

**Neeta Agrawal Vs. the State of Bihar**

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**Court :** Patna

**Decided On :** Feb-14-2007

**Judge :** Ghanshyam Prasad, J.

**Appellant :** Neeta Agrawal

**Respondent :** The State of Bihar

**Disposition :** Application allowed

**Prior history :** Ghanshyam Prasad, J. 1. Heard. 2. This application has been filed to quash the order of cognisance dated 4.4.2006 passed by A.C.J.M. Gava in Kotwali P.S. Case No. 1 of 2005. thereby and thereunder the learned Magistrate has taken cognizance under Section 304 I.P.C. against the petitioner and others. 3. The wife of opposite party No. 2 was pregnant. On 30.12.2004, she developed labour pain. The opposite party No. 2 brought his wife to the clinic of petitioner Dr. Neeta Agrawal. In the morning o

**Judgement :**

**Ghanshyam Prasad, J.**

1. Heard.

2. This application has been filed to quash the order of cognisance dated 4.4.2006 passed by A.C.J.M. Gava in Kotwali P.S. Case No. 1 of 2005. thereby and

thereunder the learned Magistrate has taken cognizance under Section 304 I.P.C. against the petitioner and others.

3. The wife of opposite party No. 2 was pregnant. On 30.12.2004, she developed labour pain. The opposite party No. 2 brought his wife to the clinic of petitioner Dr. Neeta Agrawal. In the morning of 3.1.2005, the wife of the opposite party No. 2 was operated and she gave birth to a dead child. The informant has alleged that the child died due to negligence of the doctor and other staff of the clinic.

4. On 3.1.2005, the opposite party No. 2 indeed filed a complaint before the police. Police registered case and after investigation submitted final report. However, the learned A.C.J.M. did not accept the final report and took cognizance under Section 304 I.P.C.

5. The submission of the learned Counsel for the petitioner is that the entire case is false and baseless. There was no fault or negligence on the part of the petitioner. It was ill luck that in spite of best effort the child did not survive. It is further submitted that prosecution of the petitioner is out and out malicious and has been lodged with ulterior and oblique motive. No criminal liability can be fastened for death of the child. Taking cognizance by the learned court in spite of the final report submitted by the police is misuse of process of the court. The learned Counsel for the petitioner has relied upon several decisions including the decision of the apex court reported in 2005 (4) PLJR 213 S.C. (Jacob Mathew v. State of Punjab).

6. It is well settled law that prosecution of a doctor for death of patient in course of treatment is a serious matter. Even in I.P.C. under Section 88. Medical professionals have been placed on a different pedestal than the ordinary person. Section 88 provides exemption to the surgeons from the criminal liability if the death is caused due to surgical operation done in good faith not intended to cause death. The apex court in the above cited decision has also laid certain guidelines for prosecution of medical professional. In paragraph-18 of the decision, it has been held that a professional can be held liable for negligence on only two findings: (1) Either he/she was not possessed of requisite skill which he professed to have possessed or he/she did not exercise his reasonable competence in the giving

case, the skill which he/she did possess.

7. In the present case, there, is no allegation that the petitioner does not possess skill to which she professed to have possessed. On the other hand, the documents filed by the petitioner would go to show that she was a qualified doctor having degree of MBBS, DGO, LPP. There is also no material to show that she did not exercise reasonable competence. Under such situation, only because death of child occurred in course of the operation no criminal liability can be fastened to the petitioner.

8. Apparently, the court below has not exercised his judicial mind properly on facts and circumstances of the case and has taken cognizance inspite of final report submitted by the police. It is misuse of the process of the court. Accordingly, this application is allowed and the impugned order of cognizance is hereby quashed.

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