



hitra/Niti

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL WRIT PETITION NO.996 OF 2025 (F)**

Dr Pritam Sinai Mopkar
W/o. Dr Ajit Mopkar
Age 63 years
R/o. H.No.9/463/G,
Preet Ganeshpuri,
Near Water Tank,
Mapusa, Bardez – Goa.

... PETITIONER

Versus

1. State of Goa
(As represented by
Officer in Charge,
Mapusa Police Station,
Mapusa Goa).

2. State of Goa,
Through the Public Prosecutor,
High Court of Bombay & Goa,
Porvorim, Goa.

3. Mr Dnyaneshwar Raut Dessai
(Complainant)
Major in Age,
Member/Joint Secretary (Law),
Law Department, Secretariat,
Porvorim, Bardez, North Goa, Goa.

4. Mr Darshan Pandurang Parab,
Major in age,
R/o. Kothambi, Pale,
Bicholim, Goa.

... RESPONDENTS

Ms. Caroline Collasso with Mr K. Poulekar and Mr Sahil Lavande, Advocates for the Petitioner.
Mr S. Karpe, Additional Public Prosecutor for the Respondent

Nos.1 and 2/State.

Ms Maria Simone Correia, Advocate for Respondent No.3.

Mr Arjun Naik, Advocate for Respondent No.4.

CORAM: **ASHISH S. CHAVAN, J.**

Reserved on: **23rd FEBRUARY 2026**

Pronounced on: **5th MARCH 2026**

JUDGMENT :

1. The Petitioner herein is a senior Obstetrician and Gynaecologist with more than three decades of clinical experience who finds herself being prosecuted for an offence punishable under Section 304-A read with Section 34 of IPC, vide an FIR dated 03.09.2025 bearing No.121/2025 registered at the Mapusa Police Station. The husband of the Petitioner is also arrayed as a co-accused.

2. The case of the Petitioner is as follows:

(a) The Petitioner along with her husband, owns and manages Ankur Nursing Home at Mapusa since 1989. The Petitioner has undergone advanced training in Ultra Sonography and Foetal Medicine. She has completed her MBBS in 1984 with a Distinction and thereafter obtained the Post Graduate Diploma and Master's in Obstetrics and Gynaecology. Somewhere in June, 2023, one Ms Pradnya Parab, wife of Darshan Parab, aged 41 years, had started to take treatment to conceive a child at Kolhapur, Indira IVF Centre. Somewhere in July 2023, Pradnya became pregnant and was told by Dr Sheela Gupte, attached to Vision Hospital Mapusa, that she needed to put a cervical stitch since she had a twin

pregnancy. On 11.10.2023, Pradnya approached the husband of the Petitioner (Dr Ajit Mopkar) at Ankur Nursing Home. Dr Ajit Mopkar is a renowned Gynaecologist and Laparoscopist and a co-owner of Ankur Nursing Home.

(b) Dr Ajit Mopkar put the cervical stitch as required. On 22.12.2023, Pradnya was admitted to Ankur Nursing Home, Mapusa at 6.00 a.m. due to mild spotting and blood stained discharge. She was 24.5 weeks pregnant with mild Hypothyroidism and a rare Rh Negative blood type. Diagnosed as a case of threatened miscarriage, all necessary treatment was immediately started. The treatment continued from 23.12.2023 to 26.12.2023 and patient was responding well to the said treatment. On 27.12.2023, Pradnya went in active labour at 12.00 hrs. and delivered the first twin at 5.20 p.m. and the second twin at 5.25 p.m. Since the new born babies were underweight, they were placed in the neonatal intensive care of a neighbouring hospital. The placenta of the patient did not separate and had to be removed surgically.

(c) Considering the likelihood of surgical intervention to remove the placenta and since the patient (Pradnya) needed multiple blood transfusions of A Negative Blood, which is rare, she was shifted to GMC at 19.30 hrs. Treatment was started on Pradnya at GMC at around 9.56 p.m. On 30.12.2023, Pradnya expired unfortunately, while being under management and care at

GMC due to an obstetric haemorrhage that was the underlying cause of death, which superimposed sepsis.

(d) The twin babies were shifted from Gauns Child Care Hospital Mapusa to GMC Bambolim by the relatives of Pradnya, who took discharge against medical advice.

(e) A case of U.D. No.99/2023 under Section 174 Cr.P.C. bearing No.MAP/PS/10615/2024 dated 04.09.2024 was lodged at Mapusa Police Station. In the meanwhile, a complaint was made by Darshan Parab (husband of Pradnya) before the Mapusa Police Station, alleging medical negligence against the Petitioner, her husband Dr. Ajit Mopkar and Dr. Shivanand Gauns of Gauns Childcare Hospital, Mapusa.

(f) On 12.05.2025, the Petitioner was summoned to appear before a committee constituted under the Goa Medicare Service (Goa Medicare Act 2013). This Committee was constituted on the basis of the complaint dated 19.01.2024 lodged by husband of Pradnya, i.e. Respondent No.4 herein. The Petitioner appeared before the said committee and stated that she had no involvement in the clinical management of the present case. Her husband Dr. Ajit Mopkar, also gave a statement before the committee. Thereafter, there was no communication by the committee to the Petitioner.

(g) On 05.03.2025, the Petitioner was shocked to come across articles in several newspapers which stated that an FIR was

registered against her and her husband for causing medical negligence.

3. Acting on the complaint of the Respondent No.4, against the Petitioner and others, a Committee was constituted by the Dean of Goa Medical College, an inquiry was conducted and finally, a report was submitted by the Committee. The opinion and conclusion of the said Committee is as under:-

“OPINION AND CONCLUSION

1. *The obstetric management of precious pregnancy needs critical care from treating doctor, which is not so as per statement of complainant.*
2. *The patient was shifted to GMC very late, with irreversible shock as noted by Dr. Ankita Borkar in her findings.*
3. *Retained placenta and tear in vagina and cervix caused massive obstetric haemorrhage as per opinion of GMC treating doctor Dr. Ankita Borkar.*
4. *There is prima fascia evidence of medical negligence in the above case.”*

4. On the basis of the findings in the report of the aforesaid committee, an FIR dated 03.09.2025 bearing No.121/2025 came to be registered by Mapusa Police Station against the Petitioner and her husband Dr Ajit Mopkar by the Joint Secretary (Law), Law Department, Secretariat, for offences punishable under Section 304-A r/w 34 of IPC, which is sought to be quashed by way of the present Petition.

5. Heard Ms. Caroline Collasso, Advocate for the Petitioner, Mr S. Karpe, Additional Public Prosecutor for the Respondent Nos.1 and 2/State, Ms Maria Simone Correia, Advocate for Respondent No.3 and Mr Arjun Naik, Advocate for Respondent No.4.

6. Rule. Rule is made returnable forthwith at the request of and with the consent of the learned counsel for the parties.

7. The Petitioner has assailed the FIR on various grounds. Firstly, that the Committee constituted by the Dean of Goa Medical College to conduct the inquiry against the Petitioner was under Notification No.42/6/2013-I/PHD/1076 dated 24.06.2016, which deals with the powers conferred by the Goa Medicare Service Personnel and Medicare Service Institutions (Prevention of Violence and Damage or loss to property) Act 2013, "Medicare Act". The Medicare Act is provided for the prevention of violence against medicare service personnel and the prevention of damage or loss to the property of medicare service institutions in the State of Goa. It provides for various punishments for acts of violence against medical institutions and medical professionals. It also provides for setting up a Committee to aid and advise victims of medical negligence. On behalf of the Petitioner, it was pointed out that the Goa Government has also issued another Notification, namely Notification No.71/32/84-PHD dated 13.01.1988 to deal with the appointment of Inquiry Committees to

inquire into cases of medical negligence against Doctors and Medical Professionals in the State of Goa. Placing reliance on the judgment of *Jacob Mathew V/s. State of Punjab*¹, it was sought to be argued that the Committee that was constituted to inquire into the allegations of medical negligence against the Petitioner was not in terms of the aforesaid judgment. In fact, the Committee that was constituted and which conducted an inquiry against the Petitioner was under the Medicare Act, which does not contemplate any inquiry against any Doctor or Medical Professional for allegations of medical negligence. The objective of the Medicare Act was to prevent violence against Medical Professionals. It was argued that the constitution of the Committee which conducted the inquiry against the Petitioner was fundamentally flawed and hence the findings of the Committee cannot be taken into consideration against the Petitioner. The second ground that was urged by the Petitioner was that, taking the report of the inquiry Committee at face value, there were no findings of medical negligence against the Petitioner in terms of the judgment in *Jacob Mathew* (supra). The third ground that was urged by the Petitioner was that the inquiry report itself notes the statement of the Petitioner that she has no involvement of whatsoever nature in the clinical management of the case and that she did not attend to the patient at

¹ (2005) 6 SCC 1

all from her admission to Ankur hospital on 22.12.2023 till her unfortunate demise on 30.12.2023.

8. The prosecution has filed a reply which states that the inquiry report makes out a case of medical negligence against the Petitioner. The defence of the Petitioner is a matter of trial and cannot be adjudicated at the stage of quashing the FIR. The credibility of the medical opinions and explanations offered by the Petitioner are triable issues. The offence alleged involves a loss of a human life and hence this Court ought not to interfere with the criminal proceedings at this stage.

9. Respondent No.4 has also relied on the findings of the inquiry report to contend that no interference is called for by this Court.

10. With the assistance of the learned Counsel for the Petitioner and the learned Additional Public Prosecutor, I have perused the record. At the outset, it would be necessary to make a reference to the observations of the Hon'ble Supreme Court dealing with criminal prosecution for negligence against doctors and guidelines laid down therein. Although there are several judgments of the Hon'ble Supreme Court, which have dealt with the aspect of medical negligence and the parameters of Section 304-A IPC, reference to the two leading judgments of the Hon'ble Supreme Court, namely *Dr. Suresh Gupta*

*V/s. Government of NCT of Delhi and Anr.*² and *Jacob Mathew* (supra) would be imperative.

11. In the judgment of *Dr. Suresh Gupta* (supra), the Hon'ble Supreme Court had an occasion to consider the case of a doctor, who was arraigned under section 304-A of IPC for causing the death of his patient. The patient was operated by him to remove his nasal deformity. The Hon'ble Supreme Court quashed the criminal proceedings against the doctor after a detailed discussion on criminal liability. The following observations of the Hon'ble Supreme Court are germane:

"20. For fixing criminal liability on a doctor or surgeon, the standard of negligence required to be proved should be so high as can be described as "gross negligence" or recklessness". It is not merely a lack of necessary care, attention and skill. The decision of the House of Lords in R. Vs. Adomako – (1994) 3 All ER 79 (HL) relied upon on behalf of the doctor elucidates the said legal position and contains following observations :-

"Thus a doctor cannot be held criminally responsible for patient's death unless his negligence or incompetence showed such disregard for life and safety of his patient as to amount to a crime against the State."

² (2004) 6 SCC 422

21. Thus, when a patient agrees to go for medical treatment or surgical operation, every careless act of the medical man cannot be termed as 'criminal'. It can be termed 'criminal' only when the medical man exhibits a gross lack of competence or inaction and wanton indifference to his patient's safety and which is found to have arisen from gross ignorance or gross negligence. Where a patient's death results merely from error of judgment or an accident, no criminal liability should be attached to it. Mere inadvertence or some degree of want of adequate care and caution might create civil liability but would not suffice to hold him criminally liable.

23. For every mishap or death during medical treatment, the medical man cannot be proceeded against for punishment. Criminal prosecutions of doctors without adequate medical opinion pointing to their guilt would be doing great disservice to the community at large because if the courts were to impose criminal liability on hospitals and doctors for everything that goes wrong, the doctors would be more worried about their own safety than giving all best treatment to their patients. This would lead to shaking the mutual confidence between the doctor and patient. Every mishap or misfortune in the hospital or clinic of a doctor is not a gross act of negligence to try him for an offence of culpable negligence.

25. Between civil and criminal liability of a doctor causing death of his patient the court has a difficult task of weighing the degree of carelessness and negligence alleged on the part of the doctor. For conviction of a doctor for alleged criminal offence, the standard should be proof of recklessness and deliberate wrong doing i.e. a higher degree of morally blameworthy conduct.”

12. Subsequently, the Hon'ble Supreme Court had another occasion to deal with the aspect of criminal liability and prosecution against a medical professional for negligence in the landmark judgment of *Jacob Mathew* (supra). The relevant observations of the Hon'ble Supreme Court in the aforesaid judgment are as under:

"48. We sum up our conclusions as under:-

(1) Negligence is the breach of a duty caused by omission to do something which a reasonable man guided by those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a prudent and reasonable man would not do. The definition of negligence as given in Law of Torts, Ratanlal & Dhirajlal (edited by Justice G.P. Singh), referred to hereinabove, holds good. Negligence becomes actionable on account of injury resulting from the act or omission amounting to negligence attributable to the person sued. The essential components of negligence are three: 'duty', 'breach' and 'resulting damage'.

(2) Negligence in the context of medical profession necessarily calls for a treatment with a difference. To infer rashness or negligence on the part of a professional, in particular a doctor, additional considerations apply. A case of occupational negligence is different from one of professional negligence. A simple lack of care, an error of judgment or an accident, is not proof of negligence on the part of a medical professional. So long as a doctor follows a practice acceptable to the medical profession of that day, he cannot be held liable for negligence merely because a better alternative course or method of treatment was also available or simply because a more skilled doctor would not have chosen to follow or resort to that practice or

procedure which the accused followed. When it comes to the failure of taking precautions what has to be seen is whether those precautions were taken which the ordinary experience of men has found to be sufficient; a failure to use special or extraordinary precautions which might have prevented the particular happening cannot be the standard for judging the alleged negligence. So also, the standard of care, while assessing the practice as adopted, is judged in the light of knowledge available at the time of the incident, and not at the date of trial. Similarly, when the charge of negligence arises out of failure to use some particular equipment, the charge would fail if the equipment was not generally available at that particular time (that is, the time of the incident) at which it is suggested it should have been used.

(3) A professional may be held liable for negligence on one of the two findings: either he was not possessed of the requisite skill which he professed to have possessed, or, he did not exercise, with reasonable competence in the given case, the skill which he did possess. The standard to be applied for judging, whether the person charged has been negligent or not, would be that of an ordinary competent person exercising ordinary skill in that profession. It is not possible for every professional to possess the highest level of expertise or skills in that branch which he practices. A highly skilled professional may be possessed of better qualities, but that cannot be made the basis or the yardstick for judging the performance of the professional proceeded against on indictment of negligence.

(4) The test for determining medical negligence as laid down in Bolam's case [1957] 1 W.L.R. 582, 586 holds good in its applicability in India.

(5) The jurisprudential concept of negligence differs in civil and criminal law. What may be negligence in civil law

may not necessarily be negligence in criminal law. For negligence to amount to an offence, the element of mens rea must be shown to exist. For an act to amount to criminal negligence, the degree of negligence should be much higher i.e. gross or of a very high degree. Negligence which is neither 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.

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 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 rash or negligent act within the domain of criminal law under Section 304-A of IPC. The criminal process once initiated subjects the medical professional to serious embarrassment and sometimes harassment. He 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 in his reputation cannot be compensated by any standards.

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.”

13. The Hon’ble Supreme Court has categorically differentiated the jurisprudential concept of negligence in civil and criminal law by observing that 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 must be much higher, that is, gross or of a very high degree. Negligence, which is neither gross nor of a higher degree, may provide ground for action in civil law but cannot form the basis of a criminal prosecution. Importantly, the Hon’ble Supreme Court has read the expression “**rash or negligent act**” as occurring in Section 304-A IPC to be read as qualified by the word “**grossly**”. 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. It is not merely the lack of necessary care,

attention and skill, the negligence or incompetence alleged against the medical professional must show such disregard for life and safety of his patient as to amount to a crime against the State. Where a patient's death results merely from an error of judgment or an accident, no criminal liability should be attached to it. Mere inadvertence or some degree of want of adequate care and caution might create civil liability, but would not suffice to hold him criminally liable.

14. Applying the principles set out in the aforesaid judgments to the facts of the present case, the allegations in the FIR against the Petitioner rest completely on the findings of the inquiry report. The report is prepared by a Committee constituted to inquire into the written complaint filed by Respondent No.4 against the Petitioner and her husband. The Committee consisted of the Dean, Goa Medical College (Chairman), the Joint Secretary (Law), Law Department, Goa, the President of the Consumer Disputes Redressal Forum, North Goa and the President of the Association of Private Nursing Homes, Goa. The report indicates that the inquiry was conducted in the presence of the Committee members in the Dean's chamber at GMC. During the course of inquiry, statements of the Respondent No.4 (Complainant), Investigating Officers, Associate Professor, GMC, Associate Officer of Obstetrics and Gynaecology, GMC, Lecturer, OBG, GMC and Dr. Ajit Mopkar, the co-accused were recorded. The statement of the Petitioner was also recorded before the Committee on 12.05.2025. A

perusal of the statement indicates that she had no involvement of whatsoever nature in the clinical management of the deceased and the deceased was completely managed by the co-accused Dr. Ajit Mopkar and the hospital staff. Pertinently, there is not even a whisper of any involvement of the Petitioner either in the report or its findings. None of the statements of the medical professionals recorded by the committee mention any role of the present Petitioner. In the light of the aforesaid discussion it is evident that taking the uncontroverted findings of the inquiry report, no *prima facie* case is made out against the Petitioner.

15. The issue before this Court is whether the continuation of the proceedings against the Petitioner would amount to an abuse of process of law and whether the FIR and the papers accompanying the same, without adding or subtracting anything therefrom nor adverting to the defence, if any, of the Petitioner would fall squarely within the parameters set out in the landmark judgments of the Hon'ble Supreme Court in *State of Haryana V/s. Bhajan Lal*³, *Municipal Corporation of Delhi V/s. Ramkishan Rohtagi*⁴ and others.

16. In the light of the aforesaid discussion, I find that no case of recklessness or gross negligence is made out qua the Petitioner and consequently the FIR bearing No.121/2025 dated 03.09.2025

³ 1992 SUPP (1) SCC 335

registered at the instance of Mapusa Police Station and the proceedings emanating therefrom **against the Petitioner** deserve to be quashed and set aside.

17. In view of the aforesaid observations, the Petition is allowed. Rule is made absolute.

ASHISH S. CHAVAN, J.

⁴ (1983) 2 SCC 1