

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. Sanjay Prasad, Advocate.
For the State : Mr. Sachin Kumar, A.A.G.-II
Mr. Saket Kumar, A.P.P.
For the M.C.I. : Mr. Ajit Kumar, Sr. Advocate.
M/s Aprajita Bhardawaj, Advocate.
Amicus Curiae : Mr. A.K. Kashyap, Sr. Advocate.

21/Dated: 13/04/2021

This court has taken able assistance from Dr. (Prof.) B.N. Gangadhar, President, Ethics and Medical Registration Board, National Medical Commission, Dr. Sharda Jain, Obstetrics and Gynecologist, Dr. Yogendra Malik and Dr. R.K. Vats, Working Secretary. They have submitted that they have verified the post-mortem report and other documents through virtual mode and they opined that there is no violation of professional conduct of the doctor while doing post-mortem of the deceased.

Dr. Sharda Jain, Obstetrics and Gynecologist has further submitted Clause No. 7 of the letter no.135 dated 25.02.2019 (Page nos. 28 & 29) i.e. अतः संभावना बनती है कि दिनांक 05.08.18 कि जाँच के बाद मृतिका का स्वयं गर्भपात हो गया हो या MTP द्वारा गर्भपात कराया गया है। which has been submitted by the committee of the Patliputra Medical College, Dhanbad though signed by Dr. Swapan Kumar Sarak, but while conducting the autopsy of the deceased, Anjum Bano, since the uterus was found empty and there was no sign with regard to placenta connection or any inflammation in the uterus, the doctor did not thought it proper to have histological test of the tissue of the uterus.

Learned senior counsel, Mr. Ajit Kumar assisted by Mrs. Aprajita Bhardwaj has submitted that the complete record of 99 pages have been submitted along with hand written report of Dr. Sharda Jain at page nos. 42, 43, 44, 45, 46 & 47, where name of two doctors are kept blank. However, after the name of Dr. Hans Raj Baweja, it has been stated that finally it was a mixed reaction which has been quoted in page Nos. 47 &

50, it may be a rough work of the National Medical Commission, but admittedly the proceeding book is not on the record from page-1 to 99 (compilation supplied by National Medical Commission). The same shall be treated as part of the record.

However, since the expert has submitted that there is no violation, this Court has no reason to disbelieve them, that there is no violation on the part of Dr. Swapan Kumar Sarak, as such, his report is sacrosanct for the legal system. Page nos. 42 to 52 of compilation supplied by National Medical Commission is admittedly not a proceeding book and there is no dispute about it either from National Medical Commission or from the learned senior counsel appearing for National Medical Council, Mr. Ajit Kumar, Sr. Advocate assisted by Ms. Aprajita Bardwaj.

Accordingly, the report submitted by National Medical Commission is accepted by the Court.

As such, the appearance of National Medical Council through Dr. (Prof.) B.N. Gangadhar, President, Ethics and Medical Registration Board, National Medical Commission, Dr. Sharda Jain, Obstetrics and Gynecologist, Dr. Yogendra Malik and Dr. R.K. Vats, Working Secretary by virtual mode is dispensed with.

This Court appreciate their legal assistance provided in this matter, but deprecates the manner of maintaining record with suggestion to the National Medical Commission that in future such proceeding book should be maintained properly which is lacking in this case and such Organization like National Medical Commission should maintain transparency in future.

So far personal appearance of Dr. Swapan Sarak is concerned, his personal appearance is also dispensed with.

(Kailash Prasad Deo, J.)

Sunil/