

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

+ CrI. M.C. No. 827/2010

DATE OF ORDER : 2ND AUGUST, 2010

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02.08.2010

INDRAPRASTHA MEDICAL CORP. LTD.

..... Petitioner

Through: Mr. S.S. Gandhi, Sr. Adv. with
Mr. Ranjan Kumar, Advocate.

Versus

STATE NCT OF DELHI & ORS.

..... Respondents

Through: Mr. P.K. Malik & Mr. N.P. Joshi,
AdO.P. Saxena, APP

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment? Yes.
2. To be referred to the reporter or not? Yes.
3. Whether judgment should be reported in Digest? Yes.

ORAL

1. Present petition has been filed by the petitioner for quashing of order dated 19th December, 2007, passed by learned Metropolitan Magistrate in a complaint case under section 336/337/471 read with section 34 IPC qua the petitioner. It is submitted that petitioner Indraprastha Medical Corporation Limited was a company incorporated under Companies Act and the company being only a juristic person was incapable of committing a crime of medical negligence, because it involved personal negligent act.

2. A complaint was filed before the learned M.M. against the petitioner company and the Doctors involved in the treatment of deceased wherein it was alleged that deceased died due to gross medical negligence of the Doctors. It is also submitted that Doctors involved in treatment advised wrong/superfluous treatments in order to extract extra money.

3. The petitioner's counsel stated that petitioner is not assailing the order as against Doctors but is assailing it so far as company was concerned on the ground that the company running the hospital, could not have acted in the manner in which it is assailed by the complainant.

4. In *Standard Chartered Bank Vs. Directorate of Enforcement*, 2005 SCC (Cri.) 961, SC made following observations regarding criminal liability of the Corporation:

"6. There is no dispute that a company is liable to be prosecuted and punished for criminal offences. Although there are earlier authorities to the effect that corporations cannot commit a crime, the generally accepted modern rule is that except for such crimes as a corporation is held incapable of committing by reason of the fact that they involve personal malicious intent, a corporation may be subject to indictment or other criminal process, although the criminal act is committed through its agents.

X

X

X

8. *Inasmuch as all criminal and quasi-criminal offences are creatures of statute, the amenability of the corporation to prosecution necessarily depends upon the terminology employed in the statute. In the case of strict liability, the terminology employed by the legislature is such as to reveal an intent that guilt shall not be predicated upon the automatic breach of the statute but on the establishment of the actus reus, subject to the defence of due diligence. The law is primarily based on the terms of the statutes. In the case of absolute liability where the legislature by the clearest intendment establishes an offence where liability arises instantly upon the breach of the statutory prohibition, no particular state of mind is a prerequisite to guilt. Corporations and individual persons stand on the same footing in the face of such a statutory offence. It is a case of automatic primary responsibility. It is only in a case requiring mens rea, a question arises whether a corporation could be attributed with requisite mens rea to prove the guilt. But as we are not concerned with this question in these proceedings, we do not express any opinion on that issue.”*

In *Kalpna Rai Vs. State*, 1998 AIR (SC) 201, SC made following observations:

“The company is not a natural person. We are aware that in many recent penal statutes, companies or corporations are deemed to be offenders on the strength of the acts committed by persons responsible for the management of affairs of such company or corporations e.g. Essential Commodities Act, Prevention of Food Adulteration Act etc. But there is no such provision in TADA which makes the company liable for the acts of its officers. Hence, there is no scope whatsoever to prosecute a company for the offence under Section 3(4) of TADA. The corollary is that the conviction passed against A-12 is liable to be set aside.”

In *Standard Chartered Bank Vs. Vinay Kumar Sood & Ors*, 2009 (1) JCC 756, this court had observed as under:

“Undisputedly, the petitioner is a bank incorporated in England with limited liability by Royal Charter, 1853 and, therefore, is a corporation/company. A company cannot be in any case held to have committed an offence under Section 500 IPC because; most essential ingredient of the said offence i.e. ‘mens rea’ would be missing as a company is a juristic entity or an artificial person, whereas a Director is not a company. The company may be made liable for offences, however, if there is anything in the definition or context of a particular Section or a particular statute which would prevent the application of the said section to a limited

company, the limited company cannot be proceeded against. There are number of provisions of law in which it would be physically impossible by a limited company to commit the offence. A limited company, therefore, cannot generally be tried for offences where mens rea is essential. Similarly, a company cannot face the punishment of imprisonment for obvious reasons that company cannot be sent to prison by way of a sentence.”

5. The offence of criminal negligence requires a specific state of mind in respect of the person committing the offence. The offence of medical criminal negligence cannot be fastened on the company since the company can neither treat nor operate a patient of its own. It is the Doctor working in the company who treats & performs operations. It is the Doctor who examines the patients and prescribes medicines. If there is a deliberate or negligent act of the Doctor working in the Corporation/Hospital, it is the liability of the Doctor and not of the Corporation for criminal negligence despite the fact that due to the act of the Doctor of treating patients the Corporation was getting some revenue. These days, all Doctors with big hospitals, are on panels where they have fixed fee for examination of patients and for conducting operations. Out of this fee, a percentage is paid to the hospital. The hospital/company cannot be held liable for the personal negligence of the Doctor in giving wrong treatment. However, if there is an

administrative negligence, or a negligence of not providing basic infrastructure, which results into some harm to an aggrieved person or such negligence which is impersonal, the hospital can be held liable. But, in the case of medical negligence, which is personal to the Doctor who gave treatment, the Corporation would not be liable and it is the Doctor who can be indicted for medial criminal negligence.

6. I therefore, allow this petition in respect of the petitioner. The order passed by learned M.M. qua the petitioner is hereby quashed.

AUGUST 02, 2010
acm

SHIV NARAYAN DHINGRA, J.