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WP-17803-2023

IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE MANINDER S. BHATTI

ON THE 18<sup>th</sup> OF DECEMBER, 2024WRIT PETITION No. 17803 of 2023*SHRI SHAMBHOOLAL KHATTAR**Versus**THE STATE OF MADHYA PRADESH AND OTHERS*

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Appearance:

*Shri Ashok Lalwani - Senior Advocate assisted by Shri Abhishek Singh -  
Advocate for the petitioner.*

*Shri B.K. Upadhyay - Government Advocate for the State.*  
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ORDER

This petition under Article 226 of the Constitution of India has been filed by the petitioner challenging inaction on the part of respondent Nos. 2 and 3 in not registering the case against the Doctors of Ashish Hospital, which according to the petitioner, were responsible for the death of the son of the petitioner (hereinafter referred to as the patient).

2. The facts giving rise to this petition are that the son of the petitioner was admitted in Ashish Hospital, Jabalpur on 27.1.2022 at about 11:15 AM for the purpose of surgery of stone. On 27.1.2022, at about 8:00 PM, the surgery was conducted for about one hour and after the surgery, the patient was shifted to normal ward and at that time the Blood Pressure of the patient was 150/90, which was not normal. On 29.1.2022 at about 7:00 AM, the patient started feeling pain in his chest and fell down. The patient was not provided any emergency medical back, therefore, the patient died due to



cardiac arrest. It is further averred in the petition that after performing the last rites of his son, the petitioner went again to Ashish Hospital and asked for Fitness Test Report, ECG report and CBC Test and all other documents relating to the patient but the same were not provided to him. Thereafter, when the petitioner made communications dated 3.3.2022, 15.3.2022 and 29.3.2022 to the Authorities of the Ashish Hospital, the ECG report was provided to him and thereafter he came to know that the ECG number mentioned is not the same as the ECG No. mentioned previously and the patient ID number in the ECG is also different as compared and mentioned in the Admission Card. Thereafter on 21.5.2022, the petitioner again made a communication to respondent Nos. 2 and 3 to register a case against the concerned Doctors of the said hospital. Respondent Nos. 2 and 3 refused to register a case on the ground that they would first seek expert's advice as regards the said issue. Subsequently on 9.5.2023, an expert report of two Doctors of the Victoria Hospital, Jabalpur was provided to the petitioner wherein no negligence on the part of the Doctors of Ashish Hospital was found. The petitioner produced the said report and other documents before the Medical Board, Umaria, which was contrary to the report submitted by two Doctors of Victoria Hospital, Jabalpur. It is submitted that inspite of High Blood pressure, the surgery of the patient was conducted, which amounted to medical negligence and comes within the purview of offence under Section 304-II of the Indian Penal Code. By referring the above opinion of the Medical Board, Umaria, the petitioner again wrote a letter to respondent No. 2 for registering the case against the Doctors involved but to



no avail. Hence, this petition has been filed.

3. Learned senior counsel for the petitioner contends that it is a case where the patient, who was the son of the petitioner, was done to death on account of gross negligence at the behest of the Doctors of the Ashish Hospital, therefore, in view of the law laid down by the Supreme Court in the case of **Jacob Mathew Vs. State of Punjab & another - (2005) 6 SCC 1**, the case ought to have been registered against them for the offence punishable under Section 304-II of the Indian Penal Code. It is further contended that in the present case, the patient was hospitalized on 27.1.2022 in the Ashish Hospital, Jabalpur for the purpose of removal of stone from kidney and his registration number was 159350. It is submitted that the Blood Pressure of the patient on 27.1.2022 was 140/90, which is evident from Annexure P-2, then 150/94 as per Annexure P-3 and 150/90 as per Annexure P-4. The surgery was conducted on 27.1.2022 and after the surgery, the patient was shifted to normal ward. Suddenly, on 29.1.2022, the patient complained pain in chest, fell down and died due to cardiac arrest. It is contended that in the present case, there is ECG report (Annexure A-6) of the patient, which contains different ID No. 3445 whereas it was not the ID of the son of the applicant. The ID of the patient was 159350 and no such ID, which was mentioned in the ECG report, was provided to the patient. It is contended that in the present case, the petitioner made complaint to Chief Medical and Health Officer, Jabalpur and on the said complaint, a report was submitted by the committee of two Doctors. However, the question raised by the petitioner remained unanswered as there was no explanation as regards



different ECG IDs. The said report was not submitted by the expert Doctors. It is also contended that the petitioner produced the documents before the Medical Board at Umaria and the Medical Board, Umaria also gave a report wherein it was opined that in the cases of high Blood Pressure, the surgery should not be performed and at the time of cardiac arrest, the process of Thrombolysis is required to be performed and there has to be consultation with the specialists. No such procedure has been adopted in the present case. It is also contended that as the surgery of kidney was to be performed, therefore, opinion of a Nephrologist was required to be taken, which in the present case has not been done. Thus, in view of the laid down by the Supreme Court in **Jacob Mathew (supra)**, a case is required to be registered against the concerned Doctors. Learned senior counsel has also placed reliance on the decision of the Apex Court in **Lalita Kumari Vs. Government of Uttar Pradesh and others - (2014) 2 SCC 1** to submit that the Authorities were duty bound to register a First Information Report against the accused persons under Section 304-II of the Indian Penal Code.

4. *Per contra*, the counsel for the State submits that the present petition filed by the petitioner is grossly misconceived, inasmuch as, it has been filed without even establishing that as to what kind of negligence was there on the part of the concerned Doctors. It is contended that as the petitioner expressed that he was not aware about the education qualification of the Doctors, who had given their reports, an application has been filed by the respondents vide I.A. No. 17979 of 2023 for taking additional documents on record and along with the said application Registration Certificate of the Doctors were brought



on record as Annexure D-1. It is further contended that the opinion contained in Annexure P-8 was given by the committee of two Doctors on the direction of the Chief Medical and Health Officer wherein it was categorically concluded that the surgery was conducted after following due procedure and as the patient did not complain bleeding in urine, bloating or any pain in the operated area, thus, the surgery was successful. The surgery was conducted through laparoscopy without any stitches. As per medical science, the upper limit of Blood Pressure is 140/90 and there might be momentary increase in Blood Pressure due to anxiety of surgery. With the help of Spinal Anesthesia, the Blood Pressure is kept under control and as per the Anesthesia Science, the surgery can be conducted when Blood Pressure is below 180/110. It is further contended that another application has been filed by the respondent vide I.A. No.604/2024 and along with the same, certificates and degrees of two Doctors, whose names were mentioned in Annexure P-8, have been brought on record. A perusal of same reflects that both of them are well qualified. Dr. Neelkamal Suhane has done Master of Surgery in the subject General Surgery. Therefore, it is clear that the opinion was given by the expert Doctors. It is also contended that the petitioner is seeking prosecution of the Doctors but none of Doctors has been impleaded as respondent in the petition and accordingly, this petition is not maintainable as none of the affected persons have been impleaded in the present petition, therefore, for want of non-joinder of necessary party as well, the present petition is liable to be dismissed.

5. No other point is argued or pressed by the counsel for the parties.



6 . Heard the submissions advanced on behalf of the parties and perused the record.

7. On perusal of record, it reflects that the petitioner's grievance is inaction by respondent Nos. 2 and 3 in not lodging the FIR under Section 304-II of the Indian Penal Code against the Doctors of Ashish Hospital, Jabalpur, who, according to the petitioner, were responsible for the death of the patient/son of the petitioner. It further reflects that the surgery of the patient was conducted and thereafter, the patient was shifted from Operation Theater to private ward on 27.1.2022. Later, on 29.1.2022, the patient died due to cardiac arrest. The contention of the counsel for the petitioner is that on account of negligence while conducting the surgery, the son of the petitioner died and to substantiate the said contention, the counsel for the petitioner harped on the issue that the Blood Pressure reading of the patient was high and in such circumstances, the surgery could not have been conducted. It is also the grievance of the petitioner that the conduct of the officials of the Ashish Hospital was suspicious as different IDs were provided in ECG report of the patient and no expert opinion was obtained.

8 . To deal with the aforesaid contention of the counsel for the petitioner, if the record is perused carefully, it would reveal that the petitioner highlighted his grievance by approaching various Authorities and the Chief Medical and Health Officer, then, constituted a committee to conduct an enquiry. The enquiry was conducted by two qualified Doctors and one of them was Master of Surgery (General Surgery). The committee of both the Doctors submitted a report and in the said report, it was clearly mentioned



that for different kind of investigations in Hospital, there were no different counters and thus, there was difference in ID numbers as well as time. The committee also stated that the basic investigation of a patient is conducted before admission and ultimately the persons accompanying the patient are instructed to make the payment and obtain receipt thereof. In the meantime, ECG investigation of the patient is completed and thus, there was possibility of different time so far as it related to conducting the ECG investigation as well as issuance of receipt of ECG. The committee also dealt with the aspect of conducting surgery where the Blood Pressure is 150/90 or 150/94 and also referred to Anesthesia Science. In response to Query No. 4, the committee reported that all the emergency equipment were available with the Hospital. The Cardiac Catheterization Laboratory (Cath Lab) and all life saving drugs were available in the Hospital and at the time of cardiac arrest, the treatment is given by Dr. Naveen Sharma. The committee concluded that after obtaining medical fitness report of the patient, the surgery was not conducted in traditional manner but it was conducted through laparoscopy, in which hole is made to perform the surgery. It was also stated in report that after the surgery, the patient did not make any complaint and as such, the surgery was successful. Thus, it is clear from the report of the committee that the entire procedure was carried out in terms of the settled principles of medical science.

9. The Supreme Court in the case of **Jacob Mathews (supra)** has observed in Paragraph 50, 51 and 52 as under:-

*"50. As we have noticed hereinabove that the cases of*



*doctors (surgeons and physicians) being subjected to criminal prosecution are on an increase. Sometimes such prosecutions are filed by private complainants and sometimes by the police on an FIR being lodged and cognizance taken. 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 a rash or negligent act within the domain of criminal law under Section 304-A IPC. The criminal process once initiated subjects the medical professional to serious embarrassment and sometimes harassment. He has 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 to his reputation cannot be compensated by any standards.*

*51. We may not be understood as holding that doctors can never be prosecuted for an offence of which rashness or negligence is an essential ingredient. All that we are doing is to emphasise the need for care and caution in the interest of society; for, the service which the medical profession renders to human beings is probably the noblest of all, and hence there is a need for protecting doctors from frivolous or unjust prosecutions. Many a complainant prefer recourse to criminal process as a tool for pressurising the medical professional for extracting uncalled for or unjust compensation. Such malicious proceedings have to be guarded against.*

*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."*

10. The Supreme Court in the case of **Kusum Sharma and others Vs. Batra Hospital and Medical Research Center and others - (2010) 3 SCC 480** held as under:-

*"89. On scrutiny of the leading cases of medical negligence both in our country and other countries specially the United Kingdom, some basic principles emerge in dealing with the cases of medical negligence. While deciding whether the medical professional is guilty of medical negligence following well-known principles must be kept in view:*

*I. Negligence is the breach of a duty exercised 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.*

*II. Negligence is an essential ingredient of the offence. The negligence to be established by the prosecution must be culpable or gross and not the negligence merely based upon an error of judgment.*

*III. The medical professional is expected to bring 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.*

*IV. A medical practitioner would be liable only where his conduct fell below that of the standards of a reasonably competent practitioner in his field.*

*V. In the realm of diagnosis and treatment there is scope for genuine difference of opinion and one professional doctor is clearly not negligent merely because his conclusion differs from that of other professional doctor.*

*VI. The medical professional is often called upon to adopt a procedure which involves higher element of risk, but which he honestly believes as providing greater chances of success for the patient rather than a procedure involving lesser risk but higher chances of failure. Just because a professional looking to the gravity of illness has taken higher element of risk to redeem the patient out of his/her suffering which did not yield the desired result may not amount to negligence.*

*VII. Negligence cannot be attributed to a doctor so long as he performs his duties with reasonable skill and competence. Merely because the doctor chooses one course of action in preference to the other one available,*



*he would not be liable if the course of action chosen by him was acceptable to the medical profession.*

*VIII. It would not be conducive to the efficiency of the medical profession if no doctor could administer medicine without a halter round his neck.*

*IX. It is our bounden duty and obligation of the civil society to ensure that the medical professionals are not unnecessarily harassed or humiliated so that they can perform their professional duties without fear and apprehension.*

*X. The medical practitioners at times also have to be saved from such a class of complainants who use criminal process as a tool for pressurising the medical professionals/hospitals, particularly private hospitals or clinics for extracting uncalled for compensation. Such malicious proceedings deserve to be discarded against the medical practitioners.*

*XI. The medical professionals are entitled to get protection so long as they perform their duties with reasonable skill and competence and in the interest of the patients. The interest and welfare of the patients have to be paramount for the medical professionals.*

**11. Further the Supreme Court in Malay Kumar Ganguli Vs. Dr. Sukumar Mukherjee and others - (2009) 9 SCC 221 observed as under:-**

*"178. Criminal negligence is the failure to exercise duty with reasonable and proper care and employing precautions guarding against injury to the public generally or to any individual in particular. It is, however, well settled that so far as the negligence alleged to have been caused by medical practitioner is*



*concerned, to constitute negligence, simple lack of care or an error of judgment is not sufficient. Negligence must be of a gross or a very high degree to amount to criminal negligence.*

*179. Medical science is a complex science. Before an inference of medical negligence is drawn, the court must hold not only the existence of negligence but also omission or commission on his part upon going into the depth of the working of the professional as also the nature of the job. The cause of death should be direct or proximate. A distinction must be borne in mind between civil action and the criminal action.*

*180. 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 (sic of a) much high degree. A negligence which is not of such a high degree may provide a ground for action in civil law but cannot form the basis for prosecution.*

*181. 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."*

12. The Supreme Court considering the aspect that the investigating officer and the private complainant are not supposed to have knowledge of medical science so as to determine whether the act of the accused medical



professional amounts to a rash or negligent act within the domain of criminal law under Section 304-A IPC. The criminal process once initiated subjects the medical professional to serious embarrassment and sometimes harassment. He has to seek bail to escape arrest. Ultimately, the Supreme Court observed that at the end the medical profession may be exonerated by acquittal or discharge but the loss which he has suffered to his reputation cannot be compensated. The Supreme Court also observed that the service which the medical profession renders to human beings is probably the noblest of all, and hence there is a need for protecting doctors from frivolous or unjust prosecutions. The Supreme Court accordingly observed that 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 test" to the facts collected in the investigation.

13. In the present case, the complaints moved by the petitioner were taken note of and the Chief Medical and Health Officer vide his communication dated 8.6.2022 constituted a committee and the said committee, which consisted of two Doctors including one Doctor being



expert in the field of surgery, submitted its report (Annexure P-8) and accordingly, in view of the said report no action could have been taken by the Authorities.

14. The counsel for the petitioner has placed heavy reliance on the report of Medical Board, Umaria (Annexure P-9) but the same is of no assistance to him as the said committee did not inspect the Hospital. However, if the report (Annexure P-9) is perused from any angle nowhere suggests that the surgery was conducted by the Doctors in negligent and rash manner or the Doctors had not followed settled procedure of surgery in terms of the medical science. Thus, this Court is of the considered view that as the onus was on the petitioner to establish that there was rashness or negligence on the part of the Doctors concerned and said onus having not been discharged in terms of the law laid down in **Jacob Mathew (supra)**, this Court is of the view that the petition filed by the petitioner is devoid of the merits.

15. The Supreme Court in **Jacob Mathew (supra)** also referred to "Bolam test". The "Bolam test" is the standard which determines that a medical professional has performed his duty to provide care to the patient and the procedure which is meant to treat the patient, has been duly followed by the medical professional. In the present case the report of the committee (Annexure P-8), *prima facie*, reflects that the procedure so followed was meeting the standard as per the "Bolam test".

16. The reliance by the senior counsel for the petitioner on the decision of **Lalita Kumar (supra)** is also misplaced, inasmuch as, the prosecution of the medical professional requires expert opinion and



therefore, the Police Authorities cannot proceed against the medical professional in a routine manner, until and unless, the criterion as laid down by the Supreme Court in **Jacob Mathews (supra)** are fulfilled. It is reiterated that the Police officials cannot be expected to act in a mechanical manner when they are clueless about the ailment suffered by the patient, diagnosis by the medical professional and the treatment so provided to the patient. The said procedure falls within the domain of the experts of the medical science and, therefore, the FIR cannot be lodged in a routine manner in view of the observations made by the Supreme Court in **Jacob Mathews (supra)**.

17. Resultantly, the petition sans merit and is hereby dismissed. There shall be no order as to costs.

(MANINDER S. BHATTI)  
JUDGE