

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.494 of 2016
IN
Civil Writ Jurisdiction Case No. 5907 of 2004**

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Kameshwar Singh, Son of Late Shiv Gulam Singh, Resident of Village -
Krishnapur, P.O. and P.S. Hilsa, District- Nalanda.

.... Appellant/s

Versus

1. The Chief Secretary, Govt. of Bihar, Patna.
2. The Secretary, Department of Health Service, Govt. of Bihar, Patna.
3. The Civil Surgeon cum Chief Medical Officer, Nalanda.
4. The Deputy Superintendent, Sub - Divisional Hospital, Hilsa, Nalanda.
5. The State of Bihar.
6. Dr. Uma Shankar Prasad, Deputy Superintendent, Sub - Divisional, Hospital,
Hilsa, Nalanda.
7. Dr. Balram Prasad, M.O. Sub - Divisional Officer, Hilsa, Nalanda.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. R. K. Rajan, Advocate

For the Respondent/s : Mr. Roy Shivaji Nath, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 29-03-2017

Heard learned counsel for the parties.

2. Delay in filing of the appeal is condoned.

3. Seeking exception to an order dated 28.4.2015
passed by the learned Writ Court in C.W.J.C. No.5907 of 2004,
refusing to invoke its extra ordinary jurisdiction under Article 226 of
the Constitution on account of certain disputed questions of facts
being involved, petitioner has filed this appeal under Clause 10 of
the Letters Patent.



4. Petitioner is the father of late Manish Kumar who sustained a gun-shot injury and was rushed to Government Hospital, Hilsa. However, finding the condition of the patient to be critical, the superintendent of the Government Hospital, Hilsa directed for shifting of the patient to the P.M.C.H., Patna and for the said purpose it was decided that an ambulance should be arranged and the patient shifted. However, it is the allegation of the petitioner that in the process of shifting of the patient, the Oxygen mask attached to the patient was removed, which resulted in the death of the patient within a minute. Alleging that there has been negligence on the part of the hospital superintendent, in dealing with the case while shifting appellant's son, as a consequence of which he died, the appellant initially approached the Consumer Court and when it refused to entertain the matter, the jurisdiction of the writ court was invoked. The writ court issued notice to all concerned. The hospital management and the superintendent of the hospital, respondent No.6, appeared and filed their counter affidavits. The hospital authorities pointed out that after complaint was received from the petitioner, a show cause notice was issued to the officials of the hospital and in the reply to the show cause it was stated by respondent No.6 that an Oxygen cylinder was all along available in the ambulance and the patient was shifted with the help of Oxygen cylinder. It was also indicated in reply to the show cause that there



has not been any negligence in the matter.

5. From the counter affidavits and the statements made, it seems that the hospital authorities having found no negligence on the part of the officials, rejected the representation of the petitioner. Before the writ Court, respondent No.6 vehemently denied his presence at the place of occurrence and the allegation of removing Oxygen mask. Faced with the aforesaid serious disputed questions of facts, the learned writ court held that it is not a fit case where extra ordinary jurisdiction should be invoked and dismissed the writ petition on account of there being serious disputed questions of fact.

6. Even though initially learned counsel for the appellant vehemently argued the matter and submitted that in view of violation of fundamental right under Article 21 of the Constitution, the writ court should have invoked the jurisdiction, but when this Court raised queries with regard to disputed questions of facts being involved and the jurisdiction available under Article 226 of the Constitution for going into there areas of disputes on fact and made suggestions to the learned counsel for the appellant to invoke the jurisdiction of the Human Rights Commission, where a proper enquiry into the matter could be conducted and all aspects of facts resolved, the learned counsel, in all fairness, accepted the suggestion given by this Court and sought permission to withdraw this appeal



with liberty to approach Human Rights Commission.

7. Keeping in view the aforesaid, we grant liberty to the appellant to take recourse to the remedy of approaching the Human Rights Commission and direct that, if the proceedings are held by the Human Rights Commission and enquiry conducted by the Commission, , the order passed in the writ petition shall not come in the way as the Court has not gone into the merits of the matter. The Human Rights Commission shall not take cognizance of the order passed on 28.4.2015 in C.W.J.C .No.5907 of 2004 and nothing contained in the order shall come in the way of the appellant in prosecuting the matter before the Human Rights Commission. Human Rights Commission shall be free to independently deal with the matter in accordance with law without being influenced by the order passed in the writ petition.

8. With the aforesaid, this appeal stands disposed of.

(Rajendra Menon, CJ)

(Sudhir Singh, J)

K.C.jha/-

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