The frequency of incidents in which doctors are threatened with arrest for supposed negligence in performing their professional duties, has increased tremendously in the recent past, leading to utter disquiet in the profession. Invoking criminal proceedings on frivolous complaints has become the order of the day, so much so that in the recent past, even murder charges have been levied on a doctor in Rajasthan, following the death of a patient. It would therefore be worthwhile for the medical professionals to be aware of the binding landmark Supreme Court judgments, and keep them handy in case of any threat of arrest.

1) In the case of Jacob Mathew Vs State of Punjab & Anr, (No. Crl.Appeal 144-145 of 2004) the three Judge bench of the Supreme Court headed by the then Chief Justice R C Lahoti held in the judgement of 5th August 2005 (Para 52)

“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 applying Bolam’s test 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.”

2) In another case, Martin F. D’ Souza vs Mohd. Ishfaq(CivilAppealNO.3541OF2002), the Supreme court ordered on 17 February, 2009 (Para 117)

“We, therefore, direct that whenever a complaint is received against a doctor or hospital by the Consumer Fora (whether District, State or National) or by the Criminal Court, then before issuing notice to the doctor or hospital against whom the complaint was made, the Consumer Forum or Criminal Court should first refer the matter to a competent doctor or committee of doctors, specialized in the field relating to which the medical negligence is attributed, and only after that doctor or committee reports that there is a prima facie case of medical negligence should notice be then issued to the concerned doctor/hospital. This is necessary to avoid harassment to doctors who may not be ultimately found to be negligent. We further warn the police officials not to arrest or harass doctors unless the facts clearly come within the parameters laid down in Jacob Mathew’s case (supra), otherwise the policemen will themselves have to face legal action.”

It is clear from the law laid down by the judgments of the Supreme Court, that several steps have to be taken by the Police, before contemplating arrest of a doctor. In fact, some state governments have issued standing operating instructions to the police, to strictly follow the law as laid down in the above two judgments. It would be prudent on the part of doctors, hospitals, other medical establishments and professional bodies to keep these judgements in hand and help in preventing the arrest of doctors.

End Note

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References

1. Jacob Mathew vs State Of Punjab & Anr on 5 August, 2005 [Internet]. [cited 2022 Jul 14].