
(2008) 05 P&H CK 0152
In the Punjab And Haryana At Chandigarh
Case No : Criminal M. No. 26864-M of 2006

Dr. Vanita Jhunthra and another	Vs	APPELLANT
State of Haryana and another		RESPONDENT

Date of Decision : 19-05-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 188, 304A, 34

Citation : (2008) 4 RCR(Criminal) 222

Hon'ble Judges : Vinod K.Sharma, J

Bench : Single Bench

Advocate : M.S. Lobana, for the Appellant; Tarun Aggarwal, D.A.G., Haryana for the Respondent No. 1 and Mr. Ashwani Verma, Advocate for the Respondent No. 2, for the Respondent

Final Decision : Allowed

Judgement

Vinod K. Sharma, J.—The petitioners by moving present u/s 482 of the Code of Criminal Procedure have sought quashing of FIR No. 331 dated 16.5.2005, registered under Sections 304-A/34 IPC at police station City Sirsa and also consequential proceedings arising out of the FIR.

2. The allegations against the petitioners in the FIR are as under:-

"Stated that I reside on the address as stated above. I am doing the work of selling of milk to earn my livelihood. I was married about 15 years back to Kiran daughter of Mukand Lal Sethi r/o Ratia. No child was born from our wedlock. We received treatment for infertility from many doctors, unsuccessfully and no child was born. Today i.e. on 16.5.05, I came to Jhunthra Nursing Home along with my wife Kiran at about 12.30 p.m. I got my wife examined by Dr. Satish Jhunthra and Dr. Vinita Jhunthra who advised ultrasound examination of my wife. I had got the ultrasound examination done from Dr. Garg and showed the report to Dr. Satish Jhunthra. On examination the report, Dr. Satish Jhunthra said that he has the doubt of tubal blockage in Mrs. Kiran. I asked him to proceed as he wished.

After this, I and my wife were made to sign on blank papers and I was told that the tubes of Mrs. Kiran will be checked and it will cost Rs. 6500/-. I paid Rs. 5500/- as advance to the doctor and promised to pay the balance later. I also informed the doctor that the tubes of my wife have been got checked already which are all right but the doctor refused to accept the earlier reports, as he was greedy and he insisted that the tubes will have to be checked by themselves. For this Dr. Satish Jhuntra and Dr. Mrs. Vinita Jhunthra took my wife Kiran to the operation theater. I requested the doctor to check thoroughly and arrange for anything if required, to which the doctor replied that we have all the necessary equipments with us. The doctor closed the door of the I.T. From inside. After about 10 minutes, they called another doctor inside the I.O., on which I got suspicious of some untoward incident. I tried to go inside the O.T. to see my wife but the doctors tried to prevent me from entering the O.T. But I forcibly entered the O.T. I saw that body of my wife had turned blue and the abdomen was distended. The doctor was pressing the chest and abdomen of my wife. My wife was already dead. My wife Kiran's death has resulted from administration of either wrong medicines or wrong injunction given negligently in greed of money by the doctor. As the doctors have killed my wife, so they should be arrested and appropriate action be taken. A case should be registered against both the doctors. All the record and OT should be sealed because everything has been done illegally. Sd/- Narinder Singh 16.5.05 Sd/- Attested by Sd/- Sita Ram ASI, PS City Sirsa. 16.5.05.

POLICE ACTION: A telephone call was received from Jhunthra Nursing Home, Dabwali Road, Sirsa, stating that Mrs Kiran Rani wife of Narinder Singh caste Arora, r/o Askanwali, who had come for treatment to day had expired. So on that information I ASI along with ASI Krishan HC Krishan Const. 59, Sunil Kumar 251, reached Jhunthra Nursing Home. They found Narinder Singh s/o Hazari Lal caste Arora r/o Aakanwali present along with his other relatives near the dead body. He has given the above statement which was recorded, read to him and he admitted the same to be correct and signed by him. The signatures are attested from the said statement of Narinder Singh case u/s 304-A IPC is made out. Therefore, this report is sent to the P.S. For the registration of case through constable Sunil Kumar No. 25. After registration number of FIR be intimated. I ASI am busy for investigation. Sd/- Sita Ram ASI"

3. The petitioners seek quashing of the FIR and subsequent proceedings primarily on the ground that even if the allegations made in the FIR and the evidence collected are taken on their face value no offence under Sections 304-A/34 IPC is made out against the petitioners.

4. In support of this contention, learned counsel appearing on behalf of the petitioners has placed reliance on the judgment of Hon"ble Supreme Court in the case of Jacob Mathew Vs. State of Punjab and Another, (2) Apex Criminal 649 : (2005) 6 SCC 1, wherein Hon"ble Supreme Court has been pleased to lay down that nature of negligence required under phrase "rash or negligent act" would

also include "gross" though not used in Section 304-A IPC.

5. Hon"ble Supreme Court, thus, laid down that the rash and negligent act in Section 304-A has to be read as qualified by the word grossly and until and unless the negligence attributed to act would fall within the definition of gross negligence the doctor cannot be charged u/s 304-A IPC. It is also the case of the petitioners that in order to hold negligence to be a criminal offence the element of mens rea must be shown to exist.

6. Learned counsel for the petitioners also contends that protection u/s 188 IPC is available to doctors and if the law laid down by Hon"ble Supreme Court in the case of Jacob (supra) is applied the FIR and subsequent proceedings would be nothing but misuse of the process of the court.

7. Learned counsel learned for the petitioners thereafter by placing reliance on the judgment of the Hon"ble Supreme Court in the case of Dr. Suresh Gupta v. Govt. of NCT of Delhi & Anr., 2004 (3) RCR (CrI.) 925 : 2004 (3) Apex Cri 396 (SC) contended that if any death is cause of the patient due to negligence he can be held liable to pay compensation but to fix criminal liability negligence should be gross negligence or reckless and not lack of care skill or error of judgment.

8. The contention of the learned counsel for the petitioners, therefore, is that in the present case the allegations levelled in the FIR and the evidence collected do not constitute an act which would fall within the definition of gross negligence to attract criminal liability.

Learned counsel for the petitioners further contended that the matter had been, in fact, compromised between the parties.

9. Be that as it may, once it is proved that the negligence attributed to the petitioners herein is not gross negligence to attract the criminal liability the FIR and subsequent proceedings would be nothing but misuse of the process of the court.

Consequently this petition is allowed. The FIR and the subsequent proceedings are quashed.

10. However, it would be open to the complainant to avail his remedy under the torts to claim compensation for the negligence if any on the part of the petitioners herein.