

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.45409 of 2015

Arising Out of PS. Case No.-290 Year-2013 Thana- KANKARBAG District- Patna

Dr. Hemant Kumar Son of Late Raj Nath Prasad, Resident of Plot No. F-148,
Ashiana Nagar, Phase- I, P.S. Rajiv Nagar, District- Patna.

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Naresh Dikshit, Advocate
For the Opposite Party/s : Mr. Binod Kumar No.3, APP

CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL ORDER

6 09-01-2025 The instant criminal miscellaneous petition has been filed for setting aside the order dated 03.08.2015 passed by the Judicial Magistrate, 1st Class, Patna whereby the cognizance of the offence under Section 304A read with Section 34 of the Indian Penal Code (hereinafter referred to as the 'IPC') has been taken against the petitioner in connection with Trial No. 193 of 2015 (Arising out of Kankarbagh P.S. Case No. 290 of 2013, G.R. No. 3889 of 2013).

2. The main grounds taken by the petitioner's counsel to assail the order impugned are that the deceased, brother of the informant, was admitted to Jagdish Memorial Hospital, Kankarbagh after his road accident and during the course of treatment, the informant was asked by the officials of the said hospital to arrange the blood for the patient (deceased) and it



was informed by the hospital that the patient's blood group was 'B' positive (B^{+ve}) and thereafter, the blood of said group was arranged and transfusion was made to the patient and but thereafter, the patient's kidney started deteriorating and then, the informant was again informed to bring the blood of same group and the same was also arranged and transfused to the patient but even then the condition of the patient did not improve and during that course, it was found by the informant that the actual blood group of the patient was 'O' positive (O^{+ve}) and finally, the patient died, though there might be some negligence in telling the wrong blood group of the patient to the informant and transfusing the same to the deceased patient but in that matter, there was no role of the petitioner as in the Jagdish Memorial Hospital, the deceased patient was under the treatment of an other physician namely, Dr. Amit Kumar Sinha while the petitioner who is a reputed Doctor in Nephrology stream, has done M.D. in general medicine and D.M in nephrology and his service at Jagdish Memorial Hospital was available only on call and it was not the duty of the petitioner to test the blood group of a patient at the said hospital nor the petitioner played any role in blood transfusion to the deceased patient at the said hospital, the petitioner's medical advice was



taken only with regard to the issue of lowering down the serum creatinine level of the patient, as it pertained to his kidney and secondly, no medical opinion by the Board of medical experts was given to the investigating officer nor any step was taken in this regard by the concerned Magistrate before taking cognizance to find out the medical negligence on the part of this petitioner in connection with the cause of death of the deceased which is clearly a violation of the settled principal of law.

3. On the other hand, learned APP appearing for the State has opposed this petition and submits that admittedly, the blood of wrong group was administered to the deceased at the Jagdish Memorial Hospital and it is an admitted position that the petitioner was providing his medical service and treatment at the said hospital and complication in the kidney of the deceased was the main reason of his cause of death and petitioner was providing his service at the said hospital as Nephrologist, so, he was mainly responsible for the alleged negligence happened in transfusion of the blood of wrong group to the deceased patient. Despite opposing the petition learned APP has fairly accepted that in the entire case diary there is no material to show the opinion of an independent Board consisting of medical experts with regard to the alleged medical negligence on the part of the



petitioner.

4. Heard both the sides and perused the order impugned and other relevant materials. Though in this matter, the informant's brother died during the course of medical treatment at Jagdish Memorial Hospital, Kankarbagh, Patna and the transfusion of the blood of a wrong group being made to the deceased patient was the main reason of his death as per the medical opinion given in the postmortem report by the Doctor concerned but there is nothing material even *prima facie* to show that the petitioner who is a Nephrologist by profession, was directly or indirectly involved in testing the blood group of the deceased patient and advising the patient's relatives or informant to arrange the blood of a particular group, though, in this regard, there might be negligence on the part of other medical staffs of the said hospital but in view of the medical qualification of the petitioner, he cannot be held liable for the alleged negligence and moreover, before taking cognizance of the alleged offence under Section 304A of the IPC, the learned Magistrate did not take any attempt to get the medical opinion of a Board consisting of independent medical experts with regard to the role of this petitioner in the alleged medical negligence which is completely a violation of the settled



principle of law, so, in view of this position, this court finds the order impugned summoning the petitioner for the alleged offence punishable under Section 304A read with Section 34 of the IPC to be bad in the eye of the law, so, the impugned order stands set aside only to the extent of summoning the petitioner for the alleged offence and the instant petition stands allowed.

(Shailendra Singh, J)

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