

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.45595 of 2015

Arising Out of PS. Case No.-150 Year-2011 Thana- LAHERIMUHALLA District- Nalanda

Dr. Atma Nand Kumar, Son of Sri Narayan Mehta, Resident of Anand Nurshing Home, Mangla Sthan, P.S.- Laheri, Dist. - Nalanda.

... .. Petitioner/s

Versus

1. State of Bihar
2. Arti Sharma, wife of Late Manoj Sharma, Resident of Village – Hussanpur, P.O. & P.S. - Rajgir, Dist. - Nalanda.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Majid M. Khan, Adv. Mr. Asif Kalim Adv.
For the State	:	Ms. Rita Verma, APP
For the O.P. No. 2	:	Mr. Vijay Shankar Shrivastava, Adv. Mr. Ritesh Kr. Sinha, Adv.

CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL ORDER

6 13-02-2025 Heard Mr. Majid M. Khan, learned counsel appearing for the petitioner, Ms. Rita Verma, learned APP appearing for the State and Mr. Vijay Shankar Shrivastava, learned counsel appearing for the O.P. No. 2.

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 22.05.2013 passed by the learned Chief Judicial Magistrate, Nalanda, whereby cognizance has been taken against the petitioner of the offences punishable under sections 304A, 342 and 201 of the Indian Penal Code (in short ‘IPC’).

3. Learned counsel appearing for the petitioner



submits that it is an admitted position that the deceased, husband of the informant, was admitted in the hospital of the petitioner on 07.07.2011 on account of suffering from stone in Gallbladder and considering his critical condition, the medical operation was conducted on him by this petitioner on the same day in the evening at about 6-7 P.M. and the operation was successful and the relatives of patient were advised not to give the patient consumable food and water but they did not care that medical advice and fed the patient and gave him water also, which resulted in complication to his health condition and due to asphyxia resulting from aspiration of gastric contents in respiratory passage, the patient died and in this regard, the finding given by the doctor concerned, who conducted postmortem examination on the body of the deceased, is relevant. It is further submitted that the subsequent conduct of the petitioner as alleged by the informant as to locking the family members of the deceased inside a room in the hospital as well as disappearing the dead body is completely false and in this regard, the statements of the independent witnesses recorded by the investigating officer during the course of investigation are relevant. It is further submitted that as the patient's health condition deteriorated after operation due to negligence on the part of deceased's family members and the



family members were not cooperating with the petitioner, so, due to these reasons, the patient was rushed to Sadar Hospital by the petitioner and others in critical condition by an ambulance and in this regard, sufficient evidences are available in the case diary and the said conduct goes in favour of the petitioner. While assailing the impugned cognizance order dated 22.05.2013, learned counsel appearing for the petitioner has mainly relied upon the judgment of the Hon'ble Apex Court passed in the case of **Jacob Mathew vs. State of Punjab and Another** reported in **(2005) 6 SCC 1** and the relevant paragraph No. '52' upon which reliance has been placed is being reproduced as under : -

“52. Statutory rules or executive instructions incorporating certain guidelines need to be framed and issued by the Government of India and/or the State Governments in consultation with the Medical Council of India. So long as it is not done, we propose to lay down certain guidelines for the future which should govern the prosecution of doctors for offences of which criminal rashness or criminal negligence is an ingredient. A private complaint may not be entertained unless the complainant has produced 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. 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 and unbiased opinion applying the Bolam test to the facts collected in the investigation. A doctor accused of rashness or negligence, may not be arrested in a routine manner (simply because a charge has been levelled against him). Unless his arrest is necessary for furthering the investigation or for collecting evidence or unless the investigating officer feels satisfied that the doctor proceeded against would not make himself available to face the prosecution unless arrested, the arrest may be withheld.”

4. On the other hand, learned counsel appearing for the informant has vehemently opposed this petition and submits that the conduct of the petitioner after the medical operation on the deceased was completely wrong and highly doubtful which is sufficient to show his negligence in treating the deceased and also in giving post medical treatment to the deceased as after the operation, the patient's condition was found very critical and the colour of the deceased had also changed and when the informant and his family members inquired and complained about it then



they were locked inside a room in the hospital by the petitioner with the help of other co-accused persons and further, the dead body was forcefully taken by the petitioner without the consent of the informant and her relatives and on the next day, the dead body was found in the premises of Sadar Hospital, Biharsharif, Nalanda under a tree in front of the Emergency Ward which also shows the petitioner's conduct being highly suspicious and the same is sufficient to prove his negligence from the beginning of the medical treatment to the deceased and till the end of his life. It is further submitted that initially the petitioner's wife and son, against whom the cognizance of the alleged offences has also been taken, challenged that cognizance order by way of Cr. Misc. No. 16976/2014 which was dismissed on merit, of which order's copy has been filed with this petition as Annexure - 'A' to the counter affidavit and the cognizance of the same offences has been challenged by the petitioner which is not maintainable.

5. Heard both the sides and perused the FIR of Laheri P.S. Case No. 150 of 2011 and the case diary of the said case as well as the order impugned. The petitioner is said to be an experienced surgeon as he did M.B.B.S. from Rajendra Medical College, Ranchi, in the year 1977 and has experience of more than 35 years in the field of surgery as stated by the petitioner in



the petition which has not been refuted by learned counsel appearing for the O.P. No. 2 and the medical findings given in the postmortem report with regard to the existence of internal organs of the deceased do not show disappearance of Kidney, Spleen, liver, etc. which ruled out any intentional wrong by petitioner for removing an organ from the body of the deceased on the pretext of surgery for Gallbladder stone. And further, as per the inquest report and postmortem report, marks of surgery on the body of the deceased was found and the same is relevant to show the surgery having been done on the deceased on account of stone problem. It is settled principle of law that for prosecuting a Doctor for the alleged medical negligence, there must be a medical opinion by an independent team of medical experts as observed by the Hon'ble Apex Court in various judgments including in the case of **Jacob Mathew** (supra). But in the present matter neither the investigating officer took such opinion nor the concerned Magistrate took a pain to get the medical opinion from the medical experts before taking the cognizance for the offence under section 304A of the IPC and in the entire case diary, there is no even *prima facie* material to show any kind of negligence on the part of the petitioner while doing operation on the body of the deceased in respect of the



deceased's health issue, so, considering these aspects, the cognizance of the offence under section 304A of IPC is completely bad in the eye of law. However, in respect of other allegations such as locking the informant and her family members in a room of the hospital by the petitioner and his family members and forcefully taking away the dead body of the deceased without the consent of the informant and throwing it inside the campus of Sadar Hospital, Biharsharif, Nalanda, under a tree at an open place may attract other penal provisions of IPC and in this regard, appreciation of the materials available in the case diary is required to be made by the concerned Magistrate which is demand of justice, so, considering this aspect and for the above reasons, the order impugned is hereby set aside to the extent of taking cognizance under section 304A of IPC against the petitioner and the cognizance of other offences under sections 342 and 201 of IPC is not affected as these offences are *prima facie* attracted in this matter but with regard to other allegation as to taking the dead body and throwing it at an open place inside a hospital in the night, the concerned Magistrate is directed to pass a fresh order after examining the materials available in the case diary to find out whether the commission of an offence is attracted or not and the



order shall be passed according to merit without being prejudiced with this order. In the result, the instant petition stands partly allowed to the aforesaid extent.

(Shailendra Singh, J)

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