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IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

O R D E R

- (1) S.B. CRIMINAL REVISION PETITION NO. 338/2005
DR. URMILA KATIYAL Vs. STATE OF RAJASTHAN
&
(2) S.B. CRIMINAL REVISION PETITION NO. 339/2005
ANIL SHRIVASTAVA Vs. STATE OF RAJASTHAN

DATE: 28.02.2007.

HON'BLE MR. K.S. RATHORE, J.

Mr. Veyankatesh Garg for the petitioners.
Mr. Ashwani Kumar Sharma, PP for the State.

R E P O R T A B L E

Since both the revision petitions are arising out of the same impugned order dated 22.02.2005 and involve similar question of facts and law, therefore, they are being decided by this common order.

The facts of the case of *Dr. Urmila Katiyal* are taken as leading case. The present criminal revision petition under Section 397 r/w Section 401 Cr.P.C. is preferred by the petitioner against the order dated 22.02.2005 passed by the Judicial Magistrate, Baran in Criminal Case No. 81/2004, whereby charge for the offence under Section 304-A IPC has been framed against the petitioner.

Learned counsel for the petitioners submits that upon bare perusal of the FIR it appears that

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allegations against the doctor have been levelled by the complainant that the doctor has not provided blood well within time and she was busy in conducting sonography at her residence. Thus, she was negligent in performing her duties and due to this negligence the patient died, therefore, charge for the offence under Section 304-A IPC has been framed against the petitioner, which has not been correctly framed.

In support of his submissions the learned counsel for the petitioners has placed reliance on the judgment rendered by the Hon'ble Supreme Court in the case of **Dr. Suresh Gupta Vs. Govt. of NCT of Delhi And Another, decided on 04.08.2004 and reported in (2004)6 SCC 422**, wherein the Hon'ble Supreme Court has observed that "For fixing criminal liability on a doctor or surgeon, the standard of negligence required to be proved should be so high as can be described as "gross negligence" or "recklessness". It is not merely lack of necessary care, attention and skill."

He further placed reliance on the judgment rendered by the Hon'ble Supreme Court in the case of **Jacob Mathew Vs. State of Punjab And Another, decided on 05.08.2005 and reported in (2005)6 SCC 1**, wherein the Hon'ble Supreme Court has laid down the test which

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is to be applied for determination of the negligence of the doctor.

I have heard learned counsel for the petitioners, learned Public Prosecutor for the State and have also gone through the judgments of the Hon'ble Supreme Court referred before me.

Admittedly after considering the rash and negligent act of the doctor, the offence under Section 304-A IPC is qualified, but the test laid down by the Hon'ble Supreme Court in the case of **Jacob Mathew (supra)**, is to be applied in true and latter spirit.

Having gone through the impugned order dated 22.02.2005 passed by the trial Court, it appears that the trial Court has not examined all the aspects and has not passed speaking order while framing charge under Section 304-A IPC against the petitioners.

Therefore, in the interest of justice, I deem it proper to quash and set-aside the impugned order dated 22.02.2005 passed by the trial Court and remand the matter back to the trial Court for fresh adjudication after giving opportunity of being heard to the parties and after considering the test laid down by the Hon'ble Supreme Court in the aforementioned case of **Jacob Mathew (supra)** and then pass speaking order.

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With the aforesaid observations, both the revision petitions stand disposed of.

Record be sent back forthwith.

(K.S. RATHORE),J.

/KKC/