

HONOURABLE DR. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.9293 of 2014

ORDER:

The petitioners, Dr. M.Padmanabha Reddy, Administrator of Shalini Maternity Hospital and Srishti Associates, proprietary entity represented by its Administrator supra, are accused Nos.4 & 5 in CC.No.171 of 2014 on the file of Chief Metropolitan Magistrate, Nampally, Hyderabad. The 2nd respondent is the defacto complainant by name P.Rama Krishna Reddy, advocate by profession. The present petition is by invoking Section 482 Cr.P.C. seeking to quash the CC proceedings supra pending against them for the offences punishable under Sections 304-A & 201 IPC which is in fact outcome of the private complaint of the 2nd respondent against the petitioners and 3 others who are A1 to A3.

2. The private complaint was filed stating the accused 5 in number committed the offences punishable under Sections 304-A, 316 & 201 IPC and taken cognizance as private PRC by allotting PRC.No.1 of 2004 by the learned Chief Metropolitan Magistrate, which is from the facts that Smt. Srilatha Reddy W/o. Dr. Srikar Reddy, daughter of the complainant was admitted in the hospital on 05.03.2003 at about 11.30 PM under care of A1-Dr. P.Malathi, Consultant Obstetrician and Gynecologist and the patient was shifted under the instructions of A1 supra assisted by A2-Dr. B.Thejeswari (since died) and A.3-Dr. L.Sudhakar, Anesthesiologist, all of A.5 Hospital supra administering by A4 supra as a proprietary entity and there was unborn child died of the patient under advance pregnancy admitted for delivery of child, which death taken place within few hours after the admission

supra, at the early hours of 06.03.2003 by alleged medical negligence of the accused supra from their not dealing with due care and caution and not following standard guidelines of Cardio Pulmonary Resuscitation to save life of mother and fetus and the hospital did not have facilities to give advanced cardiac life support. From the pre-cognizance enquiry, the private PRC taken cognizance was when summoned impugned in Crl.R.C.No.1015 of 2004 by A.1, Crl.R.C.No.1028 of 2005 by A.3 and Crl.R.C.No.793 of 2004 by A.4 & A.5, said cognizance order dated 27.02.2004 was set aside by the High Court on 01.07.2011 in remanding the matter by directing the learned Magistrate to record statements of witnesses and take available material into consideration while examining the issue about taking cognizance. Pursuant to the remand order, the learned Magistrate based on the defacto complainant's petition in Crl.M.P.No.2090 of 2012 permitted the affidavits of 4 medical doctors and his evidence under Section 296 Cr.P.C. by order dated 30.07.2012 and taken cognizance afresh on 13.08.2012. Same was assailed by A3 in Crl.R.C.No.1735 of 2012 and that revision was allowed on 31.12.2012 by this Court in again remanded back the matter to the learned Chief Metropolitan Magistrate giving liberty to the complainant to produce said 4 Doctors for recording their sworn statements by the learned Magistrate in accordance with law and those 4 Doctors were examined and by order dated 07.03.2013 the case to commit to the Court of Sessions saying trialable by Court of Sessions, allotted private PRC and ultimately from committal the Sessions Division allotted SC.No.242 of 2013 and made over to learned IV Additional Metropolitan Sessions Judge who had taken cognizance other than

offence under Section 316 IPC only for Sections 304-A & 201 IPC and from the hearing before charge in sending back under Section 228 Cr.P.C. to the learned Chief Metropolitan Magistrate for trial according to law as CC therefrom CC.No.171 of 2014 was allotted and pending.

3. In the factual scenario supra in the CC supra from appearance by accused, accused Nos.1 & 3 respectively filed petitions under Section 482 Cr.P.C. to quash said CC proceedings in Crl.P.Nos.5056 & 5077 of 2014 and so far as against A1 & A3 respectively the cognizance order was quashed. It is meanwhile petitioners/accused Nos.4 & 5, no other single entity, for the reason proprietor and proprietary concern are not different but one and the same.

4. The contentions in the quash petition in the factual background supra are that the allegations in the private complaint and sworn statements are untrue and without any basis to sustain accusation under Sections 304-A & 201 IPC much less to say death of the deceased caused due to negligent act of accused and the petitioners did not commit any offence but falsely implicated, Dr. Srikar Reddy husband of the deceased-Smt. Srilatha Reddy filed complaint before the State Medical Council for cancellation of license of A4 and other accused alleging negligence on their part and on Expert Committee of Senior Consultants on elaborate enquiry and Ethical and Malpractices Committee came to a conclusion of there is no negligence on part of any of the accused vide proceedings dated 11.02.2004 in coming to the conclusion of the deceased died due to Amniotic Fluid Embolism a rare complication and the General Body of AP Medical Council approved

the same and aggrieved thereby appeal before Medical Council of India was also maintained unsuccessfully by said Dr. Srikar Reddy including in filing writ petition before the High Court of Delhi against order of Medical Council of India and it is only subsequent thereto and with afterthought and with intention to harass the petitioners and other accused, the defacto complainant filed the private complaint and there is consumer dispute raised before the State Commission in CC.No.40 of 2004 for compensation of Rs.1 crore with alleged negligence on part of the accused persons of the private complaint that was ended in dismissal of ultimately with finding of no negligence and the 4 Doctors whose sworn statements recorded in the private complaint to take cognizance are not even experts in their respective branches but interested persons that too no way involved in the treatment given to the patient and against the State Commission dismissal of the said claim said Dr. Srikar Reddy filed before the National Consumer Disputes Redressal Commission in FA.No.444 of 2008 and in the factual scenario and ignoring of the same apart from non-disclosure the filing of the private complaint and taking of cognizance is unsustainable and the cognizance order is liable to be set aside. It is also drawn attention of the Court to the expression of the Apex Court in **Jacob Mathew Vs. State of Punjab**¹ for criminal negligence to make out an offence, there must be element of mens rea shown to exist thereby different to civil negligence as degree of negligence is gross or very high to make out an offence of such negligence. It is also contended with reference to it and from the other events of even dismissal of the Consumer Dispute in making claim for civil

¹ 2005 (6) SCC 1

negligence compensation, by also referring to the other expression in **Martin Desouza Vs. Mohd. Ishfaq**², the Apex Court held that Judges are not experts in medical science rather they are laymen and they shall rely on testimonies of other Doctors and Doctors sometimes have tendency to support their own colleagues charged with medical negligence and testimony may also be difficult in understanding complicated medical matters by layman like a Judge and the balance has to be struck in such case. No doubt it is observed in the expression supra of **Martin**, Doctors who caused death or agony due to their negligence should certainly be penalized however like other professionals, Doctors too can make errors of judgment and if they are chosen to be punished, no Doctor can practice with equanimity and that serves as counter productive to the society which is not good and also placed reliance on **Malay Kumar Ganguley Vs. Dr. Sukumar Mukherjee**³, of standard of proof as also culpability and under Section 304-A IPC stand on altogether different footing for criminal law in contra distinction to Tort Law or Consumer Protection Act, a claim for degree of negligence attributable is not same or similar in civil and criminal branches and if there is no gross negligence or recklessness on part of discharge of the duties any Doctor resulted in death of patient no required to fix penal consequences and ultimately contended of the proceedings are liable to be quashed against the petitioners-A4 & A5.

5. Learned counsel for the petitioners reiterated the same, whereas it is the submission of learned Public Prosecutor vis-à-vis learned counsel for the 2nd respondent-complainant that there is

² 2009 (3) SCC 1

³ 2009 (9) SCC 221

nothing to interfere with the cognizance order but for to direct them to face trial and the factual matrix in taking cognizance clearly shows the culpable negligence on the part of the petitioner-A4 Administrator and proprietor of A.5 hospital and he cannot escape from the penal consequence merely because A1 & A3 were given any benefit of doubt in their quash petitions by another single Judge of this Court in the judgment dated 25.06.2014 in Crl.P.Nos.5056 & 5077 of 2014 and thereby sought for dismissal.

6. Heard learned counsel for the petitioners, learned counsel for the 2nd respondent-defacto complainant and learned Public Prosecutor as referred supra and perused the entire material on record.

7. A perusal of the order of the quash petition of A1 to A3 by another bench of this Court supra shows that as per the expression of the Apex Court in **VM Shah Vs. State of Maharashtra**⁴ that findings recorded by Civil Court prevail until reversed by the appellate court after due consideration of the material and weighing the evidence and mere pendency of appeal against the Civil Court finding does not have the effect of suspending the operation of the decree of the civil Court already gave its findings and it is clear that there is no negligence on part of the accused Doctors in the treatment and the AP Medical Council as a statutory body also examined the allegations with the help of expert after thorough examination found of no negligence on part of the Doctors and the State Consumer Redressal Commission order dismissing the claim of damages for negligence confirmed by the National Commission also by referring to the

⁴ 1995 (5) SCC 767

Medical Council finding of no negligence confirmed by Medical Council of India and though in civil case evidence to be weighed by preponderance of probabilities. So far as criminal case it is duty of the complainant or prosecution to prove beyond reasonable doubt and even from preponderance of probabilities there is no material to find any negligence the question of sustainable of the criminal prosecution where proof is much higher than mere civil negligence attributable and which is lacking consequent thereto and as held in **Dr. Suresh Gupta Vs. Government of NCT of Delhi**⁵ in fixing criminal liability on a Doctor or surgeon, the standard of negligence required to be proved should be so high to describe as “gross negligence” or “recklessness” and or not mere lack of necessary care, attention and skill as observed by the House of Lords in **R Vs. Adomako** that a Doctor cannot be held criminally responsible for patient’s death unless his negligence or incompetence showed such disregard for life and safety of his patients as to amount to a crime against the State and when a patient agrees to go for medical treatment or surgical operation, every careless act of the medical man cannot be termed as criminal liability unless it shows gross lack of competence or inaction and wanton indifference to his patient’s safety which is not even any result of death of patient from error of judgment or accidental or mere inadvertence or some degree of want of adequate care and caution as also held in **Jacob Mathew supra** and **ASV Narayanan Rao Vs. Ratnamala**⁶, **Martin FD Souza supra**, even earlier to it **P.B. Desai (Dr.) Vs. State of Maharashtra**⁷ besides **Malay Kumar**

⁵ 2004 (6) SCC 422

⁶ 2014 (1) SCC (Crl) 102

⁷ 2013 ACC 68 SC

Gangulay supra, which principle in all in same line making clear as a settled proposition of mere negligence is not sufficient to fasten criminal liability in the absence of showing gross negligence with high recklessness on part of the Doctor that too the Medical Council and State Commission found no negligence from rare situation of death caused by Amniotic Fluid Embolism and there was any postmortem examination even to show any outcome of gross negligence or high recklessness on part of any of the accused and when basic requirements are missing the continuation of the prosecution in compelling the accused to face rigama role of the criminal trial is unjustified and leads to miscarriage of justice. In fact the order of the learned single Judge in quashing the proceedings so far as A1 & A3 among 3 Doctors for A2 died who treated the patient in the hospital of the petitioners/A4 & A5 one and the same as referred supra when challenged before the Apex Court by the complainant the Apex Court in Special leave to appeal Crl.P.No.8630 & 8631 of 2014 dismissing SLP on 17.11.2014 for no grounds to grant leave. Further the National Council Redressal Commission in the appeal No.444 of 2008 against the State Commission in CC.No.40 of 2003 supra, in his detailed order running in 105 Paras came to the conclusion that looking from any angle there is no any medical negligence on part of the Doctors and the Hospital and no fault can be found with the well reasoned order passed by the State Commission which considered all aspects of the case in great depth in upholding the same.

8. Having regard to the above and before the State Commission and the National Commission dismissing the claim for civil negligence the A4 & A5 were parties and in view of that civil

Court finding attained finality and from the quash of the proceedings of the CC against A.1 and A.3 by the single judge of this Court confirmed from non-admission of the Special Leave Petition though in single line order without going into the merits for not a case of any review filed against the order of the single Judge so far, leave about only remedy of appeal and not even review in the criminal matter, the continuation of the proceedings so far against the petitioners/A4 & A5 is nothing but abuse of process and thereby for ends of justice are supreme to the mere upholding law and to sub serve the ends of justice and to prevent abuse of process.

9. Accordingly and in the result, this Criminal Petition is allowed by quashing the proceedings against the petitioners/A4 & A5 supra in CC.No.171 of 2014 on the file of Chief Metropolitan Magistrate, Nampally, Hyderabad. Bail bonds if any stand cancelled.

Pending miscellaneous petitions, if any, shall stand closed.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 18.03.2019
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