

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.334 of 2003

Arising Out of Complaint Case No.1403(C) of 2001 District- PATNA

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1. Ahmad Abdul Hai, son of late Dr. M.A. Hai, resident of Exhibition Road, P.S. Gandhi Maidan, Town and Distt. Patna.
 2. Abu Sufayan Yahya, son of late Md. Yahya, resident of Mohalla Bakarganj, P.S. Pirbahore, Town and Distt. Patna.
 3. Ahmad Alam Khan, son of late Abdul Sakoor Khan, resident of Mohalla Sabjibag, P.S. Pirbahore, Town and Distt. Patna.

.... Petitioner/s

Versus

1. The State of Bihar
2. Sri Babar Hayat Quadri, son of late Ahmad Rayat Quadri, resident of 'Hayat Cottage', Pandit Ji ki Gali, Chunauti Kuwan, Post office and P.S. Phulwarisharif, Patna – 801 505

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. P. Nr. Shahi, Adv.

Mr. Ritesh Kumar No. 1, Adv.

For the State : Mr.

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CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

ORAL JUDGMENT

Date: 23-06-2015

Heard learned counsel for the Petitioners and the State.

The Petitioners seek revision of the order dated 20.5.2003 by which the Judicial Magistrate, 1st Class, Patna, in Complaint Case No. 1403(C) of 2001 has refused to discharge the Petitioners.

The case of the Complainant is that he was suffering from a wound on his buttock for which he was consulted the Petitioner No. 1 who being a Doctor diagnosed it as fistula and advised operation. As per his advice, the Complainant was admitted in his Clinic and operated on 19.5.2000 for which he took operation



charges. After the operation, the Complainant stayed in the Clinic for sometime but the Petitioner No. 1 never came to visit him and later on he was discharged on 23.5.2000. However, after discharge, even though, he paid consultation charge to the Petitioner and who had operated the wound did it not heal up even after six months and when he consulted another Doctor, he was told that the operation was wrong. It was under these circumstances that the Petitioner submitted that the accused persons had committed an offence under Sections 420, 384, 336 and 504/34 Indian Penal Code.

It has been submitted on behalf of the Petitioners that even conceding the allegation in the Complaint Petition, no Criminal offence is made out. The intention of a Medical Practitioner would never to be spoil a case of operation nor is there any medical negligence made out in the facts of the case. If at all, the Complainant was aggrieved with the act of the accused persons, he should have approached the Consumer Forum which he did where his Complaint was dismissed.

On the other hand, the Counsel for the Complainant submits that this matter was admitted against the order of non discharge dated 20.5.2003 but by that time all witnesses had already been examined including the defence witnesses and the case was posted only for judgment. In these circumstances, this Court should

not interfere in the matter.

Further submission is that as against the dismissal of the Complaint by the Consumer Forum, the Complainant has filed an Appeal before the National Forum which is pending.

Having gone through the Complaint petition, I am unable to convince myself that any offence is made out in the facts stated therein. There are a series of decisions which define negligence and medical negligence and that the scope of the two are completely difference and have to be urged before two different Fora.

Hence, the revision application is allowed and the Proceeding including the order dated 20.5.2003 passed by the Judicial Magistrate, 1st Class, Patna, in Complaint Case No. 1403(C) of 2001, is hereby set aside.

However, this order shall not prejudice to any Party in any manner.

(Anjana Prakash, J)

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