
(2025) 11 J&K CK 1787
In the Jammu And Kashmir High Court
Case No : CRMC No. 735 Of 2017

Sanjay Gupta

APPELLANT

Vs

Kuldeep Gupta

RESPONDENT

Date of Decision : 06-11-2025

Acts Referred:

Ranbir Penal Code, 1989 — Section 109, 420, 427, 504, 506, 540
Code Of Criminal Procedure, 1973 — Section 201

Citation : (2025) 11 J&K CK 1787

Hon'ble Judges : Rajesh Sekhri, J

Bench : Single Bench

Advocate : Rahul Raina, I. H. Bhat

Final Decision : Disposed Of

Judgement

Rajesh Sekhri, J

1. Petitioners have invoked inherent jurisdiction of this Court, for the quashment of a complaint titled " Kuldeep Gupta v. Dr. Sanjay Gupta and Ors", filed against them by the respondent, in the court of learned Judicial Magistrate 1st Class Mendhar, ["the trial court"] and order dated 18.07.2017, vide which cognizance came to be taken and process issued, by the trial court, against them.

2. Background facts of the case are that the respondent [hereinafter referred to as the complainant], preferred impugned compliant in the trial court stating inter-alia that he visited Maharishi Dayanand Hospital and Medical Research Centre, Rehari Chungi, Jammu ["the Hospital for short"] with a complaint of pain in the abdomen. He was diagnosed with G. B. Stone and was advised by the doctor-petitioner No. 1 for laparoscopic removal of Gall Bladder. It was alleged by the complainant that he was referred to PGI Chandigarh by petitioner No. 1, after he reported pain in his abdomen due to tracor injury, as a consequence of surgery performed by petitioner No. 1, which was discovered by the Doctors at PGI Chandigarh. It was also alleged that he was not properly observed in the

Hospital. He paid Rs. 6.00 lacs for surgery in petitioner's Hospital, which went unsuccessful, as a result whereof he paid Rs. 10.00 lacs for his treatment at PGI Chandigarh. The complainant also alleged that petitioners not only cheated him to extract money but threatened him with dire consequences in case matter was reported to anybody. He sought prosecution of the petitioners for offences under Sections 420, 109, 427, 504, 506 and 540 RPC.

3. Learned trial court, vide impugned order dated 18.07.2017, took cognizance and issued process against the petitioners for aforesaid offences.

4. Petitioners are aggrieved of the impugned complaint and cognizance order, primarily on the ground that complainant filed a vexatious complaint against them in the trial court with an intent to extract money.

5. The case set up by the petitioners is that the complainant, before surgery, was not only briefed about the whole process but his consent was obtained in writing. After surgery he remained in regular observation of the treating doctor-petitioner No. 1 and visited the Hospital for follow-ups. It is contention of the petitioners that when respondent reported pain in his abdomen, he was referred for advanced medical treatment to PGI Chandigarh, in an Ambulance provided by them, free of cost and till then he had not paid the expenses. According to the petitioners, the complainant came back from PGI to Jammu in a fit state of health.

6. Allegation of the petitioners is that after respondent came back from Chandigarh, he started demanding money on account of his alleged unsuccessful surgery, despite having not paid a single penny for the treatment provided to him in their Hospital and filed a frivolous and baseless complaint against them.

7. Aside petitioners have questioned territorial jurisdiction of the trial court on the premise that since offence is alleged to have been committed in the Hospital situated at Jammu, learned trial court, i.e., Judicial Magistrate 1st Class, Mandhar lacks territorial jurisdiction to try the impugned complaint and grant the relief prayed for.

8. The petition has been opposed, on the other hand by the respondent/complainant inter-alia on the ground that a complaint cannot be dismissed for want of jurisdiction, in view of Section 201 Cr.P.C., which provides that if a Magistrate is not competent to take cognizance of an offence, the complaint can be returned to the complainant for presentation before appropriate court with an endorsement to that effect. It is contention of the respondent that his health is still critical due to negligence of the petitioners and unsuccessful surgery performed by petitioner No. 1 and he is still spending money for his treatment.

9. Heard arguments and perused the file.

10. Mr. Rahul Raina, learned counsel for the petitioners has relied upon Jacob Mathew (DR) v. State of Punjab and Anr; AIR 2005 SC 3180 and Neeraj Sud and Anr. V. Kaswinder Singh (minor) and Anr, c/w Jaswinder Singh (minor) and Anr.

V. Neeraj Sud and Anr; AIR 2004 SC 5625, to reiterate the grounds urged in the petition.

11. Per contra, Mr. I. H. Bhat, learned counsel for the respondent, has reiterated his stand taken in the objections.

12. At the foremost, I find legal force in the argument of Mr. Raina, learned counsel for the petitioners that since complainant is stated to have been operated upon at Maharishi Dayanand Hospital and Research Centre situated at Jammu, learned trial court lacks territorial jurisdiction to entertain the complaint and grant the relief prayed for.

13. Be that as it may, even the contents of the complaint prima facie do not disclose the commission of any offence, much less medical negligence against the petitioners for the following reasons.

14. Negligence by professionals came to be defined in a celebrated verdict by McNair J. in [Bolam v. Friern Hospital Management Committee, (1957) 1 WLR 582, 586], in the following words:-

"20. Where you get a situation which involves the use of some special skill or competence, the test as to whether there has been negligence or not is not the test of the man on the top of a Calpham omnibus, because he has not got this special skill. The test is the standard of the ordinary skilled man exercising and professing to have that special skill....A man need not possess the highest expert skill; it is well established law that it is sufficient if he exercises the ordinary skill of an ordinary competent man exercising that particular art."

(Emphasis supplied)

15. The aforesaid principal in legal parlance came to be known as "Bolam Test" and was noted with approval by Supreme Court in Jacob Mathew, where jurisprudential concept of medical negligence as a tort and as a crime arose for discussion and it was held that determinative factor of Negligence" for the purpose of fastening liability under civil law and under criminal law is jurisprudentially different. It was ruled that generally it is the amount of damages incurred, which is the determinative factor of the extent of liability in tort, and it is the degree of negligence which is the determinative factor of liability as a crime. Another stark difference between medical negligence as a tort and as a crime came to be observed by Apex Court in Sayed Akbar v. State of Karnataka; (1980) 1 SCC 30 whereby it was held that there was marked difference as to the effect of evidence viz-a-viz the proof of civil and criminal proceedings. While in a civil proceedings, mere preponderance of probability shall be sufficient for the plaintiff for making out a case, in criminal proceedings, complainant is required to prove guilt of the respondent beyond reasonable doubt because negligence to be established by the prosecution or the complainant, as the case may be, must be culpable or gross. It was also held by Supreme Court in Jacob Mathew that in order to fasten liability in criminal law,

the degree of negligence has to be higher than that of negligence enough to fasten liability for damages in civil law and essential ingredient of mens rea could not be excluded from the consideration when charge in criminal court consists of criminal negligence. The Apex Court underlined a clear distinction between "simple lack of care", incurring civil liability and "very high degree of negligence" incurring criminal liability. Relevant excerpt captured in para 15, reads as below:-

"15. In order to hold the existence of criminal rashness or criminal negligence it shall have to be found out that the rashness was of such a degree as to amount to taking a hazard knowing that the hazard was of such a degree that injury was most likely imminent. The element of criminality is introduced by the accused having run the risk of doing such an act with recklessness and indifference to the consequences. Lord Atkin in his speech in *Andrews v. Director of Public Prosecutions*, [1937] A.C. 576, stated, "Simple lack of care such as will constitute civil liability is not enough; for purposes of the criminal law there are degrees of negligence; and a very high degree of negligence is required to be proved before the felony is established." Thus, a clear distinction exists between "simple lack of care" incurring civil liability and "very high degree of negligence" which is required in criminal cases. Lord Porter said in his speech in the same case ____ "A higher degree of negligence has always been demanded in order to establish a criminal offence than is sufficient to create civil liability".

16. Further Hon'ble Supreme Court in *Neeraj Sud* (supra) has held that actionable negligence in the context of medical profession involves three ingredients i.e., duty to exercise due care, breach of duty and the consequent damage. It was clarified that simple lack of care, an error of judgment or an accident cannot be termed as negligence on the part of a medical professional.

17. In order to make out a case against a medical professional, the prosecution or the complainant, as the case may be is obliged not only to plead but prove by cogent and trustworthy evidence that the accused medical professional lacked requisite qualification or the skill or that he failed to exercise the requisite skill with reasonable competence.

18. It is manifest from the exposition of law by Hon'ble Supreme Court that a professional cannot be held liable for negligence till he is acting in accordance with acceptable norms of practice. In other words, a professional can be held liable for negligence only when he is not possessed with requisite qualification or skill or he fails to exercise reasonable skill.

19. If the present case is approached with the aforesaid principal of law, there is nothing in the impugned complaint preferred by the complainant to suggest that petitioner No. 1 was not possessed with the requisite qualification of surgery or that he failed to exercise the reasonable skill.

20. The only allegation against petitioner No. 1 is that complainant was referred to PGI Chandigarh for advance medical treatment after he reported pain in his abdomen. It was alleged by the complainant that he was referred by petitioner

No. 1 to the higher medical institute due to tractor injury, as a consequence of surgery performed by petitioner No. 1. However, there is no prima facie evidence on the record in the form of credible opinion given by a competent doctor of PGI Chandigarh, where complainant was subsequently treated, or any other doctor or institute for that matter to support the allegation of gross negligence on the part of the accused doctor-petitioner No.1.

21. The allegation of the respondent/complainant that he was not properly observed in the Hospital by the petitioners also appears to be baseless, because in such a situation the operating doctor-petitioner No. 1 would not have referred the complainant for advanced medical treatment to a prestigious medical institute of the country.

22. In medicine a patient, must be properly informed of the potential risks to make an informed choice about the treatment. All what petitioner No. 1, was required to do was to apprise his patient, the complainant/respondent about the process and obtain his consent for surgery, which he did. He could not and he did not assure his patient of the result or of full recovery.

23. The key legal concepts of mens rea—guilty mind and actus reus—guilty act are the cornerstones to attract a criminal liability. Though professionals have a legal duty to exercise a reasonable degree of skill and knowledge, yet criminal liability in a professional context arises, only if a professional's actions fall below the standard of a reasonably competent peer in the field or if he performs an action, he is not qualified for. Criminal liability in such cases, as such, is reserved for intentional wrongdoing or extreme forms of negligence—or Criminal negligence; not just an error of judgment. Therefore, the standard of criminal liability, particularly in case of medical negligence requires proof of gross negligence or significant departure from the expected standard of care, rather than a simple error or accident.

24. Nobody can be allowed to use criminal law as a tool of oppression and stretch the contours of a pure civil dispute to give it a criminal texture. If contents of the impugned complaint are carefully glanced over, it is manifest that respondent has filed a case for the recovery of expenses incurred by him for his medical treatment under the guise of a criminal complaint which is not permissible in law. The impugned complaint even on its face value does not disclose the commission of any offence against the petitioners, much less an offence for medical negligence.

25. Viewed from any angle, the impugned complaint, is an abuse of the process of law. Learned trial court has failed to appreciate the controversy in its correct perspective, accepted bald allegations of the complainant as a gospel truth and took cognizance of the matter and proceeded to issue process against the petitioners without application of mind.

26. For what has been observed, discussed above, the present petition is allowed and impugned complaint as also the impugned order of cognizance and process

are quashed.

27. Disposed of.