



S.S.Kilaje

26-A-CRA-410-23 (STM).doc

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO. 410 OF 2023

Dr. Kirtikumar Sankleshwar Trivedi)	Applicant
Age : 72 years, of Mumbai, India Inhabitant,)	
Occupation : Doctor,)	
Residing at 101, B Georgina Sherly Rajan Road,)	
Near Rizvi College, Bandra West, Mumbai-400050)	
Versus		
State of Maharashtra)	Respondent
(At the instance of Sakinaka Police Station))	

WITH
CRIMINAL REVISION APPLICATION NO. 337 OF 2023

Dr. Mrs. Gauri Prakash Sultane Nee Gupta)	Applicant
Aged : 38 years)	
R/at :Dzire IVF Clinic, 47/396, Unnat Nagar 2, Near)	
Joggers Park, Goregaon West, Mumbai 400062)	
Versus		
State of Maharashtra)	Respondent
(At the instance of Sakinaka Police Station))	

WITH
CRIMINAL REVISION APPLICATION NO. 338 OF 2023

Dr. Mrs. Heta Deepak Kenia Nee Chabra)	Applicant
Aged – 42 years)	
R/at : C/ 4, Jolly Apartments, Saraswati Road,)	
Santacruz (W), Mumbai 400 054)	
Versus		
State of Maharashtra)	Respondent
(At the instance of Sakinaka Police Station))	

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Mr. Rajendra Shirodkar a/w. Mr. Nihar Ghag, Mr.Darshan Zogade and Mr. Archit Sakhalkar, Advocates for the Applicant.
 Mr. Akash Kavade, Advocate for Applicant in REVN/337/2023 and for REVN/338/2023.
 API – M.V.Puri, Sakinaka Police Station present.
 Smt. Poonam Bhosale, APP for Respondent-State.

CORAM : R. M. JOSHI, J.
DATED : 9th AUGUST, 2024.

JUDGMENT :

1. These applications are under Section 397 of Code of Criminal Procedure, 1973 (for short “Cr.P.C.”) taking exception to the order dated 25.05.2023 passed below Exhibit-84, Exhibit-83 and Exhibit-62 in Sessions Case No. 579 of 2011 rejecting application for discharge filed by the applicants.

2. The facts which led to the filing of the application can be narrated in brief as under.

3. Victim is a minor girl and daughter of informant. She was working in a scrap godown belonging to accused Sunil. On 07.08.2010, though she went for her work she did not return home on that day and hence on the next day informant went to the employer making enquiry about her daughter. She was told by the employer i.e. accused Mr. Sunil not to complaint to the police and that the girl will come back. Thereafter, on 09.08.2010 girl was brought from Ghatkopar. The victim told her mother that she was not aware where she had been as she was administered stupefying substance in food. On the same day victim started suffering pain in her abdomen. She was therefore taken to the clinic of one doctor wherein medical treatment was extended to her. She was

taken to the Rajawadi hospital wherein X-ray and sonography was done and she was asked to report on next day. In the meantime, since again her health deteriorated, she was taken to Dr. Singh who had administered some injection to her. She was advised to be taken to Rajawadi hospital. However, before her admission in the hospital she was found dead. Offence came to be registered by C.R. No. 329 of 2010. Postmortem was conducted wherein it was found that the victim had multiple injuries and injection marks were also noticed on her body. During the course of investigation, it was revealed that the victim was donating eggs removed from her ovaries at Rotunda hospital. It was found that such donation process was conducted on 22.10.2009, 15.02.2010 and 07.08.2010. It was also found that the S.O.P. in place for conducting such procedure did not permit the donation of eggs by the women below age of 18 years and inspite of same such procedure was undertaken on victim who is below age of 18. It was found that the doctor who runs the said hospital as well as other doctors who performed the said procedure are responsible for the death of the deceased. As such offence came to be registered against them too.

4. Applicants filed application Exhibit-84, Exhibit-83 and Exhibit-62 for their discharge under Section 227 of the Cr.P.C. This Application came to be rejected by the learned Additional Sessions Judge by passing

impugned order.

5. Learned Senior Counsel and other counsel for the applicant submitted that there is absolutely no evidence on record in order to indicate their involvement in this crime. It is submitted that the victim has unfortunately died on 10.08.2010, however, the applicants cannot be held responsible for procedure conducted on 07.08.2010. It is their submission that admittedly i.e. as per the record found during the course of investigation, the applicants were concerned with the procedure conducted on 22.10.2009 and 15.02.2010 and not on 07.08.2010. It is submitted that finding is recorded by the committee of doctors of Grant Medical College indicating that this case is not the case of medical negligence. It is further submitted that applicants are either Gynaecologist or Anaesthesian and they being visiting doctors with Rotunda hospital, they are not responsible for even admission of the underage patient for conducting the procedure. In any case it is submitted that there was documentary evidence on record of the hospital indicating age of the victim to be 20 years. It is submitted that in the absence of any sufficient ground for proceeding against the accused they ought to have been discharged by learned Trial Court. It is submitted that Dr. Kadam who was one of the accused, a Gynaecologist has been discharged by the Trial Court and on parity the present applicants are also entitled to be discharged.

6. Learned APP opposed the application by citing the seriousness of the crime. It is her contention that there is evidence on record indicating the procedure being done by the present applicants on victim. According to the prosecution there is evidence on record to indicate the age of the victim below 18 years and as such she ought not to have been allowed to undergo the procedure for removal of eggs from ovaries. It is, therefore, the contention of the prosecution that as at this stage it cannot be said that there are no sufficient grounds for proceeding against the accused.

7. Section 227 of Cr.P.C. requires the Court to consider the record of the case and documents submitted therewith. If the Court finds that there is no sufficient ground for proceeding against the accused, the accused shall be discharged by recording reasons for doing so. In the instant case, there is no dispute about the fact that the present applicants are Gynaecologist and Anaesthesian. It is further not in question that they are not owners of Rotunda hospital but they are visiting doctors to the said hospital. Further, there is material on record to indicate that at the time of admission of victim in the hospital for undergoing the said procedure, documentary evidence was placed on record indicating her age to be 20 years. There is no allegation against applicants that they prepared any document to show that victim is major.

8. From charge-sheet it is clear that medical opinion was sought about the cause of death and medical negligence, if any, therein. Committee of the doctors of Grant Medical College, Mumbai has given candid opinion about this being not a case of medical negligence. It is also observed that there is no evidence or certificate of anesthetic complications /trauma to internal organs causing death. It is further observed therein that the patient was discharged and followed up as per routine. It is thus clear that in so far as present applicants are concerned, they cannot be held responsible for the admission of underaged patient to the hospital for performance of procedure on her though as per prosecution, she was below age of 18 years. Further it cannot be said there was any medical negligence on their part which has resulted into causing of unfortunate death of the deceased.

9. Chargesheet also further does not indicate any other act except for undertaking the procedure by the applicants. For want of any negligence on their part while performing the said procedure, it cannot be said that there is sufficient ground for proceeding against them in this case. The victim girl underwent to the procedure for donating eggs thrice. Undisputedly, applicants are not concerned with the last procedure conducted on 07.08.2010. It is also pertinent to note that Dr. Kadam who is a Gynaecologist and was part of the procedure conducted on

22.10.2009, has been discharged by the Trial Court. This order has not been challenged and has attained finality. Considering the role of Dr. Kadam as well as present applicants, there is absolutely no distinction therein, in performance of procedure in question. The Applicants, therefore are entitled for discharge even on parity.

10. In view of the above discussion, since there is no sufficient ground for proceeding against the accused, so also on ground of parity it is a fit case wherein the accused shall be discharged. Hence, impugned order is set aside.

11. The learned Trial Court to pass formal order discharging the applicants from Sessions Case No. 579 of 2011.

12. Criminal Revision Applications stand allowed.

(R. M. JOSHI, J.)

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by SONALI
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