

(2009) 04 P&H CK 0373

In the Punjab And Haryana At Chandigarh

Case No : Criminal Revision No. 2008 of 2004 (O and M)

Dr. Ajay Madan and another

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 01-04-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 304, 34

Citation : (2009) 31 CriminalCC 279 : (2009) 4 RCR(Criminal) 983

Hon'ble Judges : Kanwaljit Singh Ahluwalia, J

Bench : Single Bench

Advocate : R.S. Cheema, with Mr. K.S. Nalwa, for the Appellant; S.S. Mor, Senior DAG, for the Respondent

Judgement

Kanwaljit Singh Ahluwalia, J.—Present revision petition has been filed praying that order dated 15th September, 2004 framing charge against the petitioners, be quashed.

2. Mr. R.S. Cheema, Senior Advocate accompanied by Mr. K.S. Nalwa, has canvassed before this Court that no offence under Sections 304, 314, 201 read with Section 34 IPC and Section 23 of PNDT Act is made out.

3. Petitioners Dr. Ajay Madan and Smt. Narmata Madan are doctors. Charge against them is that on 24th October, 2003 at Madan Ultrasound and IVF Centre, they had committed culpable homicide not amounting to murder, by causing death of Amarjit Kaur. Therefore, the offence u/s 304 IPC read with Section 34 IPC has been made out.

4. Mr. R.S. Cheema has submitted that in the present case, Amarjit Kaur, Baljit Kaur and Amar Kaur came to the hospital of the accused for getting the abortion done and Amarajit Kaur was admitted as a complicated case of anencephaly, and therefore, as an emergency case, she was to be given medical care by the petitioners. It is stated that the Court, while framing charge, has to apply its mind whether it is a case of medical negligence or not, or from the facts any

penal offence is made out or not.

5. Counsel for the petitioners has relied upon Jacob Mathew Vs. State of Punjab and Another, . It has been held in Jacob Mathew's case (supra) as under :

50. As we have noticed hereinabove that the cases of doctors (surgeons and physicians) being subjected to criminal prosecution are on an increase. Sometimes such prosecutions are filed by private complainants and sometimes by police on an FIR being lodged and cognizance taken. The investigating officer and the private complainant cannot always be supposed to have knowledge of medical science so as to determine whether the act of the accused medical professional amounts to rash or negligent act within the domain of criminal law u/s 304-A of IPC. The criminal process once initiated subjects the medical professional to serious embarrassment and sometimes harassment. He has to seek bail to escape arrest, which may or may not be granted to him. At the end he may be exonerated by acquittal or discharge but the loss which he has suffered in his reputation cannot be compensated by any standards.

51. We may not be understood as holding that doctors can never be prosecuted for an offence of which rashness or negligence is an essential ingredient. All that we are doing is to emphasize the need for care and caution in the interest of society; for, the service which the medical profession renders to human beings is probably the noblest of all, and hence there is a need for protecting doctors from frivolous or unjust prosecutions. Many a complainant prefers recourse to criminal process as a tool for pressurizing the medical professional for extracting uncalled for or unjust compensation. Such malicious proceedings have to be guarded against.

52. Statutory rules or executive instructions incorporating certain guidelines need to be framed and issued by the Government of India and/or the State Governments in consultation with the Medical Council of India. So long as it is not done, we propose to lay down certain guidelines for the future which should govern the prosecution of doctors for offences of which criminal rashness or criminal negligence is an ingredient. A private complaint may not be entertained unless the complainant has produced prima facie evidence before the Court in the form of a credible opinion given by another competent doctor to support the charge of rashness or negligence on the part of the accused doctor. The investigating officer should, before proceeding against the doctor accused of rash or negligent act or 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 Bolam's 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 investigation officer feels satisfied that the doctor proceeded against would not make himself available to face the prosecution unless arrested, the arrest may be

withheld.

6. Counsel for the petitioners has further relied upon Martin F. D'Souza Vs. Mohd. Ishfaq, , where ratio of law laid in Jacob Mathew's case (supra) has been reiterated.

7. Without expressing any opinion on the merits of the case, I am of the view that ratio of law laid in Jacob Mathew's case and Martin F. D'souza's case (supra) was not considered by the trial Court, as when the charge was framed, the law on this subject was not propounded by the Hon''ble Apex Court.

8. Therefore, the impugned order dated 15th September, 2004 framing charge, along with impugned chargesheet is set aside. The matter is remanded back to the trial Court to hear the parties and decide afresh, taking into consideration the guidelines spelt out by the Hon''ble Apex Court in cases of Jacob Mathew and Martin F. D'souza (supra). Petitioners shall cause appearance before the trial Court on 24th April, 2009.

9. With these observations, present revision petition is disposed off.