

Lalan Kumar Singh Vs. the State of Bihar

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Court : Patna

Decided On : Dec-06-2006

Judge : Ghanshyam Prasad, J.

Appellant : Lalan Kumar Singh

Respondent : The State of Bihar

Disposition : Application allowed

Judgement :

Ghanshyam Prasad, J.

1. Heard.

2. This application under Section 482 Cr.P.C. has been filed to quash the order of cognizance dated 16.10.2006 passed by Mr. Dayalal Prasad, Judicial Magistrate, Begusarai in Complaint Case No. 1077C of 2006 thereby and thereunder the court below has taken cognizance under Section 304 of the I.P.C.

3. Heard the learned counsel for the petitioner as well as opposite party No. 2.

4. The petitioner is doctor and is running a clinic named and styled as Jugeshwar Kidney Hospital near Municipal Chowk, Begusarai. On 11.6.2006, the opposite party No. 2 brought his ailing father to the petitioner for treatment. After some test, the father of the complainant/opposite party No. 2 was admitted in hospital of the

petitioner and was advised for operation of prostate. On 15.6.2006, the petitioner performed operation upon father of the complainant/opposite party No. 2. Since just after the operation, several types of complication began including bleeding from urinary track. Ultimately, he died on 18.6.2006.

5. The submission of the learned counsel for the petitioner, is that the entire allegation levelled by the opposite party No. 2 with regard to negligence in the treatment is false and baseless. There was no fault or negligence on the part of the petitioner. The petitioner took all precaution and conducted pathological test before the operation but it was ill-luck that the father of the opposite party No. 2 didnot survive. There was no negligence on the part of the petitioner. It is further submitted that the prosecution of the petitioner is out and out malicidus and lodged with ulterior and oblique motive with a view to extract money from the petitioner. No criminal liability can be fastened for death of father of the opposite party No. 2. Filing of the criminal case against the petitioner is abuse of process of the court and hence liable to be quashed. In support of the above submission the learned counsel for the petitioner relied upon several decisions including 2006(2) PLJR 159 (Dr. Hemendra Nath Thakur v. State), 2006(1)PLJR 194 (Dr. Umesh Chandra Samal v. State) and 2005(4)PLJR 213 Supreme Court)(Jacob Nathew v. State of Punjab).

6. On the other hand, the learned counsel for the opposite party No. 2 submitted that it is an exceptional case where the death was caused due to criminal negligence on the part of the petitioner.

7. The prosecution of the doctor for death of a patient in course of treatment is a serious matter. It does not affect the doctor alone but society as a whole. It must be borne in mind that the duty of the doctor is only to treat the patient. It is for the God to cure. Nobody has control over wish of the God. However, it does not mean that doctor has licence to be negligent. A doctor can be fastened with criminal liability if he commits gross negligence in discharge of his duty. However, mere lack of care or error of judgment does not constitute any criminal offence. There also must be nexus between cause of death and nature of negligence on the part of the doctor. (See : 1979 CriLJ1374 (Syad Kabar v. State of Karnataka and 2005

PLJR (Supra).

8. In the present case there is no case that the petitioner/doctor is not a qualified or having requisite skill to treat the ailment from which the deceased was suffering. The only allegation is that after operation, the petitioner did not attend the patient as a result he died on 18.6.2006. However, the death certificate does not support the allegation. It goes to show that the patient died as a result of cardio respiratory failure and not due to any post operation complication. Annexure-3 goes to show that the patient was operated only after obtaining consent of the patient and his son, who is the complainant.

9. The Indian. Penal Code which was enacted in the year 1860 has also Placed the medical professionals on pedestal different from ordinary persons. Section 88 (illustration) provides exemption to the surgeon from criminal liability if the death is caused due to surgical operation done in good faith with, consent, not intended to cause death for benefit of the patient. The apex court in above decision reported in 2005(4) PLJR (Supra) has also laid down guidelines for prosecution of medical professionals. In paragraphs 52 and 53 of the judgment it has been held as follows:

52. As we have noticed hereinabove that the cases of doctors (surgeons and physicians) being subjected to criminal prosecution are on an increase. Sometimes such prosecutions are filed by private complainants and sometimes by 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 the accused medical professional amounts to rash or negligent act within the domain of criminal law under Section 304A of IPC. 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 in his reputation cannot be compensated by any standards.

10. It has further been held in para 53 as follows:

53. 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.

11. Thus from the above discussions of the facts and circumstances as well as law laid down by the apex court. I am of the opinion that the prosecution of the petitioner is a malicious and lodged with ulterior and oblique purpose and it is misuse of process of the court. Accordingly, this application is allowed and the impugned order in question alongwith the entire prosecution against the petitioner arising out of Complaint Case No. 1077(C) of 2006 is hereby quashed.

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