
(2013) 04 P&H CK 0012

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 16466 of 2011 (O and M)

Dr. K.K. Locham

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 29-04-2013

Acts Referred:

Citation : (2013) 4 SCT 281

Hon'ble Judges : Augustine George Masih, J

Bench : Single Bench

Advocate : Rajiv Atma Ram and Mr. Sushant Pahwa, for the Appellant; Monica Chhibbar Sharma, D.A.G., Punjab, for the Respondent

Judgement

Augustine George Masih, J.—Challenge in this writ petition is to the chargesheet dated 9.3.2010 (Annexure P-6) served upon the petitioner and to the First Information Report No. 41 dated 20.2.2011 (Annexure P-4) registered at Police Station Civil Lines, Patiala, against the petitioner and two others. Briefly, the facts are that petitioner is working as a Professor and Head of the Department (Pediatrics), Government Medical College and Rajindra Hospital, Patiala. On the night intervening 30/31.1.2009, a fire broke out in the Nursery Unit of the Rajindra Medical College and Hospital, Patiala because of which six infants lost their lives due to burning. A judicial enquiry was ordered and a retired Judge of this Court was appointed as an Inquiry Officer. He submitted his report dated 30.1.2010 (Annexure P-1).

2. On the basis of the report of the Judge of this Court, departmental proceedings were initiated against the petitioner and in that process charge-sheet dated 9.3.2010 (Annexure P-6) was served on him. Allegations against the petitioner were that while performing his duties, he had not shown full faith and responsibility towards his work as a result of which death of innocent infants occurred on 30/31.1.2009 at about 5 a.m. due to breaking of fire in the Nursery Unit, resulting in damage to the prestige of the Government. Allegations against the petitioner were also that officials working under him in the Department of

Pediatrics had committed grave negligence as a result of which the unfortunate incident had taken place and he being the Head of the Unit, did not properly look into the equipments of this Unit. The incident had occurred on account of breakage of platform and loose tubes in the Phototherapy Unit and for non-providing plexiglass and plastic sheets. Had the plexiglass and plastic sheets been supplied and he had inspected the Unit, innocent infants could have been saved from the unfortunate incident. In this way, he has not performed his responsibility and obligation properly and had committed this negligence. Rule 3(2) of the Punjab Government Employees (Conduct) Rules, 1966 had been violated as he being the In-charge Professor and Head of the Department of Nursery Unit, Rajindra Hospital, Patiala, was under a legal obligation to provide security to the people, who had been admitted for treatment in this Unit.

3. On the basis of the report dated 30.1.2010 submitted by the retired Judge of this Court, First Information Report (for short FIR) No. 41 dated 20.2.2011 (Annexure P-4) was registered against the petitioner and others. In the FIR which was registered, the allegations against the petitioner were that he was guilty of causing death to the new born children by burning and he being the Head of the Department of Pediatrics and Incharge of the Nursery Unit, is liable for not taking safety measures and not exercising due care and caution and, thus, guilty of offence u/s 304 IPC. After investigation, challan was presented against the petitioner on 19.5.2011. The case was committed to the Session Court on 1.10.2011 and thereafter charge u/s 304 IPC stands framed against the petitioner and two other employees on 9.7.2012.

4. Counsel for the petitioner contends that the FIR which has been registered against the petitioner primarily is based upon the negligence alleged to have been committed by the petitioner and the basic reason for the fire has been found to be faulty wiring system and short circuit. It has been found that the heater in a dilapidated condition was lying near the Phototherapy Unit which caused the loss of life and property. These allegations are against the findings returned by the Enquiry Officer Hon'ble Mr. Justice K.C. Gupta, a retired Judge of this Court, who gave his report dated 31.1.2010. In this report, it has been held that the fire did not take place on account of any short circuit or defective wiring rather the same was caused due to negligence of the staff on duty, who placed blanket/bedsheet close to the rod type heater. Because of the focus of the heat on a particular point, blanket/bed-sheet caught fire causing large fire and consequent death of the infants. It has also come on record that the petitioner was not on duty and in fact the staff on duty was Dr. Neha Sharma (Doctor), Ms. Reeta Kaur (Staff Nurse) and Mrs. Satya Devi (Class IV) employee and they were negligent in performing of their duties as they were not present in the Unit but were sleeping in the Doctor's room. The only finding which has gone against the petitioner is that the petitioner being the Head of the Department was vicariously liable for the negligence of his staff. He, on this basis, contends that no cognizable offence is made out against the petitioner and, therefore, the FIR deserves to be quashed.

5. Similar is the challenge to the chargesheet issued to the petitioner dated 9.3.2010 (Annexure P-6) for which the counsel for the petitioner asserts that no misconduct can be attributed to the petitioner on the basis of the charges framed against him by the Punishing Authority. Accordingly, prayer has been made for allowing the writ petition by setting aside the impugned order as also the charge-sheet.

6. On the other hand, counsel for the respondents submits that a clear cognizable offence is made out against the petitioner on the basis of the reading of the FIR. She contends that the FIR cannot be quashed at this stage when the charges have been framed against the petitioner. In support of this contention, reliance has been placed upon a judgment passed by the Supreme Court in the case of *Manjula Sinha Vs. State of U.P. and Others*, . An assertion has been made by the counsel for the respondents that at the stage of framing of the charge, the Court is not required to appreciate the evidence and arrive at a conclusion that the material produced was sufficient for convicting the accused and, therefore, at this stage, the Court cannot go into the findings recorded in the enquiry report as has been submitted by the Enquiry Officer appointed by the State. Prayer has, on this basis, been made to dismiss the writ petition.

7. I have considered the submissions made by the counsel for the parties and with their assistance have gone through the records of the case.

8. It is an admitted fact that charges against the petitioner in the criminal case stand framed on 9.7.2012 u/s 304 IPC. In the light of this fact, this Court cannot at this stage proceed to quash the FIR as has been prayed for in the present writ petition. The judgment passed by the Supreme Court in the case of *Manjula Sinha (supra)* would disentitle the petitioner's claim as has been made in the present writ petition. Further, this Court, at this stage, cannot go into the evidence or appreciate the same to arrive at a conclusion that the materials produced are sufficient or not for convicting the accused. The charge as has been framed against the petitioner is not on record nor is the challan which has been presented before the Court below and in the absence of the same, this Court is unable to come to a conclusion as to whether there is any material available on the record, which would justify the framing of the charges or otherwise against the petitioner by the trial Court. In the case of *State of M.P. v. S.B. John*, 2000 (1) R.C.R. (Criminal) 523 : 2000 (1) Crimes 165, it has been held that the charge has to be quashed if the evidence to be produced by a Prosecutor even if fully accepted, cannot show that the accused committed the offence. It may be added here that the charge framed against the petitioner is not under challenge in the present proceedings.

9. That apart, there is a statutory remedy available to the petitioner for the framing of the charge against him, which is an alternative efficacious remedy, which the petitioner can avail of and, therefore, the Court refrains itself to further go into this matter.

10. As regards the assertion of the petitioner for quashing the charge-sheet dated 9.3.2010 served upon him, suffice it to say that prima facie the charge-sheet issued to the petitioner indicates negligence on his part in performance of his duties but that is ultimately required to be proved by the Department against the petitioner in the enquiry proceedings which have been initiated against him. At this stage, it cannot be said that the allegations made against the petitioner in the impugned charge-sheet are without any basis. Details are not being gone into by this Court on the factual aspect so that no prejudice is caused to any of the parties as the criminal trial as also the departmental enquiry are to be held against the petitioner. The writ petition, therefore, is found to be devoid of any merit and thus, stands dismissed. It may be added here that any observations made here-in-above shall have no impact on the criminal proceedings pending before the trial Court as also the departmental proceedings before the Enquiry Officer.