

IN THE SUPREME COURT OF PAKISTAN  
(APPELLATE JURISDICTION)

CIVIL REVIEW PETITION NO. \_\_\_\_/2010  
IN CIVIL PETITION NO. 2510-L OF 2009

AQUEEL AHMAD

PETITIONER

VERSUS

1. DOCTORS HOSPITAL (PVT.) LIMITED
2. DISTRICT FOOD OFFICER LAHORE.
3. CHIEF FOOD INSPECTOR, LAHORE.
4. MUHAMMD NASIR
5. WALI MUHAMMD.
6. SHAFIQ AHMAD ETC.

RESPONDENTS

CIVIL REVIEW PETITION UNDER ARTICLE 188  
OF THE CONSTITUTION OF ISLAMIC  
REPUBLIC OF PAKISTAN, 1973 READ WITH  
ORDER XXVI RULE 1 OF THE SUPREME COURT  
RULES, 1980 AGAINST THE JUDGMENT DATED  
31.12.2009

May please your Lordship:

The points of law involved in this petition are as follows:-

1. On 29<sup>th</sup> November, 2009, minor Emanah-e-Malik was brought to the emergency room of the Doctors Hospital, Johar Town, Canal Bank Lahore, as she had sustained a minor burn on the left hand (declared less than 1% in the Post Mortem Report).

2. Due to criminal mis-adventure and totally inappropriate treatment she expired soon thereafter. The petitioner, Aquil Ahmad, father of the deceased minor, brought the facts to the notice of the Johar Town Police Station through an application, on the basis of which FIR No.982/2009 was registered at the Police Station. However, for one reason or the other the police did not include the offence of Section 302 in the Sections noted in the FIR in respect of acquisitions contained in the application. The Sections which were referred are 322,319,419,201,420,109,148 and 149 PPC. As transpired later, the Doctors Hospital staff told the petitioner that they did not have the requisite paraphernalia to treat the child and advised the petitioner to take the child to the Children Hospital. On reaching the Children Hospital it transpired that the child had died before reaching the Children Hospital.

3. The Petitioner applied to the Investigating Officer to include the offence of Section 302 PPC in the offences but it was not so done. The petitioner then applied to the learned District and Sessions Judge Lahore through an application for inclusion of Section 302 PPC in the offences.

4. In the mean time writ Petition No 23796/2009, Doctors Hospital versus Government of Punjab, etc., came up for hearing before the learned Lahore High Court, Lahore. Also, the learned Lahore High Court, Lahore. The learned

High Court of Lahore had taken Suo Motu steps in the matter. This step was allocated Writ Petition 23337 of 2009. The learned Lahore High Court, Lahore, set up an Enquiry Committee, who after enquiry, filed a report of its findings. The Chief Minister Punjab had also formed an Enquiry Committee. Its report was also filed before the Lahore High Court, Lahore by the Doctors Hospital in WP No. 23796/2009, where this report was challenged by the hospital. The Doctors Hospital, in its own cause alleged to have made an enquiry. Its report was also submitted before the Lahore High Court, Lahore.

5. With all this material before them, Mr. Justice Khawaja Mohammad Sharif, Chief Justice, and Mr. Justice Mian Saqib Nisar Judge, sitting in Division Bench, also took notice that the police was acting in a partial manner and had not even arrested the accused persons, though an application for adding the offence under Section 302 PPC was made, but no action had been taken by them and that the petitioner/complainant was not satisfied with the investigation of the then investigating officer. The Honorable Division Bench also notices the submission of Muhammad Aquil, petitioner, that he had received numerous E-mails wherein people had expressed their grievances against the Doctors Hospital. The learned Advocate General submitted that there was no law governing the working of private hospitals and colleges,

The learned judges notice that a case under Section 322 was registered and that the offences had been changed from Section 322 to 319 PPC. It may be noticed that the sentence provided under Section 302(b) is death or imprisonment for life as 'Taazir' having regard to the facts and circumstances of the case, if the offence in either of the form specified in Section 304 is not available. Punishment under Section 322 extends only to 'Diat' whereas

punishment under Section 319 is imprisonment of either description for a term which may extend for five years as 'Tazeer', in addition to the 'Diat'.

6. The learned Judges of the High Court considered both the Sections with definition and restrictions in the open court and found that they were not applicable in the case. Their Lordships, considering that an application had already been made for adding the offence under Section 302 PPC, on behalf of the complainant, directed the investigating officer to add Section 30(b) PPC in the case.

7. With the consent of the parties it was directed that Ch. Zulfiqar Hamid SSP (Investigation) may investigate the matter.

8. The Doctors Hospital (Pvt.) Ltd. etc. filed CPSLA No. 2510/1./2009 which was heard by Mr. Justice Tassaduq Hussain Jilani and Mr. Justice M.A. Shahid Siddique, Judges of the Supreme court of Pakistan at Lahore on 30-12-2009. Their Lordships were pleased to take note of the absence of Regulatory mechanism in respect of certain minimum standard of quality of services etc. and granted leave to consider.

(a) Whether the lack of proper regulatory mechanism to monitor the working of privately run responsible run hospital is violative of Article 9 of the Constitution?

(b) Whether is it not in accord with the mandate of the afore-referred constitutional provision to put in place an institution of Accreditation Board which should have the power to grant or refuse accreditation to hospitals to ensure that no one is allowed to open a hospital without the

the requisite staff and equipments?

(c) Whether is it not in the interest of public safety that before accreditation is granted to hospitals, they should declare their scope of working, i.e., whether it is a Cardiac Hospital, Cancer Hospital, Outdoor Hospital and whether it can provide Emergency Services and the said Accreditation Board before granting the requisite licenses should see that the proposed hospital meet the minimum standards required to run such a hospital?

(d) Whether the functions of the afore-referred Accreditation Board can be entrusted to the College of Physicians and Surgeons of Pakistan or the said functions can be perform by a Medical University or a Consortium of such Universities?

(e) Whether the provision in the Pakistan Medical & Dental Council Act for the grant of licences is sufficient to ensure that the objects of the said Act are achieved or whether a regulatory mechanism requiring periodical renewal of such licences by a Board of Peers on the basis of laid down criteria is imperative?

(f) Whether in the face of the findings of the three inquiry reports holding the doctors and staff of duty to be responsible for the death cause, can the petition-Hospital be held vicariously liable and burdened with special costs to be given to the complainant?

(g) Since public safety is one of the fundamental duties of the State and as the State failed to provide any regulatory mechanism or institutional safeguards with regard to private hospitals, can it be burdened with special costs as the death of complainant's daughter was partly attributable to this lapse on the part of the State?

(h) Whether the learned High Court is exercise of its jurisdiction under Article 199 can direct the investigation Officer to add a particular

Section notwithstanding the fact that the matter was still under investigation?

Their Lordships were pleased to issue notices to different functionaries to file comments/proposals or concise statements on the issues identified in the Leave granting order and also passed orders that the investigating officer be directed to proceed with the investigations officer be directed to proceed with the investigations strictly on merits uninfluenced by the observations or directions give by the High Court in the order dated 30.12.2009 and submit a report under Section 173 Cr.P.C. in the concerned court within 15 days. The honorable Judges ordered the placement of the case before the honorable Chief Justice of Pakistan, for constitution of a larger bench, while the appeal has been ordered to be fixed for a date in the last weak of February 2010.

The following law points arose there from:-

(a) Whether the Supreme Court of Pakistan has been mis-lead by submission that the law is silent about the actions of doctors, if they constitute an offence. Under the normal law action against doctors has been taken in the past namely in II.R 42 All 272, 14 Cal 566, 1943 PC 72, (1937) Appeal Cases 56, 1860 F & F 201, (1932) F.C & P833, (1916) 86 L.JKB 871, (1925) 94 L. J. K. 791, (1915) PR No. 29 17 Cr LJ 20, AIR 1916 Lahore 184.

(b) As held by the Honourable Supreme Court of Pakistan in Ali Muhammad's case, PLD 1996 Supreme Court 274, that Section 302 PPC contemplates category of cases which are within the definition of 'Qatal-

e-Amad' for which punishment can, under the Islamic law, be other than death or life imprisonment. It is left to the court to decide as to what are the cases falling under clause (c) of Section 302 PPC. In respect of facts to the extent case, the deceased Eman-e-Malik, minor, was given three injunctions within a short time. The combined effect of these three injunctions can be fatality of a major person as well. Section 319 relates to punishment for 'Qatal-e-Khata' while Section 322 relates to punishment for 'Qatal-e-Sabab'. The circumstances of the case do not attract the application of these sections. Section 302 PPC applies. Investigation is to be made by the police within the parameters of Section 302 PPC. Any comment of applicability or non-applicability of a section of the Penal Code would either prejudice to the complainant or the accused person. According to the contents of the FIR itself, allegations have been made requesting that a case be registered against the duty staff and management of the hospital for the murder of the child. These allegations have since been supported by three enquiry reports. Accordingly, allegations and material, for application of provisions of Section 302 PPC, for the purpose of investigation presently, is more than made out. The investigation presently is more than made out. The investigation agency, accordingly, is required to investigate into these allegations and only after investigation formal opinion if Section 302 PPC or any of these clauses is applicable to the facts as investigated. The material, so far, available shows that it is as required by Article 17 of the Qanoon-e-Shahdat Order, 1984. Reference is made to the case of Abdul Hakeem (2005 P.Cr.L.J. 182), which, not in other things, held to constitute an offence of 'Qatal-e-Amad', it was not necessary that injury should be caused with intention to cause death.

(c) The PMDC Act regulates the licensing and control on doctors practicing in Pakistan. The PMDC is required, and has in certain respects, promulgated different regulations in this regard. Pertinent is whether a licensed doctor can not be put in charge of an emergency section in a hospital unless he has two years experience. Punishment for offences by way of cancellation of license etc, have also been provided therein.

(Q.) Unfortunately it was not brought to the notice of the honorable judges of the Supreme Court of Pakistan ~~and~~ <sup>that</sup> PMDC has neither been made a party to these proceedings by the Doctors Hospital Pvt. Ltd. nor any notice has been issued to the PMDC by the Supreme Court of Pakistan. The matter require review on the above ~~two~~ points.

(A.) That the orders passed by the Supreme Court of Pakistan on 30.12.2009 have a lasting influence on the investigation of the case. Any observations by the Honourable Supreme Court had the effectiveness of law declared. Therefore, the investigation may be ordered to be carried on without being influenced by any judicial comments, as the learned Advocate General did not defend the impugned order of High Court wherein direction to add Section 302 (b) PPC.

It is therefore respectfully prayed that the order dated 30.12.2009 may graciously be reviewed and it be ordered that investigation by police may kindly be carried out having regard to all the aspects including the application of Section 320(b) PPC and then to make a report to the competent court under Section 173 Cr. P.C. as to whether Section 302(b) PPC will stand in the challan or whether the police feels that this Section is not applicable.

ANY OTHER RELIEF WHICH THIS HON'BLE  
COURT DEEM FIT AND PROPER MAY ALSO  
BE GRANTED TO THE PETITIONER.

DATED: 31.10.2009

DRAWN BY

FILED BY

MOHAMMAD AZHAR SIDDIQUE  
ASC, LAHORE

MAHMOOD A. QURESHI  
ASC/AOR