HIGH COURT OF JHARKHAND

BENCH : HON'BLE MR. JUSTICE SUBHASH CHAND

Date of Decision: 12th April 2024

Cr. Rev. No. 648 of 2023

Dr. Punam Sinha @ Punam Sinha …PETITIONER

VERSUS

1. The State of Jharkhand

2. Savita Devi …OPPOSITE PARTIES

Legislation:

Sections 308, 338 of the Indian Penal Code (IPC)

Section 202 of the Criminal Procedure Code (Cr.P.C.)

Subject: Criminal revision against the order of discharge rejection concerning medical negligence leading to severe complications post-surgery.

Headnotes:

Medical Negligence and Criminal Intimidation – Charges against Dr. Punam Sinha for allegedly leaving surgical materials inside the complainant post-operation, leading to further health complications and additional surgeries – Initial complaint led to no action, escalating to a criminal intimidation charge when the complainant was threatened by the accused [Paras 2, 2.1, 13].

Evidence and Witness Testimony – Multiple witnesses corroborated the complainant's suffering and subsequent operations which allegedly were necessitated by the initial surgical oversight – No expert medical evidence presented to support the negligence claim [Paras 3-4, 13.1].

Legal Framework for Discharge – Discussion on the legal standards and procedures for discharging an accused at the pre-trial stage – Reference to

apex court rulings emphasizing that discharge is based on strong suspicion and not a detailed examination of evidence [Paras 10, 10.1-10.4].

Court's Analysis and Decision – Application dismissed based on insufficient evidence of intent or negligence directly linking Dr. Punam Sinha to the alleged medical complications – The court emphasized that the charge under Section 308 IPC requires evidence of intent to cause such harm, which was not substantiated [Paras 14-15].

Decision: The criminal revision petition is allowed – The impugned order dated 25th February 2023 by the lower court is set aside, discharging Dr. Punam Sinha from the charges under Sections 308 and 338 IPC.

Referred Cases:

- Palwinder Singh v. Balwinder Singh (2008) 14 SCC 504 [Para 10.1]
- State of Orissa v. Debendra Nath Padhi (2005) 1 SCC 568 [Para 10.1]
- Sanghi Brothers (Indore) Pvt. Ltd. v. Sanjay Choudhary & Ors. (2008) 10 SCC 681 [Para 10.2]
- Rukmini Narvekar v. Vijaya Satardekar & Ors. A.I.R. 2009 SC 1013 [Para 10.3]
- Central Bureau of Investigation v. Mukesh Pravinchandra Shroff & Ors (2010) 3 SCC Cr. 315 [Para 10.4]
- Mrs. Kalyani Rajan v. Indraprastha Apollo Hospital & Ors 2023 Live Law SC 926 [Para 13.2]

Representing Advocates:

For the Petitioner: Mr. Abhay Kumar Chaturvedi, Advocate

For the State: Mr. Subodh Kumar Dubey, A.P.P.

For Opposite Party No.2: Ms. Kehkashan Afsheen, Advocate and Mr. Pran Pranay, Advocate

JUDGMENT

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1. The instant Cr. Revision has been directed on behalf of the petitioner against the order dated 25.02.2023 passed by the learned Additional Sessions Judge-I Garhwa in S.T. No. 366 of 2021 whereby and whereunder the discharge application of the petitioners has been rejected.

2. The brief facts leading to this Cr. Revision are that the complainant-Savita Devi had filed the complaint against the accused Dr. Punam Sinha, Dr. Satish Kumar Sinha and three other criminals with these allegations that the complainant was pregnant. The witness 1 to 5 namely, Suneshwar Kumar Ravi, Parmeshwar Ram, Yugal Kumar, Vimlesh Ram and Vindhyachali Devi took her to Prakash Chandra Jain Sewa Sadan, Daltonganj. The broker of the Hospital took her to Doctor Punam Sinha who was on duty. On 11.05.2018 she was admitted to Prakash Chandra Jain Sewa Sadan, Daltonganj. The accused No.1-Dr. Punam Sinha prescribed medicine and diagnosed her and stated that it was not a case of normal delivery and there was possibility of both the child and the mother of dying and directed to deposit 10,000/- rupee at the counter. Accordingly, the witness No.1 Suneshwar Kumar Ravi deposited 10,000/- rupees at the counter and the accused began to operate the complainant-Savita Devi. After operation the child was brought out and for many days the complainant and the child both remained admitted in the Hospital in order to extort more money. Even after the operation, the complainant was suffering from the pain. She was advised for X-ray and medications were prescribed to her but the complainant received no relief. The flesh began to ooze from the operating part. Dr. Punam Sinha advised her that further the operation was to be done and after one month of the first operation, the second operation was done but the condition remained the same. Rs. 1,25,000/- were taken from the complainant but the blood still oozed from the operating part. Again, the complaint of the same was made to the Doctor. At this Dr. Punam Sinha and Dr. Satish Kumar Sinha both hurled abuse to her and criminally intimidated.

2.1 In order to save her life, she went to the Dr. Ashok Singh of Dehri-on-sone, Rohtas Bihar who after diagnosis referred her to Nehru Hospital P.G.I., Chandigarh. In P.G.I. Nehru Hospital, Chandigarh the complainant incurred Rs. 6,57,000/- in her treatment. After being recovered, the complainant made complaint to the Chief Secretary, Jharkhand State, Ranchi, D.C., Palamau, D.C., Garhwa, Police Superintendent, Palamau and Garhwa and Chief Medical Officer-cum-Civil Surgeon, Palamau and this news was also published in daily newspaper ‘Dainik Jagran, Ranchi, Prabhat Khabar, Ranchi, Hidustan Ranchi but no action was taken. On 31.03.2019 both the

accused along with three unknown persons intruded in her house and criminally intimidated her hurled abuse using caste word and thereafter the complainant and all the witnesses got frightened and the accused persons fled away. Ultimately there was no way out but to file the complaint.

3. On behalf of the complainant in support of the allegations made in the complaint **examined Savita Devi-complainant herself** who in her Examination-in-chief stated that her operation was done and after operation the pain continued in her stomach in left side. She was referred to Chandigarh where again the operation was done and during operation the cloth was brought out from the stomach by the Doctor in Chandigarh Hospital. The cotton was also brought out from the intestine and about 1 k.g. flesh was also brought out. On asking question by the Court this witness stated that on the day of occurrence her husband was also at the house. Vimlesh Kumar, the son of her Gotni, her Bainsur and elder Gotni were also present there. She could not recognize the three unknown persons except Dr. Punam Sinha and Dr. Satish Kumar Sinha on the date they entered in her house.

4. **Enquiry Witness No.1-Vimlesh Kumar, Enquiry Witness No.2-Yugal Kumar, Enquiry Witness No.3- Parmeshwar Ram, Enquiry Witness No.4-Suneshwar Kumar Ravi** all these four witnesses also corroborated the allegations made in the complaint and also corroborated the statement given by the complainant.

5. Vide order dated 03.10.2019 the learned Enquiry Court after hearing on the complaint, the learned Counsel for the complainant and on the basis of the statement of enquiry witness passed the summoning order against Dr. Punam Sinha for the offence under Sections 308, 338 of I.P.C.

6. Vide order dated 30.11.2021 committed this case for trial to the court of sessions.

7. On behalf of the accused Dr. Punam Sinha the application for discharge was moved and the same was rejected by the learned trial court vide impugned order dated 25.02.2023.

8. Aggrieved from the impugned order dated 25.02.2023 the instant Cr. Revision has been preferred on behalf of the petitioner. 9. I have heard the learned Counsel of parties and perused the material on record.

10. It is the settled law that while disposing the discharge application, the court concerned has to go through the allegations made in the F.I.R.

or in the complaint and the evidence collected by the I.O. in support of the F.I.R. allegations. **If from the allegations made in the F.I.R./in the complaint and the evidence collected by the I.O., there are sufficient ground to proceed with trial the court should decline to allow the discharge application; if the court is of definite opinion that no ingredient of the offence is made out from the evidence collected by the I.O. or even from the allegations made in the F.I.R. itself the discharge application should be allowed.** At the same time it is also the settled law as laid down by the Hon'ble Apex Court in catena of case law that while disposing the discharge application or framing the charge, the court has not to appreciate the evidence on record. **The appreciation of the evidence or marshalling of the evidence is not permissible. The court cannot conduct the mini trial at the time of framing charge.**

10.1 The Hon'ble Apex Court held in ***Palwinder Singh vrs. Balwinder singh (2008) 14 SCC 504:***

13. Having heard the learned counsel for the parties, we are of the opinion that the High Court committed a serious error in passing the impugned judgment insofar as it entered into the realm of appreciation of evidence at the stage of the framing of the charges itself. The jurisdiction of the learned Sessions Judge while exercising power under Section 227 of the Code of Criminal Procedure is limited. Charges can also be framed on the basis of strong suspicion. Marshalling and appreciation of evidence is not in the domain of the Court at that point of time. This aspect of the matter has been considered by this Court in State of Orissa v. Debendra Nath Padhi [(2005) 1 SCC 568 : 2005 SCC (Cri) 415] wherein it was held as under: (SCC p. 579, para 23)

"23. As a result of the aforesaid discussion, in our view, clearly the law is that at the time of framing charge or taking cognizance the accused has no right to produce any material. Satish Mehra case [Satish Mehra v. Delhi Admn., (1996) 9 SCC 766 : 1996 SCC (Cri) 1104] holding that the trial court has powers to consider even materials which the accused may produce at the stage of Section 227 of the Code has not been correctly decided."

10.2 The Hon'ble Apex Court held in ***Sanghi Brothers (Indore) Pvt. Ltd. vrs. Sanjay Choudhary & Ors. (2008) 10 SCC 681:***

11. ***Sections 227, 239 and 245 deal with discharge from criminal charge. In State of Karnataka v. L. Muniswamy [(1977) 2 SCC 699 : 1977 SCC (Cri) 404] it was noted that at the stage of framing the charge the court has to apply its mind to the question whether or not there is any ground for presuming the commission of offence by the accused. (underlined [Ed. : Herein italicised.] for emphasis) The court has to see while considering the question of framing the charge as to whether the material brought on record could reasonably connect the accused with the trial. Nothing more is required to be inquired into. (See Stree Atyachar Virodhi Parishad v. Dilip Nathumal Chordia [(1989) 1 SCC 715 : 1989 SCC (Cri) 285] and State of W.B. v. Mohd. Khalid [(1995) 1 SCC 684 : 1995 SCC (Cri) 266] .)***

10.3 The Hon'ble Apex Court also held in ***Rukmini Narvekar vrs. Vijaya Satardekar & Ors. A.I.R.2009 SC 1013:***

38. In my view, therefore, there is no scope for the accused to produce any evidence in support of the submissions made on his behalf at the stage of framing of charge and only such materials as are indicated in Section 227 CrPC can be taken into consideration by the learned Magistrate at that stage. However, in a proceeding taken therefrom under Section 482 CrPC the court is free to consider material that may be produced on behalf of the accused to arrive at a decision whether the charge as framed could be maintained. This, in my view, appears to be the intention of the legislature in wording Sections 227 and 228 the way in which they have been worded and as explained in Debendra Nath Padhi case [(2005) 1 SCC 568 : 2005 SCC (Cri) 415] by the larger Bench therein to which the very same question had been referred

10.4 The Hon'ble Apex Court held in ***Central Bureau of Investigation vrs. Mukesh Pravinchandra Shroff & Ors (2010)***

3 SCC Cr. 315:

"The appreciation of evidence, at the stage of discharge is impermissible what is required is to be seen is whether there are sufficient grounds to proceed against accused."

11. In the case in hand the petitioner has been summoned for the offence under Sections 308 and 338 of I.P.C. and the Enquiry Court has committed the case to the court of sessions **without examining all the witnesses which are shown in the complaint including Dr. Ashok Singh and in lack of documentary evidence. Section 202** of **Cr.P.C.** reads as under:

202. Postponement of issue of process.-(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorized to take cognizance or which has been made over to him under section 192, may, if he thinks fit, [and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction,] postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:

Provided that no such direction for investigation shall be made,-

(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session; or

(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 200.

(2) In an inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witnesses on oath:

Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.

(3) If an investigation under sub-section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an officer in charge of a police station except the power to arrest without warrant.

11.1 From the very perusal of this provision of Section 202 of Cr.P.C., it is found that in the **proviso of this Section 202(a) and Section 202(b) and Section 202 (2) provides** that **if the case is exclusively triable by the court of sessions, it is incumbent upon the Enquiry Court to call upon the complaint to examine all the complaint witness in support of the allegations made in the complaint.** In the case in hand the Enquiry Court has not examined all the witnesses and the most important witness Dr. Ashok Kumar who conducted the second operation and the found the alleged cloth, cotton and the clot of the blood in 1 k.g. out of the stomach of the complainant and summoning the accused petitioner herein committed the case for trial to the court of sessions.

12. Herein it would be pertinent to mention the provision of Sections 300, 308 & 338 of I.P.C. which read as under:

Section 300

Exception 1.-**When culpable homicide is not murder.-** Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident. The above exception is subject to the following provisos: *First.*- That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person. *Secondly.*- That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant. *Thirdly.*- That the provocation is not given by anything done in the lawful exercise of the right of private defence. *Exception 2.*- Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence.

Exception 3.- Culpable homicide is not murder if the offender, being a public servant or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful

and necessary for the due discharge of his duty as such public servant and without ill-will towards the person whose death is caused.

Exception 4.- Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.

Exception 5.- Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent.

308. **Attempt to commit culpable homicide.-**

Whoever does any act with such intention or knowledge and under such circumstances that, if he by that act caused death, he would be guilty of culpable homicide not amounting to murder, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if hurt is caused to any person by such act, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

338. **Causing grievous hurt by act endangering life or personal safety of others.-** Whoever causes grievous hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

13. Though on behalf of the complainant in the case in hand the Dr. Ashok Kumar was not examined by the Enquiry Court and committed the case to the court of sessions Judge for trial yet from the statement of the complainant and the other enquiry witness Vimlesh Kumar, Yugal Kumar, Parmeshwar Ram and Suneshwar Kumar Ravi prima facie there **is not sufficient and reliable evidence that the accused who had done operation of the complainant though with the consent of the complainant had left the cloth and the cotton in the stomach which was brought out by Dr. Ashok Kumar in P.G.I. Nehru Hospital Chandigarh and also the clot of flesh in 1 k.g. endangering life of the complainant.**

13.1 **So far as the medical negligence on the part of the petitioner is concerned, the same is also not supported by the expert evidence.**

13.2 The Hon'ble Apex Court held in ***Mrs. Kalyani Rajan vrs. Indraprastha Apollo Hospital & Ors 2023 Live Law SC 926:***

> ***24. On the issue as to when a medical officer may be held liable for negligence, this Court in Jacob Mathew v. State of Punjab and Another has observed thus: "A professional may be held liable for negligence on one of the two findings: either he was not possessed of the requisite skill which he professed to have possessed, or, he did not exercise, with reasonable competence in the given case, the skill which he did possess. The standard to be applied for judging, whether the person charged has been negligent or not, would be that of an ordinary competent person exercising ordinary skill in (2005) 6 SCC 1 that profession. It is not possible for every professional to possess the highest level of expertise or skills in that branch which he practices. A highly skilled professional may be possessed of better qualities, but that cannot be made the basis or the yardstick for judging the performance of the professional proceeded against on indictment of negligence."***

14. From the evidence on record, no alleged offence under Sections 308 and 338 of I.P.C. is made out from the evidence adduced on behalf of the complainant. As such the impugned order passed by the learned court-below needs interference and this Cr. Revision deserves to be allowed.

15. Accordingly, this Cr. Revision is allowed. The impugned order/Judgment dated 25.02.2023 passed by the learned courtbelow in S.T.No.366 of 2021 is set aside.