

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).25375/2005

(From the judgement and order dated 30/06/2004 in RFA No. 406/1997 of
The HIGH COURT OF KARNATAKA AT BANGALORE)

STATE OF KARNATAKA

Petitioner(s)

VERSUS

N.B. BASAVARAJ & ORS.

Respondent(s)

(With appln(s) for c/delay in filing SLP and prayer for interim relief and office
report))
(For final disposal)

Date: 29/08/2008 This Petition was called on for hearing today.

CORAM :

HON'BLE Dr. JUSTICE ARIJIT PASAYAT

HON'BLE DR. JUSTICE MUKUNDAKAM SHARMA

For Petitioner(s) Mr. Sanjay R. Hegde, Adv.
Mr. Amit Kr. Chawla, Adv.
Mr.A.Rohen Singh, Adv.
Mr.Vikrant Yadav, Adv.For Respondent(s) Ms. Kiran Suri, Adv.
Mr. S.J.Amith, Adv.
Ms.Aparna Bhat, Adv.
Mrs.K. Sarada Devi ,AdvUPON hearing counsel the Court made the following
ORDER

During the hearing of this petition reference was made to

a three Judge Bench of this Court in Jacob Mathew Vs. State of
Punjab and Anr. 2005 (6) SCC 1. The three Judge Bench was

considering the reference made

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by order dated 9.9.2004 in the said case where the two Judge
Bench was not in agreement with the view taken in Dr. Suresh
Gupta Vs. Government of NCT of Delhi and Anr. 2004 (6) SCC
422.The referring Bench in its order dated 9.9.2004 has
assigned two reasons for their disagreement with the view taken
in Dr. Suresh Gupta case (supra) which are as under:-

(1) Negligence or recklessness being "gross" is not a requirement of Section 304-A IPC and if the view taken in Dr. Suresh Gupta case is to be followed then the word "gross" shall have to be read into Section 304-A IPC for fixing criminal liability on a doctor. Such an approach cannot be countenanced.

(2) Different standards cannot be applied to doctors and others. In all cases it has to be seen whether the impugned act was rash or negligent. By carrying out a separate treatment for doctors by introducing degrees of rashness or negligence, violence would be done to the plain and unambiguous language of Section 304-A.

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If by adducing evidence it is proved that there was no rashness or negligence involved, the trial court dealing with the matter shall decide appropriately. But a doctor cannot be placed at a different pedestal for finding out whether rashness or negligence was involved.

On a reading of Jacob Mathew's case (supra) decided by the three Judge Bench it appears that the points which formed the foundation for disagreement with the view taken in Dr. Suresh Gupta's case (supra) were not specifically dealt with, as appears from the conclusions at paragraph 48.

With great respect we find that the conclusions do not appear to have been arrived at with reference to the specific points for disagreement as noted in the order dated 9.9.2004 while making reference.

That being so, we are of the view that the matter needs to be considered by a larger Bench to deal with the specific issues raised in the order dated 9.9.2004 in Jacob Mathew's case (supra) because of the disagreement with the view taken in Dr. Suresh Gupta's case (supra).

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Subsequently another three Judge Bench in State of Punjab Vs. Shiv Ram and Ors. 2005 (7) SCC 1 has followed the view expressed in Jacob Mathew's case.

Since the later judgment followed the ratio in Jacob Mathew's case, the view expressed thereon has also to be tested in the background what has been stated above.

The papers may be placed before Hon'ble the Chief Justice of India for necessary orders.

(Shashi Sareen)
Court Master

(Vijay Aggarwal)
Assistant Registrar