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HIGH COURT OF CHHATTISGARH, BILASPUR

WPCR No. 27 of 2018

Amit Agrawal, S/o. Shri Satish Agrawal, aged about- 37 years, R/o. House No. 142, K. K. Ward, Tarenga Road Bhatapara, P. S. & Tehsil- Bhatapara, District- Baloda Bazaar (C.G.).

---- Petitioner

Versus

1. State of Chhattisgarh, Through Secretary, Department of Home (Police), Mahanadi Bhawan, Naya Raipur, Revenue & Civil District- Raipur (C.G.).
2. Inspector General of Police, Raipur Range, Raipur, District- Raipur (C.G.).
3. Superintendent of Police Raipur, District- Raipur (C.G.).
4. Station House Officer, Civil Lines Raipur, District- Raipur (C.G.).
5. Dr. A. Suresh Kumar, C/o. Ashoka Super Specialty Hospital & Research Pvt. Ltd, Ashok Vihar Colony, Street No. 1, Opposite Mandi Gate, Pandri, Tehsil & District- Raipur (C.G.).
6. Dr. Ratna Agrawal, C/o Ashoka Super Specialty Hospital & Research Pvt. Ltd. Ashok Vihar Colony, Street No. 1, Opposite Mandi Gate, Pandri, Tehsil & District- Raipur (C.G.).
7. Dr. Madhuprita Agrawal, C/o. Ashoka Super Specialty Hospital & Research Pvt. Ltd, Ashok Vihar Colony, Street No. 1, Opposite Mandi Gate, Pandri, Tehsil & District- Raipur (C.G.).
8. Dr. Manoj Kushwaha, C/o Ashoka Super Specialty Hospital & Research Pvt. Ltd. Ashok Vihar Colony, Street No. 1, Opposite Mandi Gate, Pandri, Tehsil & District- Raipur (C.G.).

---- Respondents

For Petitioner	: Mr. Surfraj Khan, Advocate : Mr. Amit Agrawal, petitioneris also present in person.
For State	: Mr. Gurudev I. Sharan, G. A.
For Respondent Nos. 5 to 8	: Mr. Sachin Singh Rajput, Advocate.

Hon'ble Shri Justice Narendra Kumar Vyas

Order On Board

27.07.2021

1. Learned counsel for the petitioner would submit that petitioner

has filed written complaint on 24.03.2017 before the SHO Police Station, Civil Lines Raipur for lodging of FIR against respondent No. 5 to 8 for commission of offence punishable under Sections 304, 420/34,467,468, 471/34 & 120-B of IPC alleging that the wife of the petitioner namely Shilpi Agrawal alongwith petitioner and other family members have visited the hospital namely Ashoka Super Specialty Hospital & Research Pvt. Limited, Raipur for treatment, as the wife of the petitioner could not conceive the baby, but due to certain medical negligence, she died and thereafter on the basis of forged signature of deceased as well as mother of the petitioner, the Hospital Authorities have prepared forged consent letter. The petitioner has submitted complaint to that effect before the Police Station, Civil Lines, Raipur on 24.3.2020, but no action has been taken by the Police against the respondent Nos. 5 to 8, who are the doctors by profession.

2. It has been further contended that according to the complaint filed by the petitioner, his wife was not having any medical disability and she died on 23.03.2017 in very young age due to negligence of the doctors but the respondent/Investigating Authorities did not submit report of the inquest report No. 14/2017 and no fair investigation has been done. Learned counsel for the petitioner would submit that respondent No. 4 – Station House Officer, Civil Lines, Raipur may kindly be directed to register the FIR against respondents No. 5 to 8 in view of the law laid down by the Hon'ble Supreme Court in the matter of Lalita Kumari v.

Government of Uttar Pradesh and others reported in **2014 (2)**

SCC 1.

3. On the above factual foundation the petitioner has prayed for following reliefs :-

“10.1 That, this Hon'ble Court may kindly be pleased to issue a writ (s), order(s), direction (s) by directing the respondent authorities, particularly Station House Officer Civil Lines Raipur (Respondent No.4) to comply with the directions and procedure as mandated against the respondents no. 5 to 8, as per section 154 of Cr.P.C. and the guidelines issued by the Hon'ble Supreme Court of India in the case of **Lalita Kumari** (supra).

10.2 That, this Hon'ble Court may kindly be pleased to call for the records of the matter. As an alternative relief, the petitioner pray that, the matter may kindly be referred to an independent investigation agency for investigating the entire matter.

10.3 Any other relief (s) in form of order or orders and/or direction (s) as your lordships may deem fit and proper.”

4. This Court has time and again issued various direction to respondents authorities right from the first date of hearing of the present writ petition. This Court on 27.08.2018, has directed the Additional Superintendent of Police, Raipur to appear in person before this Court alongwith original case diary. In compliance of Court order dated 06.09.2021 the Additional Superintendent of Police & Investigating Officer appeared alongwith the original case diary before this Court and they submitted that the respondents No. 5 to 8 have not provided proper assistance and

non-cooperation by the doctors has virtually derailed the investigation. As such, this Court has directed Director, Health Service, Government of Chhattisgarh to remain present before this Court on 12.09.2018, thereafter, the Director Medical Health was present before this Court and this Court has passed the following order on 12.09.2018, which reads as under :-

“As of now, considerable time has elapsed and the petitioner herein is the husband of deceased who died on 23.03.2017. It is apparent that non-communication of the concerned director is on the face of record. Therefore, Mr. Ashok Chandrakar, Medical Education, who is present today is directed to place a list or panel of 10 doctors who are well versed with the postmortem investigation before this Court apart from the doctors who were not earlier part of the investigation so that in the facts and circumstances of this case a list or panel of doctors may be prepared afresh and direction if any can be passed to answer the query of the Police.”

5. Thereafter, on 20.09.2018, this Court has constituted a panel of four doctors to submit their report. On 28.02.2019, report of Director, Medical Education, Raipur dated 06.10.2018 was received by this Court. On 14.03.2019, the learned State counsel was directed to give the names of the team of the Anesthesia experts working in the government hospital and also working in reputed private hospitals. In pursuance of the direction, names of four doctors have been given by the State Counsel as reflected

in the order sheet dated 16.07.2019 and the team consisting of three doctors who are experts on the subject has been constituted i.e. Dr. K.K. Sahare, D.K.S. Super Specialist, Raipur, Dr. Pratibha Jain Shah, Raipur & Dr. Jaya Lalwani, Raipur and this Court has put a specific query to them, which are extracted in the order sheet dated 16.07.2019. In pursuance of the direction of this Court, the committee constituted by this Court has given a report which is part of the record.

6. The contention of the learned counsel for respondent Nos. 5 to 8 is that his clients have completed 20 years in the medical profession and there is no mistake committed by them. The allegation as leveled against them by the petitioner is not correct, they have discharged their duty to the best of their knowledge and there was no negligence on their part.
7. On the other hand, petitioner in person would submit that due to negligence of the doctors, he has lost his wife, which is irreparable loss to him. Looking to the allegations made by the petitioner as reflected in the petition, the same requires evidence for determination to respond grievances raised by the petitioner.
8. The Hon'ble Supreme Court in case of **Sakiri Vasu Vs. State of Uttar Pradesh & others**¹, has examined the issue holding that the petitioner has remedy of filing of complaint before the concerned Judicial Magistrate First Class under Section 200 of the Cr.P.C. The Supreme Court has again

¹ (2008) 2 SCC 409

considered and decided the issue in **Sudhir Bhaskarrao Tambe v. Hemant Yashwant Dhage² and M. Subramaniam & another Vs. S. Janaki & another³**.

9. Considering the facts and materials on record and in light of the law laid down by Hon'ble the Supreme Court in the above referred judgments, the present writ petition filed under Article 226 of the Constitution of India, is disposed of with liberty to the petitioner to file complaint under Section 200 or 153(3) of the Cr.P.C. before the court of Judicial Magistrate First Class having jurisdiction over the place of offence, and in-turn Magistrate will follow the procedure prescribed under the provisions of the Cr.P.C.
10. It is made clear that this Court has not expressed any opinion on merits of the case whether the complaint discloses any criminal offence or not.
11. In view of the above, the instant writ petition is disposed of with the aforesaid liberty granted in favour of the petitioner.

Sd/-

(Narendra Kumar Vyas)
Judge

Amita

² (2016) 6 SCC 277

³ (2020) 16 SCC 728