

Doctor can't be held liable for error of judgment

ML/Hindu, Feb 19, 2009

New Delhi: February 19, 2009 - A doctor cannot straightway be held liable for medical negligence simply because a patient has not favourably responded to treatment or surgery has failed, the Supreme Court has held.

A Bench consisting of Justices Markandey Katju and R.M. Lodha on Tuesday said: "A medical practitioner is not liable to be held negligent simply because things went wrong from a mischance or misadventure or through an error of judgment in choosing one reasonable course of treatment in preference to another. He would be liable only where his conduct fell below the standards of a reasonably competent practitioner in his field."

The Bench set aside an order passed by the National Consumer Disputes Redress Commission, which held Dr. Martin F. D'Souza of the Nanavati Hospital, Mumbai, guilty of negligence on a complaint from Mohd Ishtaq, who was treated for renal and severe urinary tract infection.

Writing the judgment, Justice Katju said: "While doctors who cause death or agony due to medical negligence should certainly be penalised, it must also be remembered that like all professionals doctors too can make errors of judgment, but if they are punished for this no doctor can practise his vocation with equanimity. Indiscriminate proceedings and decisions against doctors are counter-productive and serve society no good. They inhibit the free exercise of judgment by a professional in a particular situation."

✓ Therefore, whenever complaints were received against a doctor or hospital, the consumer forum or criminal court, before issuing notice, should first refer the matter to a competent doctor or a committee of doctors, specialising in the field where negligence was attributed. Only after that doctor or committee "reports that there is a prima facie case of medical negligence should notice be issued to the doctor/hospital concerned."

✓ The Bench said: "This is necessary to avoid harassment to doctors who may not ultimately be found to be negligent. We further warn police officials not to arrest or harass doctors unless the facts clearly come within the parameters laid down by the apex court in Jacob Mathew's case; otherwise, the policemen will themselves have to face legal action."

The Bench said: "While this court has no sympathy for doctors who are negligent, it must also be said that frivolous complaints against doctors have increased by leaps and bounds particularly after the medical profession was placed within the purview of the Consumer Protection Act."

The Bench said: "The courts and consumer fora are not experts in medical science and must not substitute their own views for that of specialists. It is true that the medical profession has to an extent become commercialised and there are many doctors who depart from the Hippocratic oath for their selfish ends of making money. However, the entire medical fraternity cannot be blamed or branded as lacking in integrity or competence just because of some bad apples."

Sometimes despite the best effort, the treatment of a doctor failed, the Bench said. "For instance, sometimes despite the best effort of a surgeon, the patient dies. That does not mean that the doctor or the surgeon must be held guilty of medical negligence, unless there is some strong evidence to suggest that he is. On the facts of this particular case, we are of the opinion that the appellant [Martin F. D'Souza] was not guilty of medical negligence. Appeal allowed."

Doctors Not to be Charged just because the patient died

Jacob Mathew V/S State of Punjab & Anr. DATE OF JUDGMENT: 05/08/2005

BENCH: CJI R.C. LAHOTI, G.P. MATHUR & P.K. BALASUBRAMANYAN

A Brief History of proceeding until Supreme Court

The informant's father, late Jiwan Lal Sharma was admitted as a patient in a private ward of CMC Hospital, Ludhiana. On 22.2.1995 at about 11 p.m., Jiwan Lal felt difficulty in breathing.

The complainant's elder brother, Vijay Sharma who was present in the room contacted the duty nurse, who in her turn called some doctor to attend to the patient. No doctor turned up for about 20 to 25 minutes.

Then, Dr. Jacob Mathew, the appellant before us and Dr. Allen Joseph came to the room of the patient. An oxygen cylinder was brought and connected to the mouth of the patient but the breathing problem increased further. The patient tried to get up but the medical staff asked him to remain in the bed.

The oxygen cylinder was found to be empty. There was no other gas cylinder available in the room. Vijay Sharma went to the adjoining room and brought a gas cylinder therefrom.

However, there was no arrangement to make the gas cylinder functional and in-between, 5 to 7 minutes were wasted.

By this time, another doctor came who declared that the patient was dead.

On the abovesaid report, an offence under Section 304A/34 IPC was registered and investigated. Challan was filed against the two doctors.

The Judicial Magistrate First Class, Ludhiana framed charges under Section 304A, IPC against the two accused persons, both doctors. Both of them filed a revision in the Court of Sessions Judge submitting that there was no ground for framing charges against them. The revision was dismissed. The appellant filed a petition in the High Court under Section 482 of the Code of Criminal Procedure praying for quashing of the FIR and all the subsequent proceedings.

The learned single Judge who heard the petition formed an opinion that the plea raised by the appellant was available to be urged in defence at the trial and, therefore, a case for quashing the charge was not made out. Vide order dated 18.12.2002, the High Court dismissed the petition. An application for recalling the abovesaid order was moved which too was dismissed on 24.1.2003. Feeling aggrieved by these two orders, the appellant has filed these appeals by special leave.

B. Observation of Hon'ble Supreme Court

1. The investigating officer and the private complainant cannot always be supposed to have knowledge of medical science so as to determine whether the act of the accused medical professional amounts to rash or negligent act within the domain of criminal law under Section 304-A of IPC.

2. 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.

3. At the end he may be exonerated by acquittal or discharge but the loss which he has suffered in his reputation cannot be compensated by any standards.

4. 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.

5. Many a complainant prefers recourse to criminal process as a tool for pressurizing the medical professional for extracting uncalled for or unjust compensation. Such malicious proceedings have to be guarded against.

✓ C. Guidelines for the future which should govern the prosecution of doctors for offences of which criminal rashness or criminal negligence is an ingredient.

✓ 1. 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.

✓ 2. 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 Bolam's test to the facts collected in the investigation.

✓ 3. 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 investigation officer feels satisfied that the doctor proceeded against would not make himself available to face the prosecution unless arrested, the arrest may be withheld.

✓ D. Direction passed by the Supreme Court

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.

✓ E. Judgement on the facts of the case

Reverting back to the facts of the case before us, we are satisfied that all the averments made in the complaint, even if held to be proved, do not make out a case of criminal rashness or negligence on the part of the accused appellant. It is not the case of the complainant that the accused-appellant was not a doctor qualified to treat the patient whom he agreed to treat. It is a case of non-availability of oxygen cylinder either because of the hospital having failed to keep available a gas cylinder or because of the gas cylinder being found empty. Then, probably the hospital may be liable in civil law (or may not be - we express no opinion thereon) but the accused appellant cannot be proceeded against under Section 304A IPC on the parameters of Bolam's test.