

(2018) 02 RAJ CK 0021
In the Rajasthan High Court
Case No : 972 of 2017

Dr. Tulsiram S/o Shri Bastiram & Anr	APPELLANT
Vs	
The State of Rajasthan & Anr	RESPONDENT

Date of Decision : 14-02-2018

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 482](#), [Section 197](#) - Saving of inherent powers of High Court - Prosecution of Judges and public servants
[Indian Penal Code, 1860](#)

Citation : (2018) 02 RAJ CK 0021

Hon'ble Judges : Sandeep Mehta

Bench : Single Bench

Advocate : R.S. Gehlot, M.S. Panwar, A.R. Beniwal.

Final Decision : Allowed

Judgement

1. By way of this petition under Section 482 Cr.P.C., the petitioners herein crave to challenge the order dated 07.02.2017 passed by the learned

Sessions Judge, Jodhpur District in revision affirming the order dated 15.11.2016 passed by the learned Judicial Magistrate, Balesar in Criminal

Case No.454/2012 whereby, accusation was read over to the petitioners.

2. The petitioners herein were working as doctors at the Community Health Center, Balesar in the year 2012. A lady named Kaushalya was

brought for treatment to the hospital. The petitioners treated her but the patient did not survive and passed away. Shri Dinesh, brother of the

deceased, filed an FIR No.80/2012 against the present petitioners with an allegation that they acted negligently while providing treatment to Mst.

Kaushalya. After investigation, a charge-sheet came to be filed against the petitioners for the offence under Section 304A IPC and cognizance was

taken against them vide order dated 15.11.2016. The petitioners challenged the cognizance order in the Sessions Court, Jodhpur District which was rejected holding that the objection raised by the accused was a mixed question of facts and law and was fit to be adjudicated only after recording of evidence at the trial. While rejecting the revision by the order dated 07.02.2017, the learned revisional court held that the accused would be at liberty to raise the objection of sanction by resorting to Section 197 Cr.P.C. before the trial court after collection of evidence. The petitioners have now approached this Court through this petition under Section 482 Cr.P.C. for assailing these two orders.

3. Shri R.S. Gehlot, learned counsel representing the petitioners, relied upon the Supreme Court Judgment in the case of Amal Kumar Jha vs.

State of Chhatisgarh & Anr., reported in AIR 2016 SC 2082 and urged that both the petitioners are government doctors and they can be

removed from their post only with the permission of the State Government. They were definitely acting in the discharge of their official duties while

treating the deceased. As per Shri Gehlot, the petitioners acted diligently while carrying out the treatment of the deceased and they cannot be

attributed any negligence whatsoever so as to be held responsible for her death. As per Shri Gehlot, the prosecution of the petitioners is

impressible in law without procuring sanction under Section 197 Cr.P.C. He thus implored the court to exercise its inherent powers and set aside

the impugned orders and the quash petitioners' prosecution as being bad in the eye of law.

4. Per contra, learned Public Prosecutor and Shri A.R. Beniwal, learned counsel representing complainant vehemently opposed the arguments

advanced by the petitioners' counsel. They urged that the petitioners acted with gross negligence while treating the complainant's sister and as

such, it is not a case wherein, this Court should exercise its inherent powers so as to quash the proceedings at the inception.

5. I have given my thoughtful consideration to the arguments advanced at Bar and have gone through the impugned orders as well as the other material placed on record.

6. It cannot be denied that the petitioners who were posted as government doctors at the relevant point of time, treated the sister of the

complainant Kaushalya while acting in the discharge of their official duties. It is also not in dispute that the petitioners are public servants appointed

by the State Government within the meaning of Section 21 of IPC and Section 197 of Cr.P.C. as they cannot be removed from their posts save

with the permission of the Government. As such, without any doubt, the protective umbrella of Section 197 Cr.P.C. comes into play when

prosecution of the petitioners is initiated for acts done by them in the discharge of their duties. The controversy at hand is squarely covered by the

Supreme Court decision in the case of Amal Kumar Jha (supra) relied upon by learned counsel for the petitioners wherein, it has been categorically

held that the prosecution of the government doctors cannot be allowed without procuring prior prosecution sanction as per Section 197 Cr.P.C.

7. In view of the above legal prohibition against the petitioners' prosecution, this Court is of the firm opinion that allowing the proceedings of the

present case to be continued against the petitioners for the offence under Section 304A IPC would be nothing short of a gross abuse of process of

law.

8. Thus, the instant misc. petition deserves to be and is hereby allowed. The impugned orders dated dated 07.02.2017 passed by the learned

Sessions Judge, Jodhpur District affirming the order dated 15.11.2016 passed by the learned Judicial Magistrate, Balesar and all further

proceedings of Criminal Case No.454/2012 pending against the present petitioners in the court of learned Judicial Magistrate, Balesar are hereby

quashed.