



HIGH COURT BUILDINGS,
BANGALORE - 560 001.

2. MR. LAEEQUE AHMED

...RESPONDENTS

(BY SRI.VINAYAKA.V.S, HCGP FOR R1;
SRI.D.DOMINIC JAMES, ADVOCATE FOR R2)

THIS CRL.P IS FILED U/S.482 CR.P.C BY THE ADVOCATE
FOR THE PETITIONER PRAYING TO QUASH THE ENTIRE
PROCEEDINGS IN C.C.NO.1290/2016 ON THE FILE OF IV ADDL.
CIVIL JUDGE AND JMFC, SHIVAMOGGA.

THIS PETITION, COMING ON FOR FURTHER HEARING,
THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The captioned petition is filed under Section 482 of
Cr.P.C. by the doctors, who are arraigned as accused
Nos.1 to 3, seeking quashing of the proceedings pending
in C.C.No.1290/2016 for offences punishable under



Sections 338, 201, 420, 468, 471, 120(B) read with Section 34 of IPC.

2. The facts leading to the case are as under:

The second respondent who is the de-facto complainant lodged a complaint with the Basavanagudi Police Station alleging that petitioners herein are guilty of medical negligence and a crime came to be registered in Cr.No.139/2014 for the aforesaid offences. Respondent No.2 alleged that petitioners and the management of Vivekananda Maternity Hospital, have not followed the standard protocol and the guidelines while treating Smt. Asma Kousar who was admitted on 30.10.2011 with a complaint of back ache and leaking per vaginum. Pursuant to the registration of the crime, the Investigating Officer has filed the charge sheet and the Court below has taken cognizance.

3. The learned counsel appearing for the petitioners-accused would vehemently argue and contend that even if material on record in the form of charge sheet



is accepted in entirety, no case of negligence is made out. To further strengthen the case of the petitioners, the learned counsel on record has placed on record the order passed by the Medical Council of India (for short "MCI"), which is preceded by an expert's opinion. Referring to these documents, learned counsel for the petitioners would contend that except statement of interested witnesses, the charge sheet is not supported by any expert's opinion. To counter the charge sheet, the petitioners have placed on record the order passed by the Apex Body i.e. MCI wherein the MCI having taken cognizance of the expert's opinion has allowed the appeal and has confirmed only that portion of the order passed by the Karnataka Medical Council wherein the petitioners were warned. Referring to these significant details, he would point out that the charge sheet does not constitute any offence in the first place and further the charge sheet is not supported by any expert's opinion and therefore, if petitioners are prosecuted for the alleged offences, the same would amount to abuse of process and therefore, to



meet the ends of justice, he would persuade this Court and contend that this is a fit case which would warrant interference at the hands of this Court under Section 482 of Cr.P.C.

4. The learned counsel appearing for de-facto complainant, repelling the arguments advanced by the learned counsel for the petitioners would however contend that since charge sheet is filed, an inference can be drawn that there is a prima-facie material to proceed against the petitioners and others. He would request this Court not to quash the proceedings at this juncture. He would further point out that all the grounds urged in the petition are to be tested by way of a full fledged trial. Therefore, since serious allegations are made against the petitioners, the case cannot be quashed at this juncture by having recourse to the petition under Section 482 of Cr.P.C.

5. Learned HCGP arguing in the same vein would also contend that all these contentions are very much available to the petitioners in the form of defence and



therefore, these grounds cannot be tested at this juncture and proceedings cannot be quashed under Section 482 of Cr.P.C.

6. Heard the learned counsel for the petitioners, learned HCGP and learned counsel appearing for respondent No.2-complainant.

7. The entire edifice on which this crime is registered is that the petitioners are guilty of medical negligence. Respondent No.2-complainant who is the brother-in-law of one Athik Ahamed has lodged a complaint with the police alleging that the petitioners herein are guilty of medical negligence during the admission of patient Asma Kousar. However, on perusal of the charge sheet it is quite surprising to note that though Investigating Officer though has submitted a charge sheet, the same is not supported by any expert's opinion. To counter this charge sheet, the petitioners' herein are placing heavy reliance on the expert's opinion secured by the Ethics Committee. It would be useful to



cull out the report of the Expert's opinion, which reads as under:

***Expert Opinion given by Dr. Gita Radhakrishnan
in the Ethics Committee meeting held on
30.11.2016.***

Summary of obstetric case record

Patient Asma Kausar 26 years old primigravida was admitted on 30.10.2011 at 2:00 PM at 39 weeks and 4 days of gestation with the complaint of backache and ? leaking per vaginum.

On examination vitals and BP normal. Ut relaxed FHS 136/pm regular. P/V Cx 1 cm memb+ mucold discharge +, ? high leak. Patient was kept for monitoring of spontaneous progress of labour. Over the next 14 hours patient continued to have only occasional mild contractions with no change in cervical findings. FHS remained normal. 16 hrs after admission decision for augmentation of labour with syntocinon was taken and Cx was still 3 cm dilated and memb+. 2hrs later as the pelvic findings were same decision for LSCS was taken for non progress of labour and under spinal anesthesia a live born female baby weighing 3.5 kg was delivered. The liquor was meconium stained and the baby had birth asphyxia with an Apgar score of 3,3 and 4 at 1,5 and 10 minutes respectively.

The consent forms either at admission or at the time of taking up the patient for LSCS are not available in the documents provided.

Going through the entire labour events I am of the opinion that there is no evidence of negligence in monitoring or decision for LSCS as per records provided and as per the following points:-



1. *Latent phase of labour of 14 to 16 hrs is not abnormal for a primigravida.*
2. *LSCS was in fact done before the onset of active phase of labour.*
3. *This decision of LSCS was taken timely when patient failed to progress over 2 hours despite augmentation with syntocinon.*
4. *Fetal heart rate monitoring was appropriately carried out during the latent phase of labour as per norms for a low risk pregnancy.*
5. *There was no documentation of fetal heart abnormality throughout the monitoring.*
6. *Meconium passage by the fetus in the present case seems unlikely due to fetal distress resulting from prolonged and difficult labour.*
7. *Meconium passage by the fetus in utero is not an unknown entity even without the patient getting into labour.*

Hence taking into view all the above details I am firmly of the opinion that there is no evidence of negligence on the part of the obstetrician managing the case.

Sd/-

DR. GITA RADHAKRISHNAN"

The Ethics Committee having taken cognizance of the expert's opinion also found that the allegation of medical negligence is not substantiated. Based on expert's opinion and the recommendation by the Ethics Committee, the



MCI who is the Apex Body vide order dated 12.6.2017 has allowed the appeal by only issuing a warning to the concerned Doctors as was done by the Karnataka Medical Council. The crime registered in Crime No. 139/2014 for the aforesaid offences completely hinges on medical negligence. If the allegation of medical negligence is taken away as indicated in the expert's opinion, the entire edifice on which the charge sheet is submitted goes. Therefore, if petitioners' are compelled to face the prosecution for the aforesaid offences, no purpose will be served and if permitted, the same would amount to abuse of process. In the light of the expert's opinion indicating that there was no negligence on the part of the petitioners, I am of the view that this is a fit case where proceedings are liable to be quashed. I have also taken note of the judgment rendered by the Apex Court in the case of ***Martin F. D'souza .vs. Mohd. Ishfaq***¹ wherein the Apex Court reiterating the guidelines laid down in the

¹ AIR 2009 SC 2049



case of ***Jacob Mathew .vs. State of Punjab***² have categorically held that the Investigating Officer before proceedings against the doctors for rash and negligent acts should obtain an independent and competent medical opinion, preferably from a doctor from a Government service, qualified in that branch of medical practice. As indicated in the preceding paragraph, this charge sheet is not supported by an expert's opinion.

8. Be that as it may. If MCI while entertaining the appeal has concluded that there is no medical negligence, I am of the view that the proceedings are liable to be quashed.

9. Hence, I proceed to pass the following:

ORDER

- (i) The criminal petition is allowed.
- (ii) The proceedings in C.C.No.1290/2016 pending on the file of IV Additional Civil Judge and

² (2005) 6 SCC 1



NC: 2023:KHC:22438
CRL.P No. 2264 of 2017

Judicial Magistrate I Class, Shivamogga, for offences punishable under Sections 338, 201, 420, 468, 471, 120(B) read with Section 34 of IPC., are hereby quashed.

Sd/-
JUDGE

ALB
List No.: 2 Sl No.: 3