

**IN THE HIGH COURT OF JUDICATURE AT PATNA  
CRIMINAL MISCELLANEOUS No.48927 of 2015**

Arising Out of PS. Case No.-1089 Year-2012 Thana- SARAN COMPLAINT CASE District-  
Saran

=====

Neeta Tripathi

... Petitioner

Versus

1. State Of Bihar and
2. Gautam Singh, Son of Late Ram Sagar Singh, Resident of Village - Itahiya,  
P.s. - Chapra Mufassil, District - Saran at Chapra.

... .. Opposite Parties

=====

**Appearance :**

For the Petitioner: Mr.Alok Kr.Choudhary, Advocate  
Mr. K.Jha, R.Tiwary & P.Kumar, Advocates, Advocates  
For the State : Mr.Sanjay Kumar Tiwary, Addl Public Prosecutor  
for opposite party no.2 Mr.Nawal Kishore Singh, Advocate

=====

**CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH  
C A V JUDGMENT**

**Date : 19-07-2023**

Present application has been filed for quashing order dated 24.9.2012, passed by the Judicial Magistrate 1<sup>st</sup> class, Chapra in Complaint Case No. 1089 of 2012, by which cognizance of the offence punishable under sections 304A and 504 of the Indian Penal Code has been has been taken against the petitioner.

2. Prosecution's case in short is that wife of complainant/opposite party no.2, namely, Manju Devi (herein after referred to as 'the victim') was admitted to the 'Tripathi Nursing Home, Chapra' run by petitioner for her vaginal hysterectomy under the BPL scheme and on 20.2.2012, she was operated without performing required clinical



examinations/tests, as a result of which later on she developed post operational complications. It is further alleged that at the request of the petitioner, opposite party no.2 signed the discharge ticket so that the doctor may get the payment from the Government agency but the victim remained admitted in the petitioner's nursing home. It is further alleged that when her condition did not improve, she was taken to Patna where another surgery was operated upon her in the Atlantis Hospital. However, victim died on 12.3.2012.

3. It is the case of the petitioner that on 26.11.2011, victim came to the nursing home of the petitioner with medical complications. Thereafter, she was examined by the petitioner and was prescribed medicines (annexure 2). On 28.1.2012, she was again checked up and on thorough examination, she was advised operation of uterus. Necessary investigations/tests like blood test, Ultrasonography (USG), X-ray, etc. was conducted in Mahabir X-ray and Scan Centre and B.K. Patho Centre (annexure 4 series). On 19.2.2012 victim was admitted in the petitioner's nursing home and next day she was operated upon by the petitioner assisted by her husband Dr. Anil Kumar Tripathi, who is a qualified surgeon with MBBS, MS degree. Said operation, in medical parlance, is termed as vaginal hysterectomy. After full



recovery, she was discharged from the nursing home on 28.2.2012 and complainant also signed on discharge slip and made remarks excellent (annexure 6). During treatment, petitioner adopted standard technique prescribed in the Shaw's text book of gynecology which is authority in the field of gynecology (annexure 7).

4. Learned counsel for the petitioner submits that the criminal proceedings have been instituted by opposite party no.2 with ulterior motive to blackmail and harass the petitioner. Denying the allegations, he submits that the victim had been operated upon after thorough investigation and on following the standard operating procedure by the qualified doctors. Wife of opposite party no.2 was discharged from the nursing home on 28.2.2012 after full recovery from her problems and opposite party no.2 also signed discharge slip and made remarks 'excellent'. However, opposite party no.2 never consulted the petitioner for alleged post operation complications, rather last time, she was operated upon by other team of doctors in a different hospital at Patna.

5. It is further argued that even allegations, made in the complaint, are accepted in the entirety, the same do not *prima facie* constitute offence of rashness or negligence on the part of a



professional, as such, in the case in hand, criminal proceeding cannot sustain in the eye of law. Reliance is placed on a decision of the Hon'ble Supreme Court rendered in the case of **Jacob Mathew Vs. State of Punjab and another**, reported in **AIR 2005 Supreme Court 3180**; and **Bombay Hospital & Medical Research Centre Vs. Asha Jaiswal & ors**, reported in **Civil Appeal Nos.1658 & 2322/2010** .

6. *Per contra*, learned counsel appearing for the State as well as the opposite party no.2 oppose the prayer of the petitioner for quashing the cognizance order dated 24.9.2012. They submit that the allegations made in the FIR clearly constitute offence of rash negligence against the petitioner punishable under the aforesaid sections of the Penal Code.

7. Heard learned counsel for the parties and perused the materials available on the records as also decisions of the Hon'ble Supreme Court.

8. It is specific case of opposite party no.2 that he was BPL card holder and the treatment was to be done free of cost under the Government scheme and the petitioner, in order to cut the expenses of the treatment, did not prefer required clinical tests and operated upon the victim in haste. Furthermore, petitioner removed the uterus of the victim by pulling out the



same by hands and not by way of surgical procedure. On developing post operational complications, petitioner only keep on changing medicines rather referring the victim to some other doctor in time only to make money.

9. On going through the records, it appears that on 26.11.2011, the victim was examined by the petitioner and was prescribed medicines (annexure 2). After about two months, on 28.1.2012, she was again checked up and on thorough examination, she was advised operation of uterus termed as vaginal hysterectomy. Necessary investigations/tests like blood test, Ultrasonography (USG), X-ray, etc. was conducted in Mahabir X-ray and Scan Centre, Dahiawan, Chapra and B.K. Patho Centre, South of Jail, Chapra (annexure 4 series). On 19.2.2012 victim was admitted in the petitioner's nursing home and next day she was operated upon by the petitioner, MBBS doctor, assisted by her husband Dr. Anil Kumar Tripathi, who was a qualified surgeon with MBBS, MS degree. Victim was discharged from the nursing home on 28.2.2012 after full recovery from her problems and opposite party no.2 also signed discharge slip and made remarks 'excellent. Thereafter, opposite party no.2 never visited the nursing home for consultation with respect to post operation surgery, rather he consulted other



doctors who conducted another surgery thereafter victim died. It also appears that the petitioner has provided requisite medical care to the best of her ability till the victim was admitted in his nursing home.

10. There is difference between 'Negligence' and 'Criminal Negligence' and it is only criminal negligence which can be tried by a criminal court. For 'Negligence' to amount to offence, element of *mens rea* must exist. So long doctor follows practice acceptable to medical profession of that day, he cannot be held liable for negligence.

11. Having considered rival submissions of the parties and on going through the decisions, I find that continuation of criminal proceeding would only be misuse of process of law. Consequently, this quashing petition is allowed and cognizance order dated 24.9.2012 is set aside.

12. However, quashing of the cognizance order does not preclude the opposite party no.2 to claim for compensation, if so advised.

**(Prabhat Kumar Singh, J)**

Shashi

AFR/NAFR	N A F R
CAV DATE	12.7.2023.
Uploading Date	19.7.2023.
Transmission Date	19.7.2023.

