

IN THE HIGH COURT OF MADHYA PRADESH

AT INDORE

BEFORE

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

ON THE 19th OF MARCH, 2024

WRIT PETITION No. 24210 of 2023

BETWEEN:-

**DR. SMT. RITU CHOUREY W/O SHRI
RAJENDRA GUJRATI, AGED ABOUT 59
YEARS, OCCUPATION: MEDICAL OFFICER
66, JANKI NAGAR, MAIN, INDORE (MADHYA
PRADESH)**

.....PETITIONER

SHRI ROHIT KUMAR MANGAL, ADVOCATE

AND

- THE STATE OF MADHYA PRADESH
PRINCIPAL SECRETARY PUBLIC HEALTH**
- 1. AND FAMILY WELFARE DEPARTMENT
VALLABH BHAWAN MANTRALAYA,
BHOPAL (MADHYA PRADESH)**
 - 2. CHIEF MEDICAL AND HEALTH OFFICER
DEWAS (MADHYA PRADESH)**
 - 3. CHIEF MEDICAL AND HEALTH
OFFICER DHAR (MADHYA PRADESH)
DR. N.K. KHANDEY MEDICAL OFFICER
(PGMO) PUBLIC HEALTH CENTRE,**
 - 4. PITHAPUR DIST. DHAR (MADHYA
PRADESH)**

.....RESPONDENTS

SHRI AMAY BAJAJ GOVT. ADVOCATE

.....
Reserved on : 15.02.2024

Pronounced on : 19.03.2024

This petition having been heard and reserved for orders,

coming on for pronouncement this day, the Court passed the following:

ORDER

1. This writ petition has been filed by the petitioner under Article 226 of the Constitution of India against the sanction order dated 17.7.2023 (Annexure P-9) whereby petitioner has been allowed to be prosecuted under Section 304 of IPC. The petition is also filed against the order dated 4.9.2022 (Annexure P-10); whereby, the charge has been taken from the petitioner, and respondent no.4 has become the in-charge in her place at Community Health Center, Prithampur, District Dhar.

2. In brief facts of the case are that the petitioner was appointed on the post of Medical officer on 15.11.1990. Since the year 2018, the petitioner was serving at Community Health Center Sonkatch District Dewas, where, on 21.12.2018, at about 8.15 PM a pregnant woman viz., Smt. Vishnu Kunwar Bai was brought for delivery to Community Health Center, Preethampur. She was admitted under the supervision of duty doctor Dr. Hemant Gupta. At about 10.00 P.M., Vishnu Kunwar Bai delivered a baby boy thereafter due to some medical complications she was referred to District Hospital Dewas where she was declared as dead.

3. A committee comprising of various doctors submitted a report whereby the petitioner was not found guilty, but it held that on humanitarian grounds, she should have contacted the duty sister

to save the life of the patient. On 14.1.2019, the CMHO submitted a report to Health Commissioner recommending Disciplinary Action against the petitioner. As per statements recorded during enquiry there is no evidence that the petitioner was informed by the duty nurse. Meanwhile, the petitioner was transferred from Sonkatch, District Dewas to Pithampur District Dhar, and on 2.10.2019, FIR under section 304 of IPC was filed against the petitioner as well as the duty doctor and sisters. On 17.7.2023, by the impugned order, the respondent no.1 granted sanction for prosecution under Section 197 of CRPC (Annexure P-9) for prosecuting the petitioner under Section 304 of IPC. On 4.9.2023, the charge of CHC Pithampur was taken from the petitioner and handed over to respondent no.4, who was junior to the petitioner.

4. Counsel for the petitioner has submitted that the impugned order of sanction dated 17.7.2023 is liable to be quashed as it has been passed without application of mind, and in an arbitrary manner on the basis of conjectures and surmises.

5. As per the impugned order of sanction dated 17.7.2023, it is mentioned that as per the statement of the witnesses under Section 161 of the Criminal Procedure Code 1973, it is apparent that if the deceased had provided proper treatment in time, in that case she could have been saved, whereas, petitioner Dr. Ritu Chourey was informed time and again and was called to the hospital but despite intimation, she did not turned up in the hospital which is gross

negligence of her duties, and has not acted as was required of her, and the aforesaid act of the petitioner falls under the category of Section 304 of the IPC.

6. Shri Rohit Mangal, learned counsel for the petitioner has also submitted that not only that the petitioner was never called by any person from the hospital but otherwise also the ingredients of section 304 of the IPC are also not made out.

7. Shri Mangal has also drawn the attention of this Court to the enquiry report wherein it has also been observed that as per maternity room record, and as per the statement of BMO Labour room duty Aaya, as also on duty Nurse Kirna Narware, it has not been found that the petitioner was ever called while the deceased was in labour pain. It is submitted that it was the staff nurse, who had delivered the baby, during which, Placenta came out along with the Uterus, and the staff nurse was not able to restore the position of Uterus as a result of which, the deceased died of profuse bleeding. However, in the same report, it has also been mentioned that the deceased Vishnu kunwar's father More Singh, the Aaya, who was posted at Labour room and Asha Worker have clearly stated that they had gone to the petitioner's house on 21.12.2018, as deceased Vishnu kunwar was brought to the hospital in a serious condition but the petitioner never came to the hospital. As per the petitioner's statement, she has stated that she did not receive any return call from the hospital, and that is why she did not come to

the hospital and could not attend the patient.

8. Counsel for the petitioner has further submitted that being insensitive is different from being negligent in causing death, and in the present case there is nothing to suggest that the petitioner deliberately did not attend the deceased. It is also submitted that it may be a case for departmental enquiry against the petitioner, however, no case under Section 304 of IPC is made out, and thus, the sanction order, being based on conjecture and surmises is liable to be quashed.

9. Counsel has also drawn attention of this Court to the statements of More Singh, the father of the deceased, Priyanka Chouhan who was the Aaya in the hospital, and Kiran Narvare, who was staff nurse/Asha Worker, but none of them have stated that they had approached the petitioner at her house and despite intimation about the condition of the deceased, the petitioner did not attend her. Thus, it is submitted that the impugned order of sanction is liable to be quashed.

10. In support of his submissions, Shri Mangal, learned counsel has placed reliance upon the various judgments rendered by the Hon'ble Supreme Court. In the case **R.R.Chari Vs. State of U.P reported as AIR 1962 SCC 1573**, and in the case of **C.B.I Vs. Ashok Kumar Agrawal reported as AIR 2014 SCC 827**.

11. Counsel for the respondent/State on the other hand has opposed the prayer, and a reply has also been filed by the State

wherein it is stated that a case under Section 304/34 of IPC has been registered at police station Sonkatch, District Dewas bearing crime No.396/2019, and in connection with which sanction has been granted by the state Government, hence no case for interference is made out. It is also submitted that the charge has been taken from the petitioner, and has been given to the respondent no.4 who has now become the in-charge at the Community Health Center, Preethampur, District Dhar by virtue of sanction granted by the State Government. Thus, it is submitted that no case for interference is made out.

12. Heard.

13. So far as the test which is required to be applied while considering whether the sanction to prosecute can be interfered with or not, reference may be had to the decisions rendered by the Supreme Court in the case of **R.R.Chari (supra)** in para 19 is reads as under:-

“19.....In other words, the appropriate authorities must be satisfied that there is a prima facie case for starting the prosecution and this prima facie satisfaction has been interposed as a safeguard before the actual prosecution commences. The object of Section 197(1) clearly is to save public servants from frivolous prosecution, vide Afzalur Rahman v. King Emperor [(1943) FCR 7 at p. 12].....”

(emphasis supplied)

14. Similarly in the case of **Ashok Kumar Agrawal (supra)** in paragraphs 7 and 8 which read as under:-

“7..... However, in every individual case, the court has to find out whether there has been an application of mind on the part of the sanctioning authority concerned on the material placed before it. It is so necessary for the reason that there is an obligation on the sanctioning authority to discharge its duty to give or withhold sanction only after having full knowledge of the material facts of the case. Grant of sanction is not a mere formality. Therefore, the provisions in regard to the sanction must be observed with complete strictness keeping in mind the public interest and the protection available to the accused against whom the sanction is sought. It is to be kept in mind that sanction lifts the bar for prosecution. Therefore, it is not an acrimonious exercise but a solemn and sacrosanct act which affords protection to the government servant against frivolous prosecution. Further, it is a weapon to discourage vexatious prosecution and is a safeguard for the innocent, though not a shield for the guilty.”

8.....(b)The authority itself has to do complete and conscious scrutiny of the whole record so produced by the prosecution independently applying its mind and taking into consideration all the relevant facts before grant of sanction while discharging its duty to give or withhold the sanction.

(c)The power to grant sanction is to be exercised strictly keeping in mind the public interest and the protection available to the accused against whom the sanction is sought.....”

(emphasis supplied)

15. In the case of *Dr. Sou. Jaishree Ujwal(supra)* paragraph 8 which read as under:-

“8.....

(5) The jurisprudential concept of negligence differs in civil and criminal law. What may be negligence in civil law may not necessarily be negligence in criminal law. For negligence to amount to an offence, the element of mens rea must be shown to exist. (6).....

(7) To prosecute a medical professional for negligence under criminal law it must be shown that the accused did something or failed to do something which in the given facts and circumstances no medical professional in his ordinary senses and prudence would have done or failed to do. The hazard taken by the accused doctor should be of such a nature that the injury which resulted was most likely imminent.

.....

(emphasis supplied)

16. Thus, the material placed on record must be weighed by this Court in the light of the aforesaid dictum of the Supreme Court.

17. On due consideration, it is found that so far as the impugned order dated 17.07.2023 (Annexure P-9) is concerned, which is the order passed under Section 197 of the CRPC, granting the sanction to prosecute the petitioner, the same reads as under:-

“2. कार्यालय कलेक्टर एवं जिला दण्डाधिकारी, जिला देवास के पत्र क्रमांक/1248/एसडब्ल्यू/एफ- 50/2022, दिनांक 06.06.2022 द्वारा प्राप्त अभिलेखों के अनुसार प्रकरण की संपूर्ण विवेचना पर पाया गया कि आरोपी, डॉ रितु चोरे, महिला चिकित्सा अधिकारी, जिला देवास जिनका दायित्व था कि वे प्रसूता की सावधानीपूर्वक डिलीवरी करवाएं एवं डिलीवरी में आने वाली इमरजेंसी को उचित रूप से देखें। अभिलेख पर जो साक्ष्य आई है, उनमें धारा 161 दं.प्र.सं. के अधीन एवं पांचों चिकित्सकों द्वारा जो कार्यवाही की गई है, उनसे यह स्पष्ट हुआ है कि यदि मृतिका को समय पर इलाज मिल जाता, तो उसकी जान बच जाती। डॉ रितु चोरे को बार-बार सूचना देकर आहूत किया गया परंतु फिर भी उनके द्वारा सूचना होने पर भी उपस्थित न होकर अपने कर्तव्यों का लोप किया है, जो उपेक्षा की श्रेणी का है। प्रकरण में डॉ रितु चोरे द्वारा अपने पद के अनुरूप कार्य नहीं किया गया है। अतः आरोपी का यह कृत्य अपराध क्रमांक 396/19 अंतर्गत धारा-304 भा.दं.सं. एवं धारा 197 दं.प्र.सं. के अन्तर्गत दण्डनीय अपराध है, जो विवेचना में प्रमाणित पाया गया है।

3. संचालनालय स्वास्थ्य सेवायें स्तर पर गठित राज्य स्तरीय समिति की बैठक दिनांक 13.03.2023 में यह निर्णय लिया गया कि विषयांकित प्रकरण में डॉ रितु चोरे, महिला चिकित्सा अधिकारी, जिला देवास के विरुद्ध अभियोजन स्वीकृति प्रदान करने की अनुसंशा की गई।

4. तदनुसार राज्य शासन एतद् द्वारा सामान्य प्रशासन विभाग मंत्रालय के परिपत्र क्रमांक एफ 15-1/2014/1-10 दिनांक 05.09.2014 एवं समसंख्यक परिपत्र दिनांक 21.04.2017 द्वारा प्रदत्त शक्तियों को प्रयोग करते हुए आरोपी डॉ रितु चोरे, महिला चिकित्सा अधिकारी, जिला देवास को अपराध क्र. 396/19 अंतर्गत धारा-304, 34 भादवि के अन्तर्गत दण्डनीय अपराध के लिये न्यायालय में अभियोजित करने हेतु अधिनियम, धारा-197 दं.प्र.सं. के तहत म.प्र. शासन के अंतर्गत अभियोजन संस्थित करने की स्वीकृति प्रदान करता है।”

(emphasis supplied)

18. In the aforesaid order, it is observed by the sanctioning authority that the petitioner was called many a times when the deceased was brought to the hospital but despite the intimation, she failed to report on her duty, and thus, she has committed the dereliction of her duties. However, on perusal of the charge sheet, it is found that as per the statement of More Singh, the father of the deceased he has stated that he had asked the sister to call Dr. Ritu Chourey, who had already seen his daughter around 8-10 days ago to which sister informed him that doctor is sleeping, and she had already intimated to her but she is not getting up, and she also informed him that none of the doctors are getting up. The incident is said to be of around 10.00 Clock in the night. So far as the room duty nurse Kiran is concerned whose statement has also been recorded, she has stated that she had directed Aaya Prinyanka Chouhan to call the doctor but she does not know if Priyanka Chouhan ever called any doctor. She has also stated that Dr. Ritu Chourey never appears in any emergency. A specific question was also put to her, if she had called the gynecologist to which she has emphatically denied in her answer. In question no.6, she has also admitted that she had called Dr. Hemant Gupta only, and not the petitioner Dr. Ritu Chourey, and neither she went to the house of the petitioner to call her. Although she has stated that the family members of the deceased had gone to call Dr. Ritu Chourey but despite that she had not come.

19. In her statement dated 3.1.2019, the petitioner-Dr. Ritu Chourey has stated that she was never called by any person from the hospital despite the fact that she was at her house which is in the hospital premises, and the patient was being looked after by Dr. Hemant Gupta which is also mentioned on the sheet of the pregnancy wing, that duty doctor was called. She has also stated that she remains in the hospital premises 24/7 and provides emergency services 24 hours.

20. In the reply filed by the State, it is also found that as per the opinion given by the inquiry Committee, at the time of delivery of the deceased Vishnu Kunwar, the emergency lady doctor was not called. It is apparent that lady doctor was not called by anybody, and that staff nurse delivered the baby and while the uterus was relaxed, at that time placenta also came out, and the staff nurse was not able to comprehend the situation and because of excessive bleeding, the pregnant lady died, and instead of calling the lady doctor, the nurse called Dr. Hemant Gupta, who was on duty. It is also observed that had intimation being given to the lady doctor, i.e., the petitioner by the staff of hospital, she could have appeared on time and could have saved the life of the deceased. The inquiry report also found that Dr. Ritu Chourey had examined the deceased while she was pregnant and had also administered her iron through IV, and had also given her various medicine. Although it was also mentioned that she should have conducted the sonography in the

hospital itself instead of private sonography center which against the government order and rules.

21. On a close scrutiny of the report (Annexure-P/1) which has been prepared by as many as eight doctors, it is found that it has not found the petitioner responsible for the death of the patient as she was not informed of the patient being brought to the hospital by the staff. And, coupled with the statements of witnesses, it is apparent that the petitioner was never informed or called either by the duty doctor himself or by the staff nurse or aaya, who were present in the hospital at the time when the deceased was brought to the hospital while she was having labour pains. In the considered opinion of this Court, it was also necessary for the prosecution to at least place on record some Call Data Records, demonstrating that the duty doctor, nurse or aaya had ever tried to call the petitioner.

22. In such circumstances, though it is rather unfortunate that a pregnant women has died due to hospital's negligence, but still, the petitioner cannot be held responsible for the same, and apparently, while passing the impugned order dated 17.7.2023, the finding recorded by the sanctioning authority that Dr. Ritu Chourey failed to look after the patient-deceased despite being called many a times, she is liable to be prosecuted under Section 304/34 of IPC, is apparently perverse.

23. The perversity and non-application of mind in passing the impugned order dated 17.07.2023 is also apparent from is also

apparent from the fact that the petitioner is directed to be prosecuted under Section 304 of IPC despite the fact that the Sanctioning Authority has itself noted that the petitioner was negligent in her duties. This Court fails to understand as to how, when a person is being accused of being negligent, can be directed to be prosecuted under Section 304 of IPC which refers to punishment for culpable homicide not amounting to murder, punishable with life imprisonment or sentence which may extend to 10 years, instead of Section 304A of IPC, i.e., causing death by negligence, which is punishable with imprisonment for two years or with fine or with both. Thus, it is apparent that the Sanctioning Authority has not at all applied its mind while passing the impugned order and has passed the same simply on the application filed by the prosecution agency seeking sanction to prosecute the petitioner under Section 304 and 34 of the IPC. In such circumstances also, the sanction granted by the Sanctioning Authority dated 17.07.2023 deserves to be quashed.

24. Thus, for the reasons assigned hereinabove, this court is inclined to allow the present petition as the order of sanction of prosecution of the petitioner cannot be sustained in the eyes of law and the impugned order dated 17.7.2023 (Annexure P-9) is hereby quashed.

25. So far as the other order dated 4.9.2023 (Annexure P/10) is concerned; whereby, the petitioner has been relieved from her duty,

and in her place respondent no.4 Mr.N.K.Khandey, Medical Officer(PGMO) has been given the charge of the medical center, in the light of the order of sanction dated 17.7.2023 having been quashed, the petitioner may file a representation before the concerning authorities regarding her relieving order, which shall be decided by respondents in accordance with law, within two weeks' time from the date of receipt of this order.

26. With the aforesaid observations, petition ***stands allowed and disposed of.***

(SUBODH ABHYANKAR)
JUDGE

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