

(2009) 08 DEL CK 0353

In the Delhi High Court

Case No : Criminal Revision Petition No. 381 of 2009

Dr. Vinod Gupta

APPELLANT

Vs

The State (Govt. NCT of Delhi)

RESPONDENT

Date of Decision : 12-08-2009

Acts Referred:

Delhi Medical Council Act, 1997 — Section 27
Penal Code, 1860 (IPC) — Section 304A

Citation : (2010) 1 Crimes 251

Hon'ble Judges : V.K. Shali, J

Bench : Single Bench

Advocate : L.S. Saini, for the Appellant; Pawan Bahl, APP, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Shali, J.—This is a revision petition filed by the petitioner against the order dated 25th March, 2009 passed by Sh. R.B. Singh learned ASJ in case titled State v. Dr. Dhananjay Kumar Etc. bearing FIR No. 589/2008 P.S. Sultanpuri, Delhi wherein the learned Magistrate has directed framing of charges against the petitioner u/s 304-A IPC r/w Section 27 of Delhi Medical Council Act.

2. Briefly stated the facts of the case are that on 3rd May, 2006, deceased Radhey Shyam was suffering from high fever and vomiting. He went to one Dr. Dhananjay Kumar. Dr. Kumar administered injection to Radhey Shyam. The condition of Radhey Shyam instead of improving started deteriorating and he developed rashes all over his body. Radhey Shyam was taken to Manthan hospital a nearby Nursing Home by his family members where he was administered injections by Dr. Vinod Gupta, the present petitioner. Since the condition of the patient did not improve he was referred to DDU Hospital. The deceased being taken to DDU hospital by his wife Smt. Savitri along with Ram Niwas who was the owner of the hospital and one more person Ram Niwas and that person got down midway under the pretext of getting some money and in the process by the time the deceased was brought to DDU hospital he had

already expired. A case under 304A IPC was registered against Dr. Vinod Kumar and Dr. D.K. Maurya. After investigation, the charge sheet was filed and the learned Magistrate on 25th March, 2009 framed charges.

3. I have heard the learned Counsel for the petitioner and learned APP for the State. The main contention of the learned Counsel for the petitioner is that Dr. Vinod Kumar could not be charged u/s 304A IPC as he did not treat the patient at all. It was also urged that even if it is assumed that the deceased was treated by Dr. Vinod Kumar even then no case of medical negligence could be made out because the petitioner tried his level best to save the deceased. It is further urged that when the patient was brought to the hospital, he had already expired. It was contended by the learned Counsel that at the time framing of charge by the learned Magistrate has ignored the ratio of the judgment in the case titled Jacob Mathew Vs. State of Punjab and Another, wherein the Hon'ble Supreme Court has categorically laid down the guidelines for prosecuting the medical professionals for offences involving criminal negligence. It was urged by the learned Counsel that the petitioner Dr. Vinod Gupta had taken due care and attention while treating the patient and since his condition had already deteriorated, the petitioner instead of treating the patient referred him to DDU hospital.

4. As against this, the learned APP took this Court through the supplementary statement of Smt. Savitri Devi, the wife of the deceased, Surya Bhan, brother of the deceased and Tilakdhari, father of the deceased. All the three witnesses in their statements and supplementary statements recorded on different dates have specifically attributed the death of the deceased on account of medical negligence of Dr. Vinod Gupta in not providing him timely and correct medical aid.

5. It may be pertinent here to mention that after the death of the deceased, Delhi Medical Council had conducted an enquiry with the help of experts. It had examined number of witnesses including the wife, the brother and the father of the deceased apart from Ram Niwas the owner of Manthan Hospital, Dr. Dhananjay Kumar and Dr. Vinod Gupta. A copy of the said report of the Medical Council clearly shows that the deceased who had suffered anaphylactic reaction was administered injection Atropine and injection Effcorlin by Dr. Vinod Gupta in Manthan Hospital. This has been testified by Ram Niwas who is the owner of Manthan hospital who has further stated that Dr. Vinod Gupta was rendering his services to Manthan Hospital as Consultant around the time when the incident took place. As against this, Dr. Vinod Gupta denied his association with Manthan hospital. He said that he visited the said hospital on receipt of a call purely on humanitarian ground and he also denied having administered any treatment to the deceased. On the contrary, he stated that at the time when the patient was brought to Manthan hospital he had already expired and that is why he was referred to the DDU Hospital.

6. The Medical Council in its report has opined that there was an "anaphylactic reaction" and there was medical negligence in the treatment and management of

the case of the deceased which resulted in his death. This clearly established prima facie that there was medical negligence on the part of Dr. Vinod Gupta in treating and managing the patient which he was trying to cover up by simple denial of the fact of having administered any treatment to the patient.

7. At the stage of framing of charge, it is settled legal position that if there is strong suspicion against the accused, a charge has to be framed against him. The learned Magistrate in the present case directed the charges to be framed against the petitioner for having committed an offence u/s 304A IPC and 27 of the Delhi Medical Council Act on the basis of the statement of wife and other relatives of the deceased and the report of the Medical Council.

8. I do not find that there was any impropriety, illegality or incorrectness in the order dated 25.3.2009 passed by the learned Magistrate directing the framing of the charge against the petitioner u/s 304A IPC for having caused death both by negligence

9. Reliance placed by the learned Counsel for the petitioner in Jacob Mathew's case is totally mis-placed as the said judgment lays down the guidelines as to how the cases of criminal negligence and the consequent death having been caused is to be registered against the doctors. The three guidelines which are laid down are as under:

(1) 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.

(2) 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 Bolam's test to the facts collected in the investigation.

(3) A doctor accused of rashness or negligence, may not be arrested in a routine manner (simply because a charge has been leveled against him). Unless his arrest is necessary for furthering the investigation or for collecting evidence or unless the investigation officer feels satisfied that the doctor proceeded against would not make himself available to face the prosecution unless arrested, the arrest may be withheld.

10. None of the guidelines seems to have been violated in the present case. In any case, that is not the grievance of the petitioner that any of the guidelines has been violated. The grievance of the counsel for the petitioner is that there was no medical negligence at all on the part of the petitioner as the patient was not treated by the petitioner, Dr. Vinod Gupta. It is totally misconceived and untenable in the light of what has been stated above.

11. For the reasons mentioned above, the petition is totally misconceived and the impugned order does not suffer from any illegality, impropriety or incorrectness and the revision petition is accordingly dismissed.