

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

**BEFORE
HON'BLE SMT. JUSTICE ANURADHA SHUKLA
ON THE 14th OF SEPTEMBER, 2023**

MISC. CRIMINAL CASE No. 38667 of 2023

BETWEEN:-

**REKHA GYOAL W/O SHRI VIKAS
PAWAR, AGED ABOUT 45 YEARS,
OCCUPATION: GOVT. NURSE,
R/O WARD NO. 9, BIHARI COLONY PS.
KOTWALI DISTRICT ANUPPUR (M.P.)**

.....APPLICANT

(BY SHRI OM SHANKAR PANDEY - ADVOCATE)

AND

- 1. THE STATE OF MADHYA PRADESH
THROUGH P.S. KOTWALI ANUPPUR
DISTRICT ANUPPUR (M.P.)**
- 2. THE C.M.O. DISTRICT HOSPITAL
ANUPPUR (M. P.)**

.....RESPONDENTS

(SHRI ATMARAM BEN - DEPUTY GOVERNMENT ADVOCATE FOR

RESPONDENTS/STATE)

RESERVED ON	:	11.09.2023
PRONOUNCED ON	:	14.09.2023

This petition having been heard and reserved for order, coming on for pronouncement this day, the Court passed the following:

ORDER

This petition has been preferred under Section 482 of Cr.P.C. with a prayer to quash the FIR registered in Police Station Kotwali, District Anuppur (M.P.) at Crime No.238/2023 under Section 304 and 314 of IPC.

2. The brief facts of the case are that on the date of incident, i.e. 10.06.2023 the applicant was working as staff nurse in labour ward of District Hospital, Anuppur. On that date Anusuiya Rathore (deceased) reached the District Hospital Anuppur alongwith her husband Vijay Rathore with a complaint of stomach pain; the couple had two children and husband Vijay Rathore had got vasectomy operation done about three years prior to the date of incident, which had supposedly failed. In the hospital at around 9:00 a.m., they met applicant without knowing whether she was a doctor or a staff nurse and Anusuiya (deceased) told the applicant about her complaints. Applicant gave six tables to her advising to take two tablets at one go in intervals of two hours. Anusuiya (deceased) had two tablets at 10:30 a.m., again at 2:30 p.m. and lastly at 6:00 p.m. It was told by the applicant that she would be at duty till 2:00 p.m. and had asked the couple to come to her residence. At 5:30 the couple went to her place where applicant examined Anusuiya and even in the night at around 10:00 p.m. she was told about the health status of Anusuiya by her husband on mobile phone. Upon this, applicant asked him to bring Anusuiya to her house next day as well.

3. On 11.06.23 Vijay Rathore took his wife Anusuiya (deceased) to the residence of applicant where it was informed by the applicant that Anusuiya is pregnant for four months and she should undergo abortion to skip the pain; when asked about the expenses of abortion applicant demanded Rs.10,000/-, against which Vijay Rathore made a payment of Rs.5,000/-. In the evening, Vijay Rathore again took his wife Anusuiya to the house of applicant where she kept her inside the room for 3 to 4 hours while Vijay Rathore was waiting outside. At around 11:00 p.m. in the night applicant told Vijay Rathore that Anusuiya has suffered heavy bleeding and has become very weak. Upon this, Vijay Raothore went inside to see his wife, whose condition was very serious and she was in severe pain. Vijay Rathore called his relative and hired a four wheeler. Anusuiya later went unconscious. Applicant advised her husband to immediately take her to the hospital. At 12:30 a.m. Vijay Rathore reached the hospital alongwith Anusuiya, the duty doctor examined her and told that she was brought dead. The postmortem was conducted on 12.6.2023. A merg case was registered and the enquiry was conducted; on the basis of enquiry report FIR was registered on 16.06.2023 against applicant under Sections 304 and 314 of IPC as well as Section 5 of Medical of Termination of Pregnancy Act, 1971.

4. The grounds taken in this petition are that applicant is innocent and she has been falsely implicated in the case on account of conspiracy. As a matter of fact, deceased was already ill and her husband had given her medicine to terminate the pregnancy, due to which she started bleeding, which could not be stopped. Deceased was given treatment by another doctor and when her condition worsened she was brought to the house of applicant, who under pious duty of her profession immediately referred the

deceased to district hospital where she died. Deceased was never admitted in the hospital. The investigation on the part of police was badly lacking in fairness. Section 88 of IPC protects the bonafide acts done for the welfare of a person and even if accidentally any bad effect follows, that act is not actionable in law. Applicant has the certificate which allows her to perform any duty for the welfare of public. Applicant never advised the deceased or her husband to come to her house for any treatment. Applicant is a senior nurse of Government Hospital, Anuppur. On these facts, it is prayed that the FIR registered against applicant be quashed.

5. Learned counsel appearing on behalf of the State has opposed this petition claiming that registration of FIR is justified and cannot be questioned here.

6. Arguments of both the parties have been heard and case diary has been perused.

7. The case diary reveals that prior to lodging the FIR, the statements of relatives of deceased, employees of District Hospital Anuppur and the doctors posted there were recorded and only thereafter the FIR was registered. After registration of the FIR, the statements of husband of deceased Vijay Rathore and also an employee of District Hospital, Anuppur have been recorded under Section 164 of Cr.P.C. The other investigation is presently in progress. There is also a fact revealed by the husband of deceased that on the night preceding the death of his wife, he was in touch with the applicant regarding the health status of deceased. These facts reveal that the allegations made against applicant cannot be simply brushed aside as

fabricated facts. These facts need to be examined and if they hold any truth then definitely a criminal case is made out against the applicant.

8. Learned counsel for applicant has relied upon the decision of Hon'ble Apex Court in *Jacob Mathew vs. State of Punjab and Another (Criminal Appeal No.144-145/2004)* and *Poonam Verma vs. Ashwin Patel AIR 1996 SC 2111*. In *Jacob Mathe's* (supra) the Apex Court advised the Government to frame statutory rules or issue executive guidelines and so long as it was not done, the Apex Court proposed the guideline that no private complaint should be entertained except in laid out framework and the Investigating Officer should before proceeding against the doctor accused of rash and negligent act/omission obtain an independent and competent medical opinion. Here the applicant is not a registered doctor and it was not within her sphere of duty to give any medical advice and undertake the procedure of abortion. In the case of *Poonam Verma* (supra) a doctor practicing in homeopathy administered strong antibiotics to the deceased under allopathy system of medicine. The legal representative of deceased applied for compensation and damages before the National Consumer Forum, but her petition was dismissed. The said judgment of Commission was challenged before the Apex Court, which not only allowed the petition but also directed to send a copy of judgment to the Indian Medical Council and also to the State Medical Council to take appropriate action against the concerned doctor. Thus, the ultimate decision given in the aforesaid case does not support the case of applicant and an intermediate order passed in that case mentioned in para no.44 does not lay down any guideline for future observation by other Courts.

9. Applicant has also relied upon the decision of Patna High Court passed in *Dr. Narendra Prasad vs. State of Bihar* (Criminal Misc. Case No.39802/2008). In the said case, the guidelines of Hon'ble Apex Court in the case of *Martin F. D'Souza vs. Mohd. Ishfaq 2009(2) Supreme 40* have been referred to. These guidelines relate to a complaint received by the Consumer Forum or by a criminal Court. Present case is not a complaint case, therefore, this Court finds no reason to quash the FIR on the basis of cited judgments.

10. In the light of above discussion, this petition under Section 482 of Cr.P.C. is **dismissed**.

(ANURADHA SHUKLA)
JUDGE