

IN THE HIGH COURT OF JHARKHAND AT RANCHI
(Criminal Miscellaneous Jurisdiction)
A.B.A. No. 6637 of 2018

Basir Ansari @ Md. Basir & Others Petitioners
Versus
The State of Jharkhand & Others Opp. Parties

CORAM: HON'BLE MR. JUSTICE KAILASH PRASAD DEO
(Through : Video Conferencing)

For the Petitioners : Mr. A.K. Kashyap, Sr. Advocate (A.C.).
For the State : Mr. Saket Kumar, A.P.P.
Mr. Ajit Kumar, Sr. Advocate (For M.C.I.)
M/s Aprajita Bhardawaj, Advocate. (For M.C.I.)

16/Dated: 11/09/2020

When the matter is taken up, learned counsel for the State, Mr. Saket Kumar has submitted that he has already filed reply of Health Secretary, Jharkhand.

Office is directed to verify and bring it on record.

Learned Amicus Curiae, Mr. A. K. Kashyap, Sr. Advocate has submitted that though the copy of the affidavit filed by the Health Secretary has been received by him, but a legible copy of post-mortem report be served upon him by the State Counsel, so that he may assist this Court.

Learned Amicus Curiae has further submitted that in this case, Government required to follow a Standard Operating Procedure (S.O.P.) for all such post-mortems as because it is not a solitary case where illegality has been found. Time has now changed when post-mortem should be done under a video recording system, so as to have a authenticate post-mortem report because in a case under Section 304 B IPC, where the presumption is against an accused under Section 113(B) of the Evidence Act, the accused has onus to shift the burden and if such postmortem report is being made basis for trial, the entire trial is going to prejudice the case of the accused, as such, it is humbly submitted that State should come with a Standard Operating Procedure for such of type of post-mortem.

Learned counsel for the Medical Council of India, Mr. Ajit Kumar, Sr. Advocate assisted by M/s. Aprajita Bhardwaj has

submitted that the affidavit filed by the Health Secretary, Jharkhand has not been served upon him, though it has been served upon learned Amicus Curiae, as such, learned counsel for the Medical Council of India has submitted that copy be served upon him as well as a legible copy of post-mortem report be also served upon him so as to proceed in the matter.

Learned counsel for the Medical Council of India has submitted that Medical Council will look into the matter on both aspects regarding ethical side of the doctors as well as medical irregularity committed by such doctors, and will certainly assist this Court by taking appropriate action against such doctors, who have committed such blunder where innocent person can be penalized because of their latches.

Learned Senior counsel has submitted that action taken report of Medical Council of India shall be filed within eight weeks.

Accordingly, learned counsel for the State, Mr. Saket Kumar, Additional Public Prosecutor has submitted that affidavit filed by the Health Secretary, Government of Jharkhand suggest that Government is also initiating Disciplinary Proceeding against said doctor.

The State counsel is directed to serve two copies of affidavit upon learned counsel for the Medical Council of India as well as legible copy of post-mortem report within a period of two weeks. Learned counsel for the State shall also serve copy of post-mortem report upon learned Amicus Curies.

Learned counsel for the State, Mr. Saket Kumar, Additional Public Prosecutor is directed to bring entire file to the knowledge of the Chief Secretary, Government of Jharkhand, Law Secretary, Home Secretary and Health Secretary, Government of Jharkhand, so as to have knowledge about the entire events and to suggest this court by filing an affidavit, the remedy taken by the State to curtail recurrence of such mistakes by the Government doctors while conducting post-mortem. They should also file an affidavit, whether

it is possible for them to conduct all post-mortem under video recording or not? They should also file affidavit with regard to the action taken against the erring doctors, Dr. Swapan Kumar Sarak and why this doctor has not been penalized, when the principal of the Medical College and the Chairman of the Committee Dr. Pratibha Rai has been penalized with stoppage of one increment. The entire detail affidavit has to be filed within eight weeks. The State should also conclude departmental proceeding in time frame.

As prayed by learned counsel for the State, Mr. Saket Kumar and learned counsel for the Medical Council of India, Mr. Ajit Kumar, Sr. Advocate, eight weeks' time is granted to file their detail response on each issues.

State Counsel is directed to serve copy of the affidavit upon learned Amicus Curies, Mr. A. K. Kashyap, Sr. Advocate before filing.

Put up this case after ten weeks, so as to exchange the pleading.

Let the name of Mr. Saket Kumar, Additional Public Prosecutor be reflected in the cause list in place of Mr. Vinay Kumar Tiwary.

(Kailash Prasad Deo, J.)

Sunil-Jay/