

HIGH COURT OF MADHYA PRADESH

BENCH AT GWALIOR

(Single Bench)

Misc. Criminal Case No. 8309/2019

Smt. Mala @ Gunmala Lodhi & Other APPLICANTS
Versus
State of MP & Others NON-APPLICANTS

CORAM

Hon. Shri Justice Rajeev Kumar Shrivastava

Appearance

Shri G.P.Chaurasiya, learned counsel for the applicants.

Shri K.P.S. Sengar, learned Panel Lawyer for the non-applicant No.1 to 4/State.

Shri R.K.Sharma, learned senior counsel with Shri V.K.Agarwal, Advocate for the respondents No.5 and 6.

Reserved on - 15th July, 2019

Whether approved for reporting : Yes

Law laid down	Relevant paras
<i>The first and foremost duty of a Medical Officer is to label the case as Medico Legal Case on the basis of his sound professional knowledge after taking detailed history as well</i>	Para 6

<p><i>thorough clinical examination. This duty is a pious duty and it should be based on profound principle of taking oath of his or her profession.</i></p>	
<p><i>Attending Casualty Medical Officer or Medical Officer, who is on duty only has authority to decide whether the case is to be registered as Medico Legal or not. This is the exclusive jurisdiction of the concerned Chief Medical Officer or Medical Officer, who is on duty to register/label a case as MLC or not. No other person can induce or pressurise or interfere in the aforesaid jurisdiction of Attending Casualty Medical Officer or Medical Officer. Only verbal communication with the police does not mean registering a Medico Legal Case. All the communications in this regard should be written and relevant form is required to be filled by the Doctor concerned.</i></p>	<i>Para 7</i>
<p><i>There is no criteria of doing MLC either by a government doctor or by a private doctor. MLC can be done by the skill of a person, who is having special knowledge in the specific field. Therefore, if any MLC is done in accordance with the procedure as mentioned above by any specially skilled person shall be considered as MLC. However, the prescribed procedure is required to be followed.</i></p>	<i>Para 11</i>

ORDER

(Passed on 26th September, 2019)

This petition has been filed by the applicant under Section 482 of the Criminal Procedure Code, 1973 (CrPC) praying

for the following reliefs:-

- 1 यह कि, प्रतियाचिकाकर्ता क्रमांक-3 के पत्र दिनांक 05/12/2013 के अनुसार किसी निजी अस्पताल/नर्सिंग होम को मध्य प्रदेश उपचार्या गृह तथा रूजोपचार संबंधी स्थापना में रजिस्ट्रीकरण तथा अनुज्ञापन नियम 1997 (यथासंशोधित 2008) के अन्तर्गत पंजीकृत किया जाता है एम.एल.सी. हेतु इस कार्यालय द्वारा किसी भी निजी अस्पताल/नर्सिंग होम को द्वारा अधिकृत नहीं किया गया है, के बावजूद भी प्रतियाचिकाकर्ता क्रमांक-4 द्वारा अनैतिक एवं अवैधानिक रूप से एम.एल.सी. रिपोर्ट अपराध क्रमांक-325/2017 में प्रस्तुत किये जाने के आधार पर।
2. यह कि, प्रतियाचिकाकर्ता क्रमांक-6 को एम.एल.सी. करने का अधिकार न होते हुये भी माननीय अधीनस्थ विचारण न्यायालय द्वारा दिनांक 07/01/2019 को प्रतियाचिकाकर्ता क्रमांक-6 को एम.एल.सी. के संबंध में नियम विरुद्ध रूप से समन जारी कर कथन कराये जाने के आधार पर।
3. यह कि, मध्य प्रदेश उपचार्या गृह तथा रूजोपचार संबंधी स्थापना में रजिस्ट्रीकरण तथा अनुज्ञापन नियम 1997 (यथासंशोधित 2008) के अन्तर्गत उक्त एम.एल.सी. रिपोर्ट को रिकार्ड पर न लिये जाने के आधार पर।
4. यह कि, याचिकाकर्तागण द्वारा अन्य आधार माननीय न्यायालय के समक्ष वक्त बहस मौखिक रूप से निवेदित किये जावेंगे।
अतः माननीय न्यायालय से निवेदन है कि याचिकाकर्तागण की याचिका स्वीकार कर न्यायालय चतुर्थ अतिरिक्त सत्र न्यायाधीश ग्वालियर में विचाराधीन प्रकरण क्रमांक-121/2018 एस.टी. में प्रतियाचिकाकर्ता क्रमांक-6 द्वारा की गई एम.एल.सी. को निरस्त किये जाने की कृपा करें।

2. Briefly stated the facts of the case are that respondent No.6- Dr. R.N.Gupta has retired from the post of Medical Officer in December 2009 and is working as Medico Legal Officer in Sahara Hospital, Gwalior. He conducted MLC of injured Kalyan Singh and Manoj Singh, which was filed by the prosecution in a pending Sessions Trial No.121/2018. The stand of learned counsel for the applicants is that the said MLC has not been conducted by a

Government Doctor at Govt. Hospital and it was conducted in a private nursing home by the aforesaid Doctor, therefore, Dr. R.N. Gupta may not be examined by the prosecution and the MLC cannot be considered/exhibited/taken on record.

3. Per Contra, learned counsel for the respondent has strongly opposed the prayer and has prayed for dismissal of the petition filed under Section 482 of CrPC.

4. Heard learned counsel for the rival parties and perused the available record.

5. Medico Legal Case (MLC) can be defined as a case of injury or ailment etc., wherein investigation by the legal enforcing agencies is essential to fix the responsibility with regard to cause of injury or ailment. It can also be said that Medico Legal Case is of integral part of medical practice that is frequently encountered by Medical Officer. Whenever in case of injury or ailment where the attending doctor after taking history and clinical examination, considers that investigation by law enforcing agency is warranted to ascertain circumstance and to fix the responsibility regarding the said injury or ailment according to law, such doctor should label such case as Medico Legal Case (MLC) and the decision to label a case as MLC should immediately be informed to concerned law enforcing agency or otherwise if any law enforcing agency has

approached to a doctor along with an injured person then a Medical Officer may conduct MLC. That means, in exigency under which any person is found to be treated immediately, either the patient himself or with the help of his known person reaches to the Medical Officer or any exigency is produced before the Medical Officer by the law enforcing agency, the nearest medical expert, who is having specific knowledge in the field, is competent to conduct the MLC.

6. The first and foremost duty of a Medical Officer is to label the case as Medico Legal Case on the basis of his sound professional knowledge after taking detailed history as well thorough clinical examination. This duty is a pious duty and it should be based on profound principle of taking oath of his or her profession.

7. At this stage, it is relevant to mention here that Attending Casualty Medical Officer or Medical Officer, who is on duty only has authority to decide whether the case is to be registered as Medico Legal or not. This is the exclusive jurisdiction of the concerned Chief Medical Officer or Medical Officer, who is on duty to register/label a case as MLC or not. No other person can induce or pressurise or interfere in the aforesaid jurisdiction of Attending Casualty Medical Officer or Medical Officer. It is also

relevant to mention here that only verbal communication with the police does not mean registering a Medico Legal Case. All the communications in this regard should be written and relevant form is required to be filled by the Doctor concerned.

8. Section 45 of the Evidence Act runs as under:-

“when the Court has to form an opinion upon a point of foreign law or of science or art, or as to identity of handwriting or finger impression, the opinions upon that point of persons specially skilled in such foreign law, science or art, or in questions as to identity of handwriting or finger impressions are relevant facts.”

9. Section 45 of Evidence Act specifies “**persons specially skilled**” (in their specific fields). That means, any person who is having special skills by doing/completing any specific course/getting degree etc., such person's opinion must be based within the periphery of his special skill. (See, **Malay Kumar Ganguly vs. Sukumar Mukherjee [AIR 2010 SC 1162]**).

10. In **Dayal Singh v. State of Uttaranchal [AIR 2012 SC 3046]**, it is observed that the purpose of an expert opinion is primarily to assist the Court in arriving at a final conclusion. Such report is not binding upon the Court. If eye-witnesses' evidence and other prosecution evidence are trustworthy, have credence and are consistent with the eye version given by the eye-witnesses, the Court will be well within its jurisdiction to discard the expert

opinion.

11. In the light of above, it is apparently clear that there is no criteria of doing MLC either by a government doctor or by a private doctor. MLC can be done by the skill of a person, who is having special knowledge in the specific field. Therefore, if any MLC is done in accordance with the procedure as mentioned above by any specially skilled person shall be considered as MLC. However, the prescribed procedure is required to be followed.

12. For the aforesaid discussion, the present petition filed under Section 482 of CrPC is hereby dismissed being devoid of merits and the order passed by the trial Court is affirmed.

(yog)

(Rajeev Kumar Shrivastava)
Judge.