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(2019) 09 P&H CK 0238

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous Petition (M) No. 28785 Of 2019 In Criminal Miscellaneous Petition (M) No. 42196 Of 2015

Dr. Geetanjali Sareen And Others — APPELLANT

Vs

State Of Punjab — RESPONDENT

Date of Decision : 27-09-2019

Acts Referred:
Indian Penal Code, 1860 — Section 304A
Code Of Criminal Procedure, 1973 — Section 173

Citation : (2019) 09 P&H CK 0238

Hon'ble Judges : Amol Rattan Singh, J

Bench : Single Bench

Advocate : Anupam Bhardwaj, Ruchika Sabharwal, G. S. Bhatia

Final Decision : Disposed Of

Judgement

Amol Rattan Singh, J

CRM-28785 of 2019

By this application, learned counsel for the petitioner seeks to place on record a letter addressed by the Additional DCP, Crime, Amritsar, to the Commissioner of Police, Amritsar City, on 07.06.2016, as Annexure P-7 with the accompanying petition.

Notice in the application.

Ms. Ruchika Sabharwal, AAG, Punjab, accepts notice on behalf of the respondent, at the asking of the court.

A copy of the application be handed over to learned State counsel.

The application is allowed, subject to all just exceptions and the aforesaid document is ordered to be taken on record as Annexure P-7.

Main petition

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By this petition, the four petitioners, all of whom are doctors in Amritsar, sought quashing of FIR no.380 registered at Police Station "A" Division, Amritsar, on 25.10.2015, alleging therein the commission of an offence punishable under Section 304-A of the IPC.

At the outset, it is necessary to state that petitioner no.3, Dr. Amandeep Singh, is stated to have died and thus three petitioners actually remain in the petition.

2. The background of the matter (as given in the FIR), is that as per the complainant, Satish Kumar, his wife, Rita, was admitted to the hospital that is run by petitioners no.1 and 2, (i.e. Sareen Hospital, Batala Road, Amritsar), on 29.09.2014 at about 9:00 am, on the advice of Dr. Geetanjali Sareen, such advice being that Rita required as Caesarean Section Operation for delivery of her baby, with it also admitted that she had been a patient of petitioner no.1 for a long time.

It was further contended that till one hour prior to taking her to the operation theater, petitioner no.1 did not bother to take care of her, nor were any preparations made for undertaking the operation; but when the condition of the patient deteriorated, both petitioners no.1 and 2, as also petitioners no.3 and 4, sent for the complainant (and others with him) and started threatening them and "started talking in a manner with a view to protect them and got our signatures on blank papers".

It is further contended that (now the late) petitioner no.3, Dr. Amandeep Singh instead of saving the life of patient, started saying that the complainant and his family were responsible for the condition of the patient and started recording the conversation on his mobile phone, with the other three petitioners also present. Thereafter they also started putting pressure on Rita in the operation theater to sign blank papers on which the complainant and others had also signed, all done (as per the case of the complainant), with the intention of saving themselves, with some papers thereafter written upon by the petitioners.

The allegation further is that the patient "may have suffered a great depression".

The complainant and his family are also stated to have been harassed and were also asked to arrange for blood which they arranged for with great difficulty, with allegedly more money also demanded from them.

The complainant further contends that all that such preparations should have been done prior to the operation and not at the last minute, his allegation further being that the doctors available were not qualified enough and had no proper facilities, with there even being a deficiency in the number of the staff in the hospital, resulting in the unfortunate death of the complainants' wife, his allegation further being that he and his family members were mis-guided by the petitioners, who should not have taken up the case, they not being competent to handle it.

Allegations of greed of money have also been made in the FIR.

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3. What is further necessary to be noticed at the outset, is that the death of the complainants' wife took place on 29.09.2014, but that the FIR eventually was registered by the police on 25.10.2015.

At the time when this petition was filed on 29.11.2015, the report under Section 173 of the Cr.P.C. had yet not been put up to the trial court, but was thereafter submitted to that court, because with the hearing of the petition initially having been adjourned from December 14, 2015 to 01.06.2016, on that date notice of motion was issued. Thereafter the order passed by this court (co-ordinate Bench), on March 04, 2016, is that the records of the trial court be also obtained before the next date of hearing.

On April 19, 2017, upon a contention having been raised on behalf of the petitioners that the patient having earlier suffered 6 abortions in a short span of time, and contrary to medical advice had "still gone for a subsequent pregnancy", which in fact led to her death, and which was not on account of medical negligence, further proceedings before the trial court were stayed.

Subsequently, the complainant also came to be represented by his counsel.

4. In the petition, the petitioners have firstly stated that their hospital (Sareen Hospital) is a renowned one having accreditation with the American International Accreditation Organization Inc., and the Bureau of Accredited Registrars [AIAO-BAR], and has been providing good quality service to its patients, and that the petitioners are well qualified doctors, with their qualifications enumerated as follows:-

i) Dr. Geetanjali Sareen : MBBS, DGO (Diploma in

Gynaecology and Obstetrics)

ii) Dr. Sanjeev Sareen : BAMS, MS [ISM]

iii)Dr. Amandeep Singh : MBBS, MS [General Surgery]

iv) Dr. Bhumi Dutt : MBBS, MD [Anaesthesia]

5. It has further been stated that the complainants' wife, Rita, earlier came for routine check-ups to the hospital on 05.07.2014, 17.07.2014 and 26.07.2014, and that she was diagnosed by the Head of the Department, Dr. Surat Kaur (Retd. from the Medical College, Amritsar), and was also advised admission in the hospital.

On 26.09.2014 she was attended to by petitioner no.1 and was advised that her condition was serious, due to which she needed blood transfusion, with one unit of blood administered to her on 27.09.2014 and a second unit administered on 28.09.2014.

6. A brief history of the patient (as per the stand of the petitioners) has also been given in the petition, to the effect that she had 6 abortions prior to her last pregnancy, with two living female children, and her having earlier also been

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operated upon by petitioner no.1, Dr. Geetanjali Sareen.

Her serious condition is also stated to have been told to both, herself and her husband, including the fact that she "may die on the operation theater table" itself.

It is also stated that she was in fact administered 4 units of blood by the hospital (obviously the other two being on 29.08.2014 after she was admitted because in the earlier part of paragraph 7 of the petition it is stated that she has been administered one unit of blood on each day, i.e. 27.09.2014 and 28.09.2014, as already noticed).

7. The petition goes on to state that the patient was a "Pre diagnosed case of Placenta Accrete/Percreta with extremely thinned out uterus", as per her ultra sound report, and that she had also undergone two Lower Segment Caesarean Sections (LSCS) with a bad obstetric history "[like abortions.???]"

Thus, as per the petitioners, it was a high risk case of pregnancy, with a maternal mortality rate of approximately 7.5% even in expert hands, even with team work and with the best tertiary care set up.

8. It has next been stated that the patient belonged to the poor strata of society which "could not afford to take care of a woman who had to undergo termination of her pregnancy for six times".

Thus, the contention is that eventually her uterus was extremely weak to bear a ninth pregnancy, especially as she had reportedly undergone abortions 6 times earlier.

It has next been stated that petitioner no.1 has an impeccable record of performing surgeries, with her also having performed a surgery on the same patient earlier.

A chart showing the number of surgeries conducted by the first petitioner between 2008 to 2015 has also been annexed with the petition, the total number of surgeries being 250 to 300 per year, with almost 400 surgeries in the years 2011 and 2012.

9. It has next been contended that after Rita went back upon receiving blood transfusion on 28.09.2014, she came back the next day in an emergent and critical condition, with her husband duly advised that she was "not good enough to sustain surgery", with therefore consent for surgery obtained from both, her and her husband (the complainant), as also from other relatives present. Thus, essentially it has been stated that despite the best care given as was possible, to the patient, she unfortunately died and that the petitioners are not at all negligent in having caused her death.

A judgment of the Supreme Court in Jacob Mathew v. State of Punjab and another 2005 (3) RCR (Criminal) 836: Law finder Doc Id # 984259 as also F.D'Souza v. Mohd. Ishfaq, CA n.3541 of 2012 is also cited in the petition, to

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submit that the FIR is not maintainable in any manner.

10. A reply to the petition has been filed by the Assistant Commissioner of Police, East, Amritsar City, on behalf of the respondent State of Punjab, with thereafter a reply of the complainant also sought to be filed, which in fact was allowed by this court vide an order passed on 19. 08.2019, but with the said order modified on that date itself on an objection subsequently raised (later in the day) by learned counsel for the petitioners, on the ground that the application of the complainant, seeking to be impleaded as a respondent, having already been declined by this court on 9. 11.2017, no reply filed by him could be taken on record.

Thus, on 17.09.2019 I had in fact directed, in view of the fact the application seeking impleadment was being 'dismissed as withdrawn', the reply be removed from the case file and put into the brief of the case (tablaq), with of course the complainants' counsel always at liberty to assist the State counsel as also the Court.

As regards the reply filed on behalf of the respondent State, it has been, in effect, stated therein that other than the opinion of the District Attorney, the Board of Doctors constituted by the Civil Surgeon also having opined that the patient should have been referred to a tertiary care centre, and that a review also having been conducted by the District Level Community Based Maternal Death Review (CBMDR) comprising of 6 senior doctors including the District Family Welfare Officer and the Civil Surgeon, all the guidelines laid down by the Supreme Court, with regard to registration of criminal cases against doctors for negligence in treatment, had been complied with.

(The reference would seem to be in the context of what has been observed in the judgment in Jacob Methews' case itself, in its penultimate paragraph).

11. In the background of the above pleadings, before this court, Mr. Anupam Bhardwaj, learned counsel for the petitioners, has addressed arguments as follows:-

i) That petitioner no.2, Dr. Sanjeev Sareen, was not on the operating team and is only the owner of the hospital, and therefore in any case qua him the FIR deserves to be quashed.

ii) That there was no negligence because the patient was in labour when she came on 29.9.2014 and had not been admitted to the hospital before that, though she came for check ups on the 26th, 27th and 28th of September 2014, and therefore, even the reports of the Medical Board, to the effect that in an emergency a doctor is supposed to treat the patient without further reference to another hospital, are applicable to the present case, because in such a situation (she being in labour), she could not have been referred to a larger hospital.

(iii) On instructions from the petitioners, who are present in court, learned counsel next submits that in fact the hospital they are running is itself a

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multidisciplinary hospital with tertiary care duly available there, and therefore the opinion of the Medical Boards that the patient should have been referred to such a hospital, is without foundation.

(iv) He too cites the judgments of the Supreme Court in Mathews' case (supra) and in Central Bureau of Investigation, Hyderabad v. K. Narayana Rao (Criminal Appeal No.1460 of 2012), in support of his arguments.

Consequently, he submits that there was no negligence on the part of the doctors, and therefore the FIR in question itself deserves to be quashed.

12. The counsel for the complainant on the other hand submits as follows:-

(i) That two Medical Boards constituted, in September 2015 (i.e. prior to the FIR being registered) and in April 2016 (after the FIR was registered), have opined that since the patient was already coming to the nursing home run by the petitioners, since she was a "high risk pregnancy", with her case obviously having been considered regularly by the petitioners, a risk of life threatening obsteticial haemorrage should have been anticipated and therefore she should have been referred to a tertiary care centre as soon her diagnosis of "placenta acreta/percretea" was made. Thus, he submits that it is obvious that there was negligence on the part of hospital, in dealing with the patient.

(ii) That the Civil Surgeon, Amritsar, had written a letter to the Deputy Commissioner of Police, Amritsar, to get the the degrees of the petitioners verified as he had called for them a number of times, but they had not provided.

(iii) He next submits that even in the year 2014 a Board of Doctors had found a team of doctors in the same nursing home/hospital of the petitioners (including the petitioners themselves), negligent in causing the death of a patient named Kambo.

(iv) He further submits that even as per the report Annexure R-1 (dated 22.4.2016), the baby was delivered at 1:30 pm, with blood however stated to have been obtained only at 1:35 pm. and 2:00 pm. from the Green Avenue Blood Bank, and even though three units of blood were transfused to the patient on 27.09.2014 and 28.09.2014, since the blood obtained on 29.9.2014 was obviously after the surgery, blood units were not available in the hospital prior to the surgery, as it should have been in any high risk pregnancy.

13. Learned State counsel, other than reiterating what learned counsel for the complainant has submitted, further submits that out of the 4 accused, one has expired, i.e. Dr. Amandeep Singh (petitioner no.3), with petitioner no.4, i.e. Dr. Bhumi Dutt, having been declared to be a proclaimed offender.

14. In rebuttal, learned counsel for the petitioners firstly submits that as regards Dr. Bhumi Dutt, he is in a very precarious medical condition.

Other than that, he submits as follows:-

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(i) As regards the medical degrees possessed by the petitioners, he submits that the petitioners have already filed CWP no.19146 of 2018, alongwith which they have annexed copies of their degrees, (the said petition having been filed with the allegation that the petitioners are being unnecessarily harassed and are being called to get their degrees verified for no reason); with the next date of hearing in that petition being 12.03.2020, before this court.

(ii) He also refers to the report of the Additional DCP, Crime, Amritsar, addressed to the Commissioner of Police on 07.06.2016 (copy Annexure P-7), wherein, in conclusion, it has been stated as follows:-

"The Doctors to the best of their ability and carrying out their moral duty has operated the Patient Rita but during the course of operation patient Rita died. During the course of inquiry also from the above facts and reports given by the Medical Board no negligence on the part of the Doctors has been found. As such a recommendation is made that after obtaining the opinion of D.A. Legal about the facts which have come during the inquiry further necessary action may kindly be taken. Report is submitted."

He submits that the said conclusion was reached by the Additional DCP after a detailed discussion of the entire matter, including a report of a Board of Doctors headed by Dr. Rupam Pasricha, Gynecologist in the Civil Hospital, Baba Bakala, opining that:-

"Though a team of well qualified Anesthetist, Surgeon and Gynecologist were present at the time of surgery and hospital had sufficient back up support, the Board members are of the view that the above mentioned case was a high risk pregnancy being G9 L2 A6 with 2 LSCS with documented placenta Previa with Accreta with Percreta and should have preferably been taken up at a tertiary care centre."

(iii) As regards any previous negligence by the petitioners, or doctors in their hospital, as has been today referred to by learned counsel for the complainant (in the case of one Kambo), learned counsel for the petitioners submits that no such report has ever been placed on record, and consequently, it having been referred to for the first time today, it cannot be accepted.

15. Having considered the aforesaid arguments, and the pleadings, including the ratio of the judgments of the Supreme Court in Jacob Mathews' and K.Narayana Raos' cases (both supra), in my opinion, the FIR at least cannot be quashed.

That is essentially for the reason that all three medical boards constituted have opined to the effect that the patient should have been preferably sent to a tertiary care centre, with the 2nd and 3rd Board constituted also having opined that the patient being a case of a high risk pregnancy, risk of very large blood loss should have been anticipated, with her to therefore to have been referred to a team of doctors in a tertiary care centre, preferably in a multidisciplinary centre (as per one report), even if consent was given by the patient and her

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attendants.

The report of the last Board constituted (dated 20 April, 2016), in fact also states that as soon as she was diagnosed to be a case of "placenta acreta/percretea", she should have been referred to a tertiary care centre and therefore it seems that there is negligence on the part of hospital in dealing with the patient.

Essentially to the same effect is the report dated 15.09.2015 (as has not been placed on record by either the petitioner or by the State but has produced in court by learned counsel for the petitioners).

16. It is also to be noticed that a photocopy of the first report has been annexed as Annexure P-5 with the petition, though is not shown to be carrying any date on it, it eventually, after referring to the details of the patients' condition and the treatment given (as per the record), states that though the team of doctors who attended her was a well qualified team, however she should have been preferably taken to a tertiary care centre.

17. Learned counsel for the petitioners of course had vehemently argued that the hospital run by the petitioners, has both, tertiary care facilities and is also a multidisciplinary hospital with various wings/departments of medicine being run from there, and consequently there was no need for further reference to any other such hospital, with him also having submitted that the patient was brought/ came there wholly voluntarily.

18. What of course is to be noticed with specific emphasis by this court is that, undoubtedly, as could not be denied by learned counsel for the complainant also, the late patient was obviously brought to the hospital of the petitioners wholly voluntarily, despite obviously she and the complainant both knowing that she had undergone a number of pregnancies earlier, with only two pregnancies having remained successful.

It is also to be specifically noticed in that context that there is a contradiction as to the number of pregnancies that she had undergone, because as per the petitioners she had undergone 9 pregnancies earlier, with 6 having resulted in abortions, the 7th being the unfortunately fatal one, and two live children having been delivered.

The contention of the complainant as also the prosecution on the other hand, is that she had not undergone 7 abortions but only 3, and as a matter of fact that was recorded on her ANM record even as per the last Board of Doctors constituted, though with the discrepancy between the two versions also referred to in the said report.

19. In my opinion, even though very obviously a person who goes wholly voluntarily to a private hospital and seeks medical treatment from such hospital, knowing the previous medical history, cannot otherwise be heard to say that it was the fault of the doctors alone that caused the death of the patient, yet, with three medical boards having opined that looking at the condition of the patient as

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also her history, the petitioners should have referred to her to a better tertiary care centre, I would find myself unable to differ with that medical opinion, especially as it has also been stated by one of the Boards that even if consent of the patient/relatives/her attendants was taken, it was upon the doctors who were treating her to consider actually referring her to a better equipped hospital.

Of course again, the contention on behalf of the petitioners is that she was brought to the hospital in an emergent condition and she therefore was necessarily to be treated without further reference. However, at least for the purpose of quashing of the FIR, I find myself unable to accept that contention, because firstly, it has been accepted even in the petition itself that the patient had been coming to the same hospital earlier, from the 5th of July 2014 itself, and had in fact been also operated upon by petitioner no.1 at an earlier point of time; and consequently, for her case to have been accepted for a caesarean section operation, seeing her precarious pregnancy, perhaps would not be in consonance with what has been opined by the medical boards.

20. Whether or not the petitioners' hospital is as good as any other to which the patient could have been referred, for proper tertiary care, and whether it is a hospital with proper multi disciplines/departments available, would be a matter to be seen by the trial court on the basis of evidence led before it, including as to whether the said facilities were sufficient and equivalent to any other good hospital that she may have/should have been referred to.

21. As regards the recommendation of the Additional Deputy Commissioner of Police, in his report to the Commissioner (not an annexure with the petition but it having been produced in court and referred to earlier in this judgment), firstly, it is not denied that the said report was never accepted by the competent authority.

Other than that, the stand of the State being to the effect that the Board of Doctors headed by the Civil Surgeon, Amritsar, having opined that the petitioner should have been referred to a tertiary care centre as soon as a diagnosis of a "placenta acreta/percretea was made", a prima facie case is therefore made out against the petitioners, and therefore the opinion of an Additional Deputy Commissioner of Police, would lose its significance.

22. Coming then to the contention of Mr. Bhardwaj that the complaint qua petitioner no.2, Dr. Sanjeev Sareen, at least needs to be quashed, he not having been on the team of doctors as had treated the late wife of the complainant, with him only being the 'owner/co-owner' of the hospital. Though obviously, as regards the treatment of the patient not being in his hands, no liability can be fastened on petitioner no.2, but admittedly he is an owner/co-owner of the hospital, and therefore, in the opinion of this court, the FIR cannot be quashed qua him either, though of course the extent of his culpability, if any, would need to be examined by the trial court.

23. As regards the judgments cited by learned counsel for the petitioners, the first one, in Jacob Mathews' case, pertains to allegations of negligence against

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doctors of the Christian Medical College and Hospital, Ludhiana, with the deceased having been a cancer patient, the allegation of the complainant being that the patient died due to negligence as even proper oxygen facility was not available when it was most needed.

After discussing in detail as to what constitutes criminal negligence and specifically medical negligence, their Lordships laid down certain principles and firstly observed in paragraph 32 to the effect that:-

"An empirical study would reveal that the background to a mishap is frequently far more complex than may generally be assumed. It can be demonstrated that actual blame for the outcome has to be attributed with great caution. For a medical accident or failure, the responsibility may lie with the medical practitioner and equally it may not."

Thereafter, the conclusion consists of 8 principles laid down, with learned counsel for the petitioner having drawn specific attention to the following:-

"(1) xxxxx xxxxx xxxxx

(2) Negligence in the context of medical profession necessarily calls for a treatment with a difference. To infer rashness or negligence on the part of a professional, in particular a doctor, additional considerations apply. A case of occupational negligence is different from one of professional negligence. A simple lack of care, an error of judgment or an accident, is not proof of negligence on the part of a medical professional. So long as a doctor follows a practice acceptable to the medical profession of that day, he cannot be held liable for negligence merely because a better alternative course or method of treatment was also available or simply because a more skilled doctor would not have chosen to follow or resort to that practice or procedure which the accused followed. When it comes to the failure of taking precautions what has to be seen is whether those precautions were taken which the ordinary experience of men has found to be sufficient; a failure to use special or extraordinary precautions which might have prevented the particular happening cannot be the standard for judging the alleged negligence. So also, the standard of care, while assessing the practice as adopted, is judged in the light of knowledge available at the time of the incident, and not at the date of trial. Similarly, when the charge of negligence arises out of failure to use some particular equipment, the charge would fail if the equipment was not generally available at that particular time (that is, the time of the incident) at which it is suggested it should have been used.

(3) to (6) xxxxx xxxxx xxxxx

(7) To prosecute a medical professional for negligence under criminal law it must be shown that the accused did something or failed to do something which in the given facts and circumstances no medical professional in his ordinary senses and prudence would have done or failed to do. The hazard taken by the accused doctor should be of such a nature that the injury which resulted was most likely

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imminent.

xxxxx xxxxx xxxxx

However, it was thereafter also observed as follows:-

"54. 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."

(All paragraph numbering has been taken from the Law Finder Edition)

24. As regards the judgment in K. Narayana Raos' case, it was a case pertaining to alleged mis-conduct by a lawyer who was one of the accused in a charge sheet, the allegation against him being that he gave "false legal opinion" in respect of 10 housing loans.

Eventually, their Lordships held that lawyers and physicians would not assure their clients/patients of success in every case, and as regards a surgeon, he obviously cannot guarantee that the result of a surgery would be invariably beneficial or successful.

25. Having considered the ratio of those judgments also, what is to be specifically noticed by this court is that, as obviously could not be denied by learned counsel for the petitioners, there was no opinion of a Board of Medical Doctors (in Jacob Mathews' case also), as had opined to the effect that perhaps the patient should have been referred to a tertiary care centre.

To repeat, of course the contention of learned counsel for the petitioners is that the hospital run by the first two petitioners provides due tertiary care and is a multidisciplinary hospital.

However, as already been discussed hereinabove, what was opined by the medical boards in the present case was that the patient should have been referred to a hospital with a better tertiary care facility.

26. Consequently, in view of the above, without making any comment whatsoever on the actual merits of the case, which would be gone into by the trial court in detail as per the evidence led before it, in my opinion, this is not a case for at least quashing of the FIR at this stage, in the face of the opinion of three medical boards.

The petition is therefore dismissed.

27. Having held that, the final contention of learned counsel for the petitioners,

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after dismissal of the petition, needs to be noticed, to the effect that personal exemption of appearance before the trial court be granted to the petitioners.

Naturally, a blanket order in that regard cannot be passed by this court. In fact, even though I had declined to pass any order in that regard at the time when the case was disposed of, however, by the time the draft order was put up, and I had considered the request in my mind, in my opinion it is considered appropriate that the petitioners, being doctors, be summoned by the trial court only on those dates on which their presence is considered necessary by it, and not simply on each date on which only any formal proceedings are to be recorded, where their personal presence is not actually necessary. Obviously however, their counsel would be required to be present even then.

The discretion in that regard, consequently, rests with the trial court.

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