2026:PHHC:000895

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

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CRM-M-15772-2018 (O&M)
Date of decision: 08.01.2026

Vijay Kumar Dhawan and others **...Petitioners**

Versus

Gurpreet Singh **...Respondent**

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. P. S. Ahluwalia, Senior Advocate with
Mr. H. S. Randhawa, Advocate
for the petitioners.

None for the respondent.

MANISHA BATRA, J. *(Oral)*

1. By way of filing the present petition under Section 482 of Cr.P.C., the petitioners are seeking quashing of Criminal Complaint bearing No. 164 of 2015, titled as ***Gurpreet Singh vs. Dhawan Nursing Home, Bhikhiwind and others*** as well as the order dated 23.03.2018, passed by the Court of learned Judicial Magistrate First Class, Patti in the aforementioned complaint, thereby summoning the present petitioners to face trial for commission of offence punishable under Section 304-A of IPC read with Section 34 of IPC.

2. Brief facts of the case relevant for the purpose of disposal of the present petition are that the respondent/complainant filed the aforementioned complaint on the allegations that his wife Sandeep Kaur was pregnant. In the night of 01.01.2015, she started having labour pains. She was taken to Dhawan Nursing Home. Petitioners No. 1 and 2 had reached at the hospital

on being called by the nurses. Wife of the complainant was taken to operation theatre. She was informed that she would have normal delivery and was asked to deposit the fee. Petitioners No. 2 and 3 had subsequently informed the complainant that a surgery was to be performed for delivery. Petitioner No.4, who was a practicing doctor in Guru Nanak Dev Hospital, Amritsar had been called and had performed surgery. The wife of the complainant had given birth to twin daughters. The complainant was not allowed to meet his wife thereafter and was informed that she was bleeding profusely and that her uterus was to be removed as her condition was serious. The complainant was made to sign some papers. The condition of his wife had worsened. She was taken to some other hospital and was operated again. The doctors of that hospital informed that her surgery had not properly performed by the petitioners and her uterus had not been taken out, due to which, infections had spread in her body. She died during the course of her treatment on 05.01.2015. By holding the petitioners responsible for the death of his wife, the complainant prayed for taking penal action against them.

3. After presentation of the complaint before the jurisdictional Magistrate, preliminary evidence was recorded. The complainant examined himself as CW-2 and produced two more witnesses i.e. CW-1 Gursewak Singh and CW-3 Dr. Rana Ranjit Singh, besides placing reliance upon certain documentary evidence. Vide order dated 23.03.2018, the learned Magistrate observed that a *prima facie* case was made out to issue process against the petitioners and proceeded against them for commission of offence punishable under Section 304-A read with Section 34 of IPC.

Feeling aggrieved by the same, the petitioners have filed the present petition.

4. It is argued by learned counsel for the petitioners that the impugned order is not sustainable in the eyes of law as while passing the same, the learned Magistrate did not consider the fact that the testimony of CW-3 Dr. Rana Ranjit Singh, who was a Professor of Surgery at Sri Guru Ram Dass Institute of Medical Sciences and Research, Amritsar, indicated that at the time of admission in that hospital, the wife of the complainant was conscious and cooperative with stable vitals. She was suffering from postpartum hemorrhage. Her uterus was in atony and was removed to save her life. Her condition had worsened due to disseminated intravascular coagulation. There was no negligence whatsoever on the part of the petitioners, who had treated the victim. The medical opinion produced on record does not show that there was any negligence on the part of the petitioners. The learned Magistrate also ignored the fact that as per the directions issued by this Court in a petition filed by the complainant, a team of doctors was constituted by the Civil Surgeon concerned and a report (Annexure P-5) was given, as per which, there was no lapse or negligence on the part of either of the petitioners.

5. It is further argued by learned counsel for the petitioners that the complainant had filed a similar complaint before the Consumer Forum, which was dismissed in default. In the absence of any positive, convincing and even *prima facie* medical evidence on record to prove that the petitioners had committed any act of medical negligence, no process under Section 304-A of IPC could be issued against them. It is also argued that no private complaint could be entertained on the similar allegations unless there

was a *prima facie* evidence in the form of some credible opinion to support the charge of negligence on the part of the petitioners. While relying upon the authority cited as ***Jacob Mathew vs. State of Punjab and another, 2005 (3) RCR (Criminal) 836***, it is argued that the facts of the case did not come within the parameters as laid down by the Hon'ble Supreme Court in this case and, therefore, neither any complaint could be filed by the respondent/complainant nor the learned Magistrate could issue process against the petitioners. With these broad submissions, it is urged that the petition deserves to be allowed and the impugned complaint as well as the summoning order are liable to be quashed. To fortify his argument, learned counsel for the petitioners has also relied upon the authorities cited as ***Martin F D'Souza vs. Mohd. Ishfaq, 2009 (2) RCR (Criminal) 64, Lalita Kumari vs. Govt. of U.P., 2013 (4) RCR (Criminal) 979, Dr. D. L. Budwal vs. Gurpreet Kaur, Law Finder Doc Id #2055105, Puneet Malhotra vs. State of Haryana, 2014 (7) RCR (Criminal) 2351, Dr. Manish Bansal vs. State of Haryana, 2019 (1) RCR (Criminal) 963*** and ***Dr. Vijay Kher vs. Bishan Singh, 2019 (3) RCR (Criminal) 743***.

6. The respondent/complainant had been duly served with notice. He was previously been represented through counsel. However, on 30.04.2024, his counsel had pleaded no instructions to appear on his behalf. Notice was again issued to the respondent and he was duly served. However, there is no representation on his behalf.

7. This Court has heard the submissions made by learned counsel for the petitioner at considerable length, besides perusing the material placed on record.

8. In ***Jacob Mathew***'s case (supra), Hon'ble Supreme Court was dealing with a case registered on the allegations of carelessness of doctors and nurses of a hospital allegedly leading to the death of the father of the complainant. Hon'ble Supreme Court had observed that the cases of doctors being subjected to criminal prosecution were on an increase. Sometimes such prosecutions were filed by the private complainants and sometimes by police on an FIR being lodged and cognizance taken. The investigating officer and the private complainant could not always be supposed to have knowledge of medical science so as to determine whether the act of the accused medical professional amounts to rash or negligent act within the domain of criminal law under Section 304-A of IPC. The criminal process once initiated subjects the medical professional to serious embarrassment and sometimes harassment. He had to seek bail to escape arrest, which may or may not be granted to him. At the end he may be exonerated by acquittal or discharge but the loss which he has suffered in his reputation cannot be compensated by any standards. Hon'ble Supreme Court had laid down certain guidelines for governing the prosecution of doctors for offences in which criminal rashness or criminal negligence was an ingredient. It was observed that a private complaint might not be entertained unless the complainant had produced *prima facie* evidence before the Court in the form of 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.

9. In ***Martin***'s case (supra), Hon'ble Supreme Court, while relying upon ***Jacob Mathew***'s case (supra), had given direction that whenever a complaint is received against a doctor or hospital by the Consumer Forum 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. It was also observed that this was necessary to avoid harassment to doctors who might not be ultimately found to be negligent. In ***Lalita Kumari***'s case (supra), Hon'ble Supreme Court had relied upon the observations made in ***Jacob Mathew***'s case (supra) in the context of cases involving medical negligence. In ***Dr. D. L. Budwal***'s case, ***Dr. Manish Bansal***'s case and ***Dr. Vijay Kher***'s case (supra), this Court had relied upon the observations made by the Hon'ble Supreme Court in the aforecited cases.

10. On a perusal of the impugned summoning order, it is revealed that the learned Magistrate, while issuing process against the petitioners, had relied upon the statements of the respondent/complainant, CW-1 his brother-in-law Gursewak Singh and CW-3 Dr. Rana Ranjit Singh. At this juncture, it will be relevant to mention that the respondent/complainant had filed a civil writ petition bearing number ***CWP-9691-2015*** before this Court seeking

action against the present petitioners. This Court, while keeping in view the directions issued by Hon'ble Supreme Court in ***Jacob Mathew***'s case (supra), had directed the Senior Superintendent of Police, Tarn Taran to look into the complaint filed by the complainant and proceed in accordance with law, vide order dated 05.08.2015. It is also revealed that thereafter, a thorough inquiry was conducted by a team of two doctors of Civil Hospital, Tarn Taran. The statements of Dr. Rana Ranjit Singh, under whose supervision the treatment of the victim was done in Sri Guru Ram Dass Institute of Medical Sciences and Research, was recorded and a report was submitted that the events that had taken place with the victim from her treatment upto her death, were natural and no doctor was found to be careless/negligent. This report was sent by the doctors concerned to Superintendent of Police, Tarn Taran and the complaint filed by the respondent to the police had been ordered to be filed and thereafter, the complainant had filed the impugned complaint. It is also revealed that the respondent had filed a complaint under the provisions of the Consumer Protection Act against the present petitioners but the same was dismissed in default, vide order dated 14.06.2024.

11. The petitioners have been summoned to face trial under Section 304-A of IPC, as per which, any person, who causes the death of another by doing any rash or negligent act, not amounting to culpable homicide, shall be liable for punishment. In ***Jacob Mathew***'s case (supra), Hon'ble Supreme Court had made following observations with regard to prosecution of doctors for medical negligence:

" 51. We sum up our conclusions 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 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's case [1957] 1 W.L.R. 582, 586 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 action in civil law but gross

nor of a higher degree may provide a ground cannot form the basis for prosecution.

(6) The word 'gross' has not been used in Section 304A of Indian Penal Code, 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 304A of the Indian Penal Code 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."

12. In the instant case, the victim had admittedly died after her delivery and during the course of her treatment, she had suffered from postpartum hemorrhage just after delivering twin daughters. The complainant had filed a complaint before the police. As per the directions issued by this Court in the aforementioned civil writ petition, filed by the respondent, an inquiry was conducted by a team of two doctors by the

Senior Superintendent of Police, Tarn Taran, who filed a report that there was no negligence on the part of the petitioners. Even CW-3 Dr. Rana Ranjit Singh, who was supervising the treatment of the victim in Sri Guru Ram Dass Institute of Medical Sciences and Research, has deposed in his sworn deposition that it was not a case of negligence on the part of the petitioners. The learned Magistrate, while passing the impugned order, has simply observed that the version in the complaint was corroborated by the medical evidence on record to the effect that the death of the wife of the complainant occurred due to the complications in her pregnancy. No finding has been recorded that the medical evidence produced on record pointed out that it was a case of negligence on the part of the petitioners that resulted into death of the victim. Therefore, the learned Magistrate, while passing the impugned order, is not proved to have properly appreciated the evidence produced on record, especially the medical evidence in the form of testimony of CW-3, which did not attribute any negligence to the petitioners. Rather, the testimony of CW-3 shows that the petitioners had not committed any negligence while treating the victim. The learned Magistrate even did not refer the complaint to some board of doctors to obtain any independent and competent medical opinion and did not adopt the procedure prescribed by the Hon'ble Supreme Court in ***Jabob Mathew***'s case and ***Martin***'s case (supra). Even otherwise, the police authorities had got the matter inquired into by constituting a team of two doctors, who opined that there was no negligence on the part of the petitioners. The evidence produced on record before the jurisdictional Magistrate cannot be stated to be *prima facie* sufficient to support the allegations of medical negligence and rashness on

the part of the petitioners.

13. As such, in view the discussion as made above, this Court finds merit in the petition. The same is accordingly allowed and the impugned complaint, pending before the Court of learned Judicial Magistrate First Class, Patti and the summoning order dated 23.03.2018 passed therein are hereby quashed along with all the subsequent proceedings having emanated therefrom qua the petitioners herein.

14. Miscellaneous application(s), if any, also stand disposed of.

08.01.2026 **(MANISHA BATRA)**
Waseem Ansari **JUDGE**

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*