

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.18394 of 2019

Arising Out of PS. Case No.-483 Year-2006 Thana- GAYA COMPLAINT CASE District-
Gaya

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DR. SANGEETA SINHA, Wife of Dr. Pramod Kumar Singh, Resident of Chainpur Bhawan, Murarpur More, G.B. Road, P.S.- Kotwali, District - Gaya, presently Residing at 163 A/A Mohalla - Lakhibagh, P.S. - Muffasil, District- Gaya.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Sanjay Kumar, Son of Bindeshwar Sharma, Resident of House No. - M/98, Road No. - 1, Chanakyapuri Colony, P.S.- Rampur, District Gaya

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Sanjeev Kumar, Advocate Mr. Priya Ranjan, Advocate Mr. Mukesh Kumar, Advocate Mr. Nitish Kumar, Advocate
For the Complainant	:	Mr. K. P. Singh, Sr. Advocate Ms. Mina Singh, Advocate
For the State	:	Mr. Chandra Bhushan Prasad, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL JUDGMENT

Date : 31-08-2023

Heard learned counsel for the petitioner, learned counsel for the complainant and learned A.P.P. for the State.

2. The present application has been filed seeking quashing of the order dated 18.08.2018, passed in Protest Complaint Case No. 483 of 2006/Tr. No. 1716 of 2018, whereby the learned Additional Chief Judicial Magistrate-II, Gaya has been pleased to take cognizance, for the offence under Section 304A of the Indian Penal Code, against the petitioner, after the matter was remanded back by this Court by order dated 19.03.2010 in Cr. Misc. No. 43133 of 2007.



3. Learned counsel for the petitioner, at the outset, submits that it would be pertinent to bring on record certain relevant facts which have bearing on the adjudication of the present case. It is further submitted that the complainant, who is brother-in-law of the deceased, had instituted Kotwali P.S. Case No. 73 of 2006, dated 29.03.2006, under Section 304A of the Indian Penal Code, against the petitioner. It is next submitted that the police, after threadbare investigation, came to a considered conclusion that petitioner was innocent and, accordingly, final form was submitted. It is further submitted that the final form submitted by the police was accepted by the learned trial court vide order dated 08.08.2007 and by the same order the protest petition filed by the complainant was also dismissed. It is further submitted that the complainant, accordingly, moved before this Court by filing Cr. Misc. No. 43133 of 2007 challenging the order dated 08.08.2007 passed by the learned trial court. This Court by order dated 19.03.2010 was pleased to set aside part of the order dated 08.08.2007 and remanded the matter back to the learned trial court to proceed in accordance with the procedure envisaged under Sections 200 and 202 of the Cr.P.C. It is next submitted that this Court, while setting aside the part of the order, remanding the matter back to the learned trial court, had also indicated that since



there was no medical negligence committed by the petitioner, as such, the said aspect of the matter can also be looked into by the learned trial court.

4. Learned counsel for the petitioner submits that in pursuance to the order dated 19.03.2010 in Cr. Misc. No. 43133 of 2007 the Protest-cum-Complaint Petition being Case No. 483 of 2006 got revived wherein the complainant had alleged that one Suneeta, who was wife of one Vijay Kumar, the younger brother of this complainant, became pregnant and was carrying the pregnancy of two months with amenorrhea (not menstruating) in her womb and on 28.03.2006 Suneeta along with the complainant and others had gone to the clinic of the petitioner for regular check-up where as per advice pathological test was done showing positive sign of pregnancy, though the other features including blood pressure, pulse rate were found by the Doctor to be normal. It is further alleged that the petitioner, out of sheer greed for money, advised that the position of amenorrhea is not normal and the same may result in the death of the mother i.e. Suneeta and thus advised to get the pregnancy aborted. It is next alleged that on 29.03.2006, the complainant and his other family members along with Suneeta came to Bhadani Nursing Home where the operation was performed. It is alleged that at 02:00 p.m. on 29.03.2006, the



operation was started and at about 03:15 p.m. the Doctor came out of the operation theatre and the patient was brought to the bed of the nursing home in an unconscious state. It is further alleged that even after lapse of about two hours, the patient did not regain her consciousness and on making request the Doctor and her compounder to look after the patient, the Doctor informed that she has injected sleeping medicine and the patient will regain her normal condition within an hour. It is next alleged that after lapse of one hour, the patient did not become conscious and, accordingly, request were made to the Doctor who refused to visit the patient and, thus, the patient was brought to the nursing home where neither the Doctor nor any of her staff were present and thereafter the complainant rushed to the clinic of the Doctor where the compounder said that the patient is dead. Accordingly, Kotwali P.S. Case No. 73 of 2006, dated 29.03.2006 was instituted and the body of the deceased was sent to A.N.M.C.H. for postmortem on 30.03.2006. It is alleged that the petitioner for the greed of money induced the complainant to give consent for the operation which was not required to be done. It is further alleged that to cover up the misdeeds and negligence, the accused gave misleading information to this complainant and other attendants and thereby she cheated when fact is that the death of Suneeta had occurred in



the operation theatre itself. It is next alleged that the police in connivance helped the accused in getting bail and showed complete slackness in collecting the objective evidence and other documentary evidences and also the statement of material and relevant witnesses were either not recorded or even if it was recorded it was not recorded in a proper manner, accordingly, the complaint case was filed.

5. Learned counsel for the petitioner submits that an important aspect of the matter is to be kept in mind at the time of considering the case related to prosecution of the Doctor on the charge of committing medical negligence.

6. It is submitted that judicial forum, while seeking to identify delinquents and delinquency in the cases of medical negligence, actually aim at striking a careful balance between the autonomy of the Doctor to make judgments and right of the patient to be dealt with fairly. It is further submitted that in process of adjudication, the judicial forum tends to give sufficient leeway to the Doctors and expressly recognized the complicity of the human body, inexactness of the medical science, the inherent subjectivity of the process, genuine scope for error of judgment and the importance of the autonomy of the Doctors. The law does not prescribe the limits of high standards that can be adopted but only



the minimum standards below which the patients cannot be dealt with.

7. It is next submitted that the term medical negligence is an omnibus one which has come in vogue to refer to wrongful actions or omissions of professionals in the field of medicine, in pursuit of their profession while dealing with patients. It is not a term defined or referred to anywhere in any of the enacted Indian Laws.

8. Learned counsel for the petitioner further submits that the consequences of legally cognizable medical negligence can broadly be put into three categories i.e. (i) criminal liability (ii) monetary liability and (iii) disciplinary action.

9. It is submitted that criminal liability can be fastened pursuant to the provisions of the Indian Penal Code, which are general in nature and do not provide specifically for medical negligence. For instance Section 304A of the Indian Penal Code under which cognizance has been taken in the present case, which deals with the death of a person by any rash or negligent act and leads to imprisonment upto two years. Similarly, at times other general provisions like Section 337 of the Indian Penal Code (causing hurt) and Section 338 of the Indian Penal Code (causing



grievous hurt) are often applied in cases of medical negligence but the same in the present case have not been applied.

10. It is further submitted that civil liability i.e. monetary compensation at times is resorted to under general law by pursuing a remedy before the Civil Court or the Consumer Forum. It is next submitted that from the side of the opposite party no. 2 an attempt was made to seek monetary compensation by filing C.C. No. 31 of 2006 before the learned District Consumer Forum, Gaya which was finally dismissed by an order dated 06.11.2012 (Annexure-7 to this application), after hearing all the concerned i.e. the present petitioner and the complainant i.e. Vijay Kumar husband of the deceased, the learned District Consumer Forum, Gaya, after considering all aspects of the matter by a reasoned order, came to a considered conclusion that it was a case of heterotopic pregnancy and in such cases intrauterine pregnancy and ectopic pregnancy both co-exist and in the present case after the process of D and E was completed intrauterine pregnancy was washed out but ectopic pregnancy existed in the narrow fallopian tube and due to sudden rupture of the tube due to the growth of fetus in the tube, there appeared to be severe bleeding and due to that the lady collapsed without getting any further treatment, hence, it was held that the complainant i.e. Vijay Kumar did not



succeed in proving medical negligence and deficiency on part of the petitioner herein, hence, the case was dismissed.

11. It is submitted that in absence of appeal against the order dated 06.11.2012 in C.C. No. 31 of 2006 the order attained finality, hence, can be safely argued that the finding of the learned District Consumer Forum, Gaya that there was no medical negligence and deficiency in service has attained finality.

12. It is further submitted that another consequence of medical negligence could be in the form of penalties pursuant to disciplinary proceedings, if proved on the yardsticks of preponderance of probabilities. It is next submitted that the husband of the deceased made a complaint before the Registrar, Bihar Council of Medical Registration, Patna against the petitioner which led to an enquiry by an expert committee of the Doctor and the expert committee after examining the documents and reports of the deceased thereafter came to a considered conclusion that :

(i) Allegations made out by the complainant are not correct and D and E done has resulted in no complication or damage or death. Uterus was normal and had no injury as apparent from the abovesaid reports and it cannot be said that the Doctors have failed to take necessary steps in the entire process.



(ii) Cause of death was spontaneous tubal rupture of left fallopian tube at isthmous leading to intraperitoneal bleeding shock and death. And

(iii) Doctor cannot be held to have acted negligently as is apparent from the abovesaid report (Annexure-5 to this application).

13. Learned counsel for the petitioner next submits that the line between civil liability and criminal liability is thin and no sufficiently good criteria has been devised but the Hon'ble Supreme Court in the case of **Dr. Suresh Gupta Vs. Govt. of NCT Delhi & Anr.** reported in **(2004) 6 SCC 422** has put the standard for fastening criminal liability on a higher pedestal and required the medical negligence to be gross or reckless, where lack of necessary care, attention or skill was observed to be inefficient to hold one criminally liable for negligence. It was observed that mere inadvertence or simply want of certain degree of care might create a civil liability but will not be sufficient to attract a criminal liability. In this case, a young man died during a simple procedure for nasal deformity for not introducing a cuffed endotracheal tube of proper size to prevent aspiration of blood from the wound in the respiratory passage and prosecution under Section 304A of the Indian Penal Code was quashed by the Hon'ble Supreme Court.



14. Learned counsel then submits that the soundness of view of the Hon'ble Supreme Court in the case of **Dr. Suresh Gupta** (supra) was doubted considering that the word gross is absent in Section 304A of the Indian Penal Code and thus different yardstick cannot be applied for action of negligence of the Doctor and others. Accordingly, the matter was placed for reconsideration before a Bench of a Higher Strength. It is submitted that the Three Judge Bench of the Hon'ble Supreme Court in the case of **Jacob Mathew Vs. State of Punjab & Anr.** reported in (2005) 6 SCC 1 on a reconsideration endorsed the approach of high degree of negligence being the pre-requisite for fastening criminal liability as adopted in **Dr. Suresh Gupta's case** (supra). In this case, an aged patient in an advanced stage of terminal cancer was experiencing breathing difficulties and the oxygen cylinder connected to the mouth of the patient was found empty and by the time the replacement could be made, the patient had died, the Hon'ble Supreme Court set aside the judgment of the High Court and held that the Doctors could not be criminally prosecuted.

15. Learned counsel next submits that it has been held by the Courts that in cases of medical negligence Bolam test is to be applied i.e. standard of the ordinary skilled man exercising and



professing to have that special skill and not of the highest expert skill, which is applicable to both diagnosis and treatment.

16. The learned counsel fairly submits that Supreme Court has now observed that there is a need to reconsider the parameters of Bolam Test.

17. It is next submitted that the Hon'ble Supreme Court in the case of **Spring Meadows Hospital & Anr. Vs. Harjol Ahluwalia through K.S. Ahluwalia & Anr.** reported in (1998) 4 SCC 39 has observed that error of judgment do not necessarily imply negligence, gross mistakes, would however invite the finding of negligence, such as, use of wrong drugs, or wrong gas during anesthetic process, delegation of the responsibility to a junior with knowledge that the junior is incapable of performing the duties properly removal of wrong limb, performance of operation on wrong patient or injecting a drug which the patient is allergic to without looking at the out patient card containing the warning and leaving swabs or other items inside the patients, further a person not qualified in general or a certain branch of medicine yet embarking on a treatment is held to be negligent.

18. It is next submitted that in cases involving medical negligence at the beginning the person alleging negligence has the initial onus to make out a case of negligence and thereafter onus



shifts on to the Doctor to satisfy that there was no lack of care and diligence [**Nizam's Institute of Medical Sciences Vs. Prasanath S. Dhananka & Anr. (2009) 6 SCC 1**].

19. Learned counsel further submits that while dealing with the medical negligence the opinion of the medical experts are often called for. It is submitted that Section 45 of the Evidence Act, 1872 provides that when Court has to form an opinion on a point of science, the opinion of a person especially skilled in such science is considered relevant. It is submitted that in the present case from perusal of Annexure-5 to this application, it would manifest that a committee of expert was constituted in pursuance of a complaint by the husband of the deceased and the expert committee also came to a considered conclusion that there was no medical negligence and deficiency in the science thus the opinion of the expert committee is a relevant consideration for considering the present case.

20. Learned counsel thus submits that since the report of the expert committee which found the petitioner innocent also was not challenged by the complainant or the husband of the deceased as such in absence of challenge the same also attained finality.

21. Learned A.P.P. for the State and learned counsel for the complainant vehemently opposed the application but are not in



a position to rebut the submission of the learned counsel for the petitioner that expert committee had come to a considered conclusion that petitioner was innocent and the said report of the expert committee was never challenged and the learned District Consumer Forum also held that the petitioner had not committed any medical negligence nor there was any deficiency in service and in absence of challenge the said order also attained finality.

22. Learned counsel for the petitioner, at this stage, submits that the petitioner has suffered immense mental agony since 2006 as she has been continuously pursuing criminal cases, civil cases and proceedings before the competent authority of the department and when she got clean chit by the learned Consumer Forum and the expert committee of the department now she is being pursued in the criminal case. It is further submitted that this Court while allowing Cr. Misc. No. 43133 of 2007 by order dated 19.03.2010 partly had indicated to the learned Magistrate to look at the defence of the petitioner also but then from perusal of the impugned order, it would manifest that the learned Magistrate did not even bother to record about the findings of the expert committee and the order passed by the learned Consumer Forum. Learned counsel next submits that it appears that initially final form was submitted and protest petition came to be filed and the



learned Magistrate applying his judicial mind accepted the final form and dismissed the protest petition but on remand from the High Court in mechanical manner proceeded to take cognizance.

23. In view of the submissions made by the learned counsel for the petitioner and the submissions recorded hereinabove, the order dated 18.08.2018, passed in Protest Complaint Case No. 483 of 2006/ Tr. No. 1716 of 2018, whereby cognizance, for the offence under Section 304A of the Indian Penal Code, has been taken against the petitioner, stands quashed.

24. Accordingly, this application is allowed.

(Satyavrat Verma, J)

Kundan/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	05.09.2023
Transmission Date	05.09.2003

