
(2021) 04 JH CK 0088
In the Jharkhand High Court
Case No : A.B.A. No. 6637 Of 2018

Basir Ansari @ Md. Basir & Others

APPELLANT

Vs

State Of Jharkhand & Others

RESPONDENT

Date of Decision : 09-04-2021

Acts Referred:

Indian Penal Code, 1860 — Section 34, 306, 498A

Citation : (2021) 04 JH CK 0088

Hon'ble Judges : Kailash Prasad Deo, J

Bench : Single Bench

Advocate : Sanjay Prasad, Sachin Kumar, Saket Kumar, Ajit Kumar, Aprajita Bhardawaj, A. K. Kashyap

Judgement

Heard, learned counsel for the State, Mr Saket Kumar, Additional Public Prosecutor.

Learned counsel for the State has submitted that the affidavit has been filed by the learned Chief Secretary, Government of Jharkhand in compliance of order dated 29.01.2021 passed by this Court.

From perusal of the affidavit dated 06.03.2021 filed by the Chief Secretary, Government of Jharkhand, it appears that in compliance of order passed by this Court, the affidavit has been filed by the Chief Secretary, Government of Jharkhand is not in its true spirit, as the Chief Secretary has even failed to mention the enrollment number of the Dr. Swapan Kumar Sarak, after verifying the same for whose conduct this matter is lingering before this Court since 2018.

It is strange that the State is insensitive to such a situation where a person is made accused for an offence under Section 498A, 306 and 34 of the I.P.C. and trial is pending on the basis of such reports which are self-contradictory.

In the present case, Basir Anasri @ Md. Basir has been made accused in connection with Barwadda P.S. Case No. 167/2018 dated 10.08.2018 on the basis of written report of Anwari Khatoon as daughter of the informant Anjum

Bano has committed suicide in her own house. The informant has alleged that she was married to Basir Ansari.

Basir Ansari has filed anticipatory bail application submitting therein that marriage was solemnized on 07.07.2018. Anjum Bano was having abdominal pain on 05.08.2018 and thereafter she was given medical treatment and ultra sound was done, where it was found that she was carrying pregnancy of three months. The father of Anjum Bano was informed and she was handed over to her father, who took her to his own village and premature pregnancy was terminated. Thereafter, Anjum Bano has committed suicide in her own native place.

The autopsy of deceased Anjum Bano has been conducted by Dr. Swapan Kumar Sarak, but in the post-mortem report, he has not mentioned about the premature termination of pregnancy of the deceased soon before her death. The petitioner Basir Ansari @ Md. Basir and others filed Ultra Sound report annexing in the anticipatory bail application which was verified by the Investigating Officer regarding its authenticity and genuineness from the issuing Diagnostic Centre and the same has been found true by the Investigating Officer.

This Court thereafter directed the Principal, Patliputra Medical College, Dhanbad to constitute a Medical Team, as to how such glaring medical evidence has not been recorded in the post-mortem report by Dr. Swapan Kumar Sarak. The Principal, Patliputra Medical College, Dhanbad, Dr. Pratibha Roy has constituted a Medical Team, in which for better appreciation, she has also inducted Dr. Swapan Kumar Sarak to explain the report submitted by him in the post-mortem report of the deceased Anjum Bano. In the report submitted by the Committee, Dr. Swapan Kumar Sarak was a member and has submitted that there was premature termination of pregnancy, but surprisingly, Dr. Swapan Kumar Sarak has not mentioned the same in his earlier report submitted as post-mortem report. Under such circumstance, it is necessary to enquire why Dr. Swapan Kumar Sarak was not made accused in criminal case for giving false evidence and the Department has also proceeded against the said doctor, even after sending orders to the Health Secretary, Government of Jharkhand.

On the contrary, the Department has proceeded against Dr. Pratibha Roy with stoppage of one increment.

This Court directed the then Superintendent of Police, Dhanbad to inquire about the conduct of Dr. Swapan Kumar Sarak, the Government Doctor, who submitted such post-mortem report with regard to his misconduct under the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002.

The Court directed the National Medical Commission in this regard. The National Medical Commission referred the matter to the Bihar Chapter of Medical Council and the Bihar Chapter of Medical Council referred the matter to the Jharkhand Chapter of Medical Council. The Secretary, Jharkhand Medical Council has filed affidavit before this Court that Dr. Swapan Kumar Sarak is not enrolled in the

State of Jharkhand as a medical practitioner.

Normally, in an application for grant of anticipatory bail or regular bail, the Court does not inquire and dig deeply into the matter unless and until it touches the conscience regarding miscarriage of justice.

In the present case, such medical report in the form of post- mortem can be fatal for any person who is found under accusation of Section 498A, 306 and 34 of I.P.C., but State of Jharkhand is silent upon such act of such erring doctor for approximately two years.

This Court directed the Chief Secretary, Government of Jharkhand to verify the certificates of all the Doctors practicing in the State of Jharkhand either in the Government side or in the private side, but surprisingly enough the affidavit of the Chief Secretary, Government of Jharkhand is silent over the same, rather, it discloses that one increment with non-cumulative effect has been imposed upon the Dr. Swapan Kumar Sarak and Departmental Proceeding has been initiated against him. The aforesaid step taken by the Government of Jharkhand seems to be an eye wash for two reasons:-

First, if the departmental proceeding is initiated, it is incumbent upon the State to wait till the final outcome of the Departmental Proceeding is placed and then following the process of law, punishment can be awarded;

Second, without inquiry one censure with stoppage of one increment with non-cumulative effect is no punishment for such heinous offence, where the Doctor can be prosecuted for tampering with evidence or giving false evidence in a criminal case.

Considering the aforesaid, the affidavit filed by the Chief Secretary, Government of Jharkhand is hereby rejected with a direction to file a fresh in this regard.

This Court directs the State Counsel, Mr. Saket Kumar to invite the Chief Secretary, Government of Jharkhand, the Home Secretary, Government of Jharkhand and the Health Secretary, Government of Jharkhand to remain present by virtual mode from their work place itself at 12:00 noon today for their proper assistance to this Court, at around 10:40 a.m. Learned counsel, Mrs. Aprajita Bhardwaj, has submitted that the National Medical Commission has also filed affidavit through its working Secretary, Dr. R.K. Vats, who has categorially stated in his affidavit at para-9 that there is no violation of Professional Conduct by Dr. Swapan Kumar Sarak while doing post-mortem of the deceased Anjum Bano.

Learned Amicus Curiae, Mr. A.K. Kashyap, Sr. Advocate has vehemently opposed the same and has submitted that this affidavit cannot be accepted in view of Chapter-7, Clause-7.7 of Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 along with Appendix-4, which is contradictory.

Mr. A.K. Kashyap, Senior Counsel has submitted, that it is misconduct on the part of such doctor, whose name can be struck off from the list of the Medical

Practitioner, but surprisingly such evasive reply given by National Medical Commission by affidavit sworn by the working Secretary, Dr. R.K. Vats, son of Sh. Y.P. Vats, is contrary to the Regulation of 2002.

Under the said circumstances, this Court requires personal assistance of Dr. R.K. Vats through virtual mode from his working place itself to assist this Court that how such observation has been made in para-9 of the affidavit and as such, the entire file be sent to this Court for perusal and how such finding has been recorded by the concerned Committee.

This Court requires assistance of Mr. R.K. Vats on following questions:-

(i) What is the conclusion of two conflicting reports in same criminal trial issued by the same Doctor contradictory to each other?

In the first post-mortem report, Doctor has not mentioned about the premature termination of pregnancy of deceased Anjum Bano and in the second report, which was submitted by the Committee pursuant to the order of this Court in which Dr. Swapan Kumar Sarak, was also a member and both the reports are contradictory to each other, then how far in criminal trial, the medical evidence can be relied upon while adjudicating a criminal trial.

(ii) If such conduct is not a misconduct of the Doctor, then what is misconduct of the doctor as because in Para-9 of the counter affidavit, Dr. R.K. Vats, working Secretary, National Medical Commission has mentioned that there is no violation of Professional Conduct by Dr. Swapan Kumar Sarak while conducting post-mortem report of the deceased Anjum Bano.

In the said affidavit, Dr. R.K. Vats has not stated about the misconduct. Dr. R.K. Vats is invited through virtual mode to explain what is difference between Professional Conduct and Misconduct of a Doctor?

This Court called upon this case on 12:00 p.m. as fixed for assistance of the learned Chief Secretary, the Home Secretary and the Health Secretary, Government of Jharkhand through virtual mode from their work place, but none of them have appeared nor any plausible reason has been given by learned Additional Public Prosecutor, rather learned Additional Public Prosecutor has submitted that information have been given to the concerned officials.

Mr. Sachin Kumar, Additional Advocate General-II, appeared assisted by Mr. Saket Kumar, Additional Public Prosecutor and has submitted, that they have verified about the registration number of Dr. Swapan Kumar Sarak from internet.

This Court fails to understand, if it was so simple thing for the State, then why the same has not been mentioned in the counter affidavit filed by the Chief Secretary, Government of Jharkhand. Whether it is an attempt to protect an erring Doctor or whether the State is trying to protect such doctors as because this Court has also found similar nature of case in the district of Giridih. The order has been earlier referred to the Health Secretary for his kind perusal.

Under the aforesaid circumstances, this Court requires the assistance of the Chief Secretary, the Home Secretary and the Health Secretary, Government of Jharkhand on next date.

The matter was kept pending today from 12:00 noon till 1:20 p.m. (about 1 hour 20 minutes), though the Bench have roaster for the Division Bench at 1:15 p.m., but no plausible reason has been assigned by the State Counsel for non-appearance of the Chief Secretary, the Home Secretary and the Health Secretary, Government of Jharkhand before this Court and more than 1 hour and 20 minutes have lapsed waiting for their appearance, this itself shows disrespect to the Court by those officials and hinderance in smooth functioning of the Court procedure, as such, this Court directs the State Counsel as well as counsel for the National Medical Commission, New Delhi to assist this Court along with their officers as stated above on 13.04.2021 as first case.

In the meantime, National Medical Commission shall send the original file with regard to the report, whereby the working Secretary has found that Dr. Swapan Kumar Sarak has not violated any Professional Conduct in conducting the post-mortem of the Anjum Bano.

Learned counsel, Mrs. Aprajita Bhardwaj is directed to receive the file and hand over the same to the Court Master as early as possible after perusal of the same for proper assistance.

Learned counsel for the State, Mr. Saket Kumar, Additional Public Prosecutor is directed to inform the Chief Secretary, the Home Secretary and the Health Secretary, Government of Jharkhand as to why this Court should not issue notice for initiating proceeding for the contempt of court against erring officer for disobedience of the order as no explanation has been given by the State Counsel for their non- appearance. The same will be considered on the next date on 13.04.2021.

Let all the officers i.e. the Chief Secretary, the Home Secretary and the Health Secretary, Government of Jharkhand are directed to file their affidavit in person as to why a contempt proceeding be not initiated against them for their laches, before this Court by 12.04.2021. They are also directed to appear before this Court through virtual mode from their work place.

Dr. Swapan Kumar Sarak be added as a party respondent in this application.

Let notice be issued to Dr. Swapan Kumar Sarak by the Health Secretary, Government of Jharkhand by tomorrow for his appearance on or before 12.04.2021.

Dr. Swapan Kumar Sarak is directed to appear before this Court through Virtual Mode from his work place.

Dr. R.K. Vats should also file affidavit clarifying his stand with regard to the Chapter-7 Clause-7.7 of Indian Medical Council (Professional Conduct, Etiquette

and Ethics) Regulations, 2002 along with Appendix-4, so as to justify that there was no violation of Professional Conduct by Dr. Swapan Kumar Sarak.

The affidavit must be filed by 12.04.2021.

List this case on 13.04.2021 as a first case.

Let a copy of order be communicated to the Chief Secretary, the Home Secretary and the Health Secretary, Government of Jharkhand for compliance and a copy of order be handed over to Mrs. Aprajita Bhardwaj by tomorrow.