
(2020) 12 JH CK 0091
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 : 11-12-2020

Acts Referred:

Indian Penal Code, 1860 — Section 34, 304B, 306, 498A

Citation : (2020) 12 JH CK 0091

Hon'ble Judges : Kailash Prasad Deo, J

Bench : Single Bench

Advocate : Supriya Dayal, Saket Kumar, Aprajita Bhardawaj

Judgement

The affidavit filed by the State in compliance of the order dated 11.09.2020 sworn by Deputy Secretary of Health, Government of Jharkhand is not in

consonance with direction passed by this Court.

This Court has issued three directions:-

(i) The remedy taken by the State to curtail recurrence of such mistakes by the Government doctors while conducting the postmortem examination.

(ii) whether it is possible for State to conduct all postmortem under the video recording or not?

(iii) Affidavit regarding action taken against the erring doctor Dr. Swapan Kumar Sarak and why the doctor has not been penalized, who has

conducted such postmortem, rather the committee, which was constituted for expert opinion by the Principal of Patliputra Medical College, Dhanbad,

Dr. Pratibha Rai being the Chairman of the committee has been penalized with stoppage of one increment.

The affidavit has been sworn by Deputy Secretary of Health, Government of

Jharkhand and not by the Health Secretary, Government of Jharkhand

and also not being in consonance with required information, as such, the affidavit is hereby rejected.

The Chief Secretary, Government of Jharkhand is directed to look into the matter as Basir Ansari @ Md. Basir has been made accused in connection

with Barwadda P.S. Case No.167/2018 dated 10.08.2018 under Sections 498A, 306 and 34 IPC.

The petitioner has filed a document before this Court in bail application as Annexure -2 regarding report on USG of lower abdomen of Anjum Bano

issued by Dr. Urmila Sinha, MBBS, DGO, BSM Clinilab, Naya Bazar, Dhanbad on 05.08.2018 showing single alive intrauterine foetus at 13 weeks 2

days of Gestation.

As per the case of the prosecution the marriage was solemnized on 07.07.2018 and the occurrence took place at Parental / Naihar (Father's) house on

10.08.2018 and F.I.R. has been lodged on 10.08.2018. On such plea taken by the petitioner, this Court in terms of order dated 18.01.2019 directed the

investigating officer to file an affidavit with regard to document brought on record as Annexure -2 series and also with regard to its authenticity vide

order dated 25.01.2019. The counter affidavit has been filed on 04.02.2019 by Albert Marandi, A.S.I. Barwadda Police Station being the investigating

officer of the case, paras -4 and 5 of which are profitably quoted hereunder:

4. That in compliance of the order dated 25.01.2019, passed by this Hon'ble Court whereby the undersigned was directed to verify the Annexure-2 &

2/1, which is at page 12 &13 of the instant anticipatory bail application, relating to medical description and Sonography Test of the deceased namely

Anjum Banu, the undersigned himself examined one Dr. Yogesh Anand, on 03.02.2019 and asked him about the genuineness of document which was

earlier issued from his BSM Clinicmed Lab Diagnostic & Imagine Center, Pvt. Ltd., Naya Bazar, Dhanbad and in writing he issued a certificate that

the deceased Anjum Banu referred by Dr. Urmila Sinha on 05.08.2018 and report made by him that Ultra Sound Examination is correct.

5. That it is humbly stated that the undersigned also examined one Dr. Sapan Kumar Sarkar, Tutor of Department of FMT, Patliputra Medical

College, Dhanbad and in his report the doctor who conducted the post-mortem of deceased Anjum Banu has clearly said in Para- 2 that as per the

record of P.M. Report the uterus was found normal and empty and no evidence of any pregnancy was found.

Under the aforesaid circumstances, this Court passed several orders, but till date no action has been taken against erring doctor Dr. Swapan Kumar

Sarak, rather the Principal namely, Dr. Partibha Rai, who constituted subsequently expert team in compliance of order of this Court, has been penalized with stoppage of one increment.

This is the position of criminal investigation done in serious cases on the basis of medical report, as such, the Chief Secretary Government of

Jharkhand is directed to look into the matter and file an affidavit in this regard in compliance of the orders passed by this Court as well as order dated

11.09.2020.

From the affidavit filed by National Medical Commission, New Delhi through Dr. D.C. Joshi, Senior Advisor, National Medical Commission, New

Delhi it appears that concerned authority has directed Jharkhand Medical Council, who can streamline doctors functioning and working in the State of

Jharkhand in the present matter. However, in a similar matter of District of Giridih related to Nimiyaghat P.S.(Giridih) Case No.101/2018 dated

24.09.2018 registered under Section 304B IPC, it has been brought to the notice of this Court vide letter of the National Medical Commission No.

NMC/MCI/EMRB/E-V/0002/2020 issued by Dr. Hans Raj Baweja, Consultant, Ethics & Medical Registration Board and found that State Medical

Council had gone through all the documents and had given its final decision as; ""There is no violation of Indian Medical Council (Professional Conduct,

Etiquettes and Ethics) Regulations, 2002 by any of the Members of the Post Mortem & Enquiry Board; State Medical Council had also desired

Medical Council of India to take final decision and on that basis the report of expert sub- committee has been approved by the Ethics & Medical

Registration Board; in its meeting held on 29.10.2020.

However, in the present case the matter has been referred by the National Medical Council to the Registrar, Jharkhand Medical Council, 6th Floor

RPS Hospital, Bajra - Bariatu Road, Morabadi, Ranchi, Jharkhand -834009 and as such, the Registrar, Jharkhand Medical Council is impleaded as

opposite party.

Under the aforesaid circumstances, (i) let notice be issued to the Registrar,

Jharkhand Medical Council for assistance to this Court. So far the Chief Secretary, Government of Jharkhand is concerned, this Court requires his assistance whether doctor is liable under criminal offence or not?

In the facts and circumstances as referred above as well as the steps taken by the State for fair investigation and medical examination in criminal cases, the desire affidavit must be filed within a period of four weeks' from today.

Let a copy of this order be handed over to Mr. Saket Kumar, Additional Public Prosecutor as well as Mr. Shekhar Sinha, Public Prosecutor for communication to the Chief Secretary, Government of Jharkhand.

Notice be issued by the Registry to the Registrar, Jharkhand Medical Council, Ranchi on the aforesaid address.

Put up this case after six weeks.