

Dr. Trinath Rajguru Vs. the State

Dr. Trinath Rajguru Vs. the State

SooperKanoon Citation : sooperkanoon.com/526744

Court : Orissa

Decided On : Feb-18-2008

Reported in : 2008(1)OLR519

Judge : R.N. Biswal, J.

Appellant : Dr. Trinath Rajguru

Respondent : The State

Advocate for Pet/Ap. : Mr. P.C. Chhinchani

Disposition : Petition allowed

Judgement :

ORDER

R.N. Biswal, J.

Even though the case was listed to date for admission, on the request and consent of learned counsel for both the parties, it is taken up for final disposal.

Heard Mr. P.C. Chhinchani, learned counsel for the petitioner and Mr. Swain, learned Addl. Government Advocate representing the State. The petitioner has challenged the legality and propriety of the order dated 25.3.2003 passed by the learned S.D.J.M., Gunupur in G.R. Case No. 291 of 2001, wherein he took cognizance of the offence punishable under Section 304A of I.P.C.

1. Succinctly stated, the prosecution is that on 16.8.2001, while the informant and his wife Ramita Kumari Sethi were coming from Ramguda to their native village, in the district of Kendrapara, on the way at Gunupur, the latter complained pain in her stomach and as such, she was immediately taken to the clinic of the petitioner, a doctor at Gunupur and on examination, it was detected that she was carrying 8/9 months of pregnancy. Petitioner treated her for 4 days in his clinic and on 20.8.2001 while undergoing treatment, she expired. On the next date i.e. 21.8.2008 the informant lodged a written report before the O.I.C. of Gunupur Police Station, on the allegation that due to gross negligence of the petitioner, his wife expired. As the allegation contained in the report, which was treated as F.I.R. revealed a cognizable case, the O.I.C. registered P.S. Case No. 135 of 2001 and took up investigation. In course of investigation, he visited the spot, examined the witnesses and obtained a report from Dr. Jyotin Kumar Das, Associate Professor, F.M. & T., M.K.C.G. Medical College, Berhampur, on 16.3.2002 relating to the cause of death of the deceased. The report shows that the deceased died due to pre-mature rupture of membrane causing amniotic fluid embolism, which is the most common cause of obstetrical death during labour. On the basis of this report and the statement of the witnesses, the I.O. came to the conclusion that no offence was committed by the accused-petitioner and as such submitted final report. But the learned S.D.J.M. after going through the Case Diary, including the report of Dr. Jyotin Kumar Dash, Associate Professor, held that there was prima facie material against the accused-petitioner to be proceeded under Section 304A of I.P.C. and took cognizance thereunder vide order dated 25.3.2003. Being aggrieved by that order, the petitioner has preferred the present CRLMC.

2. Learned counsel appearing for the petitioner submits that in view of the report of Dr. Jyotin Kumar Dash, Associate Professor, the I.O. rightly submitted final report, but taking into consideration, the subsequent conduct of the petitioner, the learned S.D.J.M. illegally took cognizance of the offence under Section 304A of I.P.C. against the petitioner, which warrants interference by this Court. He further submits that a case under the said Section cannot be initiated against a person, because of mere negligence. Unless there is gross negligence criminal liability under Section 304A cannot be attracted, particularly against a Doctor. In support of his submission he relied on the decision *Jacob Mathew v. State of Punjab* :

2005 CriLJ3710 , where the apex Court held that the word 'gross' has not been used in Section 304A of I.P.C, yet it is the settled principle that in criminal law negligence or recklessness, to be so held, must be of such a high degree as to be called 'gross'. The expression rash or negligent act as occurring in Section 304A of I.P.C. has to be read as qualified by the word 'grossly'. On the other hand, Mr. Swain, learned Addl. Government Advocate submits that the petitioner treated the wife of the informant in his clinic, instead of doing that in any well equipped Nurshing Home. Had the deceased been treated in a sophisticated Nurshing Home, perhaps she would not have expired. So, it can be said that the petitioner was guilty of gross negligence.

3. Treating the deceased in his clinic at best be said as negligence on the part of petitioner, but it cannot be said as gross negligence, particularly when it is the specific opinion of associate Professor Mr. Jyotin Kumar Dash that the death of the deceased was due to premature rupture of membrane causing amniotic fluid embolism, which is the most common cause of obstetrical death during labour. Taking the rival submission into consideration, I am of the view that there was no gross negligence on the part of the accused-petitioner so as to prima facie attract the offence under Section 304A of I.P.C.

In the result, the CRLMC is allowed and the order of taking cognizance under Section 304A of I.P.C. against the accused-petitioner is hereby quashed.