

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.46253 of 2017

Arising Out of PS. Case No.-29 Year-2012 Thana- SANDESH District- Bhojpur

Mukesh Kumar Singh @ Dr. Mukesh Kumar Singh, Son Of Late Birendra Prasad Singh, R/O Mohalla East Karyanand Nagar, Lakhisarai Ward No.7, P.S.- Lakhisarai District- Lakhisarai, Presently Posted As Medical Officer Referral Hospital Sandsh P.S.- Sandesh , District- Bhojpur.

... .. Petitioner/s

Versus

1. State Of Bihar
2. Akshay Chaudhary, Son of Late Sohrai Chaudhary, R/o Village- Saraiya, P.S.- Saraiya , P.O.- Saraiya, District- Bhojpur.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Anil Singh, Advocate
		Mr. Gopal Prasad Roy, Advocate
For the Opposite Party/s :		Mr. Binod Kumar No.3, APP

CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL ORDER

6 06-12-2024 Heard Mr. Anil Singh, learned counsel for the

Petitioner and Mr. Binod Kumar No.3, learned APP for the

State.

2. The instant petition has been filed under Section 482 of the Code of Criminal Procedure (in short ‘Cr.P.C.’) against the order dated 16.05.2015 passed by the Court of learned Judicial Magistrate 1st Class, Ara, Bhojpur in connection with Sandesh P.S. Case No. 29 of 2012 (G.R. No.999 of 2012) whereby and whereunder the learned trial Court has taken cognizance of the offence punishable under Section 304A read with 34 of the Indian Penal Code (in short ‘IPC’) against



petitioner and others.

3. In order to assail the order impugned, Mr. Anil Singh, learned counsel appearing for the petitioner has mainly taken the grounds that admittedly the deceased who happened to be the wife of the informant, was brought to Referral Hospital at Sandesh for delivery and on that day, the petitioner was posted as a government doctor in the said hospital and as per the allegation, due to negligence on the part of this petitioner and other medical staffs of the hospital, the informant's wife died due to excess bleeding as well as wrong treatment given by the accused including this petitioner but in the F.I.R., any specific role of the petitioner in the alleged negligence has not been revealed. Secondly, it is a settled principle of law that before taking cognizance against a medical professional in respect of a negligence act allegedly committed by him, there must be an opinion of Medical Board to support the allegation of negligence but in the instant matter, the learned Magistrate did not follow the said principle despite a Medical Board which was constituted to examine the cause of death of the informant's wife, having given its report against the allegation made by the informant and in this regard, Annexure-2 which is the report of the Medical Board is relevant. In support of this submission,



learned counsel for the petitioner has placed reliance on the judgments of **the Hon'ble Apex Court** passed in the cases of **Jacob Mathew v. State of Punjab & Anr reported in (2005) 6 SCC 1, Martin F. D'Souza v. Mohd. Ishfaq, reported in (2009) 3 SCC 1 and Kusum Sharma & Ors v. Batra Hospital and Medical Research Centre and Ors, reported in (2010) 3 SCC 480** in which guidelines and principles have been laid down by **the Hon'ble Apex Court** while deciding the issue of taking cognizance of an offence against the medical professional in respect of his or her negligence which is alleged. Learned counsel for the petitioner has further submitted that the maximum punishment for the offence punishable under Section 304A of the I.P.C. of which cognizance has been taken is two years of simple imprisonment for which the maximum limitation for taking cognizance is three years as per the provisions of Section 468 of the Cr.P.C. but the same was also violated by the learned Magistrate as the alleged incident is said to have taken place on 26.03.2012 but the cognizance was taken on 16.05.2015 after the expiry of more than two years period. The third ground taken by the petitioner's counsel is that the petitioner was admittedly a government doctor at the time of alleged wrong and he was admittedly discharging his official



duty at the time of alleged incident and there was a direct connection in between his official work and the alleged wrong, so, he was entitled to the protection under Section 197 of the Cr.P.C. but in this matter, in the absence of prosecution sanction, the learned Magistrate proceeded ahead and took cognizance against the petitioner which is completely in violation of the mandatory provisions of Section 197 of the Cr.P.C.

4. Learned APP appearing for the State has opposed the petition and submitted that the matter relates to serious negligence on the part of the petitioner and other medical officials due to which the informant's wife lost her life and the instant petition is fit to be dismissed.

5. No one appears on behalf of the O.P. No.2.

6. Heard both the sides and perused the order impugned and other relevant materials. This Court finds substance in the above grounds taken by the learned counsel for the petitioner as it is a settled law that before taking cognizance of an offence relating to negligence act against a medical professional, there must be a report of Medical Board in respect of his/her alleged negligence but in this matter, in the absence of such report, the learned Magistrate proceeded ahead and took cognizance of the alleged offence, though, a Medical Board



consisting of three doctors had been constituted prior to passing the cognizance order at the direction of Civil Surgeon, Bhojpur, which examined the cause of death of the informant's wife as well as the alleged negligence on the part of the petitioner and others and the Medical Board's report's copy has been filed by the petitioner as Annexure-2 which is against the allegation leveled by the informant. It is important to mention that as per the statement made by the petitioner in the paragraph No.18 of his petition, the said report of the Medical Board had been sent to the Investigating Officer on 04.09.2012 vide Memo No.788 and the same was sent to the concerned Court on 05.09.2012 but even then, neither the concerned investigating officer nor the concerned Magistrate took into account the findings given in the report of Medical Board. In this regard, I would like to discuss the principles laid down by the Hon'ble Apex Court while dealing with the issue to medical negligence. In the case of **Jacob Mathew (Supra)** Hon'ble Apex Court laid down certain rules to protect the doctors in criminal cases in which some of them which are relevant to the instant matter are being reproduced as under:-

“(i) A private complaint should not be entertained unless the complainant has produced the prima facie evidence before the court in the form of a



credible opinion given by another competent doctor to support the charge of rashness or negligence on the part of the accused doctor.

(ii) The investigating officer should, before proceeding against the doctor accused of rash or negligent act or omission, obtain an independent and competent medical opinion, preferably from a doctor in government service, qualified in that branch of medical practice who can normally be expected to give an impartial opinion applying the *Bolam* test.”

Hon’ble Apex Court in the case of **Martin F. D’Souza** (*supra*) observed that in respect of complaints filed against the doctor with the allegation of medical negligence, the concerned criminal court should first refer the matter to a competent doctor or committee of doctors specialized in the relevant field and when such a doctor or committee reports that there is a prima facie case of medical negligence only then issue notice to the doctor as the courts are not experts in medical science and therefore, they should not substitute their own views over that of specialists.

7. The above principles have not been followed by the police and the trial Court in the present matter.

8. Further, the provision of Section 468 of the Cr.P.C.



was also not complied with by the learned Magistrate as the cognizance of the offence punishable under Section 304A of the I.P.C. was taken after the expiry of prescribed three years limitation period which started in this matter from the date of the commission of the alleged offence without condoning the delay under Section 473 of the Cr.P.C. Further, it is an admitted position that the petitioner was discharging his official duty at the time of the commission of alleged occurrence and there was direct connection between his official duty and the alleged wrong so, in light of settled law, the petitioner was entitled to get the protection under Section 197 of the Cr.P.C. but without getting the necessary sanction to prosecute the petitioner for the alleged offence from the concerned Authority, the learned Magistrate took the cognizance in violation of the provision of Section 197 of the Cr.P.C. Accordingly, this Court finds the cognizance order which is under challenge to be bad in the eye of law, so, it is set aside to the extent of the petitioner only and the present petition stands allowed.

(Shailendra Singh, J)

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