

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. _____ OF 2021
(Arising out of SLP(Cr1.)Nos. 2395-2396 of 2021)

PRABHAT KUMAR SINGH

Appellant(s)

VERSUS

THE STATE OF BIHAR AND ORS. ETC.

Respondent(s)

O R D E R

Leave granted.

These appeals take exception to the judgment and order dated 14.08.2020 passed by the High Court of Judicature at Patna in Criminal Writ Jurisdiction Case Nos. 930 and 1585 of 2017, whereby the summoning order passed by the Court of Additional Chief Judicial Magistrate, Patna in Complaint No. 3229(C) of 2016 dated 24.12.2016 came to be set aside.

The appellant had filed a complaint before the Additional Chief Judicial Magistrate's Court at Patna against the private respondents for offence punishable under Section 304, 316/34 of the Indian Penal Code. The Trial Court after recording the evidence of three witnesses produced by the complainant and other materials on record, was persuaded to issue summons to the private respondents in connection with the stated offence vide order dated

24.12.2016. The private respondents, therefore, assailed that order by way of writ petitions before the High Court.

The High Court, in our opinion, completely glossed over the reasons which had weighed with the Trial Court as noted in order dated 24.12.2016, but was impressed by the fact that there was no evidence regarding *mens rea*, to show malicious or bad intent. This view taken by the High Court is erroneous. For, when it is a case of medical negligence, it need not be because of *mens rea* as intent. *Sans mens rea* in the above sense also it would still constitute offence of medical negligence.

Be that as it may, as aforesaid, the High Court did not advert to the reasons which had weighed with the Trial Court for issuing summons to the private respondents.

At the same time, it is noticeable that the Trial Court had summoned the private respondents without insisting for medical evidence or examination of professional Doctor by the complainant in support of his case made out in the complaint, as required in terms of the exposition of this Court in *Jacob Mathew Vs. State of Punjab & Anr.* reported in (2005) 6 SCC 1.

Resultantly, in our opinion, the appropriate course is to set aside the impugned judgment and order of the High Court as well as summoning order issued by the Trial Court

dated 24.12.2016 and relegate the parties before the Trial Court for reconsideration of the issue afresh.

We make it clear that the Trial Court may have to call upon the complainant to first examine the professional Doctor as witness in support of the case made out in complaint and then proceed to consider the matter afresh on its own merits and in accordance with law.

We also make it clear that the Trial Court shall proceed in the matter on its own merits without being influenced by any observation made in the two orders which have been set aside or for that matter in this order.

All contentions and remedies available to both sides are left open.

The appeals are disposed of in the above terms.

Pending applications, if any, stand disposed of.

.....J
(A.M. KHANWILKAR)

.....J
(SANJIV KHANNA)

New Delhi
August 06, 2021;

ITEM NO.37 Court 4 (Video Conferencing) SECTION II-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Crl.) No(s). 2395-2396/2021

(Arising out of impugned final judgment and order dated 14-08-2020 in CRWJC No. 930/2017 14-08-2020 in CRWJC No. 1585/2017 passed by the High Court Of Judicature At Patna)

PRABHAT KUMAR SINGH Petitioner(s)

VERSUS

THE STATE OF BIHAR AND ORS. ETC. Respondent(s)

(IA No. 39134/2021 - APPLICATION FOR EXEMPTION FROM FILING ORIGINAL VAKALATNAMA/OTHER DOCUMENT AND IA No. 39133/2021 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT
IA No. 39131/2021 - EXEMPTION FROM FILING O.T.)

Date : 06-08-2021 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.M. KHANWILKAR

HON'BLE MR. JUSTICE SANJIV KHANNA

For Petitioner(s) Mrs. Anjana Prakash, Sr. Adv.
Mr. Anuj Prakaash, Adv.
Mr. Kumar Mihir, AOR
Mr. Vivek Kumar, Adv.
Ms. Apurva Jain, Adv.

For Respondent(s) Mr. Saket Singh, Adv.
Mrs. Niranjana Singh, AOR

Mr. Sidharth Luthra, Sr. Adv.
Mr. Praveen Kumar Sharma, Adv.
Mr. Smarhar Singh, AOR

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeals are disposed of in the above terms.

Pending applications, if any, stand disposed of.

(DEEPAK SINGH)
COURT MASTER (SH)

(VIDYA NEGI)
COURT MASTER (NSH)

[Signed order is placed on the file]

