
SUPREME COURT GUIDELINES - SILVER LINE IN THE CLOUD TO DOCTORS FAILING NEGLIGENCE SUITS

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Doctors are undoubtedly the soft targets in the present society. The people who praise doctors to Altar when the treatment is successful, the same people do not hesitate to manhandle him or try to harass the doctor by filing the negligence suit against him if things go reverse. This kind of trend has increased multifold since the implementation of COPRA (Consumer protection Act 1986) due to various social, economical and personal reasons.

Whenever the doctor is charged of medical negligence by the patient /relatives, there was every chance of him /her getting arrested / harassed by the police under section 304 (A) of IPC. Sec 304 (A) IPC is Causing death by negligence “whoever causes the death of any person by doing any rash and negligent act not amounting to culpable homicide shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both”.

The police under this section can arrest the doctor, which was originally meant for drunken driving causing injury or death.

Arrest of the Doctor by the police may have long term impact on his profession, reputation, social and financial status even though he may come out with clean chit later, which happens in

most of the cases. The release of the doctor will not make news, as his arrest. This has become a nightmare to the practicing doctors and causing lot of stress while handling even routine cases. This had resulted in many inconveniences, mainly to the patient like refusal for treatment, increased cost of treatment etc.

Many appeals, requests and protests by the medical fraternity to avoid this uncomfortable situation were gone in vein. This kind of harassment to the doctors continued and we were all suffering silently all these days. This suffering has come to an end now due to interference by the Supreme Court of India.

On 17/02/2009 supreme count has stepped in to check harassment of the doctors in alleged medical negligence cases. A division bench of Justice Markandey Katja and Justice G. S. Singhvi held that the consumer and criminal courts would have to seek the opinion of another competent doctor or a panel of doctors before issuing a notice to a doctor or hospital in alleged cases of negligence.

Whenever the Consumer forum or criminal court receives a complaint against doctor, it should refer the matter to a panel of experts. If the committee reports that there is prima facie evidence of medical negligence, should a notice to be sent to the doctor or hospital.

It is to avoid harassment to the doctor who ultimately may not found to be negligent at all.

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The bench also held that the court and consumer forums are not experts in the medical sciences and must not hold their views over that of specialists. It also took a concern over the commercialization of medical profession due to some selfish doctors. However for their deeds entire medical fraternity should not be looked with suspicion or blamed.

It has also asked the police officers not to arrest or harass the doctor unless the facts were in line with apex court guidelines. It also further warned them of legal action if they do not strictly adhere to the guidelines.

This was with reference to 7yr old case Mohammed Ishfaq v/s Nanavati hospital [Supreme court - Civil appeal No- 3541 of 2002 ,Martin F D'souza appellant verses Mohd. Ishfaq respondent]

These fresh guidelines have really put a breather in to the hopes of the medical fraternity who are accused of medical negligence. Now all the practitioners can leave a sigh of relief and continue to practice medicine with enthusiasm, honesty and integrity using their best skills and knowledge. This is a very positive step by the Supreme Court in encouraging all GOOD DOCTORS to perform their duties in relation to medical practice without any apprehension, anxiety, or fear of harassment or arrest. In due course of time and also in long run this ruling by the Apex court will definitely have a great positive impact on the medical profession and practice in India in all respects. We all should be grateful to the Judiciary for showing confidence in the doctors as well as for these positive and humane guidelines.

[The entire judgment copy of the above mentioned case is available with the author which can be made available on request]

Refereance:

- 1) National News Paper TOI-Dt. 20-02-2009
- 2) <http://www.supremecourtjudgements.in>

*Everyone thinks of changing the world,
but no one thinks of changing himself...*

-Leo Tolstoy

*Believing everybody is dangerous;
believing nobody is very dangerous...*

-Abraham Lincoln