REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. 506-508 OF 2014
[Arising out of SLP (Crl) Nos.2421-2423 of 2013]

Daljit Singh Gujral & Ors. .. Appellants

Versus

Jagjit Singh Arora & Ors. .. Respondents

J U D G M E N T

K. S. RADHAKRISHNAN, J.

1. Leave granted.

2. We are of the considered view, after hearing the senior counsel appearing for the Appellant and the party-in-person, that the judgment is vitiated by an error apparent on the face of the record, which goes to the very root of the matter in a case relating to medical negligence.

3. The Appellants herein approached the High Court of Punjab & Haryana under Section 482 of the Criminal Procedure Code (for short "Cr.P.C.") for quashing complaint Case No.7506/09/11 dated 9.6.2008 and the summoning order 26.7.2011 passed by the Court of Judicial Magistrate (First Class), Chandigarh.

4. The Appellants herein are in the management of a hospital named, INSCOL Multispecialty Hospital, Chandigarh. On 1.8.2005, the wife of Respondent No.1, by name, Inderjeet Arora, approached Dr. Jayant Banerjee and, on his advice, she was referred to the above-mentioned hospital. She was admitted in the ICU by Dr. Jayant Banerjee and was attended by doctors of the hospital. Later, she was discharged from the hospital on 2.8.2005 on the request of son of Respondent No.1. On a total hospital bill of Rs.1,01,858/- a sum of Rs.30,000/- was paid and, for rest of the amount, a cheque was issued by Respondent No.1, husband of the patient. On 9.8.2005, the cheque was presented by the bankers of the hospital, but the same was

dishonoured, which fact was brought to the notice of Respondent No.1 by the hospital authorities. Thereafter, the cheque was presented twice on 12.11.2005 as well as on 16.11.2005 but, on both occasions, the cheque was dishonoured. Later, a legal notice under Section 138 of the Negotiable Instruments Act, 1881, was issued to Respondent No.1 claiming the cheque amount. According to the Appellants, this annoyed Respondent No.1 and a complaint was filed against the doctors of the hospital before the Punjab Medical Council. The Medical Board met on 3.10.2006 and, after examining the complaint as well as the comments of the doctors, passed an order on the same date exonerating Dr. Jayant Banerjee holding that proper procedure was followed and there was no gross negligence on the part of the hospital authorities or the Doctors. Respondent No.1, after a lapse of two years, on 9.6.2008, filed a complaint under Section 156(3) Cr.P.C. before the Chief Judicial Magistrate, UT Chandigarh for registration of FIR against the Appellants for the commission of offence under various sections, including Section 15(2)(3) of the

Indian Medical Council Act, 1956. The learned Judicial Magistrate, First Class, Chandigarh, on 13.6.2008 sent the complaint for registration as it was under Section 156(3) Cr.P.C. The said order was challenged by the Appellants by filing Crl. Misc. Petition No.17013 of 2008 before the Punjab & Haryana High Court. The High Court vide its order dated 19.2.2009 quashed the FIR by granting liberty to Respondent No.1 to approach the Judicial Magistrate, First Class, Chandigarh. Before the Judicial Magistrate, First Class, Chandigarh, Respondent No.1 submitted that he did not want to press the complaint under Section 156(3) Cr.P.C., but requested that the complaint be treated as under Section 202 Cr.P.C. The learned Magistrate, entertaining the said request, passed the order dated 26.7.2011 and summoned the Appellants to face the trial for the offences punishable under Section 420/467/468/471/ 326/120-B IPC and under Section 15 of the Indian Medical Council Act.

5. Aggrieved by the summoning order, as already stated, the Appellants preferred Crl. Misc. No.M-25733 of 2011 before the High Court for quashing the complaint Case

No.7506/09/11. The High Court vide impugned order, dismissed the Crl. Misc. Petition. Later, Respondent No.1 filed an application being Crl. Misc. No.7776 of 2013 in Crl. Misc. No.M-25733 of 2011, requesting the Court to carry out the correction of the judgment praying that the word “death” or “died” be stated to be read as “brink of death”. Review Petition was allowed by the High Court vide its order dated 11.2.2013, without notice to the appellants. Those orders, as already indicated, are under challenge in these appeals.

6. We heard Shri P.S. Patwalia, learned senior counsel for the Appellants, as well as Shri Jagjit Singh Arora, who appeared in person. Shri Patwalia submitted that the judgment as well as the order in the review petition is vitiated by serious error on the face of the record and liable to be set aside and the High Court be directed to rehear the matter in accordance with law. Respondent No.1, the party-in-person, on the other hand, submitted, on facts as well as on law, that the judgment and the order in the review petition are unassailable and, therefore, the matter could be examined by this Court on merits.

7. We have gone through the main judgment and the order passed in the review petition in their entirety. The learned Single Judge of the High Court while deciding the case formulated two questions , which read as follows :-

> "1. Whether the Managing Director and the Director, being administrators of the Hospital can be made criminally liable and prosecuted under the provisions of the Indian Penal Code and for having appointed unqualified doctor which resulted into wrong treatment and consequential death of a patient and can they claim immunity from prosecution for the offences in which they have been summoned in the present complaint?
>
> (emphasis supplied)
>
> 2. Whether the offences of cheating, tampering with the documents and causing grievous hurt are made out in conspiracy with each other?

8. On the first point, after going through the facts in detail and after hearing the parties, the learned Single Judge concluded as follows :

> "In the present case, Petitioner Nos.1 and 2 being Managing Director and Director are directly

criminally liable and their liability stems from failure to use reasonable care in the maintenance of safe and adequate facilities and equipment i.e. ventilator which was not available at the time when the patient was in need. Needless to say, it is the duty of the petitioner No.1 and 2 to select and retain only competent physician/doctor and medical supporting staff. But in this case, they had retained petitioner no.3 who is an unqualified doctor. It is the duty of the petitioner nos.1 and 2 to oversee all persons who practice medicine within its faculty and also owe duty to ensure quality of health care services. Here in this case, there is a glaring failure on the part of petitioner nos.1 and 2 to retain competent and qualified doctors and equipping the facility. In the present case, the standard of negligence, breach of duty, causation and damage is no different than in any other case of forming negligence. Hence, for that reason, petitioners are directly liable for the injury caused to the patient because the doctor in question was not having State Medical Council licence to practice medicine as per the Medical Council of India Act, 1961 and Medical Council of India Rules under which Medical Council of India certifies the doctors/physicians and regulate competency and professional standards. There is a

> clear failure on the part of petitioner nos.1 and 2 to evaluate the qualification of petitioner no.3 who has been inefficient to adequately determine his competency. Since there has been breach of duty by petitioner nos.1 and 2, they are prima facie responsible for injury resulting from that breach/incompetence as well as in forging the documents. There is a clear failure to check the credentials and employment history of petitioner no.3."

On the second question, after referring to the various statements made by Dr. Sudhir Saxena and the evidence of complainant (CW9) and also referring to the invoices CW-9/2 and CW-9/12, the learned Single Judge concluded as follows:

> "This prima facie proves forgery and cheating on the part of the petitioners. The documentary evidence prima facie proves that Dr. N.P. Singh never visited the hospital and the record of the hospital has been manipulated to save themselves. There is a clear conspiracy between the petitioners and Dr. Jayant Banerjee for fleecing money. The principles of law laid down in Jacob Mathew (supra) and Kusum Sharma (supra) are not applicable in the present case.

> In view of the above discussion, this Court does not find any illegality or perversity in the impugned summoning order. It is well settled law that while summoning an accused, the trial Court is not required to give detailed reasons, only prima facie application of mind is a necessity. In the present case, the learned trial Court has passed a reasoned order for summoning the petitioners."

9. We notice that on reaching those conclusions, as already indicated, the very first issue framed by the learned Single Judge was that the patient died due to wrong treatment and medical negligence. Learned Single Judge was examining *prima facie* the issue of medical negligence which resulted in the death of the patient. The entire approach of the learned Single Judge while entering a finding on the two questions framed was that due to medical negligence, the patient died. The said fact is reflected in the whole gamut of the judgment. In one portion of the judgment, the learned Single Judge has stated as follows :

> "The condition of Mrs. Arora extremely deteriorated and she had to remain hospitalized in

> ICU of Fortis Hospital for about 2 months and thereafter, she was shifted to PGI, Chandigarh, where she remained admitted for one month. Ultimately, she died."

Later, the learned Single Judge also opined as follows :-

> "The hospital authorities had employed unqualified doctors in ICU which resulted into death of Mrs. Arora in spite of best efforts for shifting to other hospital, like Fortis and PGI. Initial wrong treatment in the INSCOL Hospital where the unqualified doctors were employed resulted into death of respondent no.1's wife which certainly amounts to an offence under the provisions of the Indian Penal Code."

10. We, therefore, notice that the entire reasoning of the learned Single Judge was centered round the fact that he was dealing with a medical negligence case in which the patient died. In fact, the very question framed by the Court itself refers to the death of the patient. The learned Single Judge, as already indicated, finally dismissed the petition filed by the Appellants on 16.11.2012.

11. The Respondents herein then preferred Crl. Misc. Application No.7776 of 2013 praying for correcting some omission/typographical error in the judgment. The learned Single Judge entertained that application and expressed the view that no notice need be sent to the non-applicants/appellants since the application is only for the correction of accidental omission/typographical errors crept in the judgment dated 16.11.2012. The learned Single Judge opined that the Court has the inherent power to correct the typographical/clerical mistake brought to the notice of the Court. The learned Single Judge, therefore, passed the following order on 11.2.2013 :

> "Registry is directed to make following corrections and put up a note at the end of the judgment in the shape of corrigendum so that the same may be read as part of the judgment dated 16.11.2012:
>
> "1. The word "died" at page No.3 be read as "was brought to brink of death."
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> 2. The word "death" be read as "condition to brink of death" at page nos.3, 7 and 16 and where the word "dead" or "death" appears in

the judgment, it should be as “the brink of death”.

3. “Grewal” be read as “Gujral” at page no.5.

4. “rectified” be read as “ratified” at page no.6.

5. “Medical Council” be read as “Chandigarh Police” at page No.10.

6. “Section 14(2)” be read as “Section 15(2a)” at page no.11.

7. “and mind of” be read as “behind” at page no.12 and 22.

8. “nervous centre” be read as “nerve centre” at page no.13.

9. “Faculty” be read as “Facility” on Page No.19,

10. “Dr. N.P. Singh” be read as “Dr. Sudhir Saxena” at page 24.”

12. We do not agree that the learned Single Judge was merely correcting an accidental omission or typographical error. By correcting the judgment, the very foundation and the issue formulated, broken down and fell on the ground

and the issue framed by the learned Single Judge, lost its sanctity. The learned Single Judge cannot correct an issue which has been framed and answered. As already indicated, the first issue framed is with regard to the "wrong treatment and consequential death of a patient" and it was that issue which was answered, then we fail to see how the application preferred by the Respondents for review can be treated as an application for correcting accidental omission or typographical error, that too without notice to the appellants herein.

13. We are dealing with the case of medical negligence and we wonder whether this case borders on judicial negligence or the negligence of the parties to point out that the issue was wrongly framed. Pleadings of the parties nowhere state that the patient is dead. Learned Single Judge, it is seen, has framed two issues, after perusing the records and after hearing the arguments of the learned counsel for the parties. When we peruse the records, as already stated, we do not find any statement that the wife of Respondent No. 1 is no more. The entire thought process of

the Judge centered round on an incorrect premise that, due to the gross negligence on the part of the appellants, the wife of Respondent No. 1 died.

14. We may also further indicate that the learned Single Judge has expressed the opinion so expressively in the judgment which practically forecloses all the defences available to the parties, who are supposed to face the trial. The learned Single Judge, though ultimately indicated that the view is only a *prima facie* view, but a reading of the entire judgment, it would show otherwise. Judgment cannot be sustained on any ground. Consequently, the judgment dated 16.11.2012 as well as the subsequent order 11.2.2013 passed in the review petition, would stand set aside. The High Court is directed to rehear Crl. Misc. Petition No.M-25733 of 2011 afresh.

15. The Appeals are, accordingly, allowed.

.....J.
(K. S. Radhakrishnan)

.....J.
(Vikramajit Sen)

New Delhi,
February 27, 2014.