

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(Cr.) No. 405 of 2019

- Paramjeet Singh Chhabra S/o Late Shri Harnam Singh Chhabra Aged About 56 Years R/o Adarsh Colony, Behind Old High Court, Bilaspur, Police Station City Kotwali, Tehsil Bilaspur, District Bilaspur Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary, Department Of Home (Police), Mahanadi Bhawan, Naya Raipur, Revenue And Civil District- Raipur Chhattisgarh
2. Inspector General Of Police Bilaspur Range, Bilaspur District Bilaspur Chhattisgarh
3. Superintendent Of Police Bilaspur District Bilaspur Chhattisgarh
4. Station House Officer City Kotwali Police Station Bilaspur, District Bilaspur Chhattisgarh
5. Dr. Devendra Singh DNB (GASTRO) MNAMS (GASTRO ENTEROLOGY), C/o Apollo Hospitals, Seepat Road, Bilaspur, Tehsil And District Bilaspur Chhattisgarh
6. Dr. Rajib Lochan Bhanja MD, DM Sr. Consultant, Interventional Cardiologist (CARDIOLOGY), C/o Apollo Hospitals, Seepat Road, Bilaspur, Tehsil And District Bilaspur Chhattisgarh
7. Dr. Sunil Kumar Kedia MS, FAIS FIAGES (GENERAL & LAPROSCOPIC SURGERY) C/o Apollo Hospitals, Seepat Road, Bilaspur, Tehsil And District Bilaspur Chhattisgarh
8. Dr. Manoj Rai M.D. (INTERNAL MEDICINE), C/o Apollo Hospitals, Seepat Road, Bilaspur, Tehsil And District Bilaspur Chhattisgarh

---- Respondents

For Petitioner	: Mr. Surfaraj Khan, Advocate.
For State/respondents	: Ms. Akanksha Jain, Dy.G.A.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

09-09-2019

Heard on admission.

1. This petition has been brought under Article 226 of the Constitution of India praying for issuance of appropriate writ and directions.
2. Learned counsel for the petitioner submitted that the son of the petitioner namely Goldy Chhabra @ Gurveen Singh Chhabra was admitted in the Apollo Hospital, Bilaspur because he was suffering from stomach pain. On 25.12.2016, the son of the petitioner, now deceased, was hospitalized and after preliminary investigation, he was administered various medicines by way of injection and tablets etc. Thereafter, a team of doctors advised the petitioner and his family members that deceased needs to be shifted to intensive care unit and the deceased was shifted to I.C.U. On 26.12.2016, the petitioner was thereafter informed that his son Goldy Chhabra has expired. This information was given to the Police Station- Kotwali, Bilaspur and on that basis, the postmortem report was conducted, in which no clear opinion was given. However, viscera was preserved for F.S.L. examination while the F.S.L. report was awaited, the S.H.O. of Police Station, City- Kotwali, Bilaspur made a communication vide Annexure-P/4 dated 22.01.2017, in which it was informed that after consulting the Senior Scientific Officer at Bilaspur, it has been advised that since the Morgue intimation mentions of poisoning case, therefore, there is no necessity of viscera examination and it was concluded that the cause of death of the deceased was consumption of poisonous substance named as Sulphas. Subsequent to that, the F.S.L. report dated 05.03.2019 was given by State Forensic Laboratory, copy of which is attached as annexure-P/3, in which the result is mentioned that there is no presence of any chemical poison in the report for F.S.L. examination.
3. It is also submitted that looking to the result of F.S.L. examination, it

appears to be very clear that the police officer conducting the Morgue inquiry was in a hurry to close the case which appears to be in connivance with the private respondents. It may be a case of medical negligence and even otherwise. However, according to the F.S.L. report, the cause of death had not been consumption of poison, then there must be a medical cause of death of the deceased in this case. Petitioner being the father of the deceased has a right to know the cause of death of his son, which has not been certified in clear terms by the doctors of the Apollo Hospital and neither the morgue inquiry in this case can be said to have come to any conclusion in convincing nature, therefore, it is prayed that appropriate orders be passed.

4. Learned counsel appearing on behalf of the respondents No.1, 2, 3 and 4 submits that it was informed in the morgue intimation that the deceased was admitted in the hospital because of consumption of some poisonous substance. Therefore, it was concluded by the investigating officer that the cause of death of the deceased was suspected poisoning. However, as the F.S.L. report discloses that there was no presence of chemical poison in the Viscera in that case, therefore, it may be a case of natural death. Therefore, the petition is without any substances, hence, it may be dismissed.
5. Heard learned counsel for both the parties and perused the documents.
6. Perused the entire documents filed along with the petition, the documents of admission and treatment of the petitioner are not present on the record and neither the same were obtained by the police officer making morgue inquiry, as it is apparent from the report dated 22.01.2017 vide annexure-P/4. There is a mention in that report that the memo was received from Apollo Hospital, that the deceased had consumed poison named as Sulphas. The documents of treatment of

the deceased may have shown what was the line of treatment given to the deceased and was it a treatment for controlling the effects of poisoning. In postmortem report, the doctor conducting autopsy has not given any opinion as to what was the cause of death and the scientific investigation done by way of F.S.L. examination has been found negative, therefore, the doubts raised by the petitioner cannot be said to be without any substance and the death of the deceased in this case needs a detailed inquiry.

7. This is a case whether there are doubts not removed, therefore, the petitioner has an apprehension that it may be a case of medical negligence. In ***Lalita Kumari Vs. State of Uttar Pradesh And Others***, reported in **(2014) 2 SCC 1**, the Supreme Court has given specific direction in paragraph No.120.2 which is as under:-

“**120.** In view of the aforesaid discussion, we hold:

120.2. If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.”

8. Therefore, after overall consideration of the present case, I am of this view that the morgue inquiry made by the police has not resulted in a satisfactory and acceptable conclusion and the report of F.S.L. examination of the deceased is contradictory. Therefore, this case needs a preliminary inquiry to be done for the purpose of finding out the cause of death of the deceased and also for finding out whether it is a case of medical negligence. In ***Jacob Mathew Vs. State of Punjab And Another*** reported in **2005 (AIR) SC 3180**, the Supreme Court has

observed in Para 52, as under:-

“52. We may not be understood as holding that doctors can never be prosecuted for an offence of which rashness or negligence is an essential ingredient. All that we are doing is to emphasize the need for care and caution in the interest of society; for, the service which the medical profession renders to human beings is probably the noblest of all, and hence there is a need for protecting doctors from frivolous or unjust prosecutions. Many a complainant prefers recourse to criminal process as a tool for pressurizing the medical professional for extracting uncalled for or unjust compensation. Such malicious proceedings have to be guarded against. ”

Therefore, guidelines laid down in Jacob Mathew case also needs to be followed in this case. Hence, this petition is disposed off with following directions:-

(a) Respondents No.1, 2, 3 and 4 are directed to make a preliminary inquiry in the complaint made by the petitioner vide annexure-P/1 taking into consideration the postmortem report, the viscera report and other medical evidence that is available regarding the treatment in the Apollo Hospital for the purposes of drawing a conclusion regarding the actual cause of death of the deceased and also that if it is a case of medical negligence and also to find out whether it is a case of medical negligence. Assistance may be taken of the experts in the field of medicine and forensic science in accordance with the observation made in this order.

9. Accordingly, the petition is disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge