

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

W.P.(C) No. 2653 of 2021

Sanjay Ambastha, S/o. Mohan Gopal Ambastha, Aged About 51 Years,
R/o. Suman Sadan, Darripara, Ambikapur, District Sarguja, Chhattisgarh.

---- Petitioner

Versus

1. State Of Chhattisgarh, Through Secretary, Health And Family Welfare Department, Govt. Of Chhattisgarh, Raipur, Chhattisgarh.
2. The Nodal Officer, Ram Krishna Care Hospital, Regional Transport Office, Raipur Chhattisgarh.
3. The District Collector, District Raipur, Chhattisgarh.
4. D.H.O. cum Inquiry Officer, Office Of Chief Medical And Health Officer, District Raipur Chhattisgarh.
5. Ram Krishna Care Medical Science Pvt. Ltd., Through The Management, Aurobindo Enclave Pachpedhi Naka, Dhamtari Road, District Raipur Chhattisgarh.

---- Respondents

For Petitioner : Mr. Shakti Raj Sinha, Advocate

For State : Mr. Alok Bakshi, Addl. A.G.

Hon'ble Shri Justice Goutam Bhaduri

ORDER

02.07.2021

Heard

1. The facts as pleaded, the petitioner's mother, aged about 69 years, was admitted to hospital named Ram Krishna Care Medical Science Pvt. Ltd. on 22.09.2020 with an infection of Jaundice and no symptom of Covid-19. Subsequently, she was put in a Covid ward after she was tested covid positive at the time of admission. It is stated that the mother was administered with Remdesivir Injection and due to wrong treatment of administering injection her health got deteriorated from 26.09.2020. Subsequently after deterioration Remdesivir injection was stopped. Further, on 29.09.2020 RTPCR test was conducted wherein she was found covid negative but still she was kept with the covid patient and on

02.10.2020 the mother of the petitioner died due to post covid complication. Further, it is stated that the dead body was delivered to the petitioner without following the safety protocol and it was transported through the Ambulance without safety measures. Consequently, violation of guidelines issued by the Central and the State Government was committed by the respondent No.5, hospital, for which they are liable to be prosecuted. With such pleading the two fold prayer is made. The hospital is responsible for the negligent treatment and another one that the hospital did not follow the covid protocol norms in handling the dead body; therefore, the hospital is liable to be prosecuted.

2. Learned counsel for the petitioner would submit that the mother of the petitioner when admitted was tested Covid-19 positive and though she recovered from covid but eventually died on 02.10.2020. Before the date of death, the RTPCR test was carried out of patient for covid and it was found that she was negative; thereby recovered from covid but died subsequently. It is stated though the mother of the petitioner died because of covid complication yet after her death the dead body was handed over without following the guidelines issued by the Government of India, Ministry of Health & Family Welfare (Annexure P-6). He would submit that as per the guidelines, the Hospital was required to give the body in a double layer leak proof zipped body bag and to be handed over to the transport employee. Whereas, in respect of case of mother of petitioner, it was handed over to the petitioner instead and the petitioner carried the body to Ambikapur and cremated the body there only. Consequently, the guidelines which was issued under the Pandemic Act were not followed. The counsel further submits that the applications complaining the incidents were made to the respective Director, Health Services wherein allegations were made but it was not taken care of. Therefore, this petition to proceeding against the hospitals for penal actions.

3. Learned State counsel opposes the argument advanced by the counsel for the petitioner.
4. Heard learned counsel for the parties, perused the pleadings and the documents appended thereto.
5. The primary allegation of the petitioner that there has been a negligence in the treatment and wrong injection i.e. Remdesivir Injection was administered to the mother of the petitioner by which her health condition was deteriorated. With respect to the medical negligence and criminal case whether under the circumstances Remdesivir Injection was necessary or not, it cannot be tested by the Court.
6. The Supreme Court in case of ***Dr. Suresh Gupta v. Govt. of NCT of Delhi & Another***.¹ has held that the bonafide medical practitioners should not be put through unnecessary harassment. The court observed that Doctors would not be able to save lives if they were to tremble with the fear of facing criminal prosecution. In such a case, a medical professional may leave a terminally ill patient to his own fate in an emergency where the chance of success may be 10% rather than taking the risk of making a last ditch effort towards saving the subject and facing criminal prosecution if the effort fails. The court held that simple lack of care, error of judgment, or an accident is not proof of negligence on the part of a medical professional and that failure to use special or extraordinary precautions that might have prevented a particular incidence can not be the standard for judging alleged medical negligence.
7. The Supreme Court in case of ***Jacob Mathew v. State of Punjab & Another***² has laid down certain guidelines. The calculation was summed up in para 48, which are reproduced herein below :

“48. We sum up our conclusions as under :

1 AIR 2004 SC 4091

2 (2005) 6 SCC 1

(1) *Negligence is the breach of a duty caused by omission to do something which a reasonable man guided by those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a prudent and reasonable man would not do. The definition of negligence as given in Law of Torts, Ratanlal & Dhirajlal (edited by Justice G.P. Singh), referred to hereinabove, holds good. Negligence becomes actionable on account of injury resulting from the act or omission amounting to negligence attributable to the person sued. The essential components of negligence are three: 'duty', 'breach' and 'resulting damage'.*

(2) *Negligence in the context of medical profession necessarily calls for a treatment with a difference. To infer rashness or negligence on the part of a professional, in particular a doctor, additional considerations apply. A case of occupational negligence is different from one of professional negligence. A simple lack of care, an error of judgment or an accident, is not proof of negligence on the part of a medical professional. So long as a doctor follows a practice acceptable to the medical profession of that day, he cannot be held liable for negligence merely because a better alternative course or method of treatment was also available or simply because a more skilled doctor would not have chosen to follow or resort to that practice or procedure which the accused followed. When it comes to the failure of taking precautions what has to be seen is whether those precautions were taken which the ordinary experience of men has found to be sufficient; a failure to use special or extraordinary precautions which might have prevented the particular happening cannot be the standard for judging the alleged negligence. So also, the standard of care, while assessing the practice as adopted, is judged in the light of knowledge available at the time of the incident, and not at the date of trial. Similarly, when the charge of negligence arises out of failure to use some particular equipment, the charge would fail if the equipment was not generally available at that particular time (that is, the time of the*

incident) at which it is suggested it should have been used.

(3)xxx.....xxx....

(4)xxx.....xxx....

(5) The jurisprudential concept of negligence differs in civil and criminal law. What may be negligence in civil law may not necessarily be negligence in criminal law. For negligence to amount to an offence, the element of mens rea must be shown to exist. For an act to amount to criminal negligence, the degree of negligence should be much higher i.e. gross or of a very high degree. Negligence which is neither gross nor of a higher degree may provide a ground for action in civil law but cannot form the basis for prosecution.

(6)xxx.....xxx....

(7)xxx.....xxx....

(8)xxx.....xxx....”

8. This fact cannot be loose site that India is the second most populous country in the world. It being a developing economy, increased urbanization rapid deforestation, little or no check on pollution level make the people more prone to tropical diseases couple with equally dense population. Therefore, naturally the health condition in the country cannot be the best. In the urban area too the average of doctors as against the patient are less, which outbreak of pandemic all over the world, it is not normal and easy to handle. This condition worsened and aggravated as any amount of effort by the medical would not be made satisfactory for the pressure of population and patient specially during covid pandemic. The pandemic have returned after 100 years, no medicine is invented, as such, the doctors to the best of their ability and understanding have administered different injection to the Covid-19 infected patients. This may be attended by risks, one has to understand the fact that the system can not take benefits without taking the risks and every advance in technique

and experience is also attended by risks. The Doctors like the rest of us, have to learn by experience, and experience often teaches in a hard way. Therefore, putting the Doctors to a criminal prosecution for negligence would lead to create a lot of emotional disturbance, at the time of pandemic when the doctors have served the ailing besides the fact doctors-patient ratio has miserably failed and doctors made their best effort to revive the ailing one, no criminal negligence can be attached on any individual opinion. Under these circumstances, one has to indicate trust in the system and cannot be allowed to abuse the conditions, may be a self certified bonafide.

9. With respect to the second aspect of the complaint that the dead body was not handled according to the covid protocol guidelines issued by the Central and State Government, this Court in exercise of power under Article 226 of the Constitution can not go into the roving enquiry; in as much as, the nature of complaint as has been stated that the dead body was handed over without any zipped body bag is a matter of enquiry. This Court, therefore, would refrain itself to go into the exercise of investigation. Serving certain problem requires multi-pronged approach and they would persist if viewed through narrow lens and the petitioner therefore cannot accept ill conceived exercise by this court to substantiate the fact and allegation.
10. In view of the aforesaid discussion, I am not inclined to admit this petition. According it is dismissed.

Sd/-
(Goutam Bhaduri)
JUDGE