IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE V.G.ARUN

Monday, the 4th day of August 2025 / 13th Sravana, 1947

CRL.MC NO. 3414 OF 2025

CRIME NO.485/2024 OF PERAMANGALAM POLICE STATION, THRISSUR

PETITIONER/ACCUSED:

DR.MOHAMED RIZWAN T, AGED 36 YEARS,S/O ABDUL RASHEED T, 48/1834L, PUTHANPURA ROAD, ELAMAKKARA P.O, ERNAKULAM, PIN - 682026

RESPONDENT(S)/STATE:

1. **STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR,HIGH COURT OF KERALA, PIN - 682031**
2. **ASSISTANT COMMISSIONER OF POLICE,THRISSUR, OFFICE OF THE ASSISTANT COMMISSIONER OF POLICE, VELIYANNUR, THRISSUR, KERALA, PIN - 680001**
3. **DR.JACOB JOHN, KOCHU PUTHEN VEEDU, POOYAPALLY P.O, POOYAPALLY, KOLLAM (SOUGHT TO BE IMPLEADED)**
4. **DR.T.K.MANOJ,BODHI HOUSE 245,MAVELIPURAM, SECTOR 8,KAKKANAD P.O. ERNAKULAM (SOUGHT TO BE IMPLEADED)**
5. **DR.SALIM C.EAPEN, PANAMOOTTU MANNIL, ERAVIPEROOR, PATHANAMTHITTA (SOUGHT TO BE IMPLEADED)**
6. **DR. DILEEP V, PALLIYAMPIL, CHEPPAD, ALAPPUZHA (SOUGHT TO BE IMPLEADED)**
7. **DR.SUMITRAN G, SUKRITI, MANAKKARA, SASTHAMCOTTA P.O, SASTHAMKOTTA, KOLLAM (SOUGHT TO BE IMPLEADED)**
8. **DR RAJEEV DIGAMBAR JOSHI, NEAR RSM HIGH SCHOOL 1416, SADASHIV PETH, NEAR RSM GIRLS SCHOOL, PUNE (SOUGHT TO BE IMPLEADED)**

This Criminal Misc. case coming on for orders, upon persuing the petition and upon hearing the arguments of M/S.V.JOHN SEBASTIAN RALPH, VISHNU CHANDRAN, RALPH RETI JOHN, GIRIDHAR KRISHNA KUMAR, GEETHU T.A., MARY GREESHMA, LIZ JOHNY & KRISHNAPRIYA SREEKUMAR, Advocates for the petitioner and of PUBLIC PROSECUTOR for R1 & R2 and M/S. A AJIT JOY, PANCHAMI MENON,Advocate for R3 to R7 and DR RAJEEV DIGAMBAR JOSHI,(Party-In-Person) for R8, the court passed the following:

V.G.ARUN, J

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Crl.M.C.Nos.3414 and 4729 of 2025

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Dated this the 4th day of August, 2025

ORDER

Crl.M.C.No.3414 of 2025

The petitioner, a medical practitioner, is the sole accused in C.C.No.52 of 2025 on the files of the Judicial First Class Magistrate Court, Kunnamkulam. The case originated from Crime No.485 of 2024, registered at the Peramangalam Police Station for the offence under Section 304A of IPC. The circumstances leading to the registration of the crime are as under;

On 12.07.2023, a person named Vinod P.V was admitted at the Amala Medical College with a lacerated wound on his chest. The wife of the injured, who had accompanied him, stated that the wound was the result of a drunken accident, when the injured slipped and fell on a sharp piece of wood. The patient, who was conscious and speaking coherently, supported his wife's

version. The wife also informed that the patient was initially taken to the Government Hospital at Puthukkad and from there he was referred to the Medical College. Instead of following the advice, the patient was taken to the ESI Hospital and referred to the Amala Medical College. While undergoing treatment at the Amala Medical College, the patient succumbed to death at 01:50 am on 14.07.2023. In the postmortem conducted at around 03:40 pm on the same day, it was observed that, despite decrease in oxygen saturation and moderate fluid collection with collapse of underlying lung, there was no evidence of any active intervention performed to remove the collected blood. Immediately after the death of Vinod, a crime was registered against his wife, as it came to light that Vinod had sustained injury on being stabbed by his wife. A few days later, the Dy.S.P, Chalakudy informed the petitioner and the Medical Superintendent of the hospital about the possibility of medical negligence aspect being investigated based on the opinion expressed by the Forensic Surgeon. The information was passed

on to the petitioner, he being the Surgeon in the team of doctors that had examined and treated Vinod. More than a year later, on 06.11.2024 to be precise, the petitioner was summoned to the office of the Assistant Commissioner of Police, Thrissur and informed that the District Medical Board, in its meeting held on 19.02.2024, had opined that there had occurred negligence in treating the patient at Amala Medical College. The opinion was rendered on noticing that, in spite of the scan taken on 13.07.2023 displaying substantial blood loss and blood clotting along the left chest cavity and the Radiologist marking the area for tube insertion to drain out the excessive blood, no steps were taken to consult the Cardiothoracic Surgeon or to carry out immediate tube insertion and drainage. Based on the report of the Expert Panel, Annexure N FIR, arraying the petitioner as accused, was registered on 28.06.2024. After completing investigation, Annexure A final report was filed and cognisance taken by the jurisdictional Magistrate. In the meanwhile, the petitioner filed appeal challenging the report of the Expert Panel

before the State Level Apex Expert Committee in Medical Negligence Cases.

2. Adv.John S. Ralph appearing for the petitioner submitted that the Expert Panel had rendered its opinion without noticing that the patient was experiencing alcohol withdrawal induced delirium and exhibiting aggressive behaviour, making it extremely dangerous to insert and retain the chest tube, as tube disconnection would have resulted in large amount of air entering the chest cabin, which, in turn, could lead to sudden deterioration and even death. Inserting the tube while the patient was in an agitated condition could also result in puncturing of vital organs and dislodging of the blood clot already formed. Moreover, repeated assessments of the patient showed his vitals to be normal, with only moderate hemothorax i.e, pooling of blood along the side of the left lung in the chest cavity. Referring to certain authoritative studies, it is submitted that hemothoraces can be safely observed without Tube Thoracostomy (TT) and under the given conditions, treatment

without TT was the best option. According to the counsel, if the Expert Panel had granted petitioner the opportunity, he would have been able to convince the members of the Panel that his decision was medically correct. Not only was such opportunity denied, even a copy of the report was not served on the petitioner.

3. Learned counsel then contended that an error in the decision taken by a medical professional cannot result in prosecution for the offence under Section 304A IPC, unless the decision is totally against the accepted procedure/guidelines, and no medical practitioner in his normal sense and prudence would have taken such decision. To buttress the argument, reliance is placed on a plethora of decisions, including **Jacob Mathew v. State of Punjab and Another** [(2005) 6 SCC 1], **Kishan Chand and Another v. State of Haryana** [(1970) 3 SCC 904], **John Oni Akerele v. The King** [AIR 1943 PC 72], **Bolam v. Friern Hospital Management Committee** [1957 (1) WLR 582], **Hucks v. Cole** [1968 (118) New LJ 469] and **Hunter**

v. Hanley [(1955) SLT 213].

4. Learned counsel also argued that Section 304A of IPC is a classic example of bad drafting and drew attention to the provision for causing death by negligence, included in the Draft Penal Code of 1835 extracted below;

> "Whoever causes the death of any person by any act or any illegal omission, which act or omission was so rash or negligent as to indicate a want of due regard for human life, shall be punished with imprisonment of either description for a term which may extend to two years, or fine, or both";

The draftsmen omitted to add the above provision when the Indian Penal Code was enacted in 1860 and the omission was later cured in 1870, by inserting Section 304A. On a comparison of the above extracted provision with Section 304A IPC, it will be clear that the words, "so rash or negligent as to indicate a want of due regard for human life" was wantonly replaced by the word "any", unmindful of the concept of *actus reus* and *mens rea*.

5. Relying on precedents, it is contended that even in the

absence of the word “gross negligence” in Section 304A, negligence or recklessness to be so held, must be of such a high degree as to be gross. Therefore, the expression 'rash or negligent act' in Section 304A has to be read as “grossly negligent act”.

6. Finally, it is submitted that undue reliance placed on the report of the Expert Panel by trial courts is causing substantial prejudice, as it is difficult to dislodge the credibility being attached to the report, even by examining other experts. This, according to the counsel, is all the more reason for ensuring proper constitution and functioning of the Expert Panel.

Crl.M.C.No.4729 of 2025

7. The petitioner, a medical practitioner, is the accused in C.C.No.2316 of 2017 on the files of the Judicial First Class Magistrate Court, Adoor, and is facing prosecution for the offence under Section 304A of IPC. The case arose from Crime No.784 of 2010 registered at the Pandalam Police Station,

pursuant to the death of a lady named Bindu Sajeev while undergoing treatment at Chitra Multispeciality Hospital, Pandalam after delivery. The petitioner, an Obstetrician and Gynaecologist, had conducted the Lower Segment Cesarean Section on Bindu Sajeev at 09:40 pm on 26.07.2010, with her husband's consent. The patient delivered a live baby at 09:56 pm. During the operation procedure, Bindu was found to be having a huge hematoma in the retroperitoneal area, extending from the diaphragm to the pelvic wall. Based on the advice of the consultant Surgeon of the hospital, the patient was provided conservative line of management by adopting appropriate measures to mitigate the situation and keep her stable. As the condition of the patient kept deteriorating, by about 12 o' clock, her husband was advised to take the patient to the Kottayam Medical College Hospital, the nearest higher centre. Even though the advice was repeated at 04:10 am on 27.07.2010, the patient was taken to the Medical College Hospital only by 6 am. Unfortunately Bindu died before she reached the Medical

College Hospital. Her postmortem was conducted on the same day and, at the request of the Deputy Superintendent of Police, Adoor, an Expert Panel was constituted. After due deliberation, the panel submitted a report on 19.05.2012 stating that the members could not find any act of commission on the part of the treating doctor. After rendering such an opinion, the panel went on to hold that an earlier referral and timely intervention by way of exploratory laparotomy would have saved the patient, and to that extent, there was negligence on the part of the treating doctor. Based on the expert panel report, the police concluded the investigation and filed final report, arraying the petitioner as the accused.

8. Adv.C.R.Sanish, learned counsel appearing for the petitioner adopted the arguments of Adv. John S. Ralph and submitted that, having found no negligence on the part of the treating doctor, the Expert Panel committed gross illegality in finding him to be at fault for delaying the referral of the patient. According to the counsel, entries in the medical records clearly

show that the petitioner had advised referral at 12 am on 26.07.2010 and had followed it up with a second advice at 04:10 am on 27.07.2010. The delay on the part of the husband and relatives of the patient in taking her to the Medical College Hospital, cannot result in the petitioner being prosecuted. It is contended that the failure on the part of the expert panel to afford an opportunity of hearing to the petitioner and refusal to issue him with a copy of the report, is unjustified. The petitioner came to know about his implication in the crime and about the expert panel report only on being served with summons from the jurisdictional court. Immediately, the petitioner filed an appeal before the State Level Apex Expert Committee in Medical Negligence Cases and the appeal is yet to be decided.

9. Senior Advocate Gracious Kuriakose, the learned ADGP, argued that, ideally, before reaching its conclusion, the Expert Panel ought to provide the doctor facing allegation of medical negligence, an opportunity to offer his/her explanation. According to the ADGP, it would also be advisable to furnish a

copy of the Expert Panel Report to the doctor and await the outcome of his/her appeal if any filed against the report, before concluding the investigation and filing the final report in court. A copy of the letter containing the Kerala State Medical Council's suggestions was also made available by the ADGP.

10. After hearing the arguments and on being convinced about the necessity for formulating, proper guidelines for the functioning of the Expert Panel, Advocate Akash.S was appointed as amicus curiae to assist the court in formulating the guidelines. To his credit, the learned amicus curiae conducted an in-depth study and submitted a report containing valuable suggestions.

11. Impleading petitions are filed on behalf of a practicing doctor and an organisation of doctors named Medico-Legal Society of India. Advocate Ajith Joy appearing for the doctor and Dr.Rajeev Digambar Joshi representing the Society were also heard with respect to the necessity of the guidelines.

12. In common parlance, medical negligence occurs when a

healthcare professional breaches his duty of care, causing harm to a patient. In **Halsbury's Laws of England** [Ed. : 4th Edn., Vol. 30, para 35], the degree of skill and care required by a medical practitioner is stated as follows:

> "35. *Degree of skill and care required.*—The practitioner must bring to his task a reasonable degree of skill and knowledge, and must exercise a reasonable degree of care. Neither the very highest nor a very low degree of care and competence, judged in the light of the particular circumstances of each case, is what the law requires, and *a person is not liable in negligence because someone else of greater skill and knowledge would have prescribed different treatment or operated in a different way*; nor is he guilty of negligence if he has acted in accordance with a practice accepted as proper by a responsible body of medical men skilled in that particular art, *even though a body of adverse opinion also existed among medical men".*
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> (emphasis supplied)

13. The following test laid down by McNair J. in **Bolam** (supra) is an accepted standard for deciding whether the alleged omission or commission amounts to medical negligence;

> " But where you get a situation which involves the use of some special skill or competence, then the test as to whether there has been negligence or not is not the test of the man on the top of a

> Clapham omnibus, because he has not got this special skill. The test is the standard of the ordinary skilled man exercising and professing to have that special skill. A man need not possess the highest expert skill; it is well established law that it is sufficient if he exercises the ordinary skill of an ordinary competent man exercising that particular art."

14. The Code for Crown Prosecutors, a public document issued by the Director of Public Prosecutions in the United Kingdom, sets out the general principles Crown Prosecutors should follow when they make decisions on cases. In the latest update of the Crown Prosecution Service (CPS) on the offence of Gross Negligence Manslaughter, the following elements are stated to be essential for proving the offence;

a) The defendant owed a duty of care to the deceased;

b) By a negligent act or omission the defendant was in breach of the duty which he owed to the deceased;

c) The negligent act or omission was a cause of the death; and

d) The negligence, which was a cause of the death, amounts to gross negligence and is therefore a crime;

15. The authoritative pronouncements on medical negligence by the Supreme Court of India in recent times starts with **D.Suresh Gupta v. Govt. of NCT of Delhi and Another,** [(2004) 6 SCC 422]**,** the relevant portion of which is extracted below for easy reference;

> **20.** 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. The decision of the House of Lords in *R.* v. *Adomako* [(1994) 3 All ER 79 (HL)] relied upon on behalf of the doctor elucidates the said legal position and contains the following observations:
>
> "Thus a doctor cannot be held criminally responsible for patient's death unless his negligence or incompetence showed such disregard for life and safety of his patient as to amount to a crime against the State."
>
> xxxx xxxx
>
> **26.** To convict, therefore, a doctor, the prosecution has to come out with a case of high degree of negligence on the part of the doctor. Mere lack of proper care, precaution and attention or inadvertence might create civil liability but not a criminal one. The courts have, therefore, always insisted in the case of alleged criminal offence against the doctor causing death of his patient during treatment, that the act complained against the doctor must show

negligence or rashness of such a higher degree as to indicate a mental state which can be described as totally apathetic towards the patient. Such gross negligence alone is punishable".

16. In **Jacob Mathew** (supra)**,** after elaborate precedential survey, the Supreme Court affirmed the findings in **Dr.Suresh Gupta** (supra), and summed up its conclusions at paragraph 48, as under;

"48.We sum up our conclusion as under:

(1) Negligence is the breach of a duty caused by omission to do something which a reasonable man guided by those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a prudent and reasonable man would not do. The definition of negligence as given in *Law of Torts*, Ratanlal & Dhirajlal (edited by Justice G.P. Singh), referred to hereinabove, holds good. Negligence becomes actionable on account of injury resulting from the act or omission amounting to negligence attributable to the person sued. The essential components of negligence are three: "duty", "breach" and "resulting damage".

(2) Negligence in the context of the medical profession necessarily calls for a treatment with a difference. To infer rashness or negligence on the part of a professional, in particular a doctor, additional considerations apply. A case of occupational

negligence is different from one of professional negligence. A simple lack of care, an error of judgment or an accident, is not proof of negligence on the part of a medical professional. So long as a doctor follows a practice acceptable to the medical profession of that day, he cannot be held liable for negligence merely because a better alternative course or method of treatment was also available or simply because a more skilled doctor would not have chosen to follow or resort to that practice or procedure which the accused followed. When it comes to the failure of taking precautions, what has to be seen is whether those precautions were taken which the ordinary experience of men has found to be sufficient; a failure to use special or extraordinary precautions which might have prevented the particular happening cannot be the standard for judging the alleged negligence. So also, the standard of care, while assessing the practice as adopted, is judged in the light of knowledge available at the time of the incident, and not at the date of trial. Similarly, when the charge of negligence arises out of failure to use some particular equipment, the charge would fail if the equipment was not generally available at that particular time (that is, the time of the incident) at which it is suggested it should have been used.

(3) A professional may be held liable for negligence on one of the two findings: either he was not possessed of the requisite skill which he professed to have possessed, or, he did not

exercise, with reasonable competence in the given case, the skill which he did possess. The standard to be applied for judging, whether the person charged has been negligent or not, would be that of an ordinary competent person exercising ordinary skill in that profession. It is not possible for every professional to possess the highest level of expertise or skills in that branch which he practices. A highly skilled professional may be possessed of better qualities, but that cannot be made the basis or the yardstick for judging the performance of the professional proceeded against on indictment of negligence.

(4) The test for determining medical negligence as laid down in *Bolam case* [(1957) 1 WLR 582 : (1957) 2 All ER 118 (QBD)] , WLR at p. 586 [[**Ed.**: Also at All ER p. 121 D-F and set out in para 19, p. 19 herein.]] holds good in its applicability in India.

(5) The jurisprudential concept of negligence differs in civil and criminal law. What may be negligence in civil law may not necessarily be negligence in criminal law. For negligence to amount to an offence, the element of *mens rea* must be shown to exist. For an act to amount to criminal negligence, the degree of negligence should be much higher i.e. gross or of a very high degree. Negligence which is neither gross nor of a higher degree may provide a ground for action in civil law but cannot form the basis for prosecution.

(6) The word "gross" has not been used in Section 304-A IPC, yet it is settled that in criminal law negligence or recklessness, to be

> so held, must be of such a high degree as to be "gross". The expression "rash or negligent act" as occurring in Section 304-A IPC has to be read as qualified by the word "grossly".
>
> (7) To prosecute a medical professional for negligence under criminal law it must be shown that the accused did something or failed to do something which in the given facts and circumstances no medical professional in his ordinary senses and prudence would have done or failed to do. The hazard taken by the accused doctor should be of such a nature that the injury which resulted was most likely imminent.
>
> (8) *Res ipsa loquitur* is only a rule of evidence and operates in the domain of civil law, specially in cases of torts and helps in determining the onus of proof in actions relating to negligence. It cannot be pressed in service for determining *per se* the liability for negligence within the domain of criminal law. *Res ipsa loquitur* has, if at all, a limited application in trial on a charge of criminal negligence". (underline supplied)

17. Based on the conclusions above, the following guidelines were laid down in ***Jacob Mathew***;

> "**52.** Statutory rules or executive instructions incorporating certain guidelines need to be framed and issued by the Government of India and/or the State Governments in consultation with the Medical Council of India. So long as it is not done, we propose to lay down certain guidelines for the future which should govern the prosecution of doctors

> for offences of which criminal rashness or criminal negligence is an ingredient. 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 the *Bolam* [(1957) 1 WLR 582 : (1957) 2 All ER 118 (QBD)] *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 levelled against him). Unless his arrest is necessary for furthering the investigation or for collecting evidence or unless the investigating officer feels satisfied that the doctor proceeded against would not make himself available to face the prosecution unless arrested, the arrest may be withheld."
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> *(Underline supplied)*

18. The legal position is reiterated in **Martin F. D'Souza v. Mohd. Ishfaq,** [(2009) 3 SCC 1] and the Court held that in order to fasten liability in criminal proceedings eg. under Section 304-A IPC the degree of negligence has to be higher than the negligence which is enough to fasten liability in civil proceedings. While for civil liability it may be enough for the

complainant to prove that the doctor did not exercise reasonable care in accordance with the principles mentioned above, for convicting a doctor in a criminal case, it must also be proved that this negligence was gross amounting to recklessness. The Court also warned the police of legal action against harassing and arresting the doctors accused of medical negligence in violation of the directives in **Jacob Mathew**.

19. Again in **Kusum Sharma and Others v. Batra Hospital and Medical Research Centre and Others** [(2010) 3 SCC 480], the Apex Court culled out the principles on medical negligence emerging from various decisions and declared that, as long as the doctors have performed their duties and exercised an ordinary degree of professional skill and competence, they cannot be held guilty of medical negligence.

20. Later, in **Arun Kumar Manglik v. Chirayu Health & Medicare Private Limited and Another** [(2019) 7 SCC 401]**,** the Supreme Court struck a note of caution by pointing out that the standard of care as enunciated in **Bolam** case (supra) must

evolve in consonance with its subsequent interpretation by the English and Indian courts. The Court also observed that it is bound by the standard adopted in **Jacob Mathew,** of the course adopted by the medical professional being consistent with the "general and approved practice".

21. Subsequently, in **Lalita Kumari v. Government of Uttar Pradesh and Others,** [(2014) 2 SCC 1], the Constitution Bench of the Apex Court considered the important issue whether "police officers are bound to register first information report (FIR) upon receiving information relating to commission of a cognizable offence under Section 154 of the Code of Criminal Procedure, 1973 (in short 'the Code') or opt to conduct a 'preliminary inquiry' in order to test the veracity of such information before registering the crime". After holding that the police is bound to register FIR if a cognisable offence is made out and preliminary inquiry is possible only if the disclosed information does not make out a cognisable offence, the category of cases in which preliminary inquiry can be made were

enumerated in paragraph 120 of the judgment, the contextually relevant portion of which is extracted below;

> "**120.6.** As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:
>
> (*a*) Matrimonial disputes/family disputes
>
> (*b*) Commercial offences
>
> **(*c*) Medical negligence cases**
>
> (*d*) Corruption cases
>
> (*e*) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months' delay in reporting the matter without satisfactorily explaining the reasons for delay.
>
> The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry."
>
> (emphasis supplied)

22. The question here is whether the circulars issued by the Government of Kerala are consistent with the decisions above and provides fair opportunity to the doctor against whom the allegation is raised. As rightly pointed out by the learned *amicus curiae,* even though the Government of Kerala has issued a series of circulars starting from 1989 onwards to deal with the

investigation of cases where medical practitioners are accused of negligence, constitution of Expert Panels and Apex Body and the timelines for completing the proceedings, none of those circulars stipulates the grant of opportunity of hearing to the medical practitioner. A perusal of similar circulars issued by other States revealed that the Government of Karnataka, as per its Standing Order No.1018 on the subject 'Standard Operating Procedure (SoP) to deal with violence against medical professionals and medical establishments, has made it mandatory for the expert body to give opportunity to the doctor, against whom negligence is alleged, to submit his reply/explanation in writing and to provide an opportunity for personal hearing, if the doctor so desires. Pertinent also to note that in the letter addressed to the Secretary, Ministry of Health and Family Welfare, recommending the framing of specific guidelines for prosecuting doctors facing allegation of medical negligence, the Ethics and Medical Registration Board of the National Medical Commission made the following suggestions.

" 1. The prosecuting/Investigating Agency on receipt of any complaint of which criminal rashness or negligence is an ingredient against medical practitioners under the Indian Medical Council Act, 1956/NMC Act prior to making arrest refer the complaint to district Medical Council Board for its recommendations as regards the merit of the allegation of criminal rashness or negligence, contained in the complaint. The District Medical Board should be in govt. medical college and in district hospital if the district doesn't have a medical college. (The reason being the availability of all the experts with them.) Department of forensic Medicine and Toxicology in every medical college which can be a nodal department for such board.

2. The District Medical Board on receipt of such a reference examine the allegation contained therein within two weeks from the date of its receipt and forward its recommendations to the prosecuting/ investigating Agency.

3. The prosecuting/Investigating Agency or Doctors (against whom the complaint is lodged), in case, it is dissatisfied with the recommendation of the district Medical Board may starting the reasons for such dissatisfied refer the matter to the state Medical Board for its recommendation within a period of two weeks from the receipt of recommendation of the district Medical Board.

4. The state Medical Board should have a pool of specialist

from state from each specialty apart from permanent members appointed by state government. Two specialist of the concerned Branch should be included in the board on the day of receipt of the complaint or appeal.

5. The state medical board on receipt of any such reference from prosecuting/investigating Agency would examine the mater within two weeks from the date of receipt of such reference. The state medical board shall provide reason for endorsing or rejecting the recommendation of the district medical board.

6. The prosecuting/ Investigating Agency on receipt of recommendation of the district/ state medical board may further proceed in the matter in accordance with law. However, in case arrest of a registered medical practitioner in the employment of state/Central Government is being made, the controlling officers of such medical practitioner would be informed by the prosecuting/ Investigating Agency. Likewise, in case the registered medical practitioner is engaged in private practice, the concerned state medical council, or in case there is no state medical council in that state/UT, EMRB NMC informed.

7. A doctor accused of rashness or negligence may not be arrested in a routine manner (simply because allegation has been leveled against him.) Unless the alleged negligence is of gross nature; and arrest is necessary for furthering the

investigation or for collecting evidence or unless the investigation officers is satisfied that the doctor proceeded against would not make himself available to face the prosecution unless arrested, the arrest may be withheld. Further investigating agency prior to arrest of the doctor in such cases shall place factual position for consideration of concerned superintendent of police/DCP.

8. The Boards should apply Bolam's test to facts 'Standard of responsible body of medical opinion. "

24. The precedents, the circulars issued by the Government of Kerala and the Governments of other States and the suggestions/submissions of the learned counsel on both sides leaves no room for doubt that the Government of Kerala should formulate guidelines for the constitution and functioning of the Expert Panel as well as the Apex Committee. Given below is a draft of the guidelines which the Government may adopt or refer to for guidance;

1. Upon receipt of a complaint alleging medical negligence, the Investigating Officer should act swiftly and secure the initial set of documents like doctor's notes, nurses' diary, duty roster, shift reports, attendance sheets, assessment forms, consent forms, medical

reports, diagnostic reports, lab results, referral or cross consultation records, treatment notes, discharge summaries etc.

2. The Investigating Officer shall then intimate the authority concerned about the complaint and request to convene the Expert Panel meeting immediately.
3. A list of practitioners, by specialty, should be maintained in each district and those persons sensitized about the manner in which complaints of medical negligence are to be dealt with. A Doctor from the concerned specialty shall be included in each Expert Panel.
4. The Expert Panel shall conclude its proceedings within 30 days of its constitution.
5. The medical practitioner and the de facto complainant shall be issued with notice and permitted to submit written representations to the Expert Panel.
6. In cases where the Expert Panel finds *prima facie* material indicating gross negligence, the medical practitioner should be called upon to appear in person and offer his explanation regarding the procedure adopted/ treatment provided.
7. The report of the Expert Panel should contain the individual opinion of each expert. The final conclusion of the Panel should be based on consensus.
8. The report should directly address the issue whether gross negligence or recklessness, leading to loss of life, can be attributed to the medical practitioner and specify which individual(s), from among the

team of doctors, is guilty of gross negligence or recklessness and the reasons for reaching such conclusion.

9. The Expert Panel should apply a clear and consistent test for determining criminal negligence with reference to the *Bolam test.* The reasoning of the panel must be reflected explicitly in the report. A reporting template may be developed for use by the Expert Panels.
10. A copy of the report should be served on the medical practitioners affected by the report. In cases where the Expert Panel finds no negligence, on the part of the doctors, a copy of the report should be furnished to the de facto complainant.
11. The right to appeal against the finding of the Expert Panel should be provided to the medical practitioner as well as the de facto complainant.
12. Time limit should be stipulated for filing the appeal and for the State Level Apex Expert Committee to decide the appeal. If the appeal is filed within the time stipulated, the Investigating Officer shall file final report only after the appeal is decided.

25. The learned ADGP is requested to place this draft guidelines before the Government for immediate further action.

26. I place on record my appreciation for the valuable assistance rendered by the learned *amicus curiae*, the counsel for the petitioners, the learned ADGP and the parties seeking

impleadment.

27. As the final reports in the Crl.M.Cs under consideration were filed before deciding the appeals filed by the petitioners, further proceedings in the Calender Cases shall stand stayed for a period of three months. The learned ADGP shall instruct the State Level Apex Expert Committee to decide the appeals filed by the petitioners within two months and make available those decisions to this Court.

Post on 30.09.2025.

sd/-

V.G.ARUN, JUDGE

sj