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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.M.C. 1162/2018

SHALU SINGHAL

..... Petitioner

Through: Mr. M. Dutta, Adv.

versus

THE STATE & ANR

..... Respondents

Through: Mr. G.M. Farooqui, APP for State
with SI Sanjeev Kumar, P.S. Mayur
Vihar.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

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07.03.2018

By this petition under Section 482 of the Code of Criminal Procedure, 1973, petitioner has prayed for quashing of FIR No. 743/2015 under Sections 304A/34 IPC registered at police station Mayur Vihar on the complaint of Mohd. Mufiduddin. Learned counsel for the petitioner has contended that no FIR could have been registered without the opinion of the medical board regarding negligence of the petitioner. In this case, no opinion of the medical board was obtained. Accordingly, aforesaid FIR is liable to be quashed. Reliance has been placed on Jacob Mathew vs. State of Punjab & Another (2005) 6 SCC 1.

Learned APP has opposed the quashing of the FIR at this nascent stage when investigations are underway. It is submitted that facts of this

case are different. Action was taken against the petitioner by the Delhi Medical Board on the complaint of Mohd. Mufiduddin. Vide order dated 14th June, 2017 Disciplinary Committee of Delhi Medical Council ordered for removal of the name of the petitioner for 180 days from the State Medical Register of Delhi Medical Council. Petitioner preferred an appeal before the Medical Council of India which is pending. Learned APP further submits that FIR has been registered on the directions of learned Metropolitan Magistrate, Delhi vide order dated 29th September, 2015. The investigations are at the advance stage.

Learned counsel for the petitioner submits that order of Delhi Medical Council has been stayed by this Court vide order dated 12th July, 2017 passed in W.P. (Crl.) 5789/2017.

It is trite law that High Court will sparingly step in for quashing of the FIR at the nascent stage of investigation only in rare cases where it is shown that ingredients of offence are not disclosed from a bare perusal of FIR or the same is *mala fide*. The facts of this case are different from the facts involved in Jacob Mathew (Supra). In this case, specific allegations have been levelled, inasmuch as, Delhi Medical Council has already passed an order thereby accepted the medical negligence on the part of the petitioner.

The Disciplinary Committee, comprising five doctors, has observed as under:-

1) It is observed that the complainant's new born baby (baby of Smt. Shabham) was born by lower segment caesarean section (LSCS) on 31st January, 2014 at 5.00 pm. The baby was full term weight 2.5 kg, had good Apgar score (7, 8 and 9) and was seen by paediatrician at 0.99 p.m. when the baby was stable, had passed urine and stool.

As per the information given by the complainant, the baby was alright on 1st February, 2014. However, at around 2.00 am on 2nd February, 2014, the baby was making some abnormal sounds probably groaning for which he called the nurse. The nurse in turn informed Dr. Shalu Singhal on phone and as per the doctor's advice put some medicines in both the nostrils with a syringe. According to the complainant, the baby became limp, closed his eyes and was dead. The baby was later seen by a doctor who declared him dead.

It is noted that as per the post-mortem report, the peritoneal cavity was filled with clotted and fluid blood amount approximately 60 ml, liver had shown sub-capsular haemorrhage over right lobe superior and anterior surfaces, kidneys and adrenals also showed small hemorrhagic areas near superior pole, which were ante-mortem as per forensic expert clarification. In view of the above, the Disciplinary Committee is of the opinion that the baby had probably aspirated the fluid put in the nostrils and it might have resulted in his death. In our opinion, the baby should have been examined and managed by the doctor when the nurse had made a phone call, which was not done in this case. Dr. Shalu Singhal failed to exercise reasonable degree of skill, care and knowledge in the treatment of new born baby of the complainant.

2) The medical records of Singhal Maternity Clinic provided by the Police, show that the same were not properly maintained, as they were sketchy, bereft of any details of the treatment given to the baby of the complainant.

3) It is noted that even though the complainant has alleged

that a tubectomy procedure was performed upon his wife without any consent by Dr. Shalu Singhal, however, a written consent in Hindi which bears the signature of the complainant and his wife on the letter head of Singhal Maternity Clinic was found in the records provide by the police. It is observed that the said document does not constitute an informed consent.

4) We are further pained to note the total indifference of Dr. Shalu Singhal and the Medical Superintendent of Singhal Maternity Clinic, as is reflected in their failing to file their written statement or present themselves before the Disciplinary Committee or submit the medical records pertaining to this matter, of repeated notices (sent on 19th December, 2014, 30th June, 2015, 5th August, 2015, 14th December, 2016, 30th December, 2016, 22nd February, 2017 and 19th April, 2017), so as to render assistance in this matter. This recalcitrance towards an authority which is exercising power of Civil Court and whose proceedings are judicial in nature, tantamount to misconduct.

For the foregoing reasons, I do not find any reason to quash the FIR.

Petition is dismissed. Miscellaneous application is disposed of as infructuous.

A.K. PATHAK, J.

MARCH 07, 2018

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