

A.F.R.
Reserved on 20.04.2023
Delivered on 31.05.2023

Court No. - 46

Case :- CRIMINAL MISC. WRIT PETITION No. - 18229 of 2022

Petitioner :- Dr. B.K. Yadav @ Biplav Kumar Yadav

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Satyendra Kumar Singh

Counsel for Respondent :- G.A.

Hon'ble Anjani Kumar Mishra,J.

Hon'ble Ms. Nand Prabha Shukla,J.

(Delivered by Hon'ble Nand Prabha Shukla, J.)

1. Heard learned counsel for the petitioner, learned A.G.A. for the State and perused the record.
2. The writ petition seeks quashing of the F.I.R. dated 03.07.2020 giving rise to Case Crime No.33 of 2020, under Section 304 I.P.C., Police Station- Lalpur Pandeypur, District Varanasi.
3. The allegations against the petitioner is that the petitioner is the Care taker of the Medicity Neuro & Critical Care Hospital, Varanasi, who diagnosed the informant's son suffering from Hernia and advised surgery. The informant deposited a sum of Rs. 48,000/- for the treatment. However, due to negligence on the part of the doctors who without seeking the written consent from the parents/natural guardian operated the child, who died during treatment.
4. The main contention raised by learned counsel for the petitioner is that the petitioner did not operate the informant's son and is merely the Care taker of the aforesaid hospital. The petitioner has been falsely implicated for ulterior purposes. The counsel for the petitioner to support his submissions has relied the judgment and order passed in **Dr. P. Kumar VS. State of U.P. And Another** reported in **2016 Vol. 0, Supreme Court (All), 252** stating that the medical practitioner should not be prosecuted in every such case where due to critical condition a patient expires. Further, it has

been asserted that the Supreme Court has laid down the guidelines with regard to the cases of medical negligence and has issued direction that *in such cases the matter should first be referred to a competent doctor or committee of doctors specialist in the relevant field and when such a doctor or committee reports that there is prima facie case of medical negligence, only then notice should be issued to the doctor or hospital concerned. Courts or consumer courts are not experts in medical science and therefore they should not substitute their own views over that of specialists. The Supreme Court has also warned the police officers against arresting or harassing the doctors unless the facts clearly come within the parameters laid down in Jacob Mathew's case. Observing that the law is a watchdog and not a bloodhound, the Supreme Court has held that the doctors doing duty with reasonable care would not incur liability even if their treatment failed. Harm resulting from mischance or misadventure or through an error of judgment would not necessarily attract such liability. Simply because a patient has not favourably responded to a treatment given by a doctor or a surgery has failed, the doctor cannot be held straightaway liable for medical negligence.*

5. Per contra, learned A.G.A. for the State has asserted that the petitioner diagnosed and advised surgery to the informant's son suffering from Hernia. The gross negligence on the part of the petitioner is that the surgery/operation took place without seeking consent of the natural guardian/father/first informant of the deceased, who was available at the time of the incident. The consent letter annexed as Annexure No. SA-1 of the Supplementary Affidavit indicates that the said consent has been procured from the uncle Manish and the grand-mother Sita Devi. Despite the natural guardian being present at the place of incident as is evident from the FIR, the petitioner did not care to seek the consent from the father/informant.

6. From the bare reading of the First Information Report, it is apparent that the son of the first informant died during the treatment/surgery undergone for Hernia. The impugned First Information Report has been registered under Section 304 IPC and the petitioner being a care taker was supposed to be responsible for providing medical care. The contention of the learned counsel for the petitioner that he is a care taker, is merely his defence, which is not to be considered in a writ petition which seeks quashing of the FIR. The investigation is at the inceptive/nascent stage. Material has to be collected whether the offence is culpable or is a case of gross negligence. It is too early to conclude whether the petitioner

could avail and seek the protection in the light of the guidelines/parameters as laid down by the Hon'ble Supreme Court in **Jacob Mathew Vs. State of Punjab & Another** reported in **2005(5) Supreme 297**, in regard to medical negligence. The criminal prosecution cannot be thwarted as from a bare reading of the FIR, the allegations disclose commission of a cognizable offence.

7. No interference is required.

8. The writ petition is, therefore, ***dismissed***.

Order Date :- 31.5.2023

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