

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.22440 of 2015

Arising Out of PS. Case No.-641 Year-2013 Thana- PATNA COMPLAINT CASE District-
Patna

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Dr. (Prof.) Anita Singh, Wife of Umesh Prasad Singh R/o Bihta House,
Mithapur, P.S. - Jakkanpur, District - Patna.

... .. Petitioner/s

Versus

1. State Of Bihar
2. Md. Dilshad Ahmad S/o Late Md. Imamuddin resident of Mohalla -
Hamidpr Kurji, P.S. - Digha, District - Patna.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. N.K.Agrawal, Sr.Adv
	:	Mr.Saket Tiwary, Adv
	:	Mr. Anuraj Singh, Adv
	:	Mr. Tarun, Adv
For the Sate	:	Mrs. Anita Kumari Singh, APP
For the Opp. Party No.2	:	Mr.Vibhuti Ranjan Sarvodra, Adv

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 23-08-2019

Heard learned counsel for the parties.

2. Petitioner is accused in Complaint Case No.641(C)
of 2013 wherein cognizance has been taken against the petitioner
on the complaint of opposite party No.2 for offence under Section
304A/34 I.P.C. on the allegation of medical negligence of the
petitioner which caused death of the wife of the informant.

3. The challenge is on the ground that the complaint
case has been maliciously brought just to pressurize the petitioner
for wrongful gain.



4. According to complaint petition, wife of the complainant felt some pain in her stomach and the complainant took her to the Jyoti Punj Hospital run by the petitioner at Boring Road, Patna. The Doctors of the hospital including the petitioner assured that the patient would be cured after treatment. After several pathological check up, treatment started and lastly on 13.10.2012, allegation is that due to overdose administration of Chemotherapy without taking consent of the specialist Doctor, the condition of the patient deteriorated. Thereafter, the patient was taken and admitted in Ruban Emergency Hospital, Frazer Road, Patna on 26.10.2012. The Doctors thereat reported that the patient was serious due to overdose of chemotherapy. Thereafter, the patient was shifted to Sain Hospital, Kankarbagh on 01.11.2012 where wife of the complainant died.

5. Learned counsel for the petitioner has placed reliance on the judgment of the Hon'ble Supreme Court in the case of **Jacob Mathew Vs.State of Punjab & Anr**, reported in **(2005)6 SCC 1**.

6. Contention is that there is no dispute that the petitioner is a qualified Gynaecologist and the patient had gone there for treatment of disease relating to Gynaec. There is no material to substantiate as to what dose of chemotherapy was



administered to the patient and that dose was overdose one nor the Doctor, who subsequently examined the patient, has given a definite finding regarding the dose administered to the deceased which was overdose in his opinion.

7. In **Jacob Mathew** Case (Supra) with regard to medical negligence as an offence, the Hon'ble Supreme Court observed in Para-48.7 as follows:

“ To prosecute 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 facts and circumstances no medical professional in his ordinary senses and prudence would have done or failed to do. The hazard taken by the accused Doctor should be of such a nature that the injury which resulted was most likely imminent”.

8. In the facts and circumstances of the present case, it is evident that there is no material to substantiate overdose administration of chemotherapy. Moreover, even thereafter, the patient got treatment at two different hospitals for some days. Hence, there is no direct nexus between the alleged negligence of the petitioner and the death. Further there is complete lack of



evidence regarding professional and practical lapses committed by the petitioner as an ordinary prudent medical expert. Therefore, criminal prosecution of the petitioner amounts to abuse of the process of the Court. Hence, the impugned order and entire criminal prosecution arising out of the impugned order stands quashed and this application stands allowed.

(Birendra Kumar, J)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	NA
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