

IN THE HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

THURSDAY, THE TWENTY EIGHTH DAY OF AUGUST

TWO THOUSAND AND TWENTY FIVE

:PRESENT:

THE HONOURABLE SMT JUSTICE JUVVADI SRIDEVI

IA No. 1 OF 2024

IN

CRLP NO: 3867 OF 2024

Between:

Dr. Mohammed Bin Yahia @ Dr. Yahya, S/o. Yahia Bin Mohammed.

...Petitioner/Accused

(Petitioner in CRLP 3867 OF 2024

on the file of High Court)

AND

1. The State of Telangana, Rep. by its Public Prosecutor, High Court at Hyderabad.

2. Smt. Sajida Fathima, W/o. Samsamuddin Ahmed, R/o. Flat No. 302, Portan Heights, Opposite pillar No. 191, Attapur, Hyderabad.

...Respondents

(Respondents in-do-)

Petition under Section 482 of Cr.P.C praying that in the circumstances stated in the grounds filed in support of the Criminal Petition, the High Court may be pleased to stay all further proceedings including the appearance of the Petitioner/Accused in CC.No.3393/2022 pending on the file of VIII Addl. Chief Metropolitan Magistrate at Hyderabad pending disposal of CRLP No. 3867 of 2024, on the file of the High Court.

The petition coming on for hearing, upon perusing the Petition and the affidavit filed in support thereof and the order of the High Court dated 08.04.2025 made in CrI.P and upon hearing the arguments of SRI MOHD MUZAFFER ULLAH KHAN Advocate for the Petitioner and of SRI M RAMACHANDRA REDDY, ADDITIONAL PUBLIC PROSECUTOR Advocate for the Respondent No.1, the Court made the following

ORDER

This application is filed by the petitioner-accused seeking to grant stay of all further proceedings, including his appearance, in C.C.No.3393 of 2022 pending on the file of the learned VIII Additional Chief Metropolitan Magistrate at Hyderabad, registered for the offences under Sections 337 and 504 of IPC.

Heard Mr. Mohd. Muzaferullah Khan, learned counsel for the petitioner and Mr. M.Ramachandra Reddy, learned Additional Public Prosecutor appearing for the State-respondent. Perused the record.

As per the complaint, it is stated that the *de facto* complainant was admitted to Princes Durrushevar Hospital, Purani Haveli on 03.01.2019, where she underwent gall bladder surgery, which was performed by the petitioner. She was discharged from the hospital on 09.01.2019. Subsequently, when she experienced severe pain in the gall bladder region, she immediately went to the hospital on 17.01.2019. After conducting necessary tests, on 18.01.2019, the petitioner informed her that an infection had caused a blockage in the gall bladder vein and that no further medical intervention could be provided by him. Thereafter, on 19.01.2019, the *de facto* complainant was admitted to Sai Vani Hospital, where relevant medical tests were conducted. Thereafter, the Doctors informed that the surgery conducted by the petitioner had failed.

Learned counsel appearing for the petitioner submits that the *de facto* complainant came to know that the surgery conducted by the petitioner was failed on 19.01.2019, however, she lodged the present complaint on 28.03.2019 i.e., there is a delay in lodging the complaint and the reason for such delay remained unexplained. Basing on the submitted documents and records, the Doctors i.e., LW-3/B.Ramesh Kumar and LW-4/Madhusudhan, have issued expert opinion report opining that 'the patient developed bile duct injury and bile leak following Cholecystectomy and it can occur in some cases where surgery was performed in ratio of 03.-0.5%'. Though the *de facto* complainant

was advised for follow-up checkups and dressings, she did not turn up. No material is produced by the prosecution to establish the guilt of the petitioner.

Learned counsel further submits that basing on the allegations made in the complaint, without conducting any preliminary inquiry, the Investigating Officer has registered the crime against the petitioner on the very same day, contrary to the law laid down by the Hon'ble Supreme Court in *Lalitha Kumari v. Government of U.P.*¹, wherein, it is held as follows:-

"120.6 As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

(a) Matrimonial disputes/family disputes.

(b) Commercial offences.

(c) Medical negligence cases.

(d) Corruption cases.

(e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months' delay in reporting the matter without satisfactorily explaining the reasons for delay."

Learned counsel further relied on the judgment of *Jacob Mathew v. State of Punjab*², wherein, it is held as follows:

"48(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 is the given facts and circumstances no medical professional in his ordinary sense 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.

52. Statutory Rules or Executive Instructions incorporating certain guidelines need to be framed and issued by the Government of India

¹ (2014) 2 SCC 1

² (2005) 6 SCC 1

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's test to the facts collected in the investigation. A doctor accused of rashness or negligence, may not be arrested in a routine manner (simply because a charge has been levelled against him). Unless his arrest is necessary for furthering the investigation or for collecting evidence or unless the investigation officer feels satisfied that the doctor proceeded against would not make himself available to face the prosecution unless arrested, the arrest may be withheld."

Hence, he prayed to grant stay of all further proceedings against the petitioner.

On the other hand, learned Additional Public Prosecutor opposed for grant of stay stating that there are specific allegations against the petitioner.

Having regard to the submissions made by the learned counsel appearing on both sides and on a perusal of the material on record, it is apparent that no material was produced by the prosecution to show that there is any medical negligence on the part of the petitioner. Even as per the expert opinion report, the experts opined that there is possibility of bile duct injury on the patient who have underwent such type of surgery. There is a delay in lodging the complaint. In cases of medical negligence, preliminary inquiry may be conducted by the Investigating Officer.

However, in the present case, basing on the complaint lodged by the *de facto* complainant, the Investigating Officer has registered the crime against the petitioner on the very same day without conducting any preliminary inquiry.

The submissions made by the learned counsel for the petitioner do require detailed examination.

However, there shall be stay of all further proceedings against the petitioner-accused, including his appearance, in C.C.No.3393 of 2022 pending on the file of the learned VIII Additional Chief Metropolitan Magistrate at Hyderabad, pending disposal of the criminal petition.

//TRUE COPY//

SD/-U.SUDHA
ASSISTANT REGISTRAR


SECTION OFFICER

To,

1. The VIII Addl. Chief Metropolitan Magistrate, Hyderabad.
2. The Station House Officer, Mirchowk Police Station, Hyderabad District.
3. Two CCs to Public Prosecutor, High Court for the State of Telangana, Hyderabad (OUT)
4. One CC to SRI MOHD MUZAFFER ULLAH KHAN Advocate [OPUC]
5. One spare copy

HIGH COURT

JS,J

DATED:28/08/2025

ORDER

**IA No.1 OF 2024
IN
CRLP.No.3867 of 2024**

INTERIM STAY

