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

Reserved on: January 23, 2025

% ***Pronounced on: April 08, 2025***

\+ **CRL.M.C. 1150/2018 & Crl.M.A. 4175/2018**

DR. ANU NAYYAR .....Petitioner
W/O Vimal Nayyar
112 Engineers Enclave,
Pitampura
Delhi - 110034

Through: Ms. Yoothica Pallavi, Advocates

Versus

1. **THE STATE OF NATIONAL CAPITAL TERITORY OF ` DELHI**
Through SHO, P.S. K.N.Katju Marg
Rohini, Delhi.

2. **SH. DHIRAJ KUMAR SOLANKI**
R/O D-130, Green Valley Apartment
Sector-18, Rohini, New Delhi.

Through: Mr. Shoaib Haider, Additional Public Prosecutor for Respondent-State with SI Dilsukh

Mr. Dinesh Khanna, Advocate for Respondent No.2/Complainant

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. Petition under Section 482 of the Code of Criminal Procedure, 1973 *(hereinafter referred to as "Cr.P.C.")* has been filed by the Petitioner seeking quashing of Supplementary Challan dated 25.04.2016 under Sections 304A/419/420/465/120B/34 Indian Penal Code, 1860 *(hereinafter referred to as "IPC")* and summoning Order dated 03.07.2017 of the learned Metropolitan Magistrate in FIR No. 368/2012 under Section 304A IPC, registered at Police Station K.N. Katju Marg, New Delhi.

2. ***Respondent No.2/Complainant, Sh. Dhiraj Kumar Solanki filed a Complaint*** with Police Station K.N. Katju Marg, Delhi alleging that Dr. Alka Goel, Family physician and Gynaecologist and Dr. Vinay Goel, MBBS, M.D. (Medicine) were the consulting Doctors for his wife/*Smt. Kamini Solanki*, who was two months' pregnant. On 13.05.2022, the Complainant's wife who was suffering from high grade fever and pain in lower abdomen, was rushed to the residence-cum-Clinic of Dr. Alka Goel who then referred her to Satyam Hospital, where she was admitted at around 11:00 AM.

3. The staff/duty doctor Dr. R.N. Tiwari did the ultrasound at 0.45 PM and stated that there was miscarriage of baby (foetus dead) and uterus was enlarged. Dr. Tiwari talked telephonically to Dr. Alka Goel (Consulting doctor) about the condition of patient, upon which she said that she coming within 15-20 minutes and that she is on the way, but did not reach. After almost 4 hours, Dr. Alka Goel told him that she is unable to come and he can take the patient to some other hospital.

4. At about 08:00 PM, the patient was discharged from Satyam Hospital and was brought to Navjeevan Hospital, where the Petitioner/Dr. Anu

Nayyar was the consultant Radiologist, who was urgently called by Dr. Gaurav Bansal. The Petitioner performed the *ultrasound and gave report of the condition of patient to the treating doctors.* After three and a half hours, the patient was shifted to Jaipur Golden Hospital, where she died on 14.05.2012.

5. The Complainant alleged that his wife did not get timely treatment and lost her life and prayed that legal action be taken against Dr. Alka Goel and Satyam Hospital and the other staff members, who committed negligence and register a case against them.

6. On the Complaint of Respondent No.2, FIR No.368/2012 dated 27.10.2012, under Sections 304A IPC was registered against the treating doctors at Police Station Katju Marg, New Delhi. Sections 149/420/465/120B IPC & 27 Delhi Medical Council Act were also added during the investigation.

7. The Complainant filed other Complaints before the *Delhi Medical Council* (DMC) for disciplinary action alleging professional misconduct against treating doctors; Complaint before the *National Consumer Forum for compensation on the ground of deficiency of service;* and *Complaint before the Public Grievance Commission*.

8. *Disciplinary Committee, Delhi Medical Council,* after examining the Complaint made by Respondent No.2 and Written Statements of Dr. Alka Goel, Dr. Vijay Kumar Kohli and Dr. Ram Narayan Tiwari and hearing the parties, recommended *vide* Order dated 10.06.2014, that for the professional misconducts by Dr. Alka Goel, her name be removed from the State Medical Register of DMC for a period of one month. Furthermore, warning

be issued to Dr. Vijay Kumar Kohli and *Criminal Prosecution be initiated against Sh. R.N. Tiwari as per Section 27 of the DMC Act, 1997.*

9. Against the Order dated 10.06.2014 passed by the Delhi Medical Council, the treating Doctors preferred an Appeal before the *Medical Council of India* (MCI) wherein *vide* Order dated 23.10.2015, they were held guilty and following observations were made in respect of the Petitioner:-

> *"Dr. Gaurav Bansal, Dr. Anu Nayyar and Dr. Renu Aggarwal has concealed the facts in the matter and prima-facie it reveals that Dr. Gaurav Bansal, Dr. Anu Nayyar and Dr. Renu Aggarwal did not perform their duties as a doctor which caused the death of Smt. Kamini Solanki and it is a case of medical negligence on their part."*

10. The Ethics Committee, MCI in respect of the Petitioner, held as under:-

> *"Dr. Anu Nayar has done ultrasound on 13.05.2022 and diagnosed missed abortion and also mentioned that there was free fluid in abdomen. She did not mention the cause of free fluid in abdomen in the lady was abnormal coagulation profile. There is deficiency of service on the part of Dr. Anu Nayar also.*
>
> *...*
>
> *Therefore, the Committee recommends the removal of name of Dr. Gaurav Bansal and Dr. V.K. Kohll each for the period of 12 months from the IMR, Dr. Alka Goel and Dr. Renu Agarwal both for 3 months from IMR and* ***issue warning to Dr. Anu Nayar for being unethical in her reporting."***

11. Aggrieved by the Order dated 23.10.2015 of the MCI, Petitioner preferred W.P.(C) No. 11129/2015, wherein by Order dated 15.12.2015, operation of the impugned Order was stayed.

12. In the meanwhile, after completion of investigation, Charge-Sheet against Dr. Alka Goel, Dr. Vijay Kohli and Dr. Ram Narayan Tiwari was filed on 21.07.2015. The petitioner Anu Nayyar and Dr. Renu Aggarwal were cited as Prosecution witnesses in the Main Charge Sheet.

13. Complainant preferred an Application under Section 173(8) Cr.P.C. before the learned Trial Court and relying on the Order dated 23.10.2015 of the Ethics Committee, MCI, contended that Dr. Anu Nayyar along with others, did not perform duties as a Doctor which caused death of Smt. Kamini Solanki and it is a case of medical negligence on their part. It was prayed that further investigation relating to the medical negligence and professional misconduct be conducted and Supplementary Challan was directed to be filed.

14. Thereafter, *Supplementary Charge-Sheet against Dr. Anu Nayyar and Dr. Renu Agarwal* was filed before the learned Trial Court, on 25.04.2016. The Petitioner was summoned by the learned Trial Court *vide* Order dated 03.07.2017.

15. ***The Petitioner has challenged the Supplementary Charge-Sheet as well as the Summoning Order dated 03.07.2017*** on the ground that the Investigating Agency did not conduct any further investigation and it only on the basis of observations made by MCI in the Order dated 23.10.2015, the Supplementary Challan has been filed against her.

16. The Petitioner has submitted that in the Appeal before MCI against the Order dated 23.10.2015 of DMC, was filed but MCI without even giving Notice and opportunity of hearing, passed the Order dated 15.12.2015, which she challenged before this Court, wherein operation of the impugned Order was stayed. However, the Complainant filed Application under Section 173(8) Cr.P.C. before the learned Trial Court without disclosing that operation of the Appellate Order of MCI, was stayed by this Court.

17. The Petitioner has asserted even otherwise, she was never a part of team of the Doctors who treated the wife of the Complainant. She had merely conducted the *ultra sound* and given the Report to the treating Doctor.

18. Further, as per standard procedure, a Radiologist is supposed to give only the findings and not reasons/ causes behind the findings of the Report. The sole allegation against her is that she failed to provide reasons for presence of free fluid in abdomen of the patient with abnormal Coagulation Profile, which is beyond the domain of Radiologist. Also, Coagulation Profile is ascertained by blood test which was not available when she conducted the ultrasound as the Coagulation Test Report was received after the ultrasound was done.

19. Even if observations made by MCI in its Order dated 23.10.2015 in relation to *unethical reporting* by the Petitioner and warning being issued, is taken on its face value, the same cannot form basis of criminal action against her. The medical negligence alleged on the part of the Petitioner is required to be considered in the light of law laid down by the Apex Court in *Jacob Mathew vs. State of Punjab*, (2005) 6 SCC 1.

20. Reliance has also been placed on the case of *Jayshree Ujwal Ingole vs. State of Maharashtra and Ors.*, (2017) 14 SCC 571 wherein the Petitioner examined the patient and made a note stating a Physician be called and subsequently, left. The Apex Court relied upon *Jacob Mathew* (supra) and quashed proceedings against the Petitioner/Surgeon, and held that although there might be an error in judgment of the Petitioner, but that would definitely not constitute as a rash and negligent act as contemplated under Section 304A IPC.

21. It is further contended that the *mala fide* intention of the Complainant is clear from the fact that he had also impleaded the Petitioner as a party Respondent in the *Consumer case* seeking compensation and he is trying to misuse the Order of the MCI as a weapon to extort money from the Petitioner.

22. Furthermore, in his Appeal before the MCI against the Order passed by DMC, the Complainant did not accuse the Petitioner of any misconduct which could justify any criminal action against her.

23. Pertinently, DMC is a fact-finding Expert Body in regard to professional Ethics. It had conducted a detailed enquiry and in its detailed Order dated 10.06.2014, no role was assigned to the Petitioner.

24. ***The Complainant/ Respondent No.2 in his Reply*** has claimed that the present Petition is liable to be dismissed, as this Petition under Section 482 Cr.P.C. is merely an endeavour to stall the due process of law and defeat the purpose of Section. The Ethics Committee, Medical Council of India in its Order, has expressly mentioned the complicity of Petitioner and held that she did not perform her duties as a Doctor which led to the death of his wife; it is a clear case of medical negligence on her part.

25. Moreover, Petitioner has wrongly contended that she was not given a hearing by MCI. She was a party to the Enquiry conducted by the Ethics Committee, MCI and was heard at length on 15.11.2015 and 16.11.2015, which is mentioned in the Order of MCI. Her assertion that she was not given a hearing, is patently against the Record.

26. The learned MM had directed further investigation under Section 173(8) Cr.P.C. based upon the observations of the MCI, which is an Expert and specialized body. Not only this, DMC had also referred the case to Delhi Police for further investigation regarding the determination of the fact as to which doctor caused *perforation of uterus causing death of the wife of the Complainant.* The Petitioner has falsely claimed that she was not a part of team of doctors who were responsible for perforation of uterus of the patient.

27. Respondent No.2/Complainant has further asserted that the Petitioner has wrongly interpreted the Order dated 15.12.2015 of this Court, whereby *interim stay* has been granted against the Order of MCI, as it was only restricted to taking any Disciplinary Action against the Petitioner and not against cognizance on the Supplementary Charge Sheet filed under Section 173(8) Cr.P.C.

28. ***On merits,*** it is asserted that MCI had explicitly mentioned about complicity of Dr. Anu Nayyar in death of wife of the Complainant. While conducting inquiry, MCI had directed all the doctors to join who had participated in the treatment of the deceased and Petitioner had also made herself present before the MCI as an accused and not as a witness. A Radiologist is a full–fledged doctor and not a mere photographer. Wherever

the picture in radiograph is alarming indicating possibility of fatality, it is the duty of Radiologist to suggest cause and prescribe the steps to be taken to prevent any untoward exigency and not act as a mute spectator like a cameraman.

29. It is submitted that there is no infirmity in the Supplementary charge-sheet or summoning of the Petitioner and this Petition is liable to be dismissed.

30. ***Respondent-State*** **in its** ***Status Report dated 04.07.2019 has*** given details of the facts leading to Charge-sheet dated 04.07.2019 and it is stated that the matter is at the stage of re-arguments on Charge.

31. ***In Rejoinder,*** Petitioner has reaffirmed the assertions made in the Petition. It has been vehemently contended that the criminal proceedings against the Petitioner, is an afterthought as she was not even a part of the treating Doctors at Navjeevan Hospital. This is established from the fact that in none of the Complaints/Appeals filed by Respondent No.2, not a word was stated about the Petitioner as an accused or accomplice having any role in the unfortunate death of his wife.

32. **Submissions heard and record perused.**

33. The facts as discernable from the Record are that Complainant's wife/Smt. Kamini Solanki, who was two months pregnant suffered from various medical complications and was taken to Satyam Hospital on the advice of consulting Doctor, Dr. Alka Goel, Gynecologist, where her ultrasound was conducted by Dr. R.N. Tiwari on telephonic instructions of Dr. Alka Goel, who did not come to attend the patient. It was found that it was a case of *missed abortion*.

34. Since her condition was not stable, she was referred to Navjeevan Hospital, where her second ultrasound was conducted by Petitioner/Dr. Anu Nayyar, who confirmed the report of *missed abortion.* The patient was thereafter, attended by Dr. Renu Aggarwal, who on examination found that the patient was in poor condition, in shock and was bleeding. She observed that *PV USG findings* were of missed abortion and the patient appeared to be a likely case of *uterus perforation and was referred to higher centre for further management.* The patient was then taken to Jaipur Golden Hospital at about 12:15 AM where the concerned Doctor recorded that the patient came in sick with poor general condition. As per the Jaipur Golden Hospital Medical Record, the patient was brought in *a state of shock* with PV Clinical *finding of uterus floating in water hemoperitoneum which was an indication of perforation of uterus* (as mentioned in DMC Report). She died at about 12:59 AM.

35. The Supplementary Charge Sheet against Dr. Anu Nayyar and Dr. Renu Aggarwal (who were earlier cited as witnesses in main Charge Sheet), was essentially based on the Order dated 23.10.2015 of Ethics Committee, MCI, who after considering the rival contentions of the parties and the Order of Disciplinary Committee, DMC in its Order recorded the plea of Dr. Anu Nayyar, the Petitioner, which was as under:-

> *"I state that on 13th May, 2012, I was called for an ultrasound of Mrs. Kamini Solanki. I referred that uterus is bulky, shows 10 weeks 6 days foetas in uterine cavity. Foetal cardiac activity was absent. Chonodecidual separation was present and mild amount of free fluid was seen in pelvis with internal echoes."*

36. The Ethics Committee, MCI after considering the statement of Dr. Anu Nayyar and other doctors and the records, **decided in respect of Ms. Anu Nayyar, as under:-**

> *"Dr. Anu Nayyar has done ultrasound on 13.05.2012 and diagnosed missed abortion and also mentioned that there was free fluid in abdomen.* ***She did not mention the cause of free fluid in abdomen in the lady who was abnormal coagulation profile. There is deficiency of service on the part of Dr. Anu Nayar also****"*

37. It was further recommended that Dr. Anu Nayyar be issued a *warning for being unethical in her reporting*.

38. The only role which is assignable to the Petitioner is of having conducted the ultrasound of the deceased, as the Radiologist. She conducted ultrasound test of the deceased patient and submitted her Report as under:-

> *" Uterus: Anteverted/ retroverted - Ut-bulky*
> *Size: Shows 10 weeks 6 days fetus in uterine cavity; foetal cardiac activity absent.*
>
> *IMPRESSION: Please correlate clinically "*

39. The Order dated 10.06.2014 of the DMC clearly notes that the Petitioner had conducted USG abdomen on 13.05.2012 and it nowhere mentioned any other role of the Petitioner or *dereliction of professional ethics or warning*.

40. Pertinently, it is not denied that the blood sample for Coagulation Test was taken at Navjeevan Hospital, which was sent through the Complainant, to Sigma Lab, Pitampura, Delhi since a Lab in the hospital was not working. In the meanwhile, ultrasound of the deceased was conducted. *There is*

nothing on record to show that the USG Report was incorrect since the coagulation report was not available till then, to co-relate the picture recorded during ultrasound and the Coagulation Report.

41. MCI in its Order dated 23.10.2015 has also noted that as per USG dated 13.05.2012 done at Satyam Hospital, the patient had suffered missed abortion and was required to be taken up for D&C, but since patient had fever, it was required to be addressed first. It raised a strong suspicion that while the patient was kept in Labour Room/ Operation Theatre, some attempt must have been made for D&C which caused perforation of uterus, which could have been caused only by the treating Doctors.

42. Therefore, in the ultrasound conducted at Navjeevan Hospital, the uterine perforation was noted. After the Ultrasound report, Dr. Renu Aggarwal was called for further administration of treatment of the patient, who had already been put on IV Fluids/IV Antibiotics.

43. *There was no intrusive operation conducted by Dr. Anu Nayyar and prima facie there is no evidence to reflect that the uterine perforation was on account of any act of Dr. Anu Nayyar. Moreover, while MCI observed that there was dereliction of Duty by the Petitioner, but aside from mere conclusion, the basis of coming to such conclusion, has not been stated.*

44. The observations of MCI are that Petitioner did not mention the cause of free fluid in abdomen in the lady. The ***duty of the Radiologist*** is to conduct image guided Procedures and interpret such medical images, in the Ultrasound Report and to record the factual situation on the medical condition of the body part of which the ultrasound is performed and to report fairly and correctly. The Report is required to be forwarded to the

consulting Doctor/Gynecologist who then correlates the report of ultrasound with the symptoms and prescribe the treatment. It is not the job of Radiologist either to interpret or to advice any treatment, which is purely the domain of the consulting Doctor.

45. There is not a vestige of investigation or evidence in the entire supplementary Charge Sheet to show that there was any *medical negligence* while performing her duties. The only conclusion was of ***Dereliction of Duty and that too, solely on the basis of the Report of MCI.*** No independent investigations have been conducted by the Investigating Agency.

46. The meaning of the word *'dereliction'* as per the Oxford Dictionary is *the fact of deliberately not doing what you ought to do, especially when it is part of your job.* Similarly, Merriam-Webster Dictionary, defines *'dereliction' as intentional or conscious neglect.*

47. In the context of medical negligence, the Apex Court in the case of *M.A. Biviji vs. Sunita*, (2024) 2 SCC 242 examined the concept of dereliction of duty and in this regard, relied on the case of *Jacob Mathew*, (supra) to wherein it was held that:

> *"48. ... (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. ... 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 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. ...*

(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."

48. The Apex Court in the case of *Jacob Mathew,* (supra) has also observed that *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 sense and prudence would have done or failed to do.*

49. Following *Jacob Mathew*, (supra), the Court in *Kusum Sharma vs. Batra Hospital,* (2010) 3 SCC 480 laid down the following principles that are to be considered while determining the charge of medical negligence :

"*89. ... (I) Negligence is the breach of a duty exercised 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.*

***

(III) The Medical Professional is expected to bring a reasonable degree of skill and knowledge and must exercise a reasonable degree of care. Neither the very highest nor a very low degree of care and competence judged in the light of the particular circumstances of each case is what the law requires.

(IV) A medical practitioner would be liable only where his ***conduct fell below that of the standards of a reasonably competent practitioner*** *in his field.*

> *(V) In the realm of diagnosis and treatment there is* ***scope for genuine difference of opinion and one professional doctor is clearly not negligent merely because his conclusion differs from that of another professional doctor.***
>
> …
>
> *(VII) Negligence cannot be attributed to a doctor so long as he performs his duties with reasonable skill and competence. Merely because the doctor chooses one course of action in preference to the other one available,* ***he would not be liable if the course of action chosen by him was acceptable to the medical profession.***
>
> …"

50. Thus, to constitute medical negligence, circumstances must establish that there was ***"duty", "breach", and "resulting damage".*** Further, it must be shown that *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.*

51. While it is an unfortunate case where a young lady lost her life, but there is nothing on record to show that the Petitioner was ***"deficient"*** in performing her duty. It is also evident from the timeline of events that the patient was transferred to Navjeevan Hospital specifically because her condition was not stable, after the initial diagnosis at Satyam Hospital. This indicates that the initial assessment already recognized the complexity of the situation. Thus, the Petitioner's action of performing the second ultrasound and confirming the initial diagnosis, was in accordance with the expected standard of care. There is not a whisper that she was not a qualified Radiologist or that she did not possess the requisite skill to conduct

Ultrasound or that she did not exercise reasonable care in performing her duty.

52. Even the Report of MCI in its Order dated 23.10.2015, which is the sole basis of filing of Chargsheet against the Petitioner, also does not conclude it to be a case of *Medical Negligence.*

53. The entire narration and the facts, ***do not show any kind of medical negligence on the part of Petitioner.*** The Petitioner's role was primarily diagnostic i.e. to confirm the missed abortion by conducting Ultrasound. She discharged her immediate diligently in performing the requested Ultrasound and reported her findings, which aligned with the initial diagnosis *of missed abortion,* by Satyam Hospital. No offence prima facie under Section 304A IPC, is disclosed.

54. Therefore, Supplementary Challan dated 25.04.2016 under Sections 304A/419/420/465/120B/34 IPC along with the summoning Order dated 03.07.2017 and all proceedings emanating therefrom in FIR No. 368/2012, under Sections 304A IPC, Police Station K.N. Katju Marg, are hereby quashed, **against the Petitioner**.

55. With aforesaid, the present Petition is allowed and accordingly disposed of, along with pending Application(s), if any.

(NEENA BANSAL KRISHNA)
JUDGE

APRIL 08, 2025/r