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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(CRL) 3012/2022

JYOTI THAPAR ..... Petitioner

Through: Mr Vikas Nagwan and Mr Manvi Rajvanshy, Advs.

versus

STATE OF NCT OF DELHI & ANR. ..... Respondents

Through: Mr Sachin Mittal, ASC for State with Mr Nishant Chauhan, Adv.
Inspector Amit, PS-Paschim Vihar West
Mr B.P. Singh and Mr Prashant Chauhan, Advs. for R-2.

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

O R D E R

% 21.12.2022

1. This is a petition seeking quashing of FIR No. 365/2016 dated 11.08.2016, under Section 304-A IPC, registered at Police Station – Mianwali Nagar and the consequential proceeding emanating therefrom.

3. As per the FIR, the daughter of the complainant, aged about 16 years had died on 19.04.2014. It is stated in the FIR that the death occurred on account of medical negligence at the hands of the petitioner who was her treating doctor.

4. My attention has been drawn to the order dated 12.09.2019 passed by the learned MM wherein the operative portion reads as under:

"It is seen that in the order dt. 15.07.2016 passed by Delhi

Medical Council, there is observation ***"on perusal of the order of the Disciplinary Committee, the council observed that Dr. Jyoti Thapar made an error in judgment for not prescribing basic investigation like chest x-ray, sputum, AFB etc. when the patient reported to her on 03.03.2014 and again on 05.03.2014. The council observed that the patient herself was also not diligent in the follow up. "***

Apart from this, as a punishment, the accused was directed to undergo 10 hours of continuing medical education (CME) on the subject of Tuberculosis and chest diseases within a period of six months."

5. Mr Nagwan, learned counsel for the petitioner states that it was a case of wrong diagnosis and not of negligence at the hands of the petitioner.

6. Subsequently, it is stated that the petitioner has arrived at a settlement with the respondent No.2. i.e. the father of the minor child vide compromise deed/MoU dated 21.10.2022, pursuant to which the petitioner had to pay a sum of Rs. 6 lakhs to respondent No.2. The petitioner has voluntarily increased the said amount by a further sum of Rs. 2,50,000/-. The entire amount of Rs. 8,50,000/- has been paid to respondent No.2.

7. Petitioner is present in Court and has been identified by her counsel, Mr Vikas Nagwan.

8. Mr Ravinder Prasad - respondent No. 2 is also present in Court and has been identified by his counsel Mr B.P. Singh and Mr Prashant Chauhan as well as by the Investigating Officer Inspector Amit, PS-Paschim Vihar West.

9. Both the parties state that they have entered into the aforesaid

settlement out of their own free will, volition and without any threat, pressure, undue influence or coercion. It is stated by respondent No.2 that he has no objection if the FIR is quashed.

10. In the present case, the order dated 12.09.2019 records the observation of the Disciplinary Committee of the Delhi Medical Council which states that the petitioner is guilty only for error of judgment and not of negligence. The said aspect is squarely covered by the judgment of ***Jacob Mathew v. State of Punjab,*** (2005) 6 SCC 1 and the relevant paragraphs are extracted herein below:

> *"**25.** A mere deviation from normal professional practice is not necessarily evidence of negligence. Let it also be noted that a mere accident is not evidence of negligence. So also an error of judgment on the part of a professional is not negligence per se. Higher the acuteness in emergency and higher the complication, more are the chances of error of judgment. At times, the professional is confronted with making a choice between the devil and the deep sea and he has to choose the lesser evil. The medical professional is often called upon to adopt a procedure which involves higher element of risk, but which he honestly believes as providing greater chances of success for the patient rather than a procedure involving lesser risk but higher chances of failure. Which course is more appropriate to follow, would depend on the facts and circumstances of a given case. The usual practice prevalent nowadays is to obtain the consent of the patient or of the person in-charge of the patient if the patient is not in a position to give consent before adopting a given*

procedure. So long as it can be found that the procedure which was in fact adopted was one which was acceptable to medical science as on that date, the medical practitioner cannot be held negligent merely because he chose to follow one procedure and not another and the result was a failure.

***26**. No sensible professional would intentionally commit an act or omission which would result in loss or injury to the patient as the professional reputation of the person is at stake. A single failure may cost him dear in his career. Even in civil jurisdiction, the rule of res ipsa loquitur is not of universal application and has to be applied with extreme care and caution to the cases of professional negligence and in particular that of the doctors. Else it would be counter-productive. Simply because a patient has not favourably responded to a treatment given by a physician or a surgery has failed, the doctor cannot be held liable per se by applying the doctrine of res ipsa loquitur.*

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***48** We sum up our conclusions as under:*

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***(2)** Negligence in the context of the medical profession necessarily calls for a treatment with a difference. To infer rashness or negligence on the part of a professional, in particular a doctor, additional considerations apply. A case of occupational negligence is different from one of professional negligence. A simple lack of care, an error of judgment or an accident, is not proof of negligence on the part of a medical*

professional. So long as a doctor follows a practice acceptable to the medical profession of that day, he cannot be held liable for negligence merely because a better alternative course or method of treatment was also available or simply because a more skilled doctor would not have chosen to follow or resort to that practice or procedure which the accused followed. When it comes to the failure of taking precautions, what has to be seen is whether those precautions were taken which the ordinary experience of men has found to be sufficient; a failure to use special or extraordinary precautions which might have prevented the particular happening cannot be the standard for judging the alleged negligence. So also, the standard of care, while assessing the practice as adopted, is judged in the light of knowledge available at the time of the incident, and not at the date of trial. Similarly, when the charge of negligence arises out of failure to use some particular equipment, the charge would fail if the equipment was not generally available at that particular time (that is, the time of the incident) at which it is suggested it should have been used."

11. In this view of the matter and since the parties have arrived at a settlement and no disputes are pending, I am convinced that quashing of such proceedings on account of compromise would bring about peace and would secure ends of justice. This should not be treated as a legal precedent and in this case the proceedings are quashed as the respondent has decided to put a quietus to the matter. The Court does not see any fruitful purpose if criminal proceedings are permitted to be prosecuted any further. It is a fit

case for quashing. In this view of the matter, there is no reason to continue the proceedings.

12. For the above stated reasons, FIR No. 365/2016 dated 11.08.2016, under Section 304-A IPC, registered at Police Station – Mianwali Nagar and proceedings emanating therefrom is hereby quashed.

13. The petition is disposed of.

JASMEET SINGH, J

DECEMBER 21, 2022
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Click here to check corrigendum, if any