Reportable

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1193 OF 2015
(Arising out of S.L.P. (Crl) No. 9386 of 2012)

Dr. (Smt.) Manorama Tiwari and others ... appellants

Versus

Surendra Nath Rai ...Respondent

J U D G M E N T

Prafulla C. Pant, J.

Leave granted.

2. This appeal is directed against order dated 16.4.2012, passed by the High Court of Judicature Chhattisgarh at Bilaspur, in Criminal Revision No. 220 of 2002 whereby said Court has disposed of the criminal revision, affirming order of the Magistrate by which application under Section 197 of the Code of Criminal Procedure, 1973 (Cr.P.C.) moved by appellants was rejected.

3. Brief facts of the case are that Miss Tapsi Rai, aged 14 years, daughter of respondent Surendra Nath Rai, underwent surgery on 5.8.1997 in Maharani Government Hospital, Jagdalpur, Bastar. The operation necessitated due to pain developed by the patient in the abdomen, was performed by the appellants, namely, Dr. (Smt.) Manorama Tiwari, Dr. B.R. Kawdo and Dr. Pradeep Pandey. Before conducting the surgery, consent to operate was taken from the respondent. However, even after surgery, the condition of the patient did not improve, and she died on the same day.

4. A First Information Report was lodged by the respondent after lapse of more than five months, i.e. on 2.2.1998 relating to offence punishable under Section 304A of Indian Penal Code at Police Station, Jagdalpur against Dr. Manorama Tiwari and Dr. Pradeep Pandey (appellant Nos. 1 and 3 respectively). Meanwhile, enquiry was got conducted on the complaint of the respondent under orders of the District Magistrate, in which report dated nil shows that the surgeons were opined to be negligent. However, subsequently another

enquiry was held under orders of the Government, in which Joint Controller Health Services, Bastar, submitted his report dated 11.3.1998 with the finding that there was no negligence on the part of the surgeons.

5. It appears that the police did not file charge sheet, and the complainant (respondent) filed criminal complaint before the Chief Judicial Magistrate, Jagdalpur, making allegations of commission of murder against the appellants. Said case was registered as Criminal Complaint case No. 954 of 2000. The appellants moved an application on 18.10.2001 (No. 889 of 2002) alleging that prosecution against them is not maintainable without sanction as required under Section 197 Cr.P.C. Said application was rejected by the Magistrate vide order dated 16.3.2002, against which appellants filed criminal revision, but no relief is granted by the High Court and the same was disposed of summarily without any observation. Aggrieved by order of the High Court, this appeal is filed through special leave before us. The respondent, even after service of notice, did not turn up.

6. We have heard learned counsel for the parties and perused the papers on record.

7. From the papers on record it appears that the respondent, after his daughter developed abdomen pain, firstly took her to a nursing home run by one Dr. Dulhani on 4.6.1997. There she remained admitted for two days and underwent surgery of appendix. However, after her discharge, she again developed stomach pain on 8.6.1997, whereafter the patient was treated by one Dr. Bansal. Thereafter, in earlier round the patient was taken to Maharani Hospital and one Dr. (Smt.) Gupta treated the patient, and discharged her on 14.6.1997. However Miss Tapsi Rai (patient) did not get relief and was taken to MMI Hospital in Raipur. In said hospital the medical officers opined that surgery could be done only after pain gets subsided. On 23.6.1997 patient was again taken to Maharani Hospital where she was admitted for abdominal pain and was discharged on 29.6.1997 with the advice that if appendix is to be removed, the same would be done after six weeks. On 4.8.1997, the patient again complained of pain in her abdomen, and consulted Dr. (Smt.) Gupta, who told that

the pain did not relate to appendix, and gave some medicines. When the condition of the patient did not improve on the same day, in the night the patient was again taken to Maharani Hospital where one Dr. Jha, who was on duty, admitted the patient, and called Dr. Pradeep Pandey (appellant No. 3), who attended the patient at midnight. It was decided that the surgery would be done next morning. Next day, at about 9.30 a.m., Dr. Pradeep Pandey, during surgery, called Dr. (Smt.) Manorama Tiwari, Gynecologist (appellant No. 1) and she called Dr. B.R. Kawdo, Surgeon and Chief Medical Officer (appellant No. 2). However, the doctors could not save the patient, who ultimately died.

8. It is argued before us on behalf of the appellants that the appellants were discharging their public duties and have committed no negligence on their part. It is further argued that assuming but not admitting there was negligence in discharging the public duties, in view of the provisions of Section 197 Cr.P.C., the prosecution against the appellants is not maintainable without sanction from the Government.

9. Relevant provision relating to sanction in Section 197 Cr.P.C. reads as under: -

> "Section 197 - **Prosecution of Judges and public servants –** (1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction save as otherwise provided in the Lokpal and Lokayuktas Act, 2013
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> (a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;
>
> (b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government:
>
> Provided that where the alleged offence was committed by a person referred to in clause (b) during the period while a Proclamation issued under clause (1) of Article 356 of the Constitution was in force in a State, clause (b) will apply as if for the expression "State Government" occurring therein, the expression "Central Government" were substituted.
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> Explanation.--for the removal of doubts it is hereby declared that no sanction shall be required in case of a public servant accused of any offence alleged to

have been committed under section 166A, section 166B, section 354, section 354A, section 354B, section 354C, section 354D, section 370, section 375, section 376, section 376A, section 376C, section 376D or section 509 of the Indian Penal Code (45 of 1860).

(2) .....

(3) .....

(3A) .....

(3B) .....

(4) The Central Government or the State Government, as the case may be, may determine the person by whom, the manner in which, and the offence or offences for which, the prosecution of such Judge, Magistrate or public servant is to be conducted, and may specify the Court before which the trial is to be held."

10. A three-Judge Bench of this Court in ***Jacob Mathew* v. *State of Punjab and another***[1], has laid down guidelines for prosecution of medical professionals as under: -

"**50.** As we have noticed hereinabove that the cases of doctors (surgeons and physicians) being subjected to criminal prosecution are on an increase. Sometimes such prosecutions are filed by private complainants and sometimes by the police on an FIR being lodged and cognizance taken. The investigating officer and the private complainant

1 (2005) 6 SCC 1

cannot always be supposed to have knowledge of medical science so as to determine whether the act of the accused medical professional amounts to a rash or negligent act within the domain of criminal law under Section 304-A IPC. The criminal process once initiated subjects the medical professional to serious embarrassment and sometimes harassment. He has to seek bail to escape arrest, which may or may not be granted to him. At the end he may be exonerated by acquittal or discharge but the loss which he has suffered to his reputation cannot be compensated by any standards.

51. We may not be understood as holding that doctors can never be prosecuted for an offence of which rashness or negligence is an essential ingredient. All that we are doing is to emphasise the need for care and caution in the interest of society; for, the service which the medical profession renders to human beings is probably the noblest of all, and hence there is a need for protecting doctors from frivolous or unjust prosecutions. Many a complainant prefer recourse to criminal process as a tool for pressurising the medical professional for extracting uncalled for or unjust compensation. Such malicious proceedings have to be guarded against.

52. Statutory rules or executive instructions incorporating certain guidelines need to be framed and issued by the Government of India and/or the State Governments in consultation with the Medical Council of India. So long as it is not done, we propose to lay down certain guidelines for the future which should govern the prosecution of doctors for offences of which criminal rashness or criminal negligence is an ingredient. A private complaint may not be entertained unless the complainant has produced *prima facie* evidence before the court in

> the form of a credible opinion given by another competent doctor to support the charge of rashness or negligence on the part of the accused doctor. The investigating officer should, before proceeding against the doctor accused of rash or negligent act or omission, obtain an independent and competent medical opinion preferably from a doctor in government service, qualified in that branch of medical practice who can normally be expected to give an impartial and unbiased opinion applying the *Bolam*[2] *test* to the facts collected in the investigation. A doctor accused of rashness or negligence, may not be arrested in a routine manner (simply because a charge has been levelled against him). Unless his arrest is necessary for furthering the investigation or for collecting evidence or unless the investigating officer feels satisfied that the doctor proceeded against would not make himself available to face the prosecution unless arrested, the arrest may be withheld."

11. In ***Matajog Dubey* v. *H.C. Bhari***[3], a Constitution Bench of this Court in the matters of prosecution of public servants has held as under: -

> "15. ……..Public servants have to be protected from harassment in the discharge of official duties while ordinary citizens not so engaged do not require this safeguard. It was argued that Section 197, Criminal Procedure Code vested an absolutely arbitrary power in the Government to grant or withhold sanction at their sweet will and pleasure, and the legislature did not lay down or even indicate any guiding principles to control the exercise of the discretion. There is no question of any

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[2] Bolam v. Frein Hospital Management Committee, (1957) 1 WLR 582: (1957) 2 All ER 118 (QBD)
[3] AIR 1956 SC 44

> discrimination between one person and another in the matter of taking proceedings against a public servant for an act done or purporting to be done by the public servant in the discharge of his official duties. No one can take such proceedings without such sanction. ……."

12. In view of the above settled position of law, we are of the opinion that in the present case, the High Court has erred in law in dismissing the criminal revision filed by the appellants and affirming the order of the Magistrate rejecting their application as to maintainability of the criminal complaint without sanction from the State Government. In our opinion, it is a clear case where appellants were discharging their public duties, as they were performing surgery on the patient in the Government hospital. It is not disputed that the appellants were the Medical Officers in the Government Hospital. As such, the criminal prosecution of the appellants initiated by the respondent (complainant) is not maintainable without the sanction from the State Government. That being so, we are inclined to allow this appeal.

13. Accordingly, the appeal is allowed. The impugned order passed by the High Court dismissing the criminal revision,

and the one passed by the Magistrate on 16.3.2002 rejecting the application under Section 197 Cr.P.C., are set aside. The application under Section 197 Cr.P.C., moved by the appellants before the trial court, stands allowed.

.....J.
[Dipak Misra]

.....J.
[Prafulla C. Pant]

New Delhi;
September 10, 2015.

ITEM NO.1A COURT NO.5 SECTION IIA

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl.) No(s). 9386/2012

(Arising out of impugned final judgment and order dated 16/04/2012 in CRLR No. 220/2002 passed by the High Court of Chhatisgarh at Bilaspur)

MANORAMA TIWARI & ORS. Petitioner(s)

VERSUS

SURENDRA NATH RAI Respondent(s)

Date : 10/09/2015 This petition was called on for judgment today.

For Petitioner(s) Mr. Ratnakar Dash, Sr. Adv.
Mr. Piyush Kumar, Adv.
Mr. Samir Ali Khan,Adv.

For Respondent(s)

Hon'ble Mr. Justice Prafulla C. Pant pronounced the judgment of the Bench consisting Hon'ble Mr. Justice Dipak Misrha and His Lordship.

Leave granted.

The appeal is allowed in terms of the signed reportable judgment.

(Gulshan Kumar Arora) (H.S. Parasher)
Court Master Court Master

(Singed reportable judgment is placed on the file)