

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

**Criminal Misc. No.A-1126-MA of 2014 (O&M)**  
**Date of decision: 15<sup>th</sup> January, 2015**

Rich Pal

...Petitioner

Versus

Naresh

...Respondent

**CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH**

Present: Mr. Ashok Tyagi, Advocate,  
for the applicant.

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**INDERJIT SINGH, J.**

This order shall dispose of an application under Section 378 (4) Cr.P.C. for grant of leave to file appeal against the judgment dated 17.05.2014, passed by the learned Judicial Magistrate Ist Class, Sonapat, acquitting the respondent.

I have heard learned counsel for the applicant and have gone through the record.

From the record, I find that Rich Pal applicant-complainant (hereinreferred as 'the complainant') filed complaint under Sections 338, 324 and 326 IPC mainly with the allegations that on 16.10.2008, he suffered from fever and he alongwith his brother Shyam Lal went to Naresh Kumar respondent-accused (hereinreferred as 'the accused') for treatment. The accused gave one injection and also gave some tablets to complainant due to which he suffered severe pain and swelling. Thereafter, the

complainant again visited accused and this time he gave hot fermentation to the legs of the complainant as a result of which his condition became serious. Then the complainant was taken to Raj Hospital, Murthal where doctor gave him treatment and advised him to admit there. The complainant remained admitted in that hospital till 26.10.2008. As the complainant could not recover, therefore, he was taken to Nav Jeevan Hospital, Karnal.

On the basis of preliminary evidence, led by the complainant, the accused was summoned under Section 338 IPC.

Learned trial Court, after discussing the evidence on record, dismissed the complaint and acquitted the accused while holding that it was for the complainant to prove that accused gave him medical treatment so negligently and rashly as to cause him grievous hurt. It was also necessary for the complainant to prove that accused Naresh was a doctor and he had given an injection to complainant which resulted in pain and swelling. It was further not proved that the wound and swelling was due to wrong injection given by the accused. DW1 Parmod Kumar, Sarpanch has stated in his statement that Naresh is not a doctor and he does not run any clinic. The trial Court also held that there is no record to show that accused is a medical practitioner and he has given injection to the complainant which resulted in causing grievous hurt to him. The learned trial Court, on the basis of evidence, reached to the conclusion that earlier the complainant was taken to Dr. Manoj Rai,

who conducted the operation of the complainant. Despite giving treatment by Dr. Manoj Rai, the condition of complainant did not improve and thereafter he allegedly left the treatment of Dr. Manoj in between and went to Nav Jeevan Hospital for further treatment. The learned trial Court further held that it cannot be said that it was the negligence of the accused alone which resulted in grievous injuries to complainant. The negligence cannot be attributed alone to accused Naresh even if it is considered that Naresh worked as a doctor. This is a criminal complaint and in the criminal complaint, the complainant has to prove the case by leading cogent evidence beyond reasonable doubt. In the present case, the complainant has failed to lead cogent evidence against the accused. As such, the findings, returned by the learned trial Court, are correct and as per law and do not require any interference by this Court. No ground is made out to allow the application under Section 378 (4) Cr.P.C.

Accordingly, the instant application stands dismissed.

**15<sup>th</sup> January, 2015**  
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**(INDERJIT SINGH)**  
**JUDGE**