On 15.8.1990 at about 12.00 noon, Dr. Taneja visited the house of Sh. Arora and at that time Sh. Ram Sanehi, a tutor of young children of Sh. Arora who had come to enquire about his health, was also present. Dr. Taneja, after examining Sh. Arora, told them that he was quite weak; he was also suffering from fever and

that to completely cure the fever, it was necessary to put him on the glucose drip. Sh. Arora told Dr. Taneja that there was no necessity for glucose, as he was able to take food orally and that the weakness would subside within a day or so. Dr. Taneja, however, insisted that Sh. Arora was in immediate need of glucose. He then left for the market and brought a glucose bottle (it was ultimately found that the said glucose bottle had been purchased from Satiza Medical Store, Gohana Road, Sonapat) Dr. Taneja applied the drip and a few minutes thereafter, he tried to leave the house of Sh. Arora. In spite of the request by the complainant that the doctor should remain by the side of Sh. Arora, while glucose was being administered, the doctor left and made the remarks that there was no cause for worry and that he would come and examine him after some time. Soon after the doctor had left, Sh. Arora complained of shivering and pain in the head and asked that the doctor should be immediately called. The complainant removed the drip and also put a number of quilts on Sh. Arora. At the request of the complainant, Sh Ram Sanchi went and brought Dr. Taneja, but by that time, the condition of Sh. Arora had deteriorated. He was therefore, removed to Civil Hospital, Sonapat. However, his condition did not improve and during the night, at about 9.00, he was referred to Medical College, Rohtak. Sh. Arora was removed to that hospital where he died at about 2.15. a.m. on the night intervening 15/16.8.1990. The death of Sh. Arora was the result of the negligence of Dr. Taneja and the administration of fake glucose. The glucose bottle bore the label of Rusoma Laboratories Pvt. Ltd., 149, Bhamer, Indore (MP) with Batch No 900 198 (798) manufacturing date 9.8.1990 and the date of expiry as 8.5.1992."

3. Section 304A, IPC, reads as follows :

"304A. Causing death by negligence Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide shall be punished with imprisonment of either description for a term which may extend to two years, or with fine or with both."

4. In the impugned complaint, the allegations are made against Dr. Taneja for having left Sh. Arora (deceased) after applying the drip. It is a matter of evidence if Dr. Taneja was negligent or rash in the performance of his duties as a medical officer, but so far as the present petitioners are concerned, they can by no stretch of imagination, be described to have contributed to the death of Sh. Arora. Reliance is placed on the fact that when the remaining glucose bottle was sent to the Government Analyst, it was found that it did not pass the test of sterility and it also contained some dead ants and a lot of white flacculent mass. This report is Annexure R1. The significant fact to be found is that this bottle had been received by the Government Analyst in an unsealed condition. If the bottle had contained dead ants, the same would have been visible to the naked eyes of the doctor before he applied the drip. The Government Analyst has also not given any opinion if the material contained in the bottle and analysed by him could have caused any reaction.

5. The learned counsel for the respondent has then tried to rely upon the provisions of Section 420, IPC to make out a criminal charge against petitioners. It is however, difficult to appreciate this part of the argument. The medicine sold was glucose and it, in fact, did contain glucose. If it suffered from deficiency in the matter of sterility, it cannot make out an offence of cheating. To make the petitioners liable for this offence, it has to be shown that either of them was directly involved in preparing the adulterated glucose found in the despatched bottle. The petitioners are being implicated on the basis that two of them are directors and the third a chemist of the company which prepared the glucose and a presumption is sought to be drawn that they had control of the Company which prepared the glucose. On the basis of such a presumption, no charge can possibly be proved against the petitioner. In a case, like the present, the following legal proposition formulated by their Lordships of the Supreme Court in *Madhavrao Jiwaji Rao Scindia and another v. Sambhajirao Chandrojirao Angre and others*, 1988(1) R.C.R.(Criminal) 565 : AIR 1988 SC 709, provides guidance, and to quote:

"The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceedings even though it may be at a preliminary stage."

6. Faced with this situation, the learned counsel for the respondent tried to urge that offences u/s 34, Drugs and Cosmetics Act are made out. If the respondent State does not find material to proceed against the petitioners for the said offences, it shall be at liberty to initiate the proceedings. The impugned FIR is quashed against the petitioners. Criminal Miscellaneous are allowed.