IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE G. S. AHLUWALIA

ON THE 5th OF MAY, 2025

MISC. CRIMINAL CASE No. 14792 of 2025

DR. KANTI LAHARIYA AND OTHERS
Versus
DINESH KUMAR SHARMA AND OTHERS

Appearance:

Shri Vijay Dutta Sharma – Advocate for applicants.

Shri Dinesh Kumar Sharma- respondent No.1 in person.

Shri Mohit Shivhare – Public Prosecutor for respondent No.2/State.

ORDER

This application, under Section 528 of B.N.S.S., 2023, has been filed against order dated 28.03.2025 passed by IX Additional Sessions Judge, Gwalior (M.P.) in Criminal Revision No.83/2025 as well as order dated 19.02.2025 passed by JMFC, Gwalior in Unregistered Complaint Case No.0/2024.

2. It is the case of respondent No.1 that on 01.01.2024 he brought his daughter-in-law, who was due for delivery, to the clinic of Dr. Kanti Lahariya. She was admitted in the Sarvodaya Hospital, Gwalior on 01.01.2024 on the advice of Dr. Kanti Lahariya. Initially, Super Deluxe Room No.4 was allotted to her but later on she was shifted to Super Delux Room No.2. Daughter-in-law of respondent No.1 remained hospitalized from 01.01.2024 to 03.01.2024 and the

cesarean operation was performed by the applicants on 02.01.2024 and it is alleged that on account of negligence of Dr. Kanti Lahariya and Dr. Prashant Lahariya and their associate doctors, wrong treatment was given. On 02.01.2024, plasma was transfused in an incorrect manner. The plasma was given at about 05:05 pm and first unit was transfused within a period of ten minutes. When a query was made by complainant, then he was informed by Dr. Kanti Lahariya that one unit of plasma is always transfused within 10 to 15 minutes. Thereafter, second unit was transfused within 15 minutes and thereafter when third unit of Plasma was being transfused then certain injections were given to his daughter-in-law. Thereafter, his daughter-in-law started feeling pain in her chest and difficulty in breathing and she started getting restless. Thereafter, Dr. Kanti Lahariya, Dr. Prashant Lahariya and their associate doctors informed that his daughter-in-law has suffered serious side effect of treatment and in case if cesarean operation is not performed immediately, then life of his daughter-in-law and her child would be in jeopardy. Accordingly, cesarean operation was performed by Dr. Kanti Lahariya and her associate doctors in a haste. After the operation, it was informed by doctor that on account of reaction even the child is facing difficulty in breathing and therefore he is required to be admitted in NICU of Link Hospital. Accordingly, on the advise of Dr. Kanti Lahariya and Dr. Atul Goswami, grand-child of complainant was hospitalized in Link Hospital where he remained hospitalized from 02.01.2024 to 13.01.2024. The daughter-in-law of complainant was shifted to Super Deluxe Room No.4. Whenever complainant enquired from Dr. Kanti Lahariya about his daughter-in-law and grand-child, then he was informed that both are hale and hearty and they would be required to remain under medical supervision for 36 to 72 hours. However, the treatment of his daughter-in-law was not done properly. On 03.01.2024, Dr. Kanti Lahariya and Dr. Prashant Lahariya made the complainant and his son fool by saying that there

is shortage of blood. Later on, daughter-in-law of complainant was referred to Birla Hospital. When complainant reached Birla Hospital, Gwalior, then after examining his daughter-in-law, it was informed that she has suffered multiple-organ failure and ultimately she died in Birla Hospital on 15.01.2024.

3. It is submitted that complainant tried to give the aforesaid complaint to the police authorities but they refused to accept the same, accordingly, he sent the complaint to various authorities, details of which have been mentioned in the application filed under Section 175(3) of BNSS, 2023. It is submitted that when no action was taken by police then complainant filed an application under Section 175(3) BNSS, 2023 before the Court of JMFC, Gwalior. The JMFC, Gwalior, by order dated 19.02.2025 passed in Unregistered Complaint Case No.0/2024 allowed the application and directed the Police to register the FIR. Being aggrieved by the said order, applicants preferred a revision, which too has been dismissed by the Revisional Court by order dated 28.03.2025 passed in Criminal Revision No.83/2025.

4. Challenging the orders passed by the Courts below, it is submitted by counsel for applicants that the crux of the complaint made by the complainant is that there was a medical negligence on the part of applicants. It is submitted that the Supreme Court in the case of **Jacob Mathew Vs. State of Punjab** reported in **(2005) 6 SCC 1, Kusum Sharma and others Vs. Batra Hospital and Medical Research Center and Others** reported in **(2010) 3 SCC 480, Martin F. D'Souza Vs. Mohd. Ishfaq** reported in **(2009)3 SCC 1, Malay Kumar Gangula Vs. Dr. Sukumar Mukherjee and others** reported in **(2009) 9 SCC 221, S.K. Jhunjhunwala V. Dhanwanti Kaur and another** reported in **(2019) 2 SCC 282 and Kalyani Rajan Vs. Indraprastha Apollo Hospital and others** reported in **2024 (1) MPLJ Page 1** has held that in case of medical negligence, registration of FIR at the first instance is not proper. 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 and ultimately the Supreme Court in the case of **Jacob Mathew (supra)** held that guidelines are required to be framed and issued by the Government of India or State Government in consultation with Medical Council of India and so long as it is not done, it was held that for prosecution of doctors for the offence of criminal rashness or criminal negligence a private complaint may not be entertained unless the complainant has 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 accused doctor and medical opinion should be obtained from a doctor in government service qualified in that branch of medical practice who can normally be expected to give an impartial and an unbiased opinion.

5. It is submitted that both the Courts below have ignored the aforesaid judgments passed by the Supreme Court and accordingly, it is submitted that the orders passed by JMFC, Gwalior as well as IX ASJ, Gwalior may be set aside.

6. *Per contra*, it is submitted by complainant that he is an Advocate by profession. He submitted that the record of treatment was interpolated. His contention is that generally one unit of plasma is not transfused within a period of 10 minutes. Furthermore, it is clear from the medical history that son of complainant had given consent for blood transfusion at 04:40 pm but 04:40 pm was changed to 04:10 pm by interpolation. It is further submitted that Dr. Rohit Khandelwal had never treated his daughter-in-law but not only the fee for Dr. Rohit Khandelwal was charged but later on the forged documents were prepared in the handwriting of Dr. Rohit Khandelwal to show that he had visited and treated his daughter-in-law. It is further submitted that Dr. Rohit Khandelwal is

not posted in Sarvodaya Hospital, therefore, there was no question of treatment by Dr. Rohit Khandelwal. It is further submitted that the reports were received at later stage whereas treatment was done by doctors much prior to the receiving of test reports which clearly shows that documents of treatment have been prepared falsely. It is submitted that preparation of forged and concocted documents would not bring the act of applicants within the purview of medical negligence and therefore there was no reason for him to obtain opinion either from the competent committee or competent doctor. Respondent No.1 has also relied upon the judgments in the cases of **Rajinder Prasad Vs. Bashir And Others** reported in **AIR 2001 SC 3524**, **M/s Neeharika Infrastructure Private Limited Vs. State of Maharashtra and Others** reported in [**2021] 4 SCR 1044, Max Super Speciality Hospital And Another Vs. State of Punjab And Another (Punjab & Haryana High Court-** decided on **11.03.2024 in CRM-M-3458-2015), Ravindra Singh And Others Vs. The State of Madhya Pradesh and Others (M.P. High Court-** decided on **02.04.2025 in M.Cr.C. No.5402 of 2025), Lalita Kumari Vs. Government of U.P. And Ors** reported in **[2013] 14 S.C.R. 713, Sindhu Janak Nagargoje Vs. The State of Maharashtra & Ors.** decided on **08.08.2023 in SLP (Crl.) No.5883 of 2020, M/s SAS Infratech Pvt. Ltd. Vs. The State of Telangana & Anr.** decided on **14.05.2024 in Criminal Appeal No.2574/2024 (SLP (Crl.) No.2123/2024) & Vinubhai Haribhai Malaviya And Ors. Vs. The State of Gujarat And Anr.** reported in **[2019] 15 S.C.R. 936.**

7. Heard.

8. The Supreme Court in the case of **Jacob Mathew Vs. State of Punjab** reported in **(2005) 6 SCC 1** has held as under:-

> **"48.** We sum up our conclusions as under:-
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> (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 v. Friern Hospital Management Committee, [1957] 1 W.L.R. 582, 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, 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 304A of 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 304A of the 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.

> **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 Bolam [1957] 1 W.L.R. 582, 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."

9. The Supreme Court in the case of **Kusum Sharma and others vs. Batra Hospital and Medical Research Center and Others** reported in **(2010) 3 SCC 480** has 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:
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> *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.
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> *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 pressurizing 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.
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> 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.

10. The Supreme Court in the case of **Martin F. D'Souza v. Mohd. Ishfaq** reported in **(2009) 3 SCC 1** has held as under:-

> **31**. As already stated above, the broad general principles of medical negligence have been laid down in the Supreme Court judgment in *Jacob Mathew v. State of Punjab* [(1957) 1 WLR 582 : (1957) 2 All ER 118]. However, these principles can be indicated briefly here:
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> The basic principle relating to medical negligence is known as the Bolam Rule. This was laid down in the judgment of *McNair, J. in Bolam v. Friern Hospital* [(1957) 1 WLR 582 : (1957) 2 All ER 118] as follows : (WLR p. 586)
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> "… 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."

(emphasis supplied)

Bolam test has been approved by the Supreme Court in *Jacob Mathew case*.

65. From the aforementioned principles and decisions relating to medical negligence, with which we agree, it is evident that doctors and nursing homes/hospitals need not be unduly worried about the performance of their functions. *The law is a watchdog, and not a bloodhound*, and as long as doctors do their duty with reasonable care they will not be held liable even if their treatment was unsuccessful. However, every doctor should, for his own interest, carefully read the Code of Medical Ethics which is part of the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 issued by the Medical Council of India under Section 20-A read with Section 3(m) of the Indian Medical Council Act, 1956.

66. Having mentioned the principles and some decisions relating to medical negligence (with which we respectfully agree), we may now consider whether the impugned judgment of the Commission is sustainable. In our opinion the judgment of the Commission cannot be sustained and deserves to be set aside.

67. The basic principle relating to the law of medical negligence is the Bolam Rule which has been quoted above. The test in fixing negligence is the standard of the ordinary skilled doctor exercising and professing to have that special skill, but a doctor need not possess the highest expert skill. Considering the facts of the case we cannot hold that the appellant was guilty of medical negligence.

104. Hence courts/Consumer Fora should keep the above factors in mind when deciding cases related to medical negligence, and not take a view which would be in fact a disservice to the public. The decision of this Court in *Indian Medical Assn. v. V.P. Shantha* [(1995) 6 SCC 651] should not be understood to mean that doctors should be harassed merely because their treatment was unsuccessful or caused some mishap which was not necessarily due to negligence. In fact in the aforesaid decision it has been observed (vide SCC para 22) : (*V.P. Shantha case* [(1995) 6 SCC 651] , SCC p. 665)

> "22. In the matter of professional liability professions differ from other occupations for the reason that professions operate in spheres where success cannot be achieved in every case and very often success or failure depends upon factors beyond the professional man's control."
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> **105.** It may be mentioned that All India Institute of Medical Sciences has been doing outstanding research in stem cell therapy for the last eight years or so for treating patients suffering from paralysis, terminal cardiac condition, parkinsonism, etc. though not yet with very notable success. This does not mean that the work of stem cell therapy should stop, otherwise science cannot progress.
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> **106.** We, therefore, direct that whenever a complaint is received against a doctor or hospital by the Consumer Fora (whether District, State or National) or by the criminal court then before issuing notice to the doctor or hospital against whom the complaint was made the Consumer Forum or the criminal court should first refer the matter to a competent doctor or committee of doctors, specialised 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 doctor/hospital concerned. This is necessary to avoid harassment to doctors who may not be ultimately found to be negligent. We further warn the police officials not to arrest or harass doctors unless the facts clearly come within the parameters laid down in *Jacob Mathew case* [(2005) 6 SCC 1 : 2005 SCC (Cri) 1369], otherwise the policemen will themselves have to face legal action."

11. The Supreme Court in the case of **Malay Kumar Ganguly v. Dr. Sukumar Mukherjee and others** reported in **(2009) 9 SCC 221** has held as under :-

> **133**. It is noteworthy that standard of proof as also culpability requirements under Section 304-A of the Penal Code, 1860 stand on an altogether different footing. On comparison of the provisions of the Penal Code with the thresholds under the tort law or the Consumer Protection Act, a foundational principle that the attributes of care and negligence are not similar under civil and criminal branches of medical negligence law is borne out. An act which may

constitute negligence or even rashness under torts may not amount to the same under Section 304-A.

175. Criminal medical negligence is governed by Section 304-A of the Penal Code. Section 304-A of the Penal Code reads as under:

"304-A. *Causing death by negligence.*—Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

176. The essential ingredients of Section 304-A are as under:

(i) Death of a person.

(ii) Death was caused by the accused during any rash or negligent act.

(iii) Act does not amount to culpable homicide.

And to prove negligence under criminal law, the prosecution must prove:

(i) The existence of a duty.

(ii) A breach of the duty causing death.

(iii) The breach of the duty must be characterised as gross negligence. (See *R. v. Prentice* [1994 QB 302 : (1993) 3 WLR 927 : (1993) 4 All ER 935] .)

177. The question in the instant case would be whether the respondents are guilty of criminal negligence.

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 in the case of **S. K. Jhunjhunwala v. Dhanwanti Kaur and another** reported in **(2019) 2 SCC 282** has held as under:-

21. So far as this Court is concerned, a three-Judge Bench in *Jacob Mathew v. State of Punjab [Jacob Mathew v. State of Punjab*, (2005) 6 SCC 1 : 2005 SCC (Cri) 1369] examined this issue. R.C. Lahoti, C.J. (as he then was) speaking for the Bench extensively referred to the law laid down in Bolam case [*Bolam v. Friern Hospital Management Committee*, (1957) 1 WLR 582 : (1957) 2 All ER 118 (QBD)] and in Eckersley case [*Eckersley v. Binnie,* (1988) 18 Con LR 1 (CA)] and placing reliance on these two decisions observed in his distinctive style of writing that the classical statement of law in *Bolam case [Bolam v. Friern Hospital Management Committee*, (1957) 1 WLR 582 : (1957) 2 All ER 118 (QBD)] has been widely accepted as decisive of the standard of care required by both of professional men generally and medical practitioner in particular and it is invariably cited with approval before the courts in India and applied as a touchstone to test the pleas of medical negligence.

22. It was held in *Jacob Mathew case [Jacob Mathew v. State of Punjab*, (2005) 6 SCC 1 : 2005 SCC (Cri) 1369] that a physician would not assure the patient of full recovery in every case. A surgeon cannot and does not guarantee that the result of surgery would invariably be beneficial, much less to the extent of 100% for the person operated on. The only assurance which such a professional can give or can be understood to have given by implication is that he is possessed of the requisite skill in that branch of profession which he is practising and while undertaking the performance of the task entrusted to him he would be exercising his skill with reasonable competence. This is what the entire person approaching the professional can expect. Judged by this standard, a professional may be held liable for negligence on one of 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 not possess.

23. It was further observed in Jacob *Mathew case [Jacob Mathew v. State of Punjab*, (2005) 6 SCC 1 : 2005 SCC (Cri) 1369] that the fact that a defendant charged with negligence who acted in accord with the general and approved practice is enough to clear him of the charge. It was held that the standard of care, when 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. It was held that 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 practises. His Lordship quoted with approval the subtle observations of Lord Denning made in Hucks v. Cole [*Hucks v. Cole*, (1968) 118 New LJ 469], namely,

"a medical practitioner was not to be held liable simply because things went wrong from mischance or misadventure or through an error of judgment in choosing one reasonable course of treatment in preference of another. A medical practitioner would be held liable only where his conduct fell below that of the standards of a reasonably competent practitioner in his field".

(emphasis supplied)

> 24. In our view, the facts of the case at hand have to be examined in the light of the aforesaid principle of law with a view to find out as to whether the appellant, a doctor by profession and who treated Respondent 1 and performed surgery on her could be held negligent in performing the general surgery of her gall bladder on 8- 8-1996."

13. A similar law has been laid down by the Supreme Court in the case of **Kalyani Rajan vs. Indraprastha Apollo Hospital and others,** reported in **2024 (1) MPLJ Page 1**.

14. If the allegations made by complainant in his complaint are considered then it can be summarized as under:

1. Blood Plasma was given in haste;
2. Cesarean operation was performed in haste without there being any gynecologist;
3. Dr. Rohit Khandelwal had never treated daughter-in-law of complainant but still he was charged in his name;
4. The prescriptions written by Dr. Rohit Khandelwal were obtained at a later stage which amounts to creation of false and concocted documents;
5. Applicant No.1 in her reply to the complaint made by complainant pointed out the details of doctors who were present during the treatment of daughter-in-law of complainant. It is submitted that in the said list, name of Dr. Rohit Khandelwal was not mentioned. Therefore, it is clear that applicants have also accepted that Dr. Rohit Khandelwal had never treated daughter-in-law of complainant and thus it is the clear case of creation of false and concocted documents.
6. Medical history sheet was interpolated as time of consent i.e., 04:40 pm was changed to 04:10 pm.

15. So far as creation of false and concocted documents pertaining to treatment

given by Dr. Rohit Khandelwal is concerned, complainant is raising fingers towards applicants only on the ground that Dr. Rohit Khandelwal was not posted in Sarvodaya Hospital but he was working in Birla Hospital. Accordingly, he was directed to point out any provision of law which restricts a doctor posted in a particular private hospital from attending the patients admitted in other hospitals. It was fairly conceded by complainant that doctors working in one private hospital can always visit other hospital. Merely because Dr. Rohit Khandelwal is not posted in Sarvodaya Hospital, it would not mean that he cannot visit Sarvodaya Hospital. Furthermore, if according to complainant the medical prescription is in the hand writing of Dr. Rohit Khandelwal, then why the complainant did not file any application under Section 175(3) of BNSS, 2023 against Dr. Rohit Khandelwal ? Accordingly, a specific question was put to complainant as to why no complaint was filed against Dr. Rohit Khandelwal for preparing false and fabricated documents. A general submission was made by complainant like a layman but ultimately admitted that he is also a practising lawyer. Therefore, it was expected from the complainant that he would be having answer to the query that if he was alleging that Dr. Rohit Khandelwal had also prepared false and fabricated documents, then why he was not impleaded as a suspect in the complaint.

16. It is not out of place to mention here that no doctor was impleaded by complainant in the application filed under Section 175(3) of BNSS.

17. It is not the case where Dr. Rohit Khandelwal is alleged to have prepared some documents not concerning the treatment of daughter-in-law of complainant. Merely because the complainant is of the view that Dr. Rohit Khandelwal has not treated his daughter-in-law that is not sufficient to draw an inference that medical prescriptions written by Dr. Rohit Khandelwal were not written by him and they were prepared at a later stage.

18. So far as manipulation of record to the effect that time of giving consent for transfusion which was mentioned as 04:40 pm was changed as 04:10 pm is concerned, it is suffice to mention here that the said consent was given by son of complainant. The complaint is not supported by affidavit of son of complainant. Furthermore, that would not make any difference. Except saying that daughter-in-law of complainant was not treated properly and there was medical negligence on the part of applicants, nothing else has been submitted by complainant to show that there was any medical negligence on the part of applicants. It is submitted that on complaint made by complainant, CMHO, Gwalior, appointed Dr. Swechha Dandotiya and Dr. Nitesh Mudgal to conduct an enquiry. The committee has given a specific finding that "in case of Thrombocytopaenia, there is provision of Prophylactically platelet transfusion prior to major surgical process as the risk of bleeding during and after the operation would be less. The decision of platelet transfusion was taken Dr. Kanti Lahariya and Dr. Rakhi Agrawal which is available in the case file. It is also mentioned that after drug reaction, Dr. Kanti Lahariya had given Injection Avil, Injection Dexa and Injection Efcorlin. It was also found that operation theatre, post operative ward were equipped with all necessary equipments like ventilator, oxygen, necessary medicines etc. The operation was performed by Dr. Kanti Lahariya and Dr. Swati Agrawal in the presence of pediatrician Dr. Atul Goswami. With regard to seizure of CCTV footage, it was held that since the incident was about two months old, therefore, CCTV footage is not available."

19. In the enquiry report, it is nowhere mentioned that treatment given by applicants was not in accordance with medical protocol or medical science. Thus, there is nothing available on record to suggest that applicants were negligent in any manner in treating the daughter-in-law of the complainant.

20. There is another aspect of the matter. Complainant had filed an application

under Section 175(3) of BNSS without impleading the applicants as respondents. The complainant was seeking registration of FIR against applicants and others but for the reasons best known to him, he did not implead the persons against whom he wanted prosecution.

21. First proviso to sub-section (1) of Section 223 BNSS, 2023 provides that no cognizance of offence shall be taken by the Magistrate without giving the accused opportunity of hearing. If the Magistrate after considering the complaint filed by complainant was of the view that no case is made out for issuing directions to Police to register the FIR, then he should have proceeded under Section 223 of BNSS, 2023 and in view of first proviso to sub-section (1) of Section 223 BNSS, 2023, opportunity of hearing to accused/suspect is necessary before taking cognizance, but for the reasons best known to the complainant, he deliberately did not implead the doctors with a solitary intention to obtain the order for registration of FIR behind their back.

22. Be that whatever it may be.

23. This Court has already considered that the allegations made by complainant are not sufficient to hold that the record was manipulated by applicants or any other doctor. It is really unfortunate that complainant lost his daughter-in-law but until and unless the criminal negligence of doctors is found to be of such a nature which is not expected from specialists or doctors, this Court is of considered opinion that the courts below should not have directed for registration of FIR.

24. Considering the law laid down by the Supreme Court in the case of **Jacob Mathew (supra), Kusum Sharma (supra), Martin F. D'Souza (supra), Malay Kumar Ganguly (supra), S.K. Jhunjhunwala (supra) and Kalyani Rajan (supra)**, the order dated 28.03.2025 passed by IX Additional Sessions Judge, Gwalior (M.P.) in Criminal Revision No.83/2025 as well as order dated 19.02.2025 passed by JMFC, Gwalior in Unregistered Complaint Case No.0/2024

are hereby set aside.

25. The application filed by complainant under Section 175(3) of BNSS, 2023 is hereby dismissed.

26. However, liberty is granted to the complainant to approach Medical Council of India for constitution of a committee of expert doctors to conduct an enquiry into the allegation of medical negligence and interpolation of records.

If the committee of experts comes to a conclusion that the doctors were negligent or they have manipulated the records as alleged by complainant, then the complainant shall be free to lodge an FIR or complaint before Competent Court.

27. With aforesaid liberty, the application succeeds and is hereby ***allowed***.

(G.S. Ahluwalia)
Judge

(and)