

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-4177-2017 (O&M)
Judgment reserved on : 17.08.2023
Pronounced on : 21.08.2023

Jaswant Singh

...Petitioner

Versus

Dr. Anil Aggarwal

....Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present:- Mr. Kapil Aggarwal, Advocate, for the petitioner.

Mr. Munish Kapila, Advocate, and
Mr. Vishal Garg Narwana, Advocate,
for the respondent.

HARNARESH SINGH GILL, J.

Challenge in the present petition is to the order dated 05.09.2017 passed by learned Judicial Magistrate Ist Class, Jagadhari, vide which complaint under Section 304-A IPC, filed by the petitioner, was dismissed at the stage of summoning the respondent.

In brief, the facts of the case are that the petitioner-complainant filed a complaint under Section 304-A IPC against the respondent, with the allegations that his father, who had been suffering from Hernia, was admitted in the hospital of the respondent on 22.02.2014 for treatment; that prior to the admission in the hospital, father of the respondent took some medicines from an Ayurvedic Doctor and the said fact had been disclosed to the respondent; that father of the petitioner was

operated upon on 23.02.2014 by the respondent; that however, operation was done without any pre-operative investigation, as required in the case of every patient above the age of 50 years and that the respondent was rash, negligent and careless while giving treatment to the father of the petitioner.

It is further alleged that after having been operated upon, stomach of the father of the petitioner got swollen and his condition had become unstable; that the respondent did not take corrective steps and rather had kept on assuring the complainant that his father would recover from the pain; that after having made the payment of Rs.47,500/- to the respondent, father of the petitioner was discharged on 28.02.2014; that however, father of the petitioner was suffering from stomach swelling and constipation and the same had persisted, and that father of the petitioner was again operated upon on 06.03.2014, as advised, but the said operation had been conducted rashly, negligently and without pre-operative investigation. It is further alleged that intestines of his father were taken outside the stomach and had been kept in unhygienic simple polythene, instead of medicated bag; that the respondent had asked the complainant to again deposit Rs.50,000/-; that father of the petitioner had been administered glucose for around four days; that however, the condition of the petitioner's father had deteriorated; that the respondent demanded more money to the tune of Rs.5 lakh, but he had not given any proper treatment to the father of the petitioner, and that the respondent had again demanded Rs.2 lakh for further treatment. It is further alleged that attitude of the respondent

and nursing staff was insensitive who had even not changed or cleaned the polythene bags storing the intestines of father of the petitioner and that due to the above negligence, father of the petitioner died on the night of 27/28.03.2014 at about 4.00 a.m. It is further alleged that the report of Board of Doctors, Civil Hospital, Yamuna Nagar, clearly shows the rash and negligent conduct on the part of the respondent in the treatment of the petitioner's father.

Learned Judicial Magistrate after appreciating the preliminary evidence, had dismissed the complaint at the summoning stage, vide impugned order dated 05.09.2017.

Learned counsel for the petitioner contends that the trial Court did not appreciate the evidence in a right perspective, while passing the impugned order, and that there were two reports qua the cause of death of father of the petitioner i.e. one prepared by the Board of four Doctors, who were deputed by the Civil Surgeon, Yamuna Nagar, on 21.04.2014, and the second report is dated 27.08.2014, prepared by a Board of Doctors, including CW-3 Dr. Devender (M.O. G.H. Jagadhari), who had conducted post-mortem of the deceased. It was further submitted that as per the first report, perforation could have been due to injections taken from a quack or during Hernia surgery, but exact cause was not mentioned or commented upon, whereas the second report was prepared after seeing the PMR and histopathology examination reports of viscera of the deceased and as per the same, cause of death appeared to be chronic Ischemic heart disease with Septicemia, which was sufficient to cause death in natural course of time. It is further

contended that these two reports would show that the respondent did not conduct any test/investigation, as required prior to or after such kind of surgeries and that non-conducting of any pre-operative or post-operative medical tests, would constitute a medical negligence on the part of the respondent. It is further submitted that these two reports did not indicate that the deceased was suffering from any heart problem post the said two operations or that there was a possibility of any heart problem post such operations, which the respondent was required to take care of. It is further submitted that the aforesaid two reports had been prepared without taking into consideration the medical record of the deceased, and that it was a clear case of medical negligence on the part of the respondent.

It is yet further submitted that on the basis of the preliminary evidence led before the trial Court, a prima-facie case was made out by the petitioner to cause the summoning of the respondent. However, the learned trial Court, has brushed aside the same and rather dismissed the complainant by recording the findings, as if it were on the merits of a case after a full-fledged trial.

Per contra, learned counsel for the respondent has submitted that the complaint was filed before the trial Court on 15.03.2016, but prior to it, the petitioner had also filed a complaint containing similar set of allegations, before the District Consumer Disputes Redressal, Forum, Yamuna Nagar at Jagadhri, on 24.02.2016. It is further contended that all necessary prior investigations, including urine and ECG tests,

had been conducted by the respondent before operating upon the hernia of the deceased on 22.02.2014. It is further submitted that as per the report, the perforation could have been done due to the injections taken from the quack during hernia surgery and that it was the admitted case of the petitioner that the deceased had taken treatment from a quack by way of insertion of two injections at the site of hernia. The District Consumer Forum, while dismissing the complaint filed by the petitioner, vide order dated 30.07.2018, noticed that infections septicemia occurred solely because of having two injections at the site of hernia by a quack, and that there was no deviation from the well established and prescribed medical practice and procedure on the part of the respondent while conducting first surgery namely bilateral hernia plasty on 23.02.2014 and second surgery namely Ileostomy on 02.03.2014. It was further contended that as per the inquiry report dated 02.05.2016, the treatment adopted was as per standard protocol mentioned in the medical literature.

It is further contended that when a qualified Doctor treats a patient in his skill and professional prudence, merely because during or post such treatment, the patient passes away, is no ground to fasten a criminal liability on the pretext of there being a medical negligence on the part of such Doctor. Reliance is placed upon a Coordinate Bench judgment of this Court in CWP-5881-2009 – Dr. H.S. Pannu & Others Vs. Registrar, Punjab and Haryana High Court, Chandigarh and another, decided on 05.05.2011 and a Single Bench judgment of High Court of Jammu & Kashmir and Ladakh at Jammu, in OWP No.

214 of 2015 – Poonam Sharma and others v. State of J & K and others, decided on 26.12.2022.

I have heard the learned counsel for the parties and have also gone through the case file.

There is no denying the fact that the petitioner had filed Complaint Case No. 69 of 2016 before the District Consumer Disputes Redressal Forum, Yamuna Nagar at Jagadhri. As noticed above, the said complaint was dismissed by the District Forum on 30.07.2018 holding that the respondents had conducted proper investigations/tests, before conducting the surgery of hernia. It was further found that as nothing abnormal was found in the ECG report of the deceased, no treatment for the heart was done.

It is the vehement case of the petitioner-complainant that no tests/investigations were done by the respondents before conducting the surgery on the deceased, whereas the aforesaid finding of the District Forum, belies the same. It could not be shown that the said finding of the District Forum, have been set aside/modified or altered in appeal or revision, as the case may be.

As per the Inquiry Report (Annexure P.2), which has been signed by four Doctors including SMO, MLGH, Yamunanagar, it was found that the treatment adopted was as per the standard protocol mentioned in the medical literature. It also stood established on record that the father of the petitioner had taken treatment, including injections, from a quack before the surgery was done by the respondent. Moreover, the learned trial Court has noticed in its order dated 05.09.2017 that the

petitioner did not examine any medical practitioner in order to substantiate the allegations that the respondent was medically negligent and rash while performing surgeries upon the father of the petitioner. The learned trial Court was right in holding that none of the two reports submitted by the Board of Doctors, pointed out that the deceased had suffered any heart problem post the two surgeries conducted by the respondent.

In Dr. (Mrs.) Chanda Rani Akhouri & Others Vs. Dr. M.A. Methusethupathi & Others, 2022(2) RCR (Civil) 845, the Hon'ble Supreme Court, while referring to its earlier judgments in Jacob Mathew v. State of Punjab and Another, (2005) 6 SCC 1 and Kusum Sharma and Others v. Batra Hospital and Medical Research Centre and Others, (2010) 3 SCC 480, has held as under:-

“27. It clearly emerges from the exposition of law that a medical practitioner is not to be held liable simply because things went wrong from mischance or misadventure or through an error of judgment in choosing one reasonable course of treatment in preference to another. In the practice of medicine, there could be varying approaches of treatment. There could be a genuine difference of opinion. However, while adopting a course of treatment, the duty cast upon the medical practitioner is that he must ensure that the medical protocol being followed by him is to the best of his skill and with competence at his command. At the given time, medical practitioner would be liable only where his conduct fell below that of the standards of a reasonably competent practitioner in his field.”

As would emerge from the report of the Board of Doctors (Annexure P.2), the standard medical protocol was followed by the respondent No.2, while conducting surgeries of the father of the petitioner. As noticed above, the petitioner did not examine any expert witness or placed on record any material, which could be materially different from the aforesaid two reports, so as to prima-facie, establish that there was any medical negligence on the part of the respondent.

No other point has been urged.

In view of the above, finding no merit in the present petition, the same is hereby dismissed.

21.08.2023
parveen kumar

(HARNARESH SINGH GILL)
JUDGE

Whether reasoned/speaking? Yes/No

Whether reportable? Yes/No