

Dated, 21.06.2023

Circular Memorandum

Sub : Police – Registration of cases against doctors – Proper procedure – Instructions issued - Reg.

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Attention of all officers is invited to the above subject.

2. Instances have come to notice that criminal cases are registered in Police Station u/s 304 (A) IPC - which is culpable homicide not amounting to murder - for negligence against the Medical Practitioners on the complaint of the family members of the deceased or the discharged patients. Such extreme action is unjustified as it causes damage to the reputation of the medical practitioner. It also demoralises the entire health care fraternity, who take care of the health of people.

3. It may be borne in mind that, complications during treatment especially surgery are likely to happen independent of the procedures and in spite of the best efforts taken by the doctors in good faith.

4. The Hon'ble Supreme Court of India and the Hon'ble High Court have issued guidelines time and again in this regard to the effect that the doctors shall be held criminally responsible only if a prima facie case is made out and after getting an expert opinion from a qualified doctor, preferably a Government doctor of adequate qualification and training.

5. Extract of important guidelines of the Hon'ble Supreme Court of India are given hereunder:

- i) A simple lack of care, an error of judgement or an accident, is not proof of negligence on the part of a medical professional.*
- ii) 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.*
- iii) Simply because a more skilled doctor would not have chosen to follow or resort to that practice of procedure which the accused followed.*
 - iv) It is not possible for every professional to possess the highest level of expertise of skills in that branch which he practices.*
 - v) 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.*
 - vi) Simply because a patient has not favourably responded to a treatment given by a physician or a surgery has failed, the doctor cannot be held liable.*
 - vii) Human body and medical science both are too complex to be easily understood. To hold in favour of existence of negligence, associated with the action or inaction of a medical professional, requires an in-depth understanding of the working of a professional as also the nature of the job and or errors committed by chance, which do not necessarily involve the element of culpability.*
 - viii) The investigating officer and the private complainant cannot 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 IPC.*
 - ix) 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.*
 - x) 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 Bolam's test to the facts collected in the investigation..

- xi) 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.*
- xii) A mere deviation from normal professional practice is not necessarily evidence of negligence. Let it also be noted that a mere accident is not evidence of negligence. So also an error of judgment on the part of a professional is not negligence per se.*
- xiii) No sensible professional would intentionally commit an act or omission which would result in loss or injury to the patient.*

6. The Government of Tamil Nadu has also issued guidelines to be followed strictly while registering case against the Medical Practitioners, vide G.O.(Ms) No.220 Health and Family Welfare (21) Department, dated, 04.07.2008, which reads as follows :

"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 investigation 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 Bolam's 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 investigation officer feels satisfied that the doctor proceeded against would not make himself available to face the prosecution unless arrested, the arrest may be withheld.”

7. Therefore, it is reiterated that whenever a complaint of death due to negligence on the part of Medical Practitioners is received, the investigating officers should

- a) Make thorough enquiry and collect all oral and documentary evidences.
- b) Obtain the opinion of another competent Government doctor preferably from the Medical College Hospital.
- c) Obtain Legal opinion if a criminality under 304(A) is made out with the available evidences.
- d) The doctor accused of rashness or negligence, shall not be arrested in a routine manner.
- e) The CoPs and SPs should personally review and weigh the evidences before registration of case.
- f) An express report on registration of cases, facts and circumstances with details of evidence of the case shall be sent to the DGP/HoPF within 24 hours of registration of case.

8. Acknowledge the receipt of the circular memorandum.

Sd/- XXXXXX

Director General of Police/HoPF

Tamil Nadu.

To

All Unit Officers