

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.24156 of 2016

Arising Out of PS.Case No. -474 Year- 2014 Thana -SIWAN CITY District- SIWAN

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1. Dr. Priyanka, wife of Dr. Mukesh Kumar, resident of village- Hakam, P.S.- Mahadev, District- Siwan
 2. Dr. Mukesh Kumar, son of Bishnudeo Manjhi, resident of village- Hakam, P.S.- Mahadev, District- Siwan

.... Petitioner/s

Versus

1. The State of Bihar
2. Ashok Singh, son of late Lakshman Singh, resident of village- Muriyari, P.S.-Mairva, District- Siwan

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Saket Tiwary, Adv.
Mr. Sanjeev Kumar Dubey, Adv.
For the Opposite Party/s : Mr. Binod Kumar No.3, APP

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL ORDER

5 25-10-2016 Heard learned counsel for the petitioner and counsel for the State.

In this case, the petitioners are challenging the order dated 23.11.2015 passed by the learned Chief Judicial Magistrate , Siwan in connection with Nagar (Siwan) P.S. Case No. 474 of 2014 whereby cognizance has been taken against the petitioners for offence under Sections 304/34 of the Indian Penal Code.

In this case, even after notice upon the opposite party no.2, he has not chosen to participate in the proceeding.

In the First Information Report, nutshell story has been stated that the Informant has brought his wife in Sadar Hospital,



Siwan on 12.11.2014 at about 4 O'clock in the morning but, there was none in the emergency ward. The Informant has further stated that the peon, namely, Parsuram Paswan, Dr. Mukesh Kumar, Nurse Dr. Priyanka, Meena Kumari (ANM) were not present on duty. Despite calling the Civil Surgeon, the treatment could not be started. It has further been alleged that Dr. Priyanka did not took strong responsibility due to which the wife of the Informant died at 10 AM in the morning. For that the First Information Report was lodged. The police investigated the case and submitted charge-sheet against the petitioners for offence under Sections 304/34 of the Indian Penal Code.

A question has been raised in the present case that can a doctor be put to the criminal trial for non-giving the effective service to the patient. There is no averment in the application itself that the petitioners, who were posted as a Doctor, does not have the requisite qualification and expertise for treatment of the patient as well as no where it has been alleged that no treatment was given to the victim but, an allegation has been made that effective treatment has not been given to the patient. This issue can be decided by the expert who is dealing the subject, not by the normal person. Doctors give treatment as per the requirement of the patient. It is also a fact that Doctor cannot be said to be God but,



they only treat the patient to their capability. Any culpable negligence may lend the Doctors in trouble but when an honest treatment has been given to the patient by administering fluid and necessary medicine, it will be deemed that proper action has been taken and no Doctor can be sure that every person will be cured but, they take every effort according to their capacity and skill. This issue is no longer in res integra. Instead of multiplying the judgment and giving quotations from the judgments of the Hon'ble Supreme Court as well as this Court, reliance is being placed on some of the judgments which deals with this aspect of the matter. It will be relevant to go through judgments in the case of *Jacob Mathew Vs. State of Punjab & Anr.* reported in (2005) 6 SCC 1, in the case of *Martin F. D'Souza Vs. Mohd. Ishfaq* reported in 2009 (3) SCC 1, in the case of *Kusum Sharma & Ors. Vs. Batra Hospital & Medical Research Centre and Ors.* reported in (2010) 3 SCC 480, in the case of *Malay Kumar Ganguly Vs. Sukumar Mukherjee & Ors.* reported in AIR 2010 SC 1162 and the judgment dated 18.5.2015 passed in Cr. Misc. No. 40712 of 2012 (Dr. Ashok Kumar Singh & Anr. Vs. The State of Bihar & Anr.) wherein this Court has dealt with the matter and passed judgment in accordance with law. In all the aforesaid judgments, the yardstick has been given that for any treatment or negligence, the Doctors cannot be put to criminal trial. Negligence

in service will be subject matter of proceeding under the Consumer Protection Act but, a criminal liability can only be fixed when the act is such of nature which has no concern with the performance of the duty of the Doctor, for example, if the Doctor has to operate a patient and he takes out some organ from the body of the patient then in that case certainly the Doctors cannot take shelter of the aforesaid judgments but, when a treatment has been given properly and, in spite of that, the if the patient could not be cured and ultimately succumb, the same cannot lend the doctor to face criminal trial.

In that view of the matter, it is one of the cases where the case of the present petition falls in the line of the aforesaid decisions.

Accordingly, the order taking cognizance dated 23.11.2015 passed in connection with Nagar (Siwan) P.S. Case No. 474 of 2014 for offence under Section 304/34 is quashed. In the result, this application stands allowed.

(Shivaji Pandey, J)

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