

(2016) 08 AHC CK 0075

In the Allahabad High Court

Case No : Criminal Misc. Application No. 24238 of 2016

Munesh Pal

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 19-08-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 202, 482
Penal Code, 1860 (IPC) — Section 341, 504, 506

Citation : (2016) 96 ACrC 850 : (2016) 167 AIC 861

Hon'ble Judges : Pramod Kumar Srivastava, J.

Bench : Single Bench

Advocate : Sudhir Kumar Kesarwani and Jitendra Kumar, Advocates, for the Applicant; G.A, for the Opposite Party

Final Decision : Disposed Off

Judgement

Pramod Kumar Srivastava, J.— Heard learned counsel for the applicants, learned AGA and perused the records.

2. Earlier FIR was lodged by Munesh Pal, Manager of Nursing Home against Jitendra son of Chhidda Singh with averment that said Jitendra had admitted his daughter Priyanka in his Nursing Home without any payment and promised to pay the amount of treatment later on. Considering the ailment of Priyanka, she was admitted in hospital on 21.5.2014, from where she was discharged on 27.5.2014. During this period, accused Jitendra had not paid amount of treatment and gone with Priyanka with promise to pay the bill of treatment later on. When Munesh Pal visited Jitendra for reminder of payment of said amount of bill, then Jitendra had misbehaved, maltreated and inflicted injuries. On this FIR of Munesh Pal, case crime no. 309/2014 was registered and after investigation charge-sheet was filed against Jitendra son of Chhidda Singh.

3. Said Jitendra son of Chhidda Singh had filed complaint case (present no. 675/2015) Jitendra Singh v. Manager, Munesh Pal and two other compounders of said Nursing Home with averment that they have been instrumental in getting

Priyanka admitted in their Nursing Home on 21.5.2014 without any sufficient reason and had misbehaved with her and acted in such a way, due to which the life of Priyanka was endangered because of their unwarranted treatment.

4. After accepting evidences under Chapter XV CrPC, the trial court had passed summoning order dated 13.10.2015, by which Manager Munesh Pal and two compounders Vikash and Pawan Sharma were summoned for offences under sections 341, 504, 506 IPC. The proceeding of this complaint case no. 712/2015 is being challenged in present application.

5. The trial court taken cognizance for this alleged overt act of applicants that they have got admitted the ailing Priyanka without any sufficient reason in their hospital, and her treatment was unnecessarily carried out in such a way, due to which her life was endangered. During evidences under sections 200 & 202 CrPC, no witness was examined or evidence was given about alleged ailment or manner of treatment of Priyanka. Even said girl Priyanka was also not examined.

6. In Jacob Mathew v. State of Punjab and another, (2005) 6 SCC 1, Hon"ble Apex Court had held as under:

"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 practise who can normally be expected to give an impartial and unbiased opinion applying 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."

7. When there is a complaint for criminal prosecution of a medical treatment then complainant must produce prima facie evidence before the court in form credible opinion given by another competent doctor to support the charges of medical negligence or rashness in treatment on the part of concerned doctor. In present matter no such evidence had neither been adduced nor proposed. Therefore this contention of learned AGA is not unacceptable that such

prosecution should not be carried out.

8. In present case the applicants are not doctors carrying out treatment. But for alleged detention in nursing home for treatment they are being prosecuted.

9. These points need consideration as to whether in such circumstance, it would be appropriate to permit the prosecution of complaint case under challenge being carried out.

10. Learned AGA has accepted notice on behalf of OP No. 1-State.

11. Issue notice to opposite party no. 2.

12. Three weeks" time is granted to opposite parties to file counter affidavit. Two weeks thereafter is granted to applicants side to file rejoinder affidavit, if any.

13. List thereafter.

14. Till further orders, proceedings of Complaint Case No. 712/2015, under Sections 341, 504, 506 IPC, P.S. Sadar Bazar, District Meerut, shall remain stayed.