

  
**HIGH COURT OF JUDICATURE FOR RAJASTHAN**  
**BENCH AT JAIPUR**

S.B. Criminal Writ Petition No. 719/2025

Kailash Chand Bairwa S/o Chhajuram Bairwa, Aged About 38 Years, R/o At Present Behind Surya Mandir Cinema, Bawdi Ka Balaji Temple, Dausa, Permanent R/o Village Jama, Tehsil Dausa, District Dausa, (Raj.).

----Petitioner

Versus

1. State of Rajasthan, Through PP
2. S.P., District Dausa.
3. SHO, Police Station Kotwali, Dausa.
4. Registrar, Rajasthan Medical Council, Sardar Patel Marg, C-Scheme, Jaipur, 302001.
5. S.N. Khnadelwal S/o Shri Ramnivas Khnadelwal, R/o Khandelwal Nursing Home, Khadi Bhandar Road, Sundardas Marg, Manganj, Dausa.
6. Ashish Khandelwal S/o Shri S.N. Khandelwal, R/o Khandelwal Nursing Home, Khadi Bhandar Road, Sundardas Marg, Manganj, Dausa.
7. Pawan Kumar Sharma, Compounder Working At Khandelwal Nursing Home, R/o Khandelwal Nursing Home, Khadi Bhandar Road, Sundardas Marg, Manganj, Dausa.

----Respondents

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| For Petitioner(s) | : | Mr. V.R.S.Bajwa with<br>Ms. Savita Nathawat<br>Mr. Akshat Sharma<br>Mr. Anoop Meena for Anurag Sharma<br>Mr. Khushwant |
| For Respondent(s) | : | Mr. Rajesh Choudhary-GA Cum AAG<br>Mr. Jitendra Singh Rathore-PP<br>Ms. Neha Goyal                                     |

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**JUSTICE ANOOP KUMAR DHAND**

**Order**

**15/04/2026**

1. The instant misc. petition has been filed by the petitioner with the following prayer:-

"It is therefore, humbly prayed that your Lordships may graciously be pleased to accept and allow this writ petition and:

- i. Direct the respondent no.4 to cancel the medical Registration certificate of accused.
- ii. Direct the respondent no 1 to 4 to take action proper against the accused persons respondent no. 5 to 7.
- iii. Direct the respondent no.3 to investigate the matter fair and impartially and file the proper investigated report in one week.
- iv. Kindly order to investigate the matter by Central Bureau of investigation.
- v. Cost of the Writ Petition may also be awarded in favor of the Petitioners."

2. By way of filing the instant misc. petition, multiple prayers have been made by the petitioner including cancellation of medical registration certificate of the accused who is a medical practitioner and for taking proper action against him. A further prayer has been made for issuing directions to the Investigating Agency for conducting fair and impartial investigation in the case registered in the General Diary (*Rojnamacha*) No. 63/2023 Police Station Kotwali, District Dausa for the unnatural death of the petitioner's wife-Lali Devi.

3. It has been alleged by the petitioner that his wife-Lali Devi was admitted to Khandelwal Nursing Home on 21.02.2023 for taking treatment of her eye pain. Whereupon, certain treatment was provided to her at the said hospital and she was discharged on the same day. However, her condition worsened and she was admitted to Khandelwal Nursing Home again on the next day i.e. 22.02.2023 where she was ultimately passed away. It has been alleged in the General Diary report, as well as in this petition, that on account of medical negligence of the treating Doctor, the patient i.e. petitioner's wife had passed away. Hence, a prayer

has been made for taking appropriate action against the treating Doctor, who is a registered medical practitioner.

4. The question which emerges before this Court for consideration is as to whether a registered medical practitioner can be prosecuted straightaway only on the basis of a report received at the Police Station from the family members of the victim/deceased or any inquiry is required to be conducted prior to proceeding against the Doctor, against whom the allegations of medical negligence and rashness etc. have been levelled?

5. The Hon'ble Supreme Court has dealt with an identical situation, which has arisen for consideration of this Court, in the year 2005, while deciding with the case of **Jacob Mathew Vs. State of Punjab and Anr.** reported in **(2005) 6 SCC 1**, wherein similar situation was presented before the Hon'ble Apex Court as to whether any criminal action can be taken against a registered medical practitioner straightaway on the basis of a complaint made by the victim or his family member.

6. Considering the overall circumstances, the issue was summed up in para 48, 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."

7. Thereafter, certain guidelines with regard to prosecution of the medical professional, in the case of medical negligence, were formulated by the Hon'ble Supreme Court in para Nos. 50, 51 and 52, which read as under:-

"50. As we have noticed hereinabove that the cases of doctors (surgeons and physicians) being subjected to criminal prosecution are on an increase. Sometimes such prosecutions are filed by private complainants and sometimes by 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.

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

52. Statutory Rules or Executive Instructions incorporating certain guidelines need to be framed and issued by the Government of India and/or the State Governments in consultation with the Medical Council of India. So long as it is not done, we propose to lay down certain guidelines for the future which should govern the prosecution of doctors for offences of which criminal rashness or criminal negligence is an ingredient. A private complaint may not be entertained unless the complainant has produced prima facie evidence before the Court in the form of a credible opinion given by another competent doctor to support the charge of rashness or negligence on the part of the accused doctor. The investigating officer should, before proceeding against the doctor accused of rash or negligent act or omission, obtain an independent and competent medical opinion preferably from a doctor in government service qualified in that branch of medical practice who can normally be expected to give an impartial and unbiased opinion applying 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.

8. A clear and specific direction was issued by the Hon'ble Supreme Court in para 52 wherein it was held that 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. However, so long as the above exercise is not done, certain guidelines were proposed by the Hon'ble Apex Court for the future which shall govern the case of prosecution of Doctors for offences of which criminal rashness or criminal negligence is an ingredient.

9. Thereafter, again a situation had arisen before the Hon'ble Supreme Court in the incident of rape and murder of a trainee Doctor at R.G. Kar Medical College and Hospital, Kolkata wherein suo motu cognizance was taken by the Hon'ble Supreme Court and the same was registered as SMW (CrI) No. 2/2024 and a National Task Force (NTF) was formulated to deal with the issues pertaining to the safety and well being of the medical professionals. The said matter was highlighted in the segment of the aforesaid order.

10. State counsel Mr. Rajesh Choudhary-learned GA cum AAG apprised this Court that in pursuance of the directions issued by the Hon'ble Supreme Court in the aforesaid suo motu petition In Re:- Alleged Rape and Murder incident of a Trainee Doctor in R.G. Kar Medical College and Hospital, Kolkata and Related Issues, the

Government of Rajasthan, Home Department, Group-5 has formulated a Standard Operating Procedure (for short, 'SOP') on the aforesaid issue. Counsel further submitted that the aforesaid SOP, issued vide order No.P 9(14)Home-5/2022 dated 20.03.2025, deals with the procedures which are required to be followed in case of information/ complaint being filed against a Medical Officer with regard to his medical negligence in treatment of any patient and the offence pertaining to Section 106 of Bartiya Nyaya Sanhita, 2023. He submits that since issuance of the aforesaid SOP by the Government of Rajasthan, the enclosed steps are being carried out accordingly.

11. This Court is afraid to accept the contentions, so made by the State Counsel that in the cases of negligence of a registered medical practitioner, the SOP for conducting Preliminary Inquiry is being followed in its letter and spirit by the State.

12. It appears that the Investigating Officers posted at various Police Stations in the State of Rajasthan are not aware about the aforesaid SOP and it also appears that the aforesaid SOP has only been kept in the State Government files and has not been circulated to the Police Stations across the State of Rajasthan.

13. Before deciding the issue involved in the instant petition, this Court deems it just and proper to issue a direction to the respondent i.e. State of Rajasthan, Home Department to circulate a copy of the SOP formulated under Order No. P.9(14) Home-5/2022 dated 20.03.2025 to the Station House Officers of all the Police Stations across the State of Rajasthan and direct them to strictly follow the procedure, as prescribed in the said SOP, while dealing any report/complaint received against any

registered medical practitioner with regard to allegations of negligence in the treatment of patient(s).

14. This Court further directs the State to apprise this Court whether any statutory Rules have been framed by the State of Rajasthan or Union of India i.e. Central Government, in terms of the directions, issued in para 52 of the judgment passed by the Hon'ble Supreme Court in the case of **Jacob Mathew (Supra)**.

15. List this matter on 07.05.2026, to see compliance, so far made by the State.

**(ANOOP KUMAR DHAND),J**