

(2019) 09 DEL CK 0449

In the Delhi High Court

Case No : Criminal Writ Petition No. 235 Of 2018, Criminal Miscellaneous
Application No. 1331 Of 2018

Ramesh Dutt Sharma

APPELLANT

Vs

Medical Council Of India & Ors

RESPONDENT

Date of Decision : 19-09-2019

Acts Referred:

Citation : (2019) 4 JCC 3740

Hon'ble Judges : Vibhu Bakhru, J

Bench : Single Bench

Advocate : Vikas Pahwa, Vipul Sharma, Tushar Sharma, Vidushi Nishank, T. Singhdev, Abhijit Chakravarty, Tarun Verma, Arunima Pal, Rajesh Mahajan, Vishesh Issar

Final Decision : Disposed Of

Judgement

Vibhu Bakhru, J

1. The petitioner has filed the present petition, inter alia, impugning an order dated 29.11.2017 passed by the Medical Council of India (MCI), setting aside an order dated 04.04.2016 passed by the Delhi Medical Council (DMC) and thereby absolving respondent no.5 of all the charges levelled against him.

2. The controversy in the present case arises out of the treatment afforded by respondent no.5 (Dr Pradeep Nambiar) to the petitioner's wife. According to the petitioner, respondent no.5 was criminally negligent in performing a surgical procedure on his wife. He further claims that the said procedure had, thereafter, resulted in her demise.

3. The deceased (petitioner's wife) was aged seventy years. She was diabetic and had approached respondent no.5 for consultation on 05.11.2014. She had complained of severe angina and shortness of breath. It is stated that she was advised coronary artery bypass grafting (CABG) by doctors, who she had contacted prior to meeting respondent no.5 for consultation. Apparently, she did

not follow the said advise at the material time and had, thereafter, approached respondent no.5 for consultation. Respondent no.5 also advised surgery for removal of blocks from her coronary arteries.

4. It is alleged that respondent no.5 performed the surgery by using an innovative technique, which he referred to as the 'Nambiar Technique'. According to the petitioner, the said technique is experimental and is not an accepted method for conducting the surgery. It is also alleged that the petitioner and the deceased had been induced into believing that the said surgical operation is safe and an accepted procedure, which is within the limits of acceptable risk.

5. Concededly, by virtue of the decision of the Supreme Court in *Jacob Matthew v. State of Punjab and Ors.*: AIR (2005) SC 3180, an FIR for negligence cannot be registered unless the police authorities obtain an expert opinion. It is stated that the police authorities are following a procedure, whereby they seek such opinion from DMC/MCI before proceeding to register any FIR against a doctor for criminal negligence.

6. It is not disputed that it is the usual practice of the police to seek the opinion of DMC/MCI before proceeding to register an FIR alleging criminal negligence against a doctor in his professional capacity.

7. Mr T. Singhdev and Mr Khattar, learned counsel appearing for MCI and DMC respectively, submit that neither the MCI nor the DMC can render an expert opinion for the purposes of registering a criminal case. Be that as it may, it cannot be disputed that the question, whether a medical doctor has acted negligently, is clearly within the scope of peer review of DMC/MCI. Since the question whether there is professional negligence is to be examined by the qualified doctors, this Court finds no infirmity with the action of the police authorities in relying on the opinion/view expressed by DMC/MCI in determining whether an FIR is to be registered or not.

8. In *Jacob Matthew (supra)*, the Supreme Court had directed that before registering an FIR, the opinion of an expert and a competent doctor, preferably one who is in Government service, be obtained. Clearly, the Investigating Officer also has the option to obtain the medical opinion from other experts before registering an FIR. It is not mandatory for the police authorities to insist only on the opinion from DMC/MCI for the purpose of registering an FIR.

9. The principal question to be addressed is whether in the present case, the police authorities ought to have acted on the view expressed by DMC in its order dated 04.11.2016. Obviously, the answer to the same is in the negative. This is so because respondent no.5 had appealed against the said decision before MCI and MCI had allowed the said appeal and set aside the order dated 04.04.2016 passed by DMC. In view of the above, DMC's order was inoperative and of little value.

10. The petitioner has, accordingly, also impugned the order dated 29.11.2017

passed by MCI. A plain reading of the said order indicates that the Ethics Committee of MCI had examined the opinion of the Experts in Cardiac Surgery and had concluded that respondent no.5 had not committed any surgical procedure, which was not acceptable as a medical procedure for the treatment administered to the petitioner's deceased wife. It also observed that the attendants of the patient had agreed to the minimal invasive cardiac surgery and had also given their consent for the higher risk under the prevailing circumstances.

11. The expert opinions, which were referred to by the MCI, are reproduced in the minutes of the proceedings of the Ethics Committee. A plain reading of the said opinions indicate that the experts had not absolved respondent no.5 in their reports. The experts had observed that the records of the said case required to be perused, which were not placed before the experts. Dr Jugal K. Mishra, one of the experts, had specifically stated that the issue whether minimal invasive bypass surgery was safe in the given circumstances, was required to be determined on perusal of the hospital notes and charts to ascertain whether the patient was unstable or stable. According to him, such a surgery could not be performed on an unstable patient.

12. It does not appear that MCI had examined that aspect of the matter; it merely proceeded on the basis that a minimal access Coronary Artery Bypass Graft (CABG) was an acceptable procedure. MCI has also not examined whether there was any material difference in the minimal access CABG procedure and the one which was performed on the deceased. This is material, since DMC had held that the procedure actually performed on the patient was an experimental procedure referred to as 'Nambiar technique'. MCI had proceeded on the basis that the Nambiar technique is only an innovation of the minimal access procedure. However, there is no material on record to indicate that as to what the said innovation is and whether such an innovative technique - if it is so - is otherwise acceptable for purpose of the surgery.

13. In view of the above, this Court considers it apposite to set aside the order dated 29.11.2017 passed by MCI and remand the matter for consideration afresh. Both the parties - the petitioner as well as respondent no.5 - would be afforded full opportunity to present their submissions. MCI is also at liberty to seek an expert opinion in this regard. It is further directed that after evaluating all relevant material and rival contentions, MCI shall pass a speaking order clearly indicating the reasons for its view.

14. As noticed above, this Court finds no infirmity with the police authorities proceeding on the basis of the view expressed by DMC/MCI in this case.

15. At this stage, the learned counsel appearing for the petitioner states that in view of the above, he does not wish to press other prayers regarding registering of FIR while reserving the petitioner's right to do so after MCI has rendered its decision.

16. The petition is disposed of in the above terms. All pending applications also stand disposed of.