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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Pronounced on: 07.06.2024

+ **CRL.M.C. 3384/2017 & CRL.M.A. 13824/2017**

NATIONAL HEART INSTITUTE

..... Petitioner

Through: Mr. Satyakam, ASC.

versus

KAMLESH SHARMA & ORS.

..... Respondents

Through: Mr R. N. Rai, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

JUDGMENT

VIKAS MAHAJAN, J.

1. The present petition has been filed seeking quashing of CC No. 616754/2016 titled as "Kamlesh Sharma vs. Managing Director, National Heart Institute" pending in the court of learned Metropolitan Magistrate, South East District, Saket Court Complex, New Delhi.
2. The facts in brief leading to the filing of the present petition are that the respondent's husband was admitted to National Heart Institute on 18.01.2012 for diagnosis and treatment of chest discomfort and a choking sensation experienced by him since 2-3 days. These symptoms had also been appearing off and on over the previous 2-3 months.
3. Earlier, on 16.01.2012, the respondent had taken her husband to Dr Khanna in Kharbanda Clinic, who suggested that the patient should get



angiography done at some heart institute. Accordingly, the patient was taken to the National Heart Institute on 17.01.2012. After preliminary checkup, the respondent's husband was suggested to come again on 18.01.2012.

4. On 18.01.2012, the doctor after examining the respondent's husband, advised for his immediate admission in ICU as the patient's blood pressure was very high. He was, accordingly, admitted to the ICU. On the very next morning at about 6:30 AM, the respondent received a call from the hospital, informing her that her husband had fallen from the bed. Upon reaching the hospital, she found her husband to be bleeding from his elbow. Though the doctor stated that the patient fell down from the bed as he was trying to stand up on his own without any support. However, according to the respondent, her husband told her that two ward boys were changing the bed sheet of her husband's bed but the bed sheet slipped and the other boy could not balance her husband. Due to the said act/omission, her husband fell down. The fall had resulted in severe injuries on the left elbow, dorsal vertebrae and chest region of the patient. After this, the condition of the patient deteriorated significantly. During his treatment, the patient was sent to Mahajan Imaging Centre for NCCT Chest and NCCT Head scan. It was found that there was a blood clot in the chest which was drained as per the doctor's advice.

5. It is also the respondent's case in the complaint that her husband remained in the hospital for 24 days. In the complaint, the negligence of the petitioner has been alleged in the following words:-

"11. That the patient remained in the aforesaid hospital for a



period of 18.01.2012 to 11.02.2012 for solely treatment of complaint as registered in their Discharge-Summary on belief, that the Hospital is advanced, well managed and accountable towards patients and have high reputation in series of Hospitals but on the contrary, he reached to a position wherein osteolytic lesions were seen and recorded in multiple ribs on both sides and also in multiple dorsal vertebrae. Multiple rib fractures are seen on left side with periosteal new bone formation. Few of the ribs on right side also show periosteal reaction which was disclosed in the report carried out by Mahajan Imaging Centre on 23.01.2012 referred by National Heart Institute. (This report is being annexed for kind perusal of Hon'ble Court as Annexure 'A'). This report itself substantiate the culpable negligence of Hospital Staff it resulted only and only by extreme negligence of Hospital Staff for which they deserve to be punished as per the law of the land."

6. It is the pleaded case of the respondent in the complaint that as a result of the aforesaid accident, the condition of the patient had deteriorated, rather than there being any improvement, thus, the family of the patient ultimately decided to get the patient discharged from the petitioner hospital on 11.02.2012. Accordingly, the patient was brought back to his home after getting him discharged but since the medical condition of the petitioner further deteriorated he had to be admitted in Max Super Speciality Hospital on 19.02.2012, where the initial symptoms of the patient were recorded as Traumatic Paraplegia, weakness, unable to walk, appetite, etc. The patient remained in the said hospital till 23.02.2012 but he did not show any signs of improvement. Therefore, on 23.02.2012, the respondent got her husband discharged on request and brought him back home. Eventually, the respondent's husband passed away on 24.02.2012 in a nearby nursing home.
7. It is, thus, alleged that the patient could not recover from the



lesions/injury in spine at D4-D5 which led to traumatic paralysis and, thereafter, rapidly caused multiple metastasis. It is alleged that due to the injury caused to the patient on account of culpable negligence on the part of the staff of the petitioner-hospital, the husband of the respondent passed away. It was thus, prayed in the complaint that cognizance of the offence may be taken against the present petitioner/accused.

8. After recording the pre-summoning evidence of the respondent/complainant who examined herself as CW-1, the learned Metropolitan Magistrate *vide* order dated 16.11.2013 summoned the present petitioner, as well as, the consultant in charge Dr Adarsh Kumar under Section 304A IPC. It is relevant to mention here that the learned Trial Court, considering that no doctor had been examined by the complainant, deemed it appropriate to forward the report of the deceased patient to the Medical Superintendent, Safdarjung Hospital for an expert opinion from the Medical Board. The opinion of the Medical Board was accordingly, received, the relevant text of which reads thus:

“A board meeting was held on 07/06/13 at 2:30 AM under Chairmanship of Dr Veenu Khanna, Addl. MS. Meeting was attended by 1. Dr S. P. Kataria 2. Dr M. K. Sen and 3. Dr. A. H. Ansari (Cardiology) as members.

The observations are as under –

The patient (Late) Mr. K.P. Sharma, 55 yrs Male was admitted to National Heart Institute, New Delhi on 18/01/12 with h/o chest discomfort and choking sensation of 2-3 days with similar symptoms for last 2-3 months. He was diagnosed as Inferior Wall MI with LVEF 50%, left Haemothorax & Hyponatremia. C.T. scan dated 23/01/12 showed a left lung mass with multiple metastasis to dorsal vertebrae, ribs and multiple rib fractures. Patient was managed conservatively at NHI and relevant



specialists including pulmonologist, cardiologist, surgeon and endocrinologist were consulted and patient was discharged on 11/02/2012 in a stable condition. As per records, no oncology consultation was obtained and patient was not counselled regarding further management in an oncology centre.

Subsequently, patient was admitted to Max Super Specialty Hospital, New Delhi on 19/02/12 with Diagnosis of Carcinoma Lung (poorly differentiated) with multiple skeletal metastasis with Lt. basal consolidation with acute respiratory distress with acute coronary syndrome. He was managed with neurosurgical decompression D4-D5 and radiotherapy to skeletal metastasis. Patients relatives decided to defer the treatment and the patient was discharged on 23/02/12.

In the opinion of the board, the patient Mr. K.P. Sharma, 55 yrs Male was suffering from Coronary Artery Disease and advanced Lung Cancer which had spread to vertebra and bones and Lt Haemothorax. In such cases, pathological fractures of vertebra often lead to neurological deficit like paraparesis and treatment at this stage is mainly palliative. Patient subsequently succumbed to disseminated lung cancer. However, as per discharge summary of NHI dated 11.02.12 patient was not counselled regarding further treatment in an oncology centre.”

(emphasis supplied)

9. Premised on the said Medical Report, the aforesaid summoning order came to be passed.
10. To be noted, in the complaint, as well as, in her pre-summoning statement/evidence, the complainant has alleged that her husband died due to injuries caused to him due to fall in the hospital. However, in her post summoning statement recorded on 18.11.2017 she has stated that she lost her husband due to the negligence and ill advice of the hospital and treating



doctor who concealed from her that her husband was suffering from lung cancer despite the fact that he was admitted in the hospital for 25 days. The relevant part of the statement of complainant/CW-1 dated 18.11.2017, reads as under:-

“Both the accused i.e. National Heart Institute and Dr Adarsh Kumar concealed from me that my husband was suffering from lung cancer despite the fact that he was admitted to accused no.1 Institute for about 25 days. It was due to their negligence and ill advice that I lost my husband. The accused persons only wanted to earn money from the medical insurance of my husband as they had inquired from me in the beginning of the admission of my husband itself, regarding the Medicalim policy. I would have been able to save my husband if the accused persons had informed me about the lung cancer of my husband at the initial stage.”

11. For the sake of completeness, it may be stated that the respondent/complainant feeling aggrieved by the order of summoning, whereby the petitioner and other co-accused had been summoned under Section 304A IPC instead of Section 304 IPC, filed criminal revision being Crl. Rev. No. 61/2014. However, the said criminal revision was dismissed by the learned Sessions Judge *vide* order dated 23.05.2014 observing that there is no infirmity in the order of the learned Trial Court warranting any interference and the prayer of the complainant that the doctors be charged for the offence under Section 304 IPC, is neither tenable nor sustainable.

12. The learned counsel for the petitioner submits that criminal prosecution of medical doctors or hospitals can be premised on a medical opinion pointing to their guilt. He submits that in the present case, the opinion of the Medical Board which was obtained by the learned Trial Court



prior to the order on summoning, opined that the cause of death of the patient was disseminated lung cancer and the negligence of the petitioner hospital which is eventually alleged in the present case is only to the effect that no oncology consultation was obtained and the patient was not counselled regarding further management in an oncology centre. He submits that the said negligence at best could be attributed to the consulting doctor, who is facing trial and has not objected to the prayer of quashing the complaint *qua* the petitioners.

13. He submits that vicarious liability could not be fastened on the petitioner hospital for the offence under Section 304A IPC. He further submits that to impose criminal liability under Section 304A IPC, it is necessary that the death should have been the direct result of a rash and negligent act of the accused, which is not the situation in the present case as borne out from the report of the Medical Board. To buttress this contention, reliance has been placed on the decision of the Hon'ble Supreme Court in ***Kurban Hussein Mohamedalli Rangwalla vs. State of Maharashtra: AIR 1965 SC 1616.***

14. He submits that the complainant was fully conscious of the NCCT Chest report dated 23.01.2012 and the discharge summary which clearly indicated the possibility of bronchogenic carcinoma, therefore, the non-counselling for treatment at Oncology Centre cannot be said to be a cause of death, especially when the Medical Board had opined that the patient was suffering from advanced lung cancer which had spread to vertebra and bones and Lt. Haemothorax. It is further contended by the learned counsel that negligence was rather on part of the respondent inasmuch as the discharge



from the petitioner hospital and subsequently from the Max Super Speciality Hospital was at the request of the respondent/complainant. He submits that despite the NCCT Chest and discharge summary indicating the possibility of cancer, patient was not taken to a cancer hospital till 19.02.2023, i.e., at Max Super Speciality Hospital, where the patient was advised surgical decompression of D4-D5 spine, but even at the said hospital, on the request of the patient's attendant, the decompressive surgery/radiotherapy was deferred as the attendant wanted to take the patient home at their own risk and responsibility. According to the learned counsel, in the discharge summary from the petitioner-hospital, the patient was advised to review on daily basis and to follow up regularly but it is not the case of the respondent/complainant that even once the review was undertaken.

15. *Per contra*, learned counsel for the respondent submits that neither the patient nor his attendant, were informed about the patient suffering from cancer. He further submits that it was the fall in the hospital which led to the deterioration in the medical condition of the patient to an extent that the petitioner could not recover and eventually passed away on 24.02.2012. He, therefore, urges the Court to dismiss the present petition.

16. He further submits that NCCT Test conducted on 23.01.2012 clearly manifested that the patient's spinal bone suffered multiple ribs fracture and he was suffering from lung cancer (neoplasm which is a deadly cancerous tumor). In spite of knowing the consequences of cancer, NHI neither informed nor discharged/referred the patient which glaringly exposes the criminal intention of NHI to make wrongful money from the patient while keeping the patient for further 19 days.



17. He further submits that the averment made in the complaint that the family of the patient decided to get the patient discharged from the petitioner hospital on 11.02.2022, is not as per the instructions of the respondent/complainant and the same was wrongly written as clarified in the testimony of the complainant/CW-1 recorded at the pre-summoning stage.

18. I have heard the learned counsel for the petitioner, as well as, the learned counsel for the respondent and have perused the material on record.

19. The question which arises in the present petition for consideration of this Court is that whether an offence under Section 304A IPC is made out against the petitioner-hospital or the office bearers of the Society managing it.

20. To find the answer to the aforesaid moot question, apt would it be to refer to various decisions of the Hon'ble Supreme Court wherein it has been laid down as to what will constitute culpable negligence so as to attract the offence under Section 304A IPC.

21. In ***Suresh Gupta (Dr.) v. Govt. of NCT of Delhi, (2004) 6 SCC 422*** while dealing with identical question, the Court observed that careless act of the medical man can be termed as "criminal" only when the medical man exhibits a gross lack of competence or inaction and wanton indifference to his patient's safety and which is found to have arisen from gross ignorance or gross negligence. Mere inadvertence or some degree of want of adequate care and caution might create civil liability but would not suffice to hold him criminally liable. The relevant part of the said decision reads thus:

"21. Thus, when a patient agrees to go for medical treatment or surgical operation, every careless act of the medical man cannot be termed as "criminal". It can be termed "criminal" only when



*the medical man exhibits a gross lack of competence or inaction and wanton indifference to his patient's safety and which is found to have arisen from gross ignorance or gross negligence. **Where a patient's death results merely from error of judgment or an accident, no criminal liability should be attached to it. Mere inadvertence or some degree of want of adequate care and caution might create civil liability but would not suffice to hold him criminally liable.***

22. This approach of the courts in the matter of fixing criminal liability on the doctors, in the course of medical treatment given by them to their patients, is necessary so that the hazards of medical men in medical profession being exposed to civil liability, may not unreasonably extend to criminal liability and expose them to the risk of landing themselves in prison for alleged criminal negligence.

23. For every mishap or death during medical treatment, the medical man cannot be proceeded against for punishment. Criminal prosecutions of doctors without adequate medical opinion pointing to their guilt would be doing great disservice to the community at large because **if the courts were to impose criminal liability on hospitals and doctors for everything that goes wrong, the doctors would be more worried about their own safety than giving all best treatment to their patients.** This would lead to shaking the mutual confidence between the doctor and the patient. **Every mishap or misfortune in the hospital or clinic of a doctor is not a gross act of negligence to try him for an offence of culpable negligence.**

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25. Between civil and criminal liability of a doctor causing death of his patient **the court has a difficult task of weighing the degree of carelessness and negligence alleged on the part of the doctor.** For conviction of a doctor for alleged criminal offence, the standard should be proof of recklessness and deliberate wrongdoing i.e. a higher degree of morally blameworthy conduct.



26. To convict, therefore, a doctor, the prosecution has to come out with a case of high degree of negligence on the part of the doctor. Mere lack of proper care, precaution and attention or inadvertence might create civil liability but not a criminal one. The courts have, therefore, always insisted in the case of alleged criminal offence against the doctor causing death of his patient during treatment, that the act complained against the doctor must show negligence or rashness of such a higher degree as to indicate a mental state which can be described as totally apathetic towards the patient. Such gross negligence alone is punishable.”

(emphasis supplied)

22. Likewise, in ***Jacob Mathew v. State of Punjab***, (2005) 6 SCC 1, it was clarified that 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 constitute an offence, the element of *mens rea* must be shown to exist. It was also reiterated that negligence which is neither gross nor of high degree may provide a ground for action in civil law but cannot form the basis for prosecution. It was further reiterated that in criminal law negligence or recklessness, to be so held, must be of such a high degree as to be “gross”. The relevant observations of the court reads as under:-

“Negligence — as a tort and as a crime

12. The term “negligence” is used for the purpose of fastening the defendant with liability under the civil law and, at times, under the criminal law. It is contended on behalf of the respondents that in both the jurisdictions, negligence is negligence, and jurisprudentially no distinction can be drawn between negligence under civil law and negligence under criminal law. The submission so made cannot be countenanced



*inasmuch as it is based upon a total departure from the established terrain of thought running ever since the beginning of the emergence of the concept of negligence up to the modern times. Generally speaking, it is the amount of damages incurred which is determinative of the extent of liability in tort; but in criminal law it is not the amount of damages but the amount and degree of negligence that is determinative of liability. **To fasten liability in criminal law, the degree of negligence has to be higher than that of negligence enough to fasten liability for damages in civil law. The essential ingredient of mens rea cannot be excluded from consideration when the charge in a criminal court consists of criminal negligence.** In R. v. Lawrence Lord Diplock spoke in a Bench of five and the other Law Lords agreed with him. He reiterated his opinion in R. v. Caldwell and dealt with the concept of recklessness as constituting mens rea in criminal law. His Lordship warned against adopting the simplistic approach of treating all problems of criminal liability as soluble by classifying the test of liability as being “subjective” or “objective”, and said: (All ER p. 982e-f)*

“Recklessness on the part of the doer of an act does presuppose that there is something in the circumstances that would have drawn the attention of an ordinary prudent individual to the possibility that his act was capable of causing the kind of serious harmful consequences that the section which creates the offence was intended to prevent, and that the risk of those harmful consequences occurring was not so slight that an ordinary prudent individual would feel justified in treating them as negligible. It is only when this is so that the doer of the act is acting ‘recklessly’ if, before doing the act, he either fails to give any thought to the possibility of there being any such risk or, having recognised that there was such risk, he nevertheless goes on to do it.”

13. The moral culpability of recklessness is not located in a desire to cause harm. It resides in the proximity of the reckless



state of mind to the state of mind present when there is an intention to cause harm. There is, in other words, a disregard for the possible consequences. The consequences entailed in the risk may not be wanted, and indeed the actor may hope that they do not occur, but this hope nevertheless fails to inhibit the taking of the risk. Certain types of violation, called optimising violations, may be motivated by thrill-seeking. These are clearly reckless.

14. In order to hold the existence of criminal rashness or criminal negligence it shall have to be found out that the rashness was of such a degree as to amount to taking a hazard knowing that the hazard was of such a degree that injury was most likely imminent. The element of criminality is introduced by the accused having run the risk of doing such an act with recklessness and indifference to the consequences. Lord Atkin in his speech in Andrews v. Director of Public Prosecutions stated: (All ER p. 556 C)

“Simple lack of care such as will constitute civil liability is not enough. For purposes of the criminal law there are degrees of negligence, and a very high degree of negligence is required to be proved before the felony is established.”

Thus, a clear distinction exists between “simple lack of care” incurring civil liability and “very high degree of negligence” which is required in criminal cases. In Riddell v. Reid (AC at p. 31) Lord Porter said in his speech —

*“A higher degree of negligence has always been demanded in order to establish a criminal offence than is sufficient to create civil liability.” (Charlesworth & Percy, *ibid.*, para 1.13)*

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17. In our opinion, the factor of grossness or degree does assume significance while drawing distinction in negligence actionable in tort and negligence punishable as a crime. To be latter, the negligence has to be gross or of a very high degree.



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Conclusions summed up

48. *We sum up our conclusions as under:*

(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 the 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) A professional may be held liable for negligence on one of the two findings: either he was not possessed of the requisite skill which he professed to have possessed, or, he did not exercise, with reasonable competence in the given case, the skill which he did possess. The standard to be applied for judging, whether the person charged has been negligent or not, would be that of an ordinary competent person exercising ordinary skill in that profession. It is not possible for every professional to possess the highest level of expertise or skills in that branch which he practices. A highly skilled professional may be possessed of better qualities, but that cannot be made the basis or the yardstick for judging the performance of the professional proceeded against on indictment of negligence.

(4) The test for determining medical negligence as laid down in Bolam case holds good in its applicability in India.

*(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) The word “gross” has not been used in Section 304-A IPC, yet it is settled that in criminal law negligence or recklessness, to be so held, must be of such a high degree as to be “gross”. **The expression “rash or negligent act” as occurring in Section 304-A IPC has to be read as qualified by the word “grossly”.***



*(7) To prosecute a medical professional for negligence under criminal law it must be shown that the accused did something or failed to do something which in the given facts and circumstances no medical professional in his ordinary senses and prudence would have done or failed to do. **The hazard taken by the accused doctor should be of such a nature that the injury which resulted was most likely imminent.***

*(8) Res ipsa loquitur is only a rule of evidence and operates in the domain of civil law, specially in cases of torts and helps in determining the onus of proof in actions relating to negligence. **It cannot be pressed in service for determining per se the liability for negligence within the domain of criminal law. Res ipsa loquitur has, if at all, a limited application in trial on a charge of criminal negligence.***

(emphasis supplied)

23. Another aspect which is relevant for fastening the criminal liability under Section 304A IPC is that the alleged rash and negligent act of the accused should be the immediate cause or the last link in the chain of causation as opposed to a remote cause for the same. A reference to the doctrine of *causa causans* was made by the Hon'ble Supreme Court in **Kurban Hussein Mohamedalli Rangwalla** (*supra*) while considering the imposition of criminal liability under Section 304A IPC. In the said decision, the Supreme Court relied upon the following observations made in **Emperor Omkar vs. Rampratap**¹:

“To impose criminal liability under Section 304-A, Penal Code, 1860, it is necessary that the death should have been the direct result of a rash and negligent act of the accused, and that act must be the proximate and efficient cause without the intervention of another's negligence. It must be the causa

¹ 17 (1902) 4 BOM LR 679



causans; it is not enough that it may have been the causa sine qua non.”

24. Again in *Sushil Ansal vs. State:(2014) 6 SCC 173*, the Hon’ble Supreme Court explained the doctrine of *causa causans* in the following terms:

“81. Suffice it to say that this Court has in Kurban Hussein case accepted in unequivocal terms the correctness of the proposition that criminal liability under Section 304-A IPC shall arise only if the prosecution proves that the death of the victim was the result of a rash or negligent act of the accused and that such act was the proximate and efficient cause without the intervention of another person's negligence. A subsequent decision of this Court in Suleman Rahiman Mulani v. State of Maharashtra has once again approved the view taken in Omkar Rampratap case that the act of the accused must be proved to be the causa causans and not simply a causa sine qua non for the death of the victim in a case under Section 304-A IPC. To the same effect are the decisions of this Court in Rustom Sherior Irani v. State of Maharashtra, Bhalchandra v. State of Maharashtra, Kishan Chand v. State of Haryana, S.N. Hussain v. State of A.P., Ambalal D. Bhatt v. State of Gujarat and Jacob Mathew case.

*82. To sum up: for an offence under Section 304-A to be proved it is not only necessary to establish that the accused was either rash or grossly negligent **but also that such rashness or gross negligence was the causa causans that resulted in the death of the victim.***

83. As to what is meant by causa causans we may gainfully refer to Black's Law Dictionary (5th Edn.) which defines that expression as under:

“Causa causans.—The immediate cause; the last link in the chain of causation.”

The Advance Law Lexicon edited by Justice Chandrachud, former Chief Justice of India defines causa causans as follows:



“Causa causans.—The immediate cause as opposed to a remote cause; the ‘last link in the chain of causation’; the real effective cause of damage.

84. The expression “proximate cause” is defined in the 5th Edn. of Black's Law Dictionary as under:

“Proximate cause.—That which, in a natural and continuous sequence, unbroken by any efficient intervening cause, produces injury and without which the result would not have occurred. Wisniewski v. Great Atlantic & Pacific Tea Co., A2d at p. 748. That which is nearest in the order of responsible causation. That which stands next in causation to the effect, not necessarily in time or space but in causal relation. The proximate cause of an injury is the primary or moving cause, or that which, in a natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury and without which the accident could not have happened, if the injury be one which might be reasonably anticipated or foreseen as a natural consequence of the wrongful act. An injury or damage is proximately caused by an act, or a failure to act, whenever it appears from the evidence in the case, that the act or omission played a substantial part in bringing about or actually causing the injury or damage; and that the injury or damage was either a direct result or a reasonably probable consequence of the act or omission.

(emphasis supplied)

25. For the purpose of present case, the opinion of the Medical Board assumes relevance inasmuch as it is trite law that criminal prosecution of doctors ought to be premised on adequate medical opinion².

26. As noted above, the report of the Medical Board has categorically opined that the patient succumbed to disseminated lung cancer which was at

² Dr. Suresh Gupta (*supra*).



an advanced stage. It was further opined that the treatment, at the given stage of disease from which the patient was found to be suffering, was mainly palliative. The opinion of the Medical Board only alleges that no oncology consultation was obtained and that the patient was not counseled regarding further management/treatment in Oncology Centre.

27. It would not be appropriate for this court, to delve into the culpability of the accused persons at the present juncture, premised on the inquiry into the questions that whether the negligence in the present case, if at all, could be termed as gross negligence and whether not counselling the patient or his attendant regarding further treatment in an oncology centre was *causa causans* that resulted in the death of the patient, as the treating doctor has not approached this court with the prayer for quashing of complaint *qua* him. Any observation made by this court at this juncture on the said aspects may prejudice the case of either the complainant or of the co-accused (treating doctor) in the trial.

28. This approach is being adopted also for the reason that the present petition can otherwise be decided on the aspect of vicarious liability which was argued by the learned counsel for the petitioner. The submission is that the petitioner hospital set up under the aegis of a society registered under the Societies Registration Act, 1860 or any office bearers of its Managing Committee cannot be held vicariously liable for the act of the doctor or the hospital staff who were treating or handling the patient in the hospital.

29. Now in view of the limited question to be adverted to by this court, the controversy narrows down to the issue as to whether not counseling the patient or his attendant regarding further management/treatment in



Oncology Centre by the treating doctor, if at all, could be termed as gross negligence, will make the petitioner-hospital or the office bearers of its Managing Committee, vicariously liable.

30. The question whether for the criminal offence committed by a company, its Director can be held vicariously liable, fell for consideration in ***Sunil Bharti Mittal v. CBI, (2015) 4 SCC 609***, wherein the Hon'ble Supreme Court observed as under:

“(iii) Circumstances when Director/person in charge of the affairs of the company can also be prosecuted, when the company is an accused person

*42. No doubt, a corporate entity is an artificial person which acts through its officers, Directors, Managing Director, Chairman, etc. If such a company commits an offence involving mens rea, it would normally be the intent and action of that individual who would act on behalf of the company. It would be more so, when the criminal act is that of conspiracy. **However, at the same time, it is the cardinal principle of criminal jurisprudence that there is no vicarious liability unless the statute specifically provides so.***

43. Thus, an individual who has perpetrated the commission of an offence on behalf of a company can be made an accused, along with the company, if there is sufficient evidence of his active role coupled with criminal intent. Second situation in which he can be implicated is in those cases where the statutory regime itself attracts the doctrine of vicarious liability, by specifically incorporating such a provision.

44. When the company is the offender, vicarious liability of the Directors cannot be imputed automatically, in the absence of any statutory provision to this effect. One such example is Section 141 of the Negotiable Instruments Act, 1881. In Aneeta Hada, the Court noted that if a group of persons that guide the business of the company have the criminal intent, that would be imputed to



*the body corporate and it is in this backdrop, Section 141 of the Negotiable Instruments Act has to be understood. Such a position is, therefore, because of statutory intendment making it a deeming fiction. Here also, **the principle of “alter ego”, was applied only in one direction, namely, where a group of persons that guide the business had criminal intent, that is to be imputed to the body corporate and not the vice versa. Otherwise, there has to be a specific act attributed to the Director or any other person allegedly in control and management of the company, to the effect that such a person was responsible for the acts committed by or on behalf of the company.”***

(emphasis supplied)

31. A Coordinate Bench of this Court in ***Indraprastha Medical Corp. Ltd. vs. State NCT of Delhi & Ors: ILR (2010) VI Delhi 653*** was considering a question as to whether a company running hospital could be fastened with a criminal liability for the acts of gross medical negligence of the doctors. It was held as under:

“2. A complaint was filed before the learned M.M. against the petitioner company and the Doctors involved in the treatment of deceased wherein it was alleged that deceased died due to gross medical negligence of the Doctors. It is also submitted that Doctors involved in treatment advised wrong/superfluous treatments in order to extract extra money.

3. The petitioner's counsel stated that petitioner is not assailing the order as against Doctors but is assailing it so far as company was concerned on the ground that the company running the hospital, could not have acted in the manner in which it is assailed by the complainant.

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*5. The offence of criminal negligence requires a specific state of mind in respect of the person committing the offence. **The offence of medical criminal negligence cannot be fastened on the company since the company can neither treat nor operate a***



patient of its own. It is the Doctor working in the company who treats & performs operations. It is the Doctor who examines the patients and prescribes medicines. If there is a deliberate or negligent act of the Doctor working in the Corporation/Hospital, it is the liability of the Doctor and not of the Corporation for criminal negligence despite the fact that due to the act of the Doctor of treating patients the Corporation was getting some revenue. These days, all Doctors with big hospitals, are on panels where they have fixed fee for examination of patients and for conducting operations. Out of this fee, a percentage is paid to the hospital. The hospital/company cannot be held liable for the personal negligence of the Doctor in giving wrong treatment. However, if there is an administrative negligence, or a negligence of not providing basic infrastructure, which results into some harm to an aggrieved person or such negligence which is impersonal, the hospital can be held liable. But, in the case of medical negligence, which is personal to the Doctor who gave treatment, the Corporation would not be liable and it is the Doctor who can be indicted for medial criminal negligence.”

(emphasis supplied)

32. Insofar as allegation of not obtaining any Oncology consultation and the patient not being counselled regarding further management in an Oncology Centre is concerned, that was entirely between the patient and the treating doctor. It is not the case of the complainant that the treating doctor on the panel of the hospital was not qualified to treat the patient nor is it the case that infrastructure in the hospital was found wanting in any manner during treatment of the patient in question, which resulted into the deterioration of health of the patient. Even assuming that the aforesaid act of the doctor constitutes a gross negligence, though no opinion is being expressed thereon, the said negligence cannot be attributed to the hospital or office bearers of the society managing it.



33. Likewise, the act of patient falling due to alleged negligence of two ward boys, though the same is disputed by the petitioner, can at best be termed as accident due to lack of precaution and attention or inadvertence which might create civil liability but does not give rise to a criminal liability. Further, in view of the legal position noted above, the hospital or office bearers of the society managing it cannot be held vicariously liable for any act of negligence on part of the ward boys.

34. At this stage the guidelines laid down by the Hon'ble Supreme Court in *State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335*, relating to the exercise of inherent power under Section 482 CrPC for quashing an FIR or criminal proceedings emanating therefrom could advantageously be referred to, wherein the Court observed as under:

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.



(2) *Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.*

(3) *Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*

(4) *Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.*

(5) *Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*

(6) *Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*

(7) *Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”*

(emphasis supplied)



35. Evidently, the present case is covered under more than one clause of the guidelines laid down by ***Bhajan Lal*** (supra).

36. In this view of the above discussion, the petitioner cannot be proceeded against under Section 304A IPC. Accordingly, the petition is allowed and consequently, the complaint being CC No. 616754/2016 titled as “Kamlesh Sharma vs. Managing Director, National Heart Institute” pending in the court of learned Metropolitan Magistrate, South East District, Saket Court Complex, New Delhi, is quashed *qua* the petitioner.

37. The petition stands disposed of. All the pending applications are also disposed of.

VIKAS MAHAJAN, J.

JUNE 07, 2024
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