

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 14TH DAY OF JANUARY, 2022

BEFORE

THE HON'BLE MR. JUSTICE KRISHNA S.DIXIT

WRIT PETITION NO.21688 OF 2009 (GM-RES)

BETWEEN:

DR GANESH NAYAK,
S/O.LATE H K NAYAK,
AGED ABOUT 66 YEARS,
R/AT.NO.8, 7TH CROSS,
JAKKASANDRA BLOCK,
KORAMANGALA, BANGALORE – 560 034.

...PETITIONER

(BY SRI. PALECANDA M CHINNAPPA, FOR
SMT. ANUPAMA HEBBAR, ADVOCATE)

AND:

1. V SHAMANNA,
S/O LATE VENKATASWAMAPPA,
AGED ABOUT 65 YEARS,

R-1 DIED ON 12/03/2013
REP BY HIS LR.

1(A) S NAGARAJ,
S/O V SHAMANNA,
AGED ABOUT 59 YEARS,
NO.46, 6TH CROSS,
CAMBRIDGE LAYOUT,
HALSOOR, BENGALURU – 560 008.

AMENDED V.C.O DATED 14.01.2022.

2 KARNATAKA MEDICAL COUNCIL,
#70, 2ND FLOOR, VAIDYAKEEYA BHAVANA,
K R ROAD, BASAVANAGUDI,
BANGALORE – 560 004.

REPRESENTED BY ITS PRESIDENT.

...RESPONDENTS

(BY SRI. P JAGANNATHAN, ADVOCATE FOR R1(A);
SRI. D S HOSMATH, ADVOCATE FOR R2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED ORDER DATED 07.05.2009, PASSED BY THE R2 IN ENQ.NO.7 OF 2008 VIDE ANNEX-N.

THIS PETITION COMING ON FOR ORDERS THROUGH VIDEO CONFERENCING, THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

A delinquent medical practitioner is knocking at the doors of Writ Court for assailing the order dated 7.5.2009 made by the second respondent Karnataka Medical Council, a Statutory Body under the Indian Medical Council Act, 1956, at Annexure-N whereby, he was administered the punishment of 'warning' for the alleged occupational lapse namely some procedural breach in accomplishing angioplasty to an aged & ailing lady.

2. The Karnataka Medical Council has entered appearance through its Panel Counsel who remained absent when the matter was taken up for consideration twice i.e., in

the morning and afternoon sessions; the first respondent Complainant having died, his son is permitted to come on record to prosecute the defence in the Writ Petition; his counsel too is absent; however, the absence of the counsel cannot interdict the disposal of this decade old case on merits, without unnecessarily prolonging its pendency.

3. Having heard the learned counsel for the petitioner and having perused the bulky Petition Papers, this court is inclined to grant indulgence in the matter for the following reasons:

(a) The vehement submission of learned counsel for the petitioner that the patient namely Smt.Yellamma was suffering from multiple ailments including diabetes, Neuropathy, Nephropathy, etc., and that she was being treated by several other doctors in different hospitals at different times, is substantiated from the perusal of material on record; however, the allegation is made only against the petitioner and no explanation is offered as to why others who had treated her before were not even issued a show cause

notice asking for their views; this happens to be the first error apparent on the face of the record.

(b) The records reveal that the patient Smt.Yellamma was already aged 65 years and she was suffering from ailments natural to declining age of life; it is a common knowledge that the evening of life, some diseases come and stay with beings, be it humans or other, as inevitable guests; an aged person suffering from ailments of the kind, is visited by yet another disease more particularly affecting the functioning of heart, the degree of mortality increases; the records reveal that the patient had some significant problem with Cardio Vascular Vein since long and therefore, she had undergone angiogram at the hands of the petitioner; however, the medical records including the impugned order prima facie show that the cause of death is the serious bacterial infection later contracted; there is huge time gap between accomplishment of angioplasty by the petitioner and the demise of the patient; there is nothing on record to show that the alleged deficiency in professional service accelerated the process of health deterioration that eventually resulted into her death; some positive evidentiary material was necessary

to eliminate the possible *nova causa interveniens*; therefore, there is no reasonable connect or nexus between the medical procedure done by the petitioner and death of the patient vide **ARUN KUMAR MANGLIK VS. CHIRAYU HEALTH AND MEDICARE PRIVATE LTD** 2019 (7) SCC 401.

(c) It does not need research to show that more often than not, the cases of medical negligence are launched recklessly by the patients and their relatives; 'compensation culture' which obtains in other jurisdictions is gradually gaining entry to the field of medical services in our society affecting a healthy relationship of doctor & patient; it is tritely said "faith heals and not the medicine"; faith here means the one reposed in the treating doctor; courts have been nowadays observing that an unscrupulous section of the people are prone to use the slightest opportunity to sue the doctors and hospitals, in the hope of making fast buck; the motivation of people bringing actions for medical negligence are more complicated: some sue for money; others sue for getting an acceptance of guilt; some others do it to ensure that errors would not be repeated; but a large chunk of cases does not involve bonafide claims, cannot be much disputed;

the 'compensation culture' be it truth or a myth in varying degrees, has given rise to risk aversion; medical professionals having a complaint made against them gather an impression that there is an unjustifiable attack on their professional integrity and reputation; this may lead to a defensive response of the medicos ultimately resulting into enormous cost escalation in medical services; if the public servants can be legally protected for the bonafide errors in their action, there is no reason to extend for not extending such a protection to the medical professionals.

(d) It is said the realm of medicine is an ever growing branch of uncertain knowledge; William Osler (1849-1919), a Canadian Physician, more than a century ago had said that "*medicine is a science of uncertainty and an art of probability*", a host of un-assessable factors entering the fray of diagnosis & treatment; the advancement of science & technology has to some extent reduced the level of such uncertainty and enhanced the degree of probability, is also true; however, it cannot be disputed that the medical field is still in a fluid state; a great Indian sage Ramakrishna Paramahansa had said: "*God laughs on two occasions. He laughs when the*

physician says to the patient's mother, 'Don't be afraid...; I shall certainly cure your boy.' God again laughs, saying to Himself, 'I am going to take his life, and this man says, he will save it!...' Even if it is shown that a drug or a procedure did cause an injury, it is difficult to ascertain whether this is because of the drug or the procedure; for example, it might be that the drug or the procedure is not defective if it provides a cure for the vast majority of people, although it has undesirable consequences for a small number of people; if a patient is of the unlucky few, there will be difficulty in concluding that the drug or the procedure was actionably defective; this is only to highlight the uncertain causation obtaining in the realm of medical liability; this aspect ought to have animated the decision making process that culminated into the impugned order of penalty; however, that having not happened, the impugned order suffers from another legal infirmity.

(e) Before parting with this case, it needs to be observed that: medical and paramedical professionals are inevitable for a healthy society; Vedic literature lauds medical practitioner and medicine as '*vaidyo naaraayano harihi*',

nearly meaning that a true doctor as a healer is God and that a true medicine is like the sacred water from the river Ganga; during COVID pandemic, how the doctors and paramedics served our society does not fade away from the public memory; society has to gratefully appreciate the valuable services rendered by the medicos; however, at times, being the victims, the medicos are made to apologize to the attackers and this led to the State enacting the Prevention of Violence Against Doctors, Medical Professionals and Medical Institutions Act, 2018; having said all this, this court hastens to add that the doctors' is a profession wherein service ought to be the motto and not the profit; as any professionals, they too are not immuned from legal action for medical negligence, as observed by the Apex Court in **INDIAN MEDICAL ASSOCIATION VS. V.P.SHANTHA (2005) 6 SCC 1.**

In the above circumstances, this Writ Petition succeeds; a Writ of Certiorari issues quashing the impugned order; the petitioner doctor is absolved from the allegations.

This court places on record its appreciation for the assistance rendered by Mr.Faiz Afsar Sait, Law Clerk cum Research Assistant.

Costs made easy.

cbc

**SD/-
JUDGE**

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