2025:CGHC:49753-DB

**AFR**

**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**CRMP No. 1224 of 2024**

**1 -** Dr. Rajib Lochan Bhanja S/o Radhakrushna Bhanja Aged About 50 Years R/o Quarter No. -7, Appollo Hospital, Bilaspur, Tehsil And District - Bilaspur (C.G.)

**2 -** Dr. Sunil Kumar Kedia S/o Shri Gopal Prasad Kedia Aged About 56 Years R/o Rajkishor Nagar, Bilaspur, Tehsil And District - Bilaspur (C.G.)

**3 -** Dr. Devendra Singh S/o Late Inderjeet Singh Aged About 60 Years R-A-36, Vijayapuram, Seepat Road, Bilaspur,tehsil And District - Bilaspur (C.G.)

**4 -** Manoj Kumar Rai S/o Shri Vibhuti Rai, Aged About 51 Years R/o D-15, Vijaypuram , Seepat Road, Bilaspur, Tehsil And Distt.- Bilaspur, (Petitioner Name Father Name Correctly Mentioned)

**... Petitioners**

**versus**

**1 -** State of Chhattisgarh Through The Station House Officer, P.S.- Sarkanda, Distt.- Bilaspur (C.G.)

**2 -** Paramjeet Singh Chabra, R/o Adarsh Colony, Dayal Band, Ps Kotwali, Bilspur, Distt.- Bilaspur (C.G.)

**... Respondent**

*(Cause title taken from CIS)*

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| For Petitioners | :Mr. Sunil Otwani, Senior Advocate assisted by Mr. Rohan Shukla, Advocate. |
| For Respondent/State | :Mr. Shaleen Singh Baghel, Dy.G.A. |
| For Respondent No.2 | :Mr. Surfaraj Khan, Advocate. |

**Hon'ble Shri Ramesh Sinha, Chief Justice**

**Hon'ble Shri Bibhu Datta Guru, Judge**

**Order on Board**

***Per* Bibhu Datta Guru, Judge**

**07.10.2025**

1. By the present petition, the petitioners have prayed for the following reliefs:

> *"It is therefore humbly prayed that the Hon'ble Court may kindly be pleased to quash the FIR No. 1342/23, chargesheet (Annexure P-1) for offence u/s 304A of IPC registered by PS- Sarkanda, District- Bilaspur, C.G which is a gross abuse of process of law, illegal and against the provision of law and thus, liable to be quashed in the interest of justice. The Hon'ble High Court may be pleased to set-aside the consequential criminal proceedings bearing Criminal Case No. 2035/2024 pending before Chief Judicial Magistrate, Bilaspur, District- Bilaspur, CG in the interest of justice.*
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> *Any other relief which this Hon'ble Court deem fit and proper may also kindly be granted to the petitioners in the interest of justice."*

2. Facts of the case, in brief, is that the respondent no. 2 is the father of deceased namely; Goldy Chhabra alias Gurveen Singh Chhabra and he lodged a report alleging, *inter alia*, therein that on 25/12/2016 at about 8.45 a.m. the deceased had visited the Apollo Hospital Bilaspur for medical treatment and after conducting preliminary examination, he was hospitalized and was completely normal, as he was having regular

conversation with his family members. Then the petitioners herein started medically treating the deceased and in that process administered various injection, tablets, ointment etc. etc. and then all of a sudden, the team of doctors did advised the respondent No.2 and his family members that the deceased needs Intensive Care Unit Treatment (for short, "ICU") and was shifted to ICU. Finally on 26/12/2016, the team of doctors (petitioners herein) who were medically treating the son of the respondent No.2 had informed the respondent No.2 and his family members that Goldy Chhabra @ Gurveen Singh Chhabra is no more and was declared dead. The respondent No.2/complainant levelled an allegation that on account of negligence committed by the petitioners, the deceased died.

3. (A) Learned counsel for the petitioners would submit that the petitioners are Doctors by profession. He submits that on 25.12.2016 one Goldi was admitted in Apollo Hospital with critical condition, he was on ventilator and passed away on 26.12.2016 due to multiple organ failure. His autopsy was done on 27.12.2016 and viscera was preserved for chemical examination which was sent in the year 2019. However, the report of the chemical examination does not indicate any residual of sulphas. It is next submitted that a writ petition was filed in the year 2019 by respondent No.2 herein stating that procedure under Section 174 of Cr.P.C. regarding inquest was not followed in proper perspective, therefore, a Board was constituted in CIMS, Bilaspur which opined that *prima facie* there seems to be nothing against the petitioners but since

CIMS do not have the facility of Cardiology, the matter was referred to the State Medical Board in the year 2023. The State Medical Board, which consists of five medical experts including cardiologist, opined that there is no negligence on the part of the petitioners. However, in order to overreach the said report, one report was sought from the medico-legal expert working in the police department who pointed out certain deficiencies e.g. dying declaration was not recorded, procedure under Section 39 of Cr.P.C. has not been followed; MLC intimation was given with a delay, rice tube was not preserved etc. In the entire report given by the medical expert, nowhere the cause and effect theory has been explained. Further, there is unexplained delay in filing of the FIR as the complainants alleged that offence has been committed on 26/12/2016 and instant report has been lodged on 7/10/23 which is after a passage of about 7 years which has not been explained by the complainant which shows that the present FIR is completely an afterthought and has been lodged to illegally harass the petitioners and their noble medical profession which is impermissible under law.

(B) Learned counsel for the petitioners would further submit that time and again it has been opined by the Hon'ble Supreme Court that such matter should be referred to the medical board and in case, there is dearth of such board, the matter should be referred to the person competent in the field. All the medical experts have given opinion in favour of the petitioners that no negligence was committed on their part. However, on the basis of subsequent report which shows negligence of

the petitioners, the aforesaid offence has been registered against them. Learned counsel submits that the medical board was constituted by the Respondent authorities and the said medical board has opined that since the deceased was in hospital for a short duration and was critical therefore it would be difficult to arrive at exact diagnosis and cause of death. It would not be out of place to mention here that no material has been placed by the prosecuting agency to establish that the petitioners have given a wrong treatment to the deceased as a result of which the death has taken place. In catena of cases it has been held by the Hon'ble Supreme Court that the offence against the doctors and against the medical practitioners cannot be registered until and unless there is a clear cut report prepared either by medical practitioner specialists or by the medical board. In support of his contention, he placed reliance on the decisions of the Hon'ble Supreme Court in the matters of **Bolam Vs. Friern Hospital Management Committee, [1957] 1 WLR 582**; and **Jacob Mathew Vs. State of Punjab, (2005) 6 SCC 1**.

4. Learned counsel for the respondents, *ex adverso*, would submit that the deceased Goldy Chhabra @Gurveen Singh Chhabra was not having any disease and to a very young age was rested to die on account of failure & negligent act of petitioners herein. However, the police of police station City Kotwali Bilaspur has only registered Merg/Inquest Report No. 45/2016, but no further investigation done by the police, as required under Sections 174 & 176 of Cr.P.C. Learned counsel further submits that the police authorities obtained another opinion from one Dr. Vikash

Kumar Dhruv who contrary to the opinion of other 5 qualified doctors and finally came to conclusion and opined involvement of ingredients with regard to negligence as stated offence.

5. We have heard learned counsel for the parties, perused the pleadings and documents.

6. Bare perusal of the material available on record, it is apparent that on 25/12/2016, the deceased was admitted in Apollo Hospital Bilaspur with a complaint of pain in abdomen. On due examination, an intimation was given to the concerned police station for medico legal case on 26/12/2016 and in the meantime, during the course of treatment, the deceased died on the same day, for which, merg was registered at P.S. Sarkanda, Bilaspur. Thereafter, on 27/12/2016, autopsy was conducted and the viscera was preserved. On 31/01/2019, the said viscera was sent to FSL for chemical examination. After completion of the examination, the viscera report was sent to S.P. Bilaspur mentioning that no residual of poison was found. Subsequently, on 23/01/2023, the C.M.H.O. Bilaspur sent a letter to CIMS Bilaspur to ascertain whether the treating Doctors have committed any act of medical negligence while treating the deceased. On 02/02/2023, CIMS opined that the case can be examined by the team of Doctors including Cardiologist. Based on the same, on 25/05/2023, the DME constituted a team of five qualified expert Doctors which includes Professor (Medicine), Professor (General Surgery), Professor (Cardiology), Assistant Professor (Gastrology) and Professor (Forensic). The said Committee submitted its reports opining that there is

no evidence of medical negligence on the part of the treating Doctors. In spite of categorical opinion submitted by the qualified expert Doctors of the State Medical Board and that too without any reasonable cause and explanation, the police authorities obtained another opinion from Dr. Vikash Kumar Dhruv who found certain irregularities on the part of the petitioners. Based on the same, the FIR was registered against the petitioners for offence under Section 304-A IPC. Subsequently, on completion of investigation, the charge sheet was filed on 15/04/2024 for offence under Section 304-A, 201 read with 34 of the IPC. Thereafter, by order dated 19/04/2024, the cognizance was taken against the petitioners by the CJM Bilaspur in Criminal Case No.2035/2024.

7. In the present case, the petitioners are qualified medical professionals and there is unexplained delay in lodging the FIR as the complainant alleged that offence has been committed on 26/12/2016 and the FIR has been lodged on 07/10/2023 which is after a passage of about 7 years. The deceased was admitted in a critical condition and passed away within a short span, and all duly constituted expert bodies, including the State Medical Board comprising five specialists (including a Cardiologist), have categorically opined that there was no medical negligence on the part of the petitioners and after perusing the record, the Expert Committee concludes that the patient was given appropriate treatment and apparent evidence of medical negligence is not present and it may be difficult to arrive at exact diagnosis & cause of death.

8. In an identical case, while examining the allegation of medical negligence on the part of the doctors, the Supreme Court in the matter of **Jacob Mathew (**supra**)** held thus at paras 28, 29, 30 and 48.

> *"28. A medical practitioner faced with an emergency ordinarily tries his best to redeem the patient out of his suffering. He does not gain anything by acting with negligence or by omitting to do an act. Obviously, therefore, it will be for the complainant to clearly make out a case of negligence before a medical practitioner is charged with or proceeded against criminally. A surgeon with shaky hands under fear of legal action cannot perform a successful operation and a quivering physician cannot administer the end-dose of medicine to his patient.*
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> *29. If the hands be trembling with the dangling fear of facing a criminal prosecution in the event of failure for whatever reason - whether attributable to himself or not, neither a surgeon can successfully wield his life-saving scalper to perform an essential surgery, nor can a physician successfully administer the life-saving dose of medicine. Discretion being better part of valour, a medical professional would feel better advised to leave a terminal patient to his own fate in the case of emergency where the chance of success may be 10% (or so), rather than taking the risk of making a last ditch effort towards saving the subject and facing a criminal prosecution if his effort fails. Such timidity forced upon a doctor would be a disservice to the society.*
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> *30. The purpose of holding a professional liable for his act or omission, if negligent, is to make the life safer and to eliminate the possibility of recurrence of negligence in future. The 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 of errors committed by chance, which do not necessarily involve the element of culpability.*

*xxx xxx xxx*

*48. We sum up our conclusions as under:*

*(1) Negligence is the breach of a duty caused by omission to do e 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 f 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, WLR at p. 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, off 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".*

9. In the case at hand, on the basis of direction of the DME, a team of qualified expert Doctors was constituted wherein, on due examination of the facts and material available, the team of experts opined that there is no evidence of medical negligence on the part of the petitioners who have treated the deceased. The allegations levelled by the father of the deceased did not make out a case of criminal rashness or negligence on the part of the petitioners and, as such, the petitioners cannot be proceeded on the basis of FIR lodged by the respondent No.2.

10. Recently, the Supreme Court in the matter of **Neeraj Sud and Another Vs. Jaswinder Singh (minor) & Another** (Civil Appeal No.272/2012 decided on 25/10/2024) held thus at paras 14, 15, 16 and 17.

> *14. It is well recognized that actionable negligence in context of medical profession involves three constituents (i) duty to exercise due care; (ii) breach of duty and (iii) consequential damage. However, a simple lack of care, an error of judgment or an accident is not sufficient proof of negligence on part of the medical professional so long as the doctor follows the acceptable practice of the medical profession in discharge of his duties. He cannot be held liable for negligence merely because a better alternative treatment or course of treatment was available or that more skilled doctors were there who could have administered better treatment.*
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> *15. A medical professional may be held liable for negligence only when he is not possessed with the requisite qualification or skill or when he fails to exercise reasonable skill which he possesses in giving the treatment. None of the above two essential conditions for establishing negligence stand satisfied in the case at hand as no evidence was brought on record to prove that Dr. Neeraj Sud had not exercised due diligence, care or skill which he possessed in operating the patient and giving treatment to him.*
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> *16. When reasonable care, expected of the medical professional, is extended or rendered to the patient unless contrary is proved, it would not be a case for actionable negligence. In a celebrated and very often cited decision in Bolam v. Friern Hospital Management Committee (Queen's Bench Division), it was observed that a doctor is not negligent if he is acting in accordance with the acceptable*

*norms of practice unless there is evidence of a medical body of skilled persons in the field opining that the accepted principles/procedure were not followed. The test so laid down popularly came to be known as Bolam's test and stands approved by the Supreme Court in Jacob Mathews v. State of Punjab and Another. If we apply the same in the present case, we would find that Dr. Neeraj Sood was a competent and a skilled doctor possessing requisite qualification to perform PTOSIS surgery and to administer the requisite treatment and that he had followed the accepted mode of practice in performing the surgery and that there was no material to establish any overt act or omission to prove negligence on his part. As stated earlier, no evidence was adduced to prove that he had not exercised sufficient care or has failed to exercise due skill in performing the surgery.*

*17. In Jacob Mathews (supra) this Court held that a professional may be held liable for negligence if he is not possessed of the requisite skill which he supposes to have or has failed to exercise the same with reasonable competence. The complainant has not adduced any evidence to establish that Dr. Neeraj Sud or the PGI were guilty of not exercising the expertise or the skill possessed by them, so as to hold them liable for negligence. No evidence was produced of any expert body in the medical field to prove that requisite skill possessed by Dr. Neeraj Sood was not exercised by him in discharge of his duties.*

11. In the case at hand apparently the deceased was admitted in the Apollo Hospital, Bilaspur in a critical condition and passed away within a short span of time in spite of the fact that the doctors available in the hospital have tried their best to save the life of the deceased and for the said

purpose, all the required treatment was provided. There is no allegation and material on record to show that the petitioners, who treated the deceased have shown negligence. From the record it is evident that the DME has constituted the State Medical Board consisting of five expert doctors in their respective fields including cardiologist. On due examination of the case, the committee categorically opined that there was no medical negligence on the part of the petitioners and after examination of the case, the committee concluded that the patient was given proper treatment and apparent evidence of medical negligence is not present and it may be difficult to arrive at exact diagnosis and cause of death.

12. It is noteworthy to mention here that despite clear report given by the State Medical Board, the police authorities without any reasonable cause and explanation obtained another opinion from one Dr. Vikash Kumar Dhruv who contrary to the opinion of five qualified doctors opined negligence of the petitioners. Once the expert team of doctors constituted by the DME has opined that no negligence found on the part of the petitioners while treating the deceased, only on the basis of the opinion of Dr. Vikash Kumar Dhruv, lodging of report against the petitioners is not sustainable.

13. Applying the well settled principles of law to the facts of the present case and for the reasons mentioned herein above, this CRMP stands **allowed.** Accordingly, FIR No. 1342/2023 dated 07/10/2023 registered at P.S. Sarkanda, District- Bilaspur, Charge sheet dated 15/04/2024 and all

consequential proceedings bearing Criminal Case No. 2035/2024 pending before the Chief Judicial Magistrate, Bilaspur, District-Bilaspur, CG against the petitioners are hereby quashed.

Sd/- Sd/-

**(Bibhu Datta Guru)**
**Judge**

**(Ramesh Sinha)**
**Chief Justice**

Gowri/
Amardeep

KONDAPALLI GOWRI SANKARA RAO

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Head Note

Medical professionals cannot be held criminally liable for medical negligence in absence of clear evidence showing lack of reasonable care expected in the profession.