

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.22984 of 2016

Arising Out of PS. Case No.-1862 Year-2015 Thana- PATNA COMPLAINT CASE District-
Patna

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1. Dr. Rabindra Narayan Singh, S/o Late Radha Ballabh Singh resident of Anup Institute of Orthopaedics and Rehabilitation, G-75-77, P.C. Colony, Kankarbagh, P.S.- Kankarbagh, District- Patna.
 2. Dr. Ashish, S/o Dr. Rabindra Narayan Singh, resident of Anup Institute of Orthopaedics and Rehabilitation, G-75-77, P.C. Colony, Kankarbagh, P.S.- Kankarbagh, District- Patna.
 3. Ashesh Kumar, S/o Bhartendu Ramesh Chandra Jha, resident of Anup Institute of Orthopaedics and Rehabilitation, G-75-77, P.C. Colony, Kankarbagh, P.S.- Kankarbagh, District- Patna.

... .. Petitioner/s

Versus

1. State Of Bihar
2. Rakesh Sharma, S/o Late Anil Sharma, resident of Village- Balbhadra, P.S.- Hilsa, District- Nalanda.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Saket Tiwary, Adv. Mr. Animesh Gupta, Adv. Mr. Shivam Gupta, Adv. Mr. Amritya Raj, Adv.
For the State	:	Mr. Binod Kumar No.3, APP
For the O.P. No.2	:	None.

CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL ORDER

16 29-11-2024

The instant petition has been filed to quash the order dated 15.09.2015 by which the learned Judicial Magistrate, 1st Class, Patna has taken cognizance of the offences punishable under sections 304A and 120B of the Indian Penal Code (in short 'IPC') against the petitioners.

2. Mr. Saket Tiwary, learned counsel appearing for the petitioners and Mr. Binod Kumar No. 3, learned APP for the



State are present and they are heard but no one appears on behalf of the O.P. No. 2.

3. Heard both the sides, perused the order impugned and other relevant materials. As per the allegations levelled by the O.P. No. 2 in his complaint, the father of the O.P. No. 2 was admitted in the hospital of the petitioner No. 1 for taking treatment in respect of pain in left hip of the complainant's father and thereafter, as per the complainant (O.P. No. 2), the required fee was paid to the petitioners with this impression that the operation of the father of the O.P. No. 2 (deceased) would be done by the petitioner No. 1 but later on, the operation was not done by the petitioner No. 1, rather the same was done by another incompetent doctor under the direction of the petitioner Nos. 1 and 2 which resulted in death of the father of the O.P. No. 2 and the same was due to negligence of the petitioners. After perusing the complaint filed by the O.P. No. 2, it appears that the complainant made his allegations mainly on the basis of presumption and suspicion and except this, there is no material in support of his allegation and further, on the dead body of the deceased, postmortem examination was not done and there is no justifiable explanation for the same. In respect of the medical negligence, the Hon'ble Apex Court made some relevant



observations in the case of Jacob Mathew vs. State of Punjab & Another [(2005) 6 SCC 1] and the relevant paragraph No. 18 is being reproduced as under :-

“18. In the law of negligence, professionals such as lawyers, doctors, architects and others are included in the category of persons professing some special skill or skilled persons generally. Any task which is required to be performed with a special skill would generally be admitted or undertaken to be performed only if the person possesses the requisite skill for performing that task. Any reasonable man entering into a profession which requires a particular level of learning to be called a professional of that branch, impliedly assures the person dealing with him that the skill which he professes to possess shall be exercised with reasonable degree of care and caution. He does not assure his client of the result. A lawyer does not tell his client that the client shall win the case in all circumstances. A physician would not assure the patient of full recovery in every case. A surgeon cannot and does not guarantee that the result of surgery would invariably be beneficial, much less to the extent of 100% for the person operated on. The only assurance which such a professional can give or can be understood to have given by implication is that he is possessed of the requisite skill in that branch of profession which he is practising and



while undertaking the performance of the task entrusted to him he would be exercising his skill with reasonable competence. This is all what the person approaching the professional can expect. Judged by this standard, a professional may be held liable for negligence on one of 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 necessary for every professional to possess the highest level of expertise in that branch which he practises. In Michael Hyde and Associates v. J.D. Williams & Co. Ltd. [2001 PNLR 233 (CA)] Sedley, L.J. said that where a profession embraces a range of views as to what is an acceptable standard of conduct, the competence of the defendant is to be judged by the lowest standard that would be regarded as acceptable.”

4. While dealing with the negligence by the medical professional, the Hon’ble Apex Court in the case of Martin F. D’Souza vs. Mohd. Ishfaq [(2009) 3 SCC 1], made some observation in the paragraph No. 106, which is relevant to the



present matter and the same is being reproduced as under : -

“106. We, therefore, direct that whenever a complaint is received against a doctor or hospital by the Consumer Fora (whether District, State or National) or by the criminal court then before issuing notice to the doctor or hospital against whom the complaint was made the Consumer Forum or the criminal court should first refer the matter to a competent doctor or committee of doctors, specialised in the field relating to which the medical negligence is attributed, and only after that doctor or committee reports that there is a prima facie case of medical negligence should notice be then issued to the doctor/hospital concerned. This is necessary to avoid harassment to doctors who may not be ultimately found to be negligent. We further warn the police officials not to arrest or harass doctors unless the facts clearly come within the parameters laid down in Jacob Mathew case [(2005) 6 SCC 1 : 2005 SCC (Cri) 1369], otherwise the policemen will themselves have to face legal action.”

5. The above principle laid down by the Hon’ble Apex Court was followed in the case of Dr. Ashok Kumar Singh & Anr. vs. The State of Bihar & Anr. passed by this Court in Cr. Misc. Case No. 40712 of 2012.

6. In the present matter, it is an admitted position that



there is no any independent medical opinion with regard to the alleged negligence on the part of the petitioners in respect of the death of the father of the O.P. No. 2 and the learned trial court has taken cognizance in the absence of any independent medical opinion with regard to the alleged negligence which is completely a violation of the above settled principle and further the dead body of the deceased was not postmortemed, so, the exact cause of the death could not come out in the light. It will not be proper to put the petitioners on trial for the alleged offences merely on the basis of presumption and suspicion without support of any evidence. Accordingly, this Court finds that the order impugned is completely bad in the eye of law as well as in violation of the above settled principles, so, the same deserves to be set aside, hence, the order impugned taking cognizance of the offences punishable under sections 304A and 120B of the IPC against the petitioners is hereby set aside and the instant petition stands allowed.

(Shailendra Singh, J)

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