
(1998) 06 KL CK 0066
In the High Court Of Kerala
Case No : Criminal M.C. No. 2420 of 1997

Dr. K. Shaheed

APPELLANT

Vs

P.K. Shahida and Others

RESPONDENT

Date of Decision : 24-06-1998

Acts Referred:

Penal Code, 1860 (IPC) — Section 336

Citation : (1998) CriLJ 4638 : (1999) 1 ILR (Ker) 63 : (1998) 4 RCR(Criminal) 24

Hon'ble Judges : P.V. Narayanan Nambiar, J

Bench : Single Bench

Advocate : T.A. Ramadasan and Anil Thomas, for the Appellant; T.M. Abdul Latiff and C.M. Suresh Babu, Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

P.V. Narayanan Nambiar, J.—The complainant in C.C. No. 249/97 on the file of the Additional Chief Judicial Magistrate, Thalassery inserted Coppocr-T, an Intra Uterine Device (IUD) for prevention of pregnancy. But unfortunately she conceived after the insertion of the device, probably due to the failure of the system.

2. Complaining of abdominal pain she approached the accused, who is the petitioner herein, during the 4th month of her pregnancy, in January, 1997 for a check up. It is admitted that the accused is not a gynaecologist. But he is a qualified allopathic doctor. The accused examined her and removed the IUD. It is alleged that the accused told her that the IUD is the cause of abdominal pain and hence the complainant did not object to the removal of the device. Certain medicines were also prescribed by the accused for relieving the pain.

3. Later the complainant was admitted in the Kalyan Lying Hospital, Kuthuparamba on 18-3-97 and she gave birth to a premature baby on the same day in the hospital. Soon thereafter she was removed to Ashirvad Hospital, Kannur. But the baby passed away on 9-4-97, on the 22nd day of its birth.

4. A complaint was filed alleging that the petitioner committed an offence punishable u/s 336, IPC. Allegation by the complainant is that the accused was not expected to remove the IUD during pregnancy and the removal of the device at the time of pregnancy is potentially dangerous to the mother as well as the child. It is also stated that the accused was not a gynaecologist and he should not have removed the device. Under these circumstances it was alleged that the petitioner has committed the offence punishable u/s 336, IPC. The accused has approached this Court for quashing the complaint.

5. Section 336, IPC is extracted hereunder :

Act endangering life or personal safety of others.- Whoever does any act so rashly or negligently as to endanger human life or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred and fifty rupees, or with both.

A person can be punished u/s 336, IPC if he does any act so rashly and negligently as to endanger human life or the personal safety of others. Except the fact that the petitioner removed the IUD when the complainant was complaining of pain no "rash or negligent act" was committed by the accused. So the question is whether the removal of IUD during pregnancy when it caused abdominal pain to the complainant can be said to be a rash and negligent act.

6. Counsel for the petitioner brought to my notice relevant portions of the Text Book of Obstetrics by D. C. Dutta. It is cited in page 561 of the Book thus:

Indications for Removal of the IUD : The Indications for removal are - (1) Persistent excessive regular or irregular uterine bleeding and/ or severe cramp like pain in the lower abdomen (2) Downward displacement of the device into the cervical canal or partly protruding outside into the vagina (3) Perforation of the uterus with the device lying in the peritoneal cavity (4) Pregnancy occurring with the device in situ (5) Flaring up of salpingitis (6) Patient desirous of a baby (7) Missing thread.

Likewise in the Text Book, Postgraduate Obstetrics and Gynaecology, Third Edition by M. K. Krishna Menon and others in Page 513 it is stated that "when pregnancy is diagnosed, the device should be removed as early as possible with or without termination." In the light of the authoritative pronouncement by the leading authors it cannot be said that the removal of the IUD during pregnancy of the complainant when she complained of pain, by the petitioner who is a qualified allopathic doctor cannot be said to be an act of rashness or negligence.

7. That apart the consequence of the act of the accused is said to be the premature delivery of the complainant and the consequential death of the child. As already stated that the child died after 22 days of the delivery. Premature delivery might have occurred due to various reasons. There are no materials produced before the Court to show that the premature delivery was due to the

reason of removal of the IUD. The death of the child also might have been caused due to premature delivery or due to various other reasons. Hence it cannot be said that it is the act of the petitioner which has caused the premature delivery of the complainant and the death of the child.

8. The act complained of must have a reasonable nexus with the result caused. The result must be the proximate result of the act. As held by the Supreme Court in a decision reported in *Kurban Hussein Mohammedali Rangwalla Vs. State of Maharashtra*, the death or the premature delivery must be the direct result of the rash and negligent act of the accused and must be the proximate and efficient cause without intervention of another's negligence. It must be the causa causans; it is not enough that it may have been the causa sine qua non. There are no materials to come to the conclusion that the premature delivery and the death of the child were the direct consequence of the act of the petitioner.

9. In view of what is stated above it is clear that taking cognizance of the complaint against the petitioner and issuing process to him is a sheer abuse of the process of the Court and hence prosecution against him cannot be allowed to continue. So all further proceedings in C.C. No. 249/97 on the file of the Additional Chief Judicial Magistrate, Thalassery will stand quashed.

The CrI. M.C. is allowed.