

(2023) 07 CHH CK 0015
In the Chhattisgarh High Court
Case No : Writ Petition (CR) No. 723 Of 2022

Dr. Shobhraj Chandani

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision : 12-07-2023

Acts Referred:

Indian Penal Code, 1860 — Section 34, 294, 304A, 323, 506
Chhattisgarh Chikitsa Sevak tatha Chikitsa Seva Sansthan (Hinsa Tatha Sampatti Ki
Shati Ya Hani Ki Roktham) Adhiniyam, 2010 — Section 3

Citation : (2023) 07 CHH CK 0015

Hon'ble Judges : Ramesh Sinha, CJ; Rajani Dubey, J

Bench : Division Bench

Advocate : Parag Kotecha, Gagan Tiwari, H.A.P.S. Bhatia

Final Decision : Allowed

Judgement

1. By this petition, the petitioner seeks for the following reliefs:

"10.1 The writ in the nature of Certiorari by quashing/setting aside the FIR No. 764/2022 dated 21/8/2022 for an offence under Section 294, 304A, 323, 34 and 506 of Indian Penal Code and the proceedings initiated pursuant to Crime No. 764/2022 registered before the Police Station Kotwali District Korba, or any other offence in the interest of justice.

10.2 The Hon'ble Court may kindly be pleased to writ in the nature of the Mandamus, by directing the respondents and its authority to comply with the direction issue by the Hon'ble Supreme Court before registering an offence against the Doctors.

10.3 The Hon'ble Court may kindly be please to grant the compensation for harassment to the petitioners for registering an offence which they never committed.

10.4 That, this Hon'ble Court may kindly be pleased to grant any other relief, as it may deems fit and appropriate."

2. The present petition is filed for quashing of a First Information Report bearing Crime No. 764/2022, dated 21/08/2022 registered against the petitioners for an offence under section 294, 304 A, 323, 34, 506 of Indian penal Code. The respondent no. 2 i.e. the Station House Office, has not considered the provision and ingredient of the sections and the judgment of the Hon'ble Supreme Court and this Hon'ble Court and directly offence under the aforesaid section had been registered, which is totally perverse, illegal, arbitrary and unconstitutional and directly affects the personal liberty of the petitioners who are by profession a qualified Doctor.

3. Mr. Kotecha, learned counsel for the petitioners submits that the petitioners are Doctor by profession. Petitioner No. 1 is the M.D Orthopedic and the petitioner No. 2 is M.S (General Surgeons) and petitioner No. 1 is the Director of New Korba Hospital (hereinafter referred as NKH). The daughter in law of the respondent no. 3 namely Smt Pushpa Rathore, aged about 36 years, was pregnant and on 19.08.2022, she alongwith her relative came for treatment and for delivery. As per the information given by the patient and her family member, before this, she was operated twice for Oravian Cyst and Chocolate Cyst. The Doctors in the Hospital had made the plan of treatment and started giving treatment. As there was some complication in pregnancy, so as per advice, an Cesarean operation was to be done. From the relative of the deceased, a High Risk Consent had been obtain and it was also informed to the relative that patient was at high risk. All the best possible treatment had been provided to the patient, but before operation, she vomited, but her vomit could not come out and same was inhale. Immediately the Cardiopulmonary Resuscitation (In short CPR) was given to the patient, but she was not responding to it and all efforts were made by the Doctors who were treating the patient, but neither she nor her child's life could not be save and both of them died at about 12.00 hours. Immediately, the information about the death was given to the police. After death of the patient, the family member of the patient started misbehaving and manhandling with the Doctors and staff of the Hospital and with the petitioners and other staff trying to convince them, but they were agitating and had beaten the petitioner No. 2 and Manager of the Hospital. The family members had also caused injury to the petitioner No. 1 and had use filthy language with the staff of hospital. All the staff and Doctors were under tremendous threat to their life and property by the family member and others who are known to the deceased Smt. Pushpa Rathore. Their entire action was recorded in the CCTV camera of the hospital. Immediately the report was lodge by the Manager of the Hospital Namely Shri Rajesh Chandani, to the Police Chowki Rampur on 19.08.2022 against the family member of the Smt Pushpa Rathore that they had beaten the doctors and staff of the Hospital and also the CCTV footage had been supplied to the police station. The said complaint was made to Police Chowki Rampur which was later sent to Police Station, Kotwali, Korba and on the complaint of Rajesh Chandani, the police registered an offence under section 3 of Chhattisgarh Chikitsa Sevak tatha Chikitsa Seva Sansthan (Hinsa Tatha Sampatti Ki Shati Ya

Hani Ki Roktham) Adhiniyam 2010 against the family members of Smt Pushpa Rathore. Just to counter blast, the respondent no. 3 lodged a report against the petitioners, by lodging the First Information Report 764/2022, Police Station Kotwali Korba and police without considering the direction of the Hon'ble Court as well as Hon'ble Supreme Court, had directly registered an offence under section 294, 506, 323, 304 A read with section 34 of Indian Penal code against the petitioners. In fact, the petitioners are the victims and against them only, the FIR had been lodged. As no treatment had been given by the petitioners to the patient namely Smt. Pushpa Rathore, hence no offence under the aforesaid sections is made out against them. Even the CCTV footage and photographs speaks in volume that respondent no. 3 and their family members and other known to them had converted the Hospital into a battle zone and had assaulted the petitioners and other staff of the Hospital. Only when the report was lodged by the petitioners, in order to save themselves, the respondent No. 3 had lodged the report. Mr. Kotecha further submits that the respondent No. 2, before registering offence against the Doctors/petitioners, had not complied with the direction issued by the Hon'ble Supreme Court and this Hon'ble Court and further there is totally non-compliance to the direction of the Hon'ble Supreme court. The registration of FIR against the petitioner is totally illegally without any foundation and the same deserves to be quashed by this Hon'ble Court. In support of his submissions, he relies on the decisions rendered by the Supreme Court in Jacob Mathew v. State of Punjab & Another, {(2005) 6 SCC 1}, and Martin F. D'souza v. Mohd. Ishfaq {AIR 2009 SC 2049} and the order passed by this Court in Dr. Smt. Krishna Dixit v. State of Chhattisgarh {AIR ONLINE 2019 CHH 1547}. Mr. Kotecha further relies on the decision of the Supreme Court in State of Haryana v. Bhajan Lal {1992 Supp (1) SCC 335} to contend that even if the FIR has been registered, the same can be quashed under certain circumstances to prevent abuse of process of law.

4. On the other hand, Mr. Gagan Tiwari, learned Deputy Government Advocate appearing for the State/respondents No. 1 and 2 submits that FIR has been lodged against both the parties i.e. against the petitioners as well as the respondent No. 3 and his family members who were trying to take the law into their own hands. The police is investigating the matter and as such, no interference is warranted at this stage.

5. Mr. H.A.P.S. Bhatia, learned counsel for the respondent No. 3 would submit that on the one hand, the petitioners mishandled the case of his daughter-in-law because of which she and her child expired and on the other hand, had lodged FIR against him and his family members which is unjust and unfair.

6. We have heard learned counsel for the parties, perused the pleadings and documents appended thereto.

7. The learned Single Judge, vide order dated 14.10.2022, had passed the following order:

"Learned counsel for the petitioners and respondent No.3 would submit that matter has been settled between the parties.

Learned counsel for the petitioners seeks time to file appropriate application to amend cause-title of the petition.

Meanwhile, considering the facts of the case and aforesaid submission of learned counsel for the parties, particularly considering the guidelines of Hon'ble Supreme Court in the matters of Jacob Mathew vs. State of Punjab reported in (2005) 6 SCC 1, which has also been relied by Hon'ble Apex Court in the case of Martin F D'souza vs. Mohd. Ishfaq reported in (2009) 3 SCC 1, it is directed that investigation may go on, but charge sheet shall not be filed without prior permission of this Court, if the same has not been filed yet."

8. Though notices were issued way back on 05.09.2022, but till date, no return has been filed by either of the respondents.

9. From persual of the pleadings, it appears that the daughter-in-law of the respondent No. 3, who was pregnant, was brought to the hospital of the petitioners for delivery. As per the information given by the patient and her family member, before this, she was operated twice for Oravian Cyst and Chocolate Cyst. The Doctors in the Hospital had made the plan of treatment and started giving treatment. As there was some complication in pregnancy, so as per advice, an Cesarean operation was to be done. From the relative of the deceased, a High Risk Consent had been obtain and it was also informed to the relative that patient was at high risk. All the best possible treatment had been provided to the patient, but before operation, she vomited, but her vomit could not come out and same was inhale. Despite their all efforts were made by the Doctors who were treating the patient, neither the mother nor her child could be saved. It appears that the respondent No. 3 and his family were aware of the complications as they had signed the High Risk Consent form.

10. The Supreme Court, in Jacob Mathew v. State of Punjab & Another, {(2005) 6 SCC 1}, while dealing with a similar issue, has issued guidelines with regard to prosecuting medical professionals, at paragraphs 50, 51 and 52, which reads as under:

"Guidelines re: prosecuting medical professionals

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 the 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 under Section 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 to 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 the 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."

11. The incident took place on 19.08.2022. The photographs annexed with the petition also indicates that there was a huge crowd assembled in the Hospital and any untoward incident could have occurred there for which the petitioners had to call the police to control the situation. In the facts and circumstances of the case, particularly in light of what has been said in Jacob Mathew (supra), no effort has been made to obtain an independent and competent medical opinion 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 and the impugned FIR has been lodged straightaway against the petitioners, we deem it appropriate to quash the impugned FIR bearing Crime No. 764/2022, dated

21.08.2022 registered at Police Station, Kotwali, Korba, District Korba, for the offence under Section 294, 304-A, 323, 34 and 506 of the Indian Penal Code.

12. Accordingly, this petition is allowed.