

Patna High Court - Orders

/Dr.Narendra Prasad vs State Of Bihar & Anr on 4 January, 2012

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.39802 of 2008

Dr.Narendra Prasad, son of Late Medni Prasad, Resident
of H/6, Doctor's Colony, P.S. Kankarbagh, District-Patna.

.....Petitioner.

Versus

1. The State Of Bihar.
 2. Pramod Kumar Gupta, son of Late Laljee Prasad,
Resident of Bakerganj, P.S. Pirbahore, District-
Patna.
-Opposite Parties.

For the Petitioner: M/s. Ajay Thakur & Amish Kumar,
Advocates.

For the State : Mr. D. Mehta, A.P.P.

For O.P. No.2 : Mr. Manoj Kumar, Advocate.

O R D E R

10. 4.01.2012. The petitioner has approached this Court under Section 482 of the Code of Criminal Procedure to quash the order dated 17.4.2006 passed by the Chief Judicial Magistrate, Patna, in Complaint Case No.2739C of 2005, summoning the petitioner for the offence under Section 304- A of the Indian Penal Code and also the order dated 13.8.2008 passed by the Additional Sessions Judge-XI, Patna, dismissing the Criminal Revision No.478 of 2006 as preferred by the petitioner against the aforesaid summoning order. A prayer has also been made to quash the entire proceeding arising out of the aforesaid complaint case.

2. In brief, the case is that the opposite party no.2, Pramod Kumar Gupta, filed the complaint petition, numbered as Complaint Case No.2739C of 2005, in the court of the Chief Judicial Magistrate, Patna, against the petitioner, Dr. Narendra Prasad, with the allegation that his wife, deceased, Nirmala Devi, was suffering from stomach pain since 7-8 months, hence, she was checked up by Dr. Suresh Prasad (Cardiologist and Physician) at his clinic, situated at Road No.1, Rajendra Nagar, Patna, on 25.1.2005. After examination of his wife, Nirmala Devi, Dr. Suresh Prasad, prescribed few medicines to continue for few days but his wife was suffering from stomach pain continuously. Dr. Suresh Prasad advised to take same medicines continuously and suggested for blood test and ultrasound of Nirmala Devi. Thereafter, the opposite party no.2 and his son again approached Dr. Suresh Prasad on 30.1.2005 and handed over the blood and ultrasound report, then Dr. Suresh Prasad advised to consult the petitioner, Dr. Narendra Prasad, M.S., saying the problem of Gall- bladder. Thereafter, the opposite party no.2 approached the petitioner at his Anupama Hospital, Khajanchi Road, Patna, on 3.2.2005, who told him to deposit Rs.13,000/- as operation

and professional charge for operation of Gall-bladder. While the opposite party no.2 and his son made request for test and examination of blood and also for ultrasound for satisfaction, but the petitioner did not give the importance of their requests. Then a request was made to give some time to arrange the money of Rs.20,000/- (Rs.13,000/- as operation cost and Rs.7000/- for medicine and room rent etc. as estimated). Thereafter, the opposite party no.2 again came in the private hospital of the petitioner alongwith his wife, Nirmala Devi, on 21.2.2005 and deposited cash Rs.10,000/- as advance. While again request was made for test and ultrasound of Nirmala Devi, but the petitioner did not care and ultimately, operation of Nirmala Devi was done in hurriedness without observing the standard care and an important vein of stomach was negligently stitched in course of operation of Gall-bladder of Nirmala Devi. When Nirmala Devi, the wife of opposite party no.2, came in consciousness, she was crying continuously for acute pain and despite the several requests, the petitioner did not come to know the condition of Nirmala Devi and she was discharged on 25.2.2005, preparing the discharged sheet. Since there was no relief in stomach pain of Nirmala Devi, hence, opposite party no.2, after 4-5 days again approached the petitioner on 2.3.2005 and also on 5.3.2005 and 9.3.2005 but every time the petitioner gave different medicines and injection with false consolation of relief. When the condition of Nirmala Devi became serious and pathetic, then the opposite party no.2 getting no way approached the petitioner on 4.4.2005 but he did not spare time to check Nirmala Devi and advised to consult Dr. J.R. Pandey, a specialist Physician and also advised for her P.N.A.C. test. Thereafter, the opposite party no.2 approached Dr. J.R. Pandey, on 9.3.2005 and after blood test and ultrasound report, it was detected that a vein at the time of operation of Gall-bladder was hurriedly stitched and blocked and due to that jaundice developed to Nirmala Devi and it was also detected in ultrasound report that there was cancer on the part of the body, where the operation of Nirmala Devi was done. As such, there was prima facie professional failure on the part of the petitioner, who did not thoroughly check up Nirmala Devi before the operation of the Gall-bladder to know as to whether the patient was suffering from cancer or from a simple problem of Gall-bladder. On knowing about the cancer to Nirmala Devi, the opposite party no.2 and his son became perplex and lastly approached at Oncology Centre of Dr. Jitendra Kumar, on 6.4.2005, where Dr. Jitendra Kumar, examined Nirmala Devi and, accordingly, told that Nirmala Devi was suffering from cancer much before the operation of Gall-bladder and also told that due to major lapses at the time of operation of the Gall-bladder of Nirmala Devi, one important vein was stitched. Thereafter, the opposite party no.2 brought his wife, Nirmala Devi to Tata Memorial Hospital, Indian Cancer Society, where she remained under the treatment since 10.4.2005 to 17.6.2005 and the opposite party no.2 spent about Rs.3,00,000/- there and lastly, the opposite party no.2 alongwith his wife, Nirmala Devi, came at Patna and hospitalized his wife, Nirmala Devi, at Magadh Hospital, Patna on 4.8.2005, where she died on 8.8.2005. As such, the death of the deceased, Nirmala Devi, the wife of opposite party no.2 was caused by virtue of rash and gross negligence of the petitioner, in operating the Gall-bladder.

After filing of the complaint petition by the opposite party no.2, numbered as Complaint Case No.2739C of 2005, the Chief Judicial Magistrate, Patna, on enquiry, summoned the accused-petitioner under Section 204 of the Code of Criminal Procedure finding prima facie case under Section 304-A of the Indian Penal Code through the order dated 17.4.2006.

Being aggrieved and dissatisfied with the aforesaid order, the petitioner preferred Criminal Revision No.478 of 2006, which was dismissed by the Additional Sessions Judge- XI, Patna, vide order dated 13.8.2008.

3. Learned counsel appearing on behalf of the petitioner made submission that it is itself clear from the complaint petition that the petitioner is Master in Surgery and the opposite party no.2 was advised by Dr. Suresh Prasad to approach the petitioner raising suspicion of Gall-bladder problem. The deceased, Nirmala Devi, the wife of opposite party no.2 had come at the clinic of the petitioner on 27.2.2005 and made complaint of her stomach pain, then an ultrasound was done by Dr. Usha Kiran Jha in which "No Malignant Cell were detected", which would appear from Annexure-„4 to this application. The deceased, Nirmala Devi, the wife of opposite party no.2, again came to the petitioner on 9.3.2005 complaining of her stomach pain, then the petitioner advised to consult the Physician, Dr. J.R. Pandey, who after examining the deceased, Nirmala Devi, advised her to take medicine and rest but he has not stated in his report about the stitching of vein rashly and negligently by the petitioner, nor any cancer being developed, which would appear from Annexure-„5 to this application. It has further been submitted that the deceased, Nirmala Devi, the wife of opposite party no.2 again came at the clinic of the petitioner on 4.4.2005, whereupon after blood bilienbin test, the petitioner advised her to get it checked by a Cancer specialist and, thereafter, she was examined by Dr. R.J. Chaudhri, on 5.4.2005, in which he found the presence of intra hepatic metastasis but nothing stated in the report how the metastasis has been developed inside the body of the deceased, Nirmala Devi. As such, the opposite party no.2 has filed this false complaint case with oblique motive for illegal gain against the petitioner making false allegation. It has also been urged that the opposite party no.2 has also filed the Consumer Complaint Case No.171 of 2009 before the District Consumer Dispute Redressal Forum at Patna against the petitioner in which Consumer Forum referred the points, raised in the Consumer Complaint Case No.171 of 2009, to be examined by the Medical Board and the petitioner was also asked to be present before the Medical Board on 19.10.2011 vide letter no.11251 dated 24.9.2011 issued by the office of the Civil Surgeon-cum-Chief Medical Officer, Patna, which would appear from Annexure-„8 to the supplementary affidavit. The Civil Surgeon-cum- Chief Medical Officer, Patna, submitted the report of the Medical Board dated 21.11.2011 before the District Consumer Forum, vide letter no.12715 dated 25.11.2011, which would appear from Annexure-„9 to the supplementary affidavit, in which finding has been given that there is no deficiency and professional negligence on the part of the petitioner. As such, in absence of the opinion of the expert doctor or the Medical Board, summoning the petitioner for the offence under Section 304-A of the Indian Penal Code through the order dated 17.4.2006 by the Chief Judicial Magistrate, Patna, amounts to abuse of the process of the Court in the light of the decision of the Hon ble Apex Court rendered in the case of Martin F. D'Souza Vs. Mohd. Ishfaq {2009(2) Supreme 40}.

4. On the other hand, learned counsel appearing on behalf of the opposite party no.2 made submission that the Chief Judicial Magistrate, Patna, on perusal of the complaint petition, solemn affirmation of the opposite party no.2 and the statements of the witnesses, as recorded in course of inquiry, has rightly summoned the petitioner finding prima facie case under Section 304-A of the Indian Penal Code vide order dated 17.4.2006 and the Additional Sessions Judge-XI, Patna, has also rightly dismissed the Criminal Revision No.478 of 2006 vide order dated 13.8.2008, as preferred by

the petitioner against the summoning order dated 17.4.2006.

5. From the complaint petition, it appears that the allegation of the opposite party no.2 is that his wife, the deceased, Nirmala Devi, was suffering from acute stomach pain and she was treated by Dr. Suresh Prasad but there was no relief in her pain. Dr. Suresh Prasad, raising suspicion of Gall-bladder problem, advised the opposite party no.2 to approach the petitioner, who in spite of several requests, did not care the request of the opposite party no.2 for blood test and ultrasound and in hurriedness, the operation of the deceased, Nirmala Devi, the wife of the opposite party no.2 was done by the petitioner in course of which one important vein was stitched. Later on, on examination of the deceased, Nirmala Devi, cancer was detected since before the operation of the Gall-bladder. Admittedly, the petitioner is master in surgery, as appears from the complaint petition, and the deceased, Nirmala Devi, the wife of opposite party no.2, died on 8.8.2005 after about five months of the operation. Annexure-„8 to the supplementary affidavit disclosed that in Consumer Complaint Case No.171 of 2009 filed by the opposite party no.2 before the District Consumer Dispute Redressal Forum at Patna against the petitioner, some points were formulated and sent through letter no.468 dated 8.9.2011 for expert opinion to the Civil Surgeon-cum-Chief Medical Officer, Patna, who issued direction to the petitioner to appear on 19.10.2011 before the Board. Accordingly, the Medical Board constituted in the Chairmanship of the Civil Surgeon sent the report to the court of District Consumer Dispute Redressal Forum at Patna, with a finding that there is no deficiency and professional negligence on the part of the opposite party (petitioner).

6. In the case of Martin F. D'Souza (supra), the Hon ble Apex Court held in paragraph-117 as under:

"117. We, therefore, direct that whenever a complaint is received against a doctor or hospital by the Consumer Fora (whether District, State or National) or by the Criminal Court then before issuing notice to the doctor or hospital against whom the complaint was made the Consumer Forum or Criminal Court should first refer the matter to a competent doctor or committee of doctors, specialized in the filed relating to which the medical negligence is attributed, and only after that doctor or committee reports that there is a prima facie case of medical negligence should notice be then issued to the concerned doctor/hospital. This is necessary to avoid harassment to doctors who may not be ultimately found to be negligent. We further warn the police officials not to arrest or harass doctors unless the facts clearly come within the parameters laid down in Jacob Mathew's case (supra), otherwise the policemen will themselves have to face legal action."

7. Under the aforesaid facts and the circumstances, the order dated 17.4.2006 passed by the Chief Judicial Magistrate, Patna, in Complaint Case No.2739C of 2005, summoning the petitioner for the offence under Section 304-A of the Indian Penal Code without obtaining the report of competent doctor or Medical Board regarding the negligence of the petitioner in surgery and treatment of the deceased Nirmala Devi, the wife of opposite party no.2, as alleged by the opposite party no.2 in complaint petition, appears to be abuse of the process of the court.

8. Accordingly, the dated 17.4.2006 passed by the Chief Judicial Magistrate, Patna, in Complaint Case No.2739C of 2005 and the order dated 13.8.2008 passed by the Additional Sessions Judge-XI, Patna, in Criminal Revision No.478 of 2006 as also the entire criminal proceeding, arising out of the

aforesaid complaint case, are hereby quashed and the application is allowed.

(Rajendra Kumar Mishra, J) P.S./A.F.R.