

(2008) 10 GUJ CK 0047

In the Gujarat High Court

Case No : Special Criminal Application No. 212 of 2008

Sudhaben Kantilal Shah

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 14-10-2008

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Criminal Procedure Code, 1973 (CrPC) — Section 258, 482
Penal Code, 1860 (IPC) — Section 304A, 32

Citation : (2008) 10 GUJ CK 0047

Hon'ble Judges : D.H. Waghela, J

Bench : Single Bench

Advocate : Hriday Buch, for the Appellant; L.R. Pujari, Assistant Public Prosecutor for Respondent 1, for the Respondent

Final Decision : Dismissed

Judgement

D.H. Waghela, J.—Invoking Articles 226 and 227 of the Constitution, the petitioner has called into question the judgment and order dated 10.01.2008 of learned Additional Sessions Judge, Junagadh in Criminal Revision Application No. 30 of 2006 whereby the order dated 19.01.2006 of learned J.M.F.C., Junagadh in Criminal Case No. 293 of 2000 discharging the petitioner u/s 258 of the Cr.P.C. was set aside and regular trial by recording the evidence was ordered. The criminal proceeding against the petitioner were initiated by registration of an F.I.R. dated 09.02.1998 as C.R. No. 40 of 1998 for the alleged offence punishable u/s 304A of the Indian Penal Code, 1860. A charge-sheet pursuant to that F.I.R. and investigation was also filed and the first order dated 19.01.2006 of learned J.M.F.C., Junagadh in Criminal Case No. 293 of 2000 appeared to have been made on a cursory reading of the papers of investigation. It was, inter alia, concluded in that order that, if a doctor on duty does not attend a patient in his or her ward, it amounts to administrative negligence but not medical negligence.

2. In the facts of the present case, according to the complainant, the victim of

the alleged offence was stated to have been dying out of excessive pain and bleeding after delivery by caesarean section, while the petitioner was on duty as the doctor but had consciously failed to attend or examine her. Against the backdrop of those broad facts, it was vehemently argued by learned Counsel Mr. Buch that the statements of other witnesses recorded by police during the course of investigation were required to be carefully read to arrive at the conclusion that prima facie findings of fact recorded by learned Additional Sessions Judge in the impugned order were perverse and the impugned order suffered from manifest illegality. It was, however, argued by learned A.P.P. and seen from the record that the Court had adopted an appropriate course of action as the prima facie case made out against the petitioner required fulfledged trial. It was also seen that learned J.M.F.C. had jumped to an irrational conclusion in respect of the alleged negligence of the petitioner during the discharge of her duties as doctor in charge of the ward of the Government Hospital.

3. Learned Counsel Mr. Buch relied upon orders and judgments of the Supreme Court in *Rakesh Ranjan Gupta Vs. State of U.P. and Another*, and *Dr. Suresh Gupta Vs. Govt. of N.C.T. of Delhi and Another*, in support of his argument that it was permissible for this Court to analyze the material appearing against the petitioner, either in exercise of the power u/s 482 of the Cr.P.C., 1973 or under Article 226 of the Constitution, to arrive at an appropriate conclusion and relieve the petitioner of the pain of facing trial.

4. However, in the facts of the present case, not only that the petitioner expressly invites the Court to re-appreciate the material which may not be evidence in strict sense of the term but it was found that learned Additional Sessions Judge has, in the impugned order, only reversed the perverse order. This Court would not be justified in interfering with the impugned order in exercise of its extraordinary jurisdiction which is required to be only sparingly exercised with circumspection. It would be wholly improper, unwise and premature to come to any definite conclusion by relying upon the statements of several witnesses recorded by the police and find out how inconsistent they were from the version of the original complainant, who is not even a party before this Court. The post mortem report indicating negligence of the petitioner could not be brushed aside and ignored at this stage by relying upon statements of the nurses, who might be subordinate to the petitioner, for discharging the petitioner as urged by learned Counsel. The post mortem report clearly stated that:

Looking to the case paper, over all I am of the opinion that due and reasonable care has not been observed in the treatment of deceased since she became serious till her death.

5. The above facts are clearly distinguishable from the facts in which the Apex Court had, in *Rakesh Ranjan Gupta (supra)*, held that, by no stretch of imagination could it be held that death of the deceased was caused by any act done by the appellant-medical practitioner. In the facts of that case, the deceased was shown to have died due to consuming poison. Similarly, in *Dr.*

Suresh Gupta (supra), it was found after examining all medical papers accompanying the complaint that no case of recklessness or gross negligence was made out against the doctor for being compelled to face trial for offence u/s 304A of the IPC. One of the issues in the facts of the present case, to be examined in light of the evidence that may be led before the trial court, would be whether not attending or even examining a patient in charge of the doctor, while the emergency situation is reported to her, would be an omission amounting to such gross negligence or recklessness or carelessness as would attract criminal liability in the eye of law. In view of express provisions of Section 32 of I.P.C., an illegal omission is at par with a culpable act causing the effect which amounts to an offence.

6. Therefore, the petition is dismissed, Notice is discharged and interim relief is vacated with no order as to costs. Lastly, learned Counsel requested for extension of the injunction against the impugned order for a period of three weeks. There being no justification for grant of such relief, the request is rejected.