

(2011) 01 PAT CK 0105

In the Patna High Court

Case No : Criminal Miscellaneous No. 20670 of 2003

Gunjan Sinha

APPELLANT

Vs

The State of Bihar and Vijay Prasad

RESPONDENT

Date of Decision : 24-01-2011

Acts Referred:

Citation : (2011) 01 PAT CK 0105

Final Decision : Allowed

Judgement

Rakesh Kumar, J.—The Petitioner, who is a doctor and was running a Clinic at Amba in the district of Aurangabad, has approached this Court, while invoking its inherent jurisdiction u/s 482 of the Code of Criminal Procedure with a prayer to quash an order dated 26.6.2003 passed by the learned Chief Judicial Magistrate, Aurangabad in G.R. No. 1387 of 2002 (arising out of Kutumba (Amba) P.S. Case No. 71 of 2002). By the said order, learned Chief Judicial Magistrate has taken cognizance of offence u/s 304 of the Indian Penal Code.

2. Short fact of the case is that on 23.7.2002, Opp. Party No. 2 filed a written application addressed to the Officer Incharge of Amba Police Station disclosing therein that on 22.7.2002 at about 9.00 P.M. (night), he brought his pregnant wife for the purpose of delivery to the clinic of the Petitioner. It was disclosed that the Petitioner at the relevant time was posted in Primary Health Centre, Kajpa. The Petitioner told the informant that he will get the delivery done in his clinic and asked him to deposit Rs. 1400/- After the treatment rendered by the Petitioner, the condition of the informant's wife become more serious. In the meanwhile, the informant's men arrived there for rendering monetary help to the informant. It was further alleged by the informant that he requested the Petitioner for referring his wife for her better treatment outside. Thereupon, the Petitioner retorted that if all the Harijans (Scheduled Castes) will go to Varanasi and Patna, then for what purpose he had opened the Clinic at Amba and forcibly and negligently, the Petitioner treated the wife of the informant. As per the informant, there were no arrangements for conducting delivery. However, lastly

the wife of the informant delivered a child and, thereafter in the night at 11.00 P.M. his wife died in the clinic of the Petitioner. It was alleged that had the Petitioner not forcibly treated his wife, his wife would not have died. As per the informant, all the things were witnessed by his other co-villagers. The informant further alleged that after the death of his wife, the Petitioner asked him to carry the dead body of his wife and cremate her and subsequently, cremation was done. On the basis of the aforesaid written report of the informant, an F.I.R. vide Kutumba (Amba) P.S. Case No. 71 of 2002 was registered on 24.7.2002 for the offence u/s 302 of the Indian Penal Code and Section 3(X) of SC/ST (Prevention of Atrocities) Act. However, after conducting investigation, the police submitted chargesheet u/s 304 of the Indian Penal Code against the Petitioner and the learned Chief Judicial Magistrate on the basis of chargesheet dated 24.3.2003 took cognizance of the offence and transferred the case to the file of Sri Alok Raj, Judicial Magistrate, 1st Class, Aurangabad for commitment.

3. Aggrieved with the order of cognizance dated 26.6.2003, the Petitioner approached this Court by filing the present petition. On 12.4.2004, learned Counsel for the Petitioner was permitted to implead the informant as Opp. Party No. 2 and directed for issuance of notice to Opp. Party No. 2. It was further directed that during the pendency of this application, proceedings in G.R. Case No. 1387 /02 (arising out of Kutumba (Amba) P.S. Case No. 72 of 2002) shall remain stayed. On 18.11. 2005, the case was admitted for hearing and it was directed that the interim order of stay granted on 12.4.2004 shall continue. The order of stay is still continuing. Despite valid service of notice, Opp. Party No. 2 has preferred not to appear.

4. Sri Akhileshwar Prasad Singh, learned Counsel appearing on behalf of the Petitioner, while challenging the order of cognizance, submits that on the basis of materials available on record, no offence u/s 304 of the Indian Penal Code is made. It was submitted that the case was filed by Opp. Party No. 2 only with a view to extract money from the Petitioner. The Petitioner being a Medical Officer had rendered sincere and honest service and treated the wife of the informant as per his request. It was submitted that even in the F.I.R. itself, the informant has categorically averred that he himself had brought his wife to the clinic of the Petitioner for the purpose of delivery. Since the Petitioner had treated the wife of the informant to the best of his ability, it cannot be imagined that the Petitioner being a qualified Medical Officer in his own clinic would have intended to cause death of the wife of the informant, nor there was any reason that the treatment, which was rendered by the Petitioner was likely to cause death of the wife of the informant. Learned Counsel for the Petitioner , while referring to Annexure-3 to the petition i.e. photo copy of a compromise petition, submits that even during the investigation itself, compromise in between the parties had arrived and, as such, there was no occasion for the police to further investigate and submit chargesheet. It was further submitted that false implication of the Petitioner is evident from the fact that the informant with a view to make out a case for depriving the Petitioner from availing the privilege of anticipatory bail, in a

calculated way had alleged in the F.I.R. regarding commission of offence under the provision of SC/ST (Prevention of Atrocities) Act however during investigation the same was found untrue and, as such, chargesheet was not submitted for the offence under SC/ST (Prevention of Atrocities) Act.

5. Sri Akhileshwar Prasad Singh, learned Counsel for the Petitioner further submits that the informant on his own volition had come to the clinic of the Petitioner for the purpose of delivery of his wife. After the operation, which was done in the clinic, the wife of the informant delivered a healthy child and since subsequently she developed some complication, she was referred by the Petitioner for her admission at Anugrah Narayan Magadh Medical College and Hospital, Gaya and on way to the Hospital, she died. After the death of the wife of the informant, they went back and performed the cremation. To the reasons best known to the informant at subsequent stage, the informant came out with a case of commission of offence u/s 302 of the Indian Penal Code and Section 3(X) of SC/ST (Prevention of Atrocities) Act. It was submitted that the death of the wife of the informant had occurred on 22.7.2002 in the night and thereafter at about 16.30 hours on 23.7.2002, a written complaint of the Petitioner was purported to be received in the Police Station and, as such, there was no reason for lodging an F.I.R. on the next date i.e. on 24.7.2002 at about 12.15 P.M. Sri Akhileshwar Prasad Singh, learned Counsel for the Petitioner has argued that in the case of prosecution of a Surgeon or Physician in relation to accusation of negligent treatment, certain guidelines have been framed by the Apex Court and in view of the said guidelines, the present case is a fit case for quashing of the order of cognizance and entire prosecution. It was also argued that on record there were no report /opinion regarding the death of the wife of the informant. The informant himself had admitted that after the death, she was cremated and only after cremation, the F.I.R. was lodged. This makes it clear that even the postmortem examination on the dead body of the wife of the informant was not done and, as such, it cannot be said that the death of the wife of the informant had occurred due to negligent treatment. In support of his contention, Sri Akhileshwar Prasad Singh, learned Counsel for the Petitioner has referred a case Jacob Mathew Vs. State of Punjab and Another, in which certain guidelines have been laid down in cases of prosecution of Surgeons or Physicians. Learned Counsel for the Petitioner has specifically referred to paragraph Nos. 51 and 51 of the said Judgment, which would be appropriate to quote herein:

50. As we have noticed hereinabove that the cases of doctors (Surgeons and Physicians) being subjected to criminal prosecution are on an increase. Sometimes by the police on an FIR being lodged and cognizance taken. The investigating officer and the private complainant cannot always be supposed to have knowledge of medical science so as to determine whether the act of accused medical professional amounts to a rash or negligent act within the domain of criminal law u/s 304-A I.P.C.

The criminal process once initiated subjects the medical professional to serious

embarrassment and sometimes harassment. He has to seek bail to escape arrest, which may or may not be granted to him. At the end, he may be exonerated by acquittal or discharge but the loss which he has suffered to his reputation cannot be compensated by any standards.

51. We may not be understood as holding that doctors can never be prosecuted for an offence of which rashness or negligence is an essential ingredient. All that we are doing is to emphasize the need for care and caution in the interest of society; for, the service which the medical profession renders to human beings is probably the noblest of all, and hence there is a need for protecting doctors from frivolous or unjust prosecutions. Many a complainant prefers recourse to criminal process as a tool for pressurizing the medical professional for extracting uncalled for or unjust compensation. Such malicious proceedings have to be guarded against.

6. It was further submitted by Sri Akhileshwar Prasad Singh that in absence of any expert opinion, it cannot be held that it was a case of negligent treatment. It was reiterated that the Petitioner has rendered his sincere and honest treatment to the wife of the informant and immediately after noticing the condition of deterioration; the Petitioner referred the patient for better treatment to A.N.M.M. College and Hospital, Gaya. However, the patient died on way. It was submitted by Sri Akhileshwar Prasad Singh, learned Counsel for the Petitioner that the informant had purposely withheld the report whereby the Petitioner had referred the patient to the Hospital for better treatment. In any event, it was submitted that in absence of any expert opinion or in absence of postmortem examination report, the police was not required to proceed with the investigation, but in a perfunctory manner, the police firstly registered the F.I.R. for the offence u/s 302 of the Indian Penal Code and Section 3(X) of the SC/ST Act and, thereafter, in similar manner submitted chargesheet u/s 304 of the Indian Penal Code. Learned Counsel for the Petitioner has emphasized that in absence of expert opinion, no prosecution was permissible in the facts and circumstances of the present case. Learned Counsel for the Petitioner has relied upon a case *Dr. Suresh Gupta Vs. Govt. of N.C.T. of Delhi and Another*, He has particularly referred to paragraph 23 of the said Judgment. For better appreciation, it would be appropriate to quote paragraph 23 of the said Judgment, which is as follows:

23. For every mishap or death during medical treatment, the medical man cannot be proceeded against for punishment. Criminal prosecutions of doctors without adequate medical opinion pointing to their guilt would be doing great disservice to the community at large because if the courts were to impose criminal liability on hospitals and doctors for everything that goes wrong, the doctors would be more worried about their own safety than giving all best treatment to their patients. This would lead to shaking the mutual confidence between the doctor and the patient. Every mishap or misfortune in the hospital or clinic of a doctor is not a gross act of negligence to try him for an offence of culpable negligence.

7. In view of the law laid down by the Apex Court, Sri Akhileshwar Prasad Singh, learned Counsel for the Petitioner submits that the order of cognizance is liable to be set aside.

8. Smt, Veena Rani Prasad , learned Addl. Public Prosecutor has vehemently opposed the prayer of the Petitioner. It was submitted that the case was thoroughly investigated and only after collecting sufficient material, chargesheet was submitted by the police and the learned Magistrate in accordance with law on the basis of materials and the case diary has passed the impugned order. It was further submitted that at the initial stage of a criminal proceeding, this Court may not interfere. Accordingly, it has been prayed to reject the petition.

9. Besides hearing learned Counsel for the parties, I have perused the materials available on record. After going through the F.I.R., it is evident that the Petitioner had never called the informant to come to his clinic for the purpose of delivery. The informant himself has admitted that he had gone to the Clinic of the Petitioner for the purpose of delivery. It cannot be imagined that a qualified Medical Officer would have taken the case of delivery with an intention to causing death or causing such bodily injury, which was likely to cause death. The fact remains that the patient had delivered a child and at subsequent stage, she died, for which defence has been taken by the Petitioner that he had referred the patient to the hospital for better treatment. Of course, at this stage, this Court may not notice to defence of the Petitioner, but the fact remains that after delivery, at subsequent stage the patient died and, as such, it cannot be said that the Petitioner had any intention for committing a crime. At the same time, it cannot be considered that the Petitioner was having any knowledge that while treating the patient for delivery, it would have caused death or any injury, which was likely to cause death. It is not in dispute that the Petitioner was a qualified Medical Officer and he was running a Clinic and, as such, the Court is of the opinion that it was not a case for attracting penal provision of Section 304 of the Indian Penal Code. Similarly, in absence of any expert opinion or postmortem examination report, it would be difficult to come to a conclusion that the act of the Petitioner was negligent. After filing of the F.I.R., the act of the informant for coming for compromise also creates some doubt in the mind of the Court that after the death of the wife of the informant, the informant with some oblique motive had filed the present case at a belated stage that, too, after the cremation of his wife. It is true that at the time of hearing a petition u/s 482 of the Code of Criminal Procedure , this Court is not required to examine a case in detail, but keeping in view the guidelines of the Supreme Court, as has been laid down in Jacob Case (Supra) , the Court was persuaded to examine the aforesaid fact

10. In view of the facts and circumstances, particularly the law laid down by the Hon"ble Supreme Court in the aforesaid cases, the Court is of the opinion that allowing the prosecution of the Petitioner in the present case, will amount to allowing the abuse of the process of the Court and as such, with a view to

prevent the abuse of the process of the Court it is imperative to exercise inherent jurisdiction in favour of the Petitioner and, as such, the order of cognizance dated 26.6.2003 passed by the learned Chief Judicial Magistrate, Aurangabad in G.R. Case No. 1387 of 2002 (arising out of Kutumba (Amba) P.S. Case No. 71 of 2002) is hereby set aside and the petition stands allowed.