

Jacob Mathew v. State of Punjab, the judgment stipulates the guidelines to be followed before launching a prosecution against a doctor for negligence

Bhattaram Visweswara Subrahmanyam

Department of Forensic Medicine, Forensic Medicine, Narayana Medical College and Hospital, Nellore, India

ABSTRACT

In a landmark judgment, the supreme court of India laid down guidelines in cases of alleged negligence against medical practitioners in India. It clearly stated that there is a need for protecting doctors from frivolous or unjust prosecution.

Key words: Judgment, guidelines, prosecution, negligence

In a landmark judgment of the Supreme Court of India the judgment stipulates the guidelines to be followed before launching a prosecution against a doctor for negligence. On February 15, 1995, the informant's father, was admitted as a patient in the private ward of a hospital. On February 22, 1995 at about 11 p.m., the patient felt difficulty in breathing. The complainant's elder brother, who was present in the room contacted the duty nurse, who in turn called a doctor to attend to the patient. No doctor turned up for 20-25 minutes. Then doctors 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. Son of the patient went to the adjoining room and brought a gas cylinder. However, there was no arrangement to make the gas cylinder functional and meanwhile, 5-7 minutes were wasted. By this time, another doctor came and declared that the patient was

dead. The complaint as per records reads as follows. "The death of my father has occurred due to the carelessness of doctors and nurses and nonavailability of oxygen cylinder and the empty cylinder was fixed on the mouth of my father and his breathing was totally stopped hence my father died. I sent the dead body of my father to my village for cremation and for information I have come to you. Suitable action be done."^[1]

On the above said report, an offence under Sections 304-A and 34 of the Indian Penal Code was registered and investigated. It was submitted before the High Court that there was no specific allegation of any act of omission or commission against the accused persons in the entire plethora of documents comprising the challan papers filed by the police against them. The learned single Judge who heard the petition formed an opinion that the plea raised by the appellant was available to be urged in defense at the trial and therefore, a case for quashing the charge was not made out. Feeling aggrieved the appellant has filed these appeals by special leave before the Supreme Court. The Supreme Court gave the Guidelines—regarding prosecuting medical professionals as follows: 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 the Indian Penal Code. The criminal process once initiated subjects the medical

Access this article online

Quick Response Code:



Website:
www.ruralneuropractice.com

DOI:
10.4103/0976-3147.105639

Address for correspondence:

Dr. B. V. Subrahmanyam, Forensic Medicine, Narayana Medical College and Hospital, Nellore, India. E-mail: docsbrahmanyam@yahoo.co.in

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 in his reputation, cannot be compensated by any standards. 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 emphasize 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 prosecution. 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.

Statutory Rules of 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 in regard 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 leveled 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.

The above judgment gives relief to the medical profession. However, no immunity is conferred—The judges have left to the Central and State Governments to give rules and regulations, as in India it is a state subject. These guidelines prescribe opinion from a proper Government doctor before proceeding against a doctor. The accused doctor can present his defense by obtaining from expert of choice after the case is charge sheeted and the case comes before the court for examination.

References

1. Subrahmanyam BV. Medical Jurisprudence and Toxicology. Allahabad, India: Law Publishers; 2011. P. 651-75.

How to cite this article: Subrahmanyam BV. Jacob Mathew v. State of Punjab, the judgment stipulates the guidelines to be followed before launching a prosecution against a doctor for negligence. *J Neurosci Rural Pract* 2013;4:99-100.

Source of Support: Nil. **Conflict of Interest:** None declared.