
(2010) 10 AHC CK 0288
In the Allahabad High Court
Case No : Application No. 5713 of 1999

Smt. Chandrama Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 19-10-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (2010) 10 AHC CK 0288

Hon'ble Judges : Rajesh Dayal Khare, J

Bench : Single Bench

Judgement

Rajesh Dayal Khare, J.—Heard learned Counsel for the applicant, learned A.G.A. for the State and Sri R.B. Sahai, learned Counsel for the opposite party No. 2.

2. The present application has been filed for quashing the summoning order dated 17.04.1999 passed by learned Chief Judicial Magistrate, District Fatehpur in Criminal Case No. 1476 of 1999 State v. Dr. Nigar Sultana Rizvi and Ors.

3. Vide order dated 12.11.1999 another Bench of this Court had connected the present application alongwith Criminal Misc. Application No. 5549 of 1999 and had further directed that the stay order in the aforesaid application shall also apply to the present applicant.

4. Learned Counsel for the applicant has contended that the applicant is the Nurse who attended the wife of the opposite party No. 2 during the time of her delivery and a child was born but she expired. Learned Counsel for the applicant has drawn the attention of this Court to Annexure-7 to the affidavit accompanying the application and has argued that the bed head ticket discloses that utmost care was given to wife of the opposite party No. 2. Learned Counsel for the applicant has further drawn the attention of this Court to the post mortem report, copy of which is annexed as Annexure-7 and has argued that the cause of death shown in the post mortem report is due to anti-mortem cardiac air embolism. It is further argued that the patient expired due to reasons beyond

her control inspite of the fact that best treatment was given to the wife of the opposite party No. 2. It is further contended that the opposite party No. 2 had filed a suit for damages against the applicant, copy of which is annexed as Annexure-10 to the affidavit accompanying the application. It is thus contended that criminal liability cannot be fixed upon the applicant and the Investigating Officer after investigation submitted final report against which, protest petition has been filed by the opposite party No. 2 which was allowed and the applicant has been illegally summoned. Learned Counsel for the applicant has relied upon a judgment of Hon''ble Apex Court reported in V (2004) ACC 257 Dr. Suresh Gupta v. Government of N.C.T. of Delhi and Anr. and has argued that no criminal liability can be fixed upon the applicant in view of well settled law as laid down by Hon''ble Apex Court in view of paragraphs No. 21, 22 and 23 of the aforesaid judgment which is quoted below:

21. Thus when a patient agrees to go for medical treatment or surgical operation, every careless act of the medical man cannot be termed as "criminal". It can be termed "criminal" only when the medical man exhibits a gross lack of competence or inaction and wanton indifference to his patient's safety and which is found to have arisen from gross ignorance or gross negligence. Where a patient's death results merely from error of judgment or an accident, no criminal liability should be attached to it. Mere inadvertence or some degree of want of adequate care and caution might create civil liability but would not suffice to hold him criminally liable.

22. This approach of the Courts in the matter of fixing criminal liability on the doctors, in the course of medical treatment given by them to their patients, is necessary so that the hazards of medical men in medical profession being exposed to civil liability, may not unreasonably extend to criminal liability and expose them to risk of landing themselves in prison for alleged criminal negligence.

23. For every mishap or death during medical treatment, the medical man cannot be proceeded against for punishment. Criminal prosecutions of doctors without adequate medical opinion pointing to their guilt would be doing great disservice to the community at large because if the Courts were to impose criminal liability on hospitals and doctors for everything that goes wrong, the doctors would be more worried about their own safety than given all best treatment to their patients. This would lead to shaking the mutual confidence between the doctor and patient. Every mishap or misfortune in the hospital or clinic of a doctor is not a gross act of negligence to try him for an offence of culpable negligence.

5. Shri R.B. Sahai, learned Counsel for the opposite party No. 2 has contended that no medical attendance was given to the wife of the opposite party No. 2 by the applicant and it was due to her own negligence, that the wife of the opposite party No. 2 had expired, therefore it is argued that the applicant is criminally liable for the same.

6. Learned A.G.A. has contended that there is no legal infirmity in the order impugned which may warrant any interference by this Court in exercise of power conferred under 482 Code of Criminal Procedure jurisdiction.
7. After hearing the learned Counsel for the parties and after perusing the averments made in the present application as well as order impugned, the prayer for quashing the order impugned is hereby refused.
8. Interim order dated 12.11.1999 is hereby vacated.
9. However, it is provided that in case, the applicant moves an appropriate application for discharge through counsel before the concerned Court below within a period of two months from today, the same shall be considered and disposed off as expeditiously as possible by the concerned Court below in accordance with law, preferably within a period of four months, thereafter.
10. For a period of six months from today or till the disposal of the discharge application whichever, is earlier, no coercive action shall be taken against the applicant in the aforesaid case.
11. With the aforesaid directions, this application is finally disposed off.