

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.53960 of 2013

Arising Out of PS.Case No. -420 Year- 2002 Thana -KHAZANIHAT District- PURNIA

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1. Dr. Bibha Jha, w/o Dr. P.C. Jha, resident of Mohalla- Navratan Hata, Police Station- K. Hat, District- Purnia.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Romeo Dey, s/o Shri Ashish Kumar Dey, resident of c/o Devashis Rai, Mohalla- Rajni Chowk, Police Station- K.Hat, District- Purnia.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Rajeeva Roy, Advocate
Mr. Sunil Prasad Singh, Advocate
For the Opposite Party/s : Mrs. Nirmala Kumari, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

CAV JUDGMENT

Date: 16-05-2017

1. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 04.01.2013 passed by the Chief Judicial Magistrate, Purnea, in K. Hat P.S. Case No.420 of 2002, by which the learned Magistrate has taken cognizance against the petitioner under Section(s) 304 Indian Penal Code.

2. The prosecution case, as alleged in the written report of the informant, is that wife of the informant was admitted in the Nursing Home of the petitioner for delivery on 10th November, 2002. The doctor (petitioner) was absent during delivery. The trained *Daai* of this petitioner performed delivery. The wife of the informant started bleeding heavily just after the delivery. The doctor



did not turn up in spite of several requests. The doctor came after few hours and told that the patient needs blood. The doctor discharged the patient after blood transfusion and told that she was okay. The wife of the informant became senseless in the morning. She was brought to the same doctor by the informant immediately. The doctor told this is general weakness and the patient was again taken back to her home. In the evening, the patient started sinking and was taken to the Nursing Home of the petitioner where her husband, Dr. P. C. Jha, told to arrange blood. He told that he can arrange blood even tomorrow. It is further alleged that in spite of several request, the petitioner did not turn up and the wife of the petitioner passed away without any treatment.

3. In the instant case, the police after investigation submitted Final Report. The Court below after looking into the case diary has found that several witnesses have supported the case of the informant in para 3, 4, 5, 6, 7, 8, 14 and 15 of the case diary. The court below also perused the Inquest Report and Post Mortem Report, which were available in the case diary. The Court below on the basis of restatement of the informant and the statement of witnesses, Inquest Report and Post Mortem Report came to the finding that a *prima facie* case for the offence under Section(s) 304 Indian Penal Code is made out against Dr. Bibha Jha and has taken



cognizance under Section 304 Indian Penal Code against the petitioner-accused.

4. Counsel for the petitioner has submitted that for prosecuting a medical professional for negligence under criminal law, it must be shown that the accused did something or failed to do something, which in the given case in the facts and circumstances of the case, no medical professional in his ordinary sense and prudence would have done or failed to do. The hazard taken by the accused should be of such a nature that the injury which resulted was most likely imminent.

5. In support of his submission, counsel for the petitioner has relied upon a decision reported in **2017 SCC Online SC 354 [Sou Jayshree Ujwal Ingole (Dr.) Vs. State of Maharashtra]**. Counsel for the petitioner has also relied on the decision reported in **2017 SCC Online Jhar 904 (Sathi Ghosh Vs. State of Jharkhand)**.

6. Learned counsel appearing on behalf of the State has submitted that from the written report itself, it is apparent that the doctor never appeared to perform delivery of the child. Delivery was performed by the trained *Daai* of the petitioner. The petitioner was informed. She had gone to see *Chaath Puja* and in her absence her trained *Daai* performed delivery and the wife of the informant started



bleeding heavily. As such, there is no illegality in the impugned order.

7. From the facts of the aforesaid case, this Court finds that wife of the informant was admitted in the Nursing Home of the petitioner for delivery after checkup by the petitioner herself, but during delivery the petitioner was absent. The informant was told by her staff that she has gone to see *Chaath Puja* and in her absence her trained *Daai* performed delivery and the wife of the informant started bleeding heavily just after delivery. In spite of several requests, the petitioner did not turn up. The petitioner came after few hours and told that patient needs blood. The wife of the informant was discharged after blood transfusion. The patient became senseless in the next morning and was taken to the petitioner by the informant where he was told that this is only general weakness and the patient was again taken back to her home. The wife of the informant started sinking in the evening and she was again brought to the Nursing Home of the informant where Dr. P. C. Jha, husband of the petitioner told to arrange blood, which he can do even tomorrow. The petitioner did not turn up in spite of several requests and the wife of the informant died for want of treatment.

8. The Hon'ble Supreme Court in the case of ***Jacob Mathew Vs. State of Punjab*** reported in ***[2005 (4 East Cr C 169***



(SC)] has summarized the conclusion and has held in para 49(3) that a professional may be held liable for negligence on one of the two findings: either he was not possessed of the requisite skill which he professed to have possessed, or, he did not exercise, with reasonable competence in the given case, the skill which he did possess. The standard to be applied for judging, whether the person charged has been negligent or not, would be that of an ordinary competent person exercising ordinary skill in that profession. It is not possible for every professional to possess the highest level of expertise or skills in that branch which he practices. A highly skilled professional may be possessed of better qualities, but that cannot be made the basis or the yardstick for judging the performance of the professional proceeded against on indictment of negligence.

9. In the instant case, from the allegation in the written report itself, it is apparent that the petitioner never attended the wife of the informant at the time of delivery. The petitioner did not appear to attend the patient when severe bleeding started to her after performing delivery by her trained *Daai*. The informant was informed on enquiry that the petitioner has gone to see *Chaath Puja*. The petitioner after few hours discharged the patient after blood transfusion. The wife of the informant again became senseless in the house and was brought to the Nursing Home. The patient was



attended by the petitioner, who told that this is general weakness and the patient was brought back to home. In the evening, the patient started sinking and was again brought to the Nursing Home of the petitioner where she was attended by the husband of this petitioner, who advised blood transfusion and also said that it can be done by tomorrow, but the petitioner despite several requests did not turn up and the patient died for want of treatment.

10. As such, the petitioner did not exercise the requisite skill with reasonable competence in this case.

11. The Hon'ble Supreme Court in the case of *State of Bihar Vs. Rajendra Agrawalla* reported in (1996) 8 SCC 164 has held that inherent power of the Court under Section 482 of the Code of Criminal Procedure should be very sparingly and cautiously used only when the Court comes to the conclusion that there would be manifest injustice or there would be abuse of the process of the Court, if such power is not exercised.

12. In the instant case, from the conduct of the petitioner, it is apparent that the petitioner committed negligence and recklessness of a high degree on account of which wife of the informant died.

13. The learned Magistrate has mentioned in the impugned order that there are sufficient materials in the case diary to



take cognizance against the petitioner.

14. Therefore, this Court does not find any illegality in the impugned order dated 04.01.2013 passed by the Chief Judicial Magistrate, Purnea, in K. Hat P.S. Case No.420 of 2002, taking cognizance against the petitioner under Section(s) 304 Indian Penal Code.

15. The application is, accordingly, dismissed.

16. The Trial Court shall proceed in the trial in accordance with law.

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	AFR
CAV DATE	25-04-2017
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