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MOHANNAN
v.
PRABHA G. NAIR AND ANR.

FEBRUARY 4, 2004

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[K.G. BALAKRISHNAN AND B.N. SRIKRISHNA, JJ]

Code of Criminal Procedure, 1973:

C

S. 482—Quashing of complaint—Death of patient in hospital—Criminal complaint against Doctor alleging medical negligence—Cognizance taken by Magistrate of offence punishable u/s 304-A IPC—High Court quashing the complaint—Held, High Court not justified in quashing the complaint at the threshold—It must be noticed that the complainant did not get the full opportunity to produce evidence before the Magistrate—Negligence of the doctor could be ascertained only by scanning the material if any and the expert evidence that may be adduced—Having regard to the facts of the case, the complainant should have been given an opportunity to present the case before the Magistrate—Order of High Court set aside—Magistrate to consider the matter in accordance with law—Indian Penal Code, 1860—S. 304-A.

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 515 of 2003.

From the Judgment and Order dated 28.11.2001 of the Kerala High Court in CrI. M.C. No. 6341 of 1999 (C).

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R. Satish and M. Joseph for the Appellant.

Roy Abraham, Mrs. Seema Jain, Himinder Lal, Ramesh Babu M.R. and Ms. Anupama Madanan for the Respondents.

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The following Order of the Court was delivered:

The appellant herein filed a criminal complaint before the Judicial Magistrate, First Class, Cherthala alleging that the respondent who is a Gynaecologist attached to the private hospital at Cherthala had shown medical negligence of such a degree and thereby the appellant's wife died on 8th

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December 1995. The appellant's wife was pregnant and he consulted the first respondent from the seventh month of pregnancy and on 4th December 1995 appellant's wife was admitted in the first respondent's hospital for the delivery of the child. On 5th December, 1995 with medical intervention of first respondent she delivered a dead child and there was profuse bleeding. She was under the continued treatment of the first respondent. On 8th December, 1995 she died. The appellant alleged that in spite of repeated request to take his wife to the medical college hospital, the first respondent told him that the patient has no problem and everything would be alright within short time. The appellant filed a complaint before the police and after investigation the police filed a report. Thereafter, the appellant filed a criminal complaint before the Magistrate. Apart from the statement given by the complainant, he also got examined the Doctor, who conducted the post-mortem examination and also a Radiologist. The Magistrate took cognizance of the offence punishable under section 304-A, IPC. Thereafter, the first respondent filed a criminal miscellaneous application before the High Court under section 482 of the Cr.P.C. to quash the criminal proceedings alleging that the allegations made in the complaint along with the sworn statement and other materials before the Court, did not make out an offence and the complaint and other proceedings were liable to be quashed. The learned Single Judge held that:

"The mere fact that a patient dies in a hospital does not lead to the presumption that the death occurred due to the negligence of the doctor and in order to make a doctor criminally responsible for death of his patient, it must be established that there was negligence or incompetence on his part which went beyond a mere matter of compensation on the basis of some civil liability and that he did something in disregard for the life and safety of the patient."

It must be noticed that the appellant herein did not get the full opportunity to produce evidence before the Magistrate. The negligence of the Doctor could be ascertained only by scanning the material if any and the expert evidence that may be adduced. Having regard to the facts of this case, we feel that the appellant-complainant should have been given an opportunity to present the case before the Magistrate. The learned Single Judge was not justified in quashing the complaint at the threshold, especially in a case where the culpability could be established only on proper analysis of the expert evidence that may be adduced by the complaint. In the result, we set aside the judgment of the learned Single Judge and direct the Magistrate to consider the matter in accordance with law. We may hasten to add that the

A first respondent being a Medical Practitioner, if any application for bail is filed, the same shall be favourably considered by the Magistrate.

The appeal is disposed of.

R.P.

Appeal disposed of.

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