HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL MISC. PETITION No. 765 of 2010

PETITIONER	:	Dr. R. Jairam Iyer, son of Shri T.S. Raman, aged about 51 years, Resident of Plot No.1-2, Geetanjali City, Behtarai Road, District Bilaspur, Chhattisgarh
	versus	
RESPONDENT	:	State of Chhattisgarh, Through Police Station, Sarkanda, District Bilaspur, Chhattisgarh

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For Petitioner : Mr. R. S. Marhas, Advocate.

For Respondent : Mr. A. S. Kachhwaha, Additional Advocate General & Shri Anant Bajpai, Panel Lawyer.

HON'BLE SHRI JUSTICE SANJAY K. AGRAWAL

JUDGMENT [C.A.V.]

(Passed on 08.07.2015)

(1) The petitioner herein is an interventional Cardiologist and on the date of occurrence was working as Senior Consultant in the Apollo Hospital, Bilaspur, while facing criminal prosecution for commission of offences punishable under Sections 304-A, 468 & 201 of the Indian Penal Code, has invoked the inherent jurisdiction of this

Court under Section 482 of the Code of Criminal Procedure (henceforth 'Cr.P.C.') for quashment of charge-sheet and criminal prosecution initiated against him for the above-stated offences.

(2) The essential facts, as unfolded by the prosecution, to find out whether petitioner is entitled to the relief claimed in the criminal miscellaneous petition are as under:-

(2.1) The State of Chhattisgarh through Station House Officer, Police Station Sarkanda submitted a charge sheet under Section 173 of the Cr.P.C. against the petitioner herein for commission of offences under Sections 304-A, 468 & 201 of the Indian Penal Code before the jurisdictional criminal court stating inter alia that Shri Ashok Pingle, the then Mayor of Municipal Corporation, Bilaspur was admitted in the Apollo Hospital, Bilaspur on 02.08.2008 for treatment of pain in chest. The petitioner being a Senior Consultant of said Hospital after examination found that Shri Pingle was suffering from Non-ST segment elevation myocardial infarction *i.e.* a heart disorder and suspecting heart attack, subjected him to angiography and based on the angiographic finding,

clinical conditions and further investigation reports, angioplasty was also performed on patient Shri Pingle and his blocks in the arteries of the heart was treated and, thereafter, post angioplasty due medical care and attention was provided but thereafter the petitioner did not take adequate and proper precaution about his frequent complaint of fever resulting in deterioration of his health condition and, ultimately, he became serious on 11.08.2008. When the health condition of patient Shri Ashok Pingle started deteriorating, attending staff nurses gave intimation to the petitioner at about 3.00 p.m. on 11.08.2008 for attending the patient but the petitioner did not attend Shri Pingle promptly and diligently and attended only at 5.00 pm in the evening and he was subjected to unsuccessful second angioplasty however he died on 11.08.2008 at 9.02 p.m., but his death was suppressed and he was declared dead on 12.08.2008 at 3.50 a.m. and forged death certificate was issued to the family members of Shri Ashok Pingle and, as such, there is a rash and negligent act in treating the patient Shri Ashok Pingle by the petitioner and death of Shri Pingle was

suppressed and forged death certificate was issued and, thereby, petitioner committed the aforesaid offences.

(3) The petitioner herein has filed this petition under Section 482 of the Cr.P.C. for quashing of charge sheet stating inter alia that he is a well qualified interventional Cardiologist and while working as Senior Consultant in the Apollo Hospital, he performed angiography and thereafter, angioplasty to the patient (Shri Ashok Pingle) on 02.08.2008 and he planned to discharge him on 06.08.2008 but on account of fever, discharge was withheld. It has further been averred that being a qualified Cardiologist, he decided to adopt invasive line of treatment to Shri Ashok Pingle looking to his condition prevailing at the time of admission and took proper care to treat Shri Pingle but on account of stent thrombosis he died on 11.08.2008. Thereafter the Enquiry Committee consisting of Dr. R. R. Tiwari, Superintendent, CIMS, Bilaspur, Dr. U.S. Paikra, Professor (Medicines), Govt. Medical College, Jagdalpur & Dr. G.B. Gupta, Professor (Medicine), Pt. J.N. Medical College, Raipur recorded a conclusion that medical line of therapy, which is conservative should have

been applied rather invasive line of treatment. It is further averred that it is not a case of “gross” medical negligence for which, the petitioner is liable to be prosecuted for offence under Section 304-A of the Indian Penal Code and as such charge-sheet for offences under Section 304-A, 201, 468 IPC deserves to be quashed.

(4) The State Government has filed its counter affidavit stating inter alia that the State Government, after taking into account the report of three doctors committee, filed a charge sheet against the petitioner for the aforesaid offences, in which, it has clearly been indicated that the petitioner, while working as Senior Consultant in the Apollo Hospital, Bilaspur treated the patient Mr. Pingle rashly and negligently and on account of which he suffered death and, as such, it is not a case where inherent jurisdiction of this Court under Section 482 of the Cr.P.C. should be exercised and the instant petition for quashing deserves to be dismissed with cost.

(5) Shri R.S. Marhas, learned counsel appearing for the petitioner would submit that in order to prosecute the medical professional under Section 304-A IPC, “gross

negligence" on the part of the petitioner should be pleaded and established by the prosecution; he would further submit that on the basis of report of the three doctors' committee constituted by State Government, it cannot be held that petitioner is guilty of gross negligence in treating Mr. Ashok Pingle, which will attract penal provisions contained in Section 304-A IPC and the petitioner, while opting for the invasive line of treatment, performed angiography and based on angiography report and other essential test, performed angioplasty which is one of standard medical line of treatments for patients suffering from acute coronary syndrome and therefore, it cannot be held that petitioner is guilty of criminal negligence and, as such, prosecution of the petitioner for offence under Section 304-A IPC is liable to be quashed. He would lastly submit that prosecution of petitioner for offence under Section 201 and 468 IPC is equally bad as ingredients of aforesaid offences are not available in the charge-sheet and it is also liable to be quashed.

(6) On the other hand, Shri Kachhwaha, learned Additional Advocate General appearing on behalf of the

State of Chhattisgarh would submit that after filing of charge-sheet, charges have been framed against the petitioner for the aforesaid offences on 08.02.2012, against which remedy of revision under Section 397 read with 401 of Cr.P.C. is available to the petitioner and as such this petition under Section 482 of the Cr.P.C. is not maintainable. He would further submit that prima facie, charges for the aforesaid offences are clearly born out from the charge-sheet filed against the petitioner and available on record; and the petitioner being a treating doctor and a senior consultant ought to have visited and treated the patient Shri Pingle right in time as there was delay on the part of the petitioner to attend the patient right in time, which resulted in death of Shri Pingle and, as such, no case for quashing of the criminal prosecution is made out and the petition under Section 482 of the CrPC deserves to be dismissed with cost.

(7) Countering the objection with regard to maintainability of this petition, Shri Marhas learned counsel for the petitioner, would submit that inherent jurisdiction by this Court under Section 482 Cr.P.C. can be exercised in

appropriate cases to prevent abuse of the process of the court and/or to secure ends of the justice and availability of revisional jurisdiction under Section 397 Cr.P.C. does not exclude jurisdiction of this Court under Section 482 Cr.P.C.

(8) I have heard learned counsel for the parties and given thoughtful consideration to the submissions made therein and also perused the records available with utmost circumspection.

(9) After hearing the learned counsel for the parties and upon perusal of the records, the following facts would emerge on the face of the record:-

(1) That, Shri Ashok Pingle was admitted to the Apollo Hospital, Bilaspur upon severe chest discomfort on 02.08.2008.

(2) That, petitioner being an interventional cardiologist working as senior consultant in the said hospital, conducted various tests and found Shri Pingle with typical symptoms of acute coronary syndrome with ECG changes (ST Depression) and enzyme elevations and diagnosed him to be suffering from Non ST-elevations myocardial infarction.

(3) The petitioner finding the invasive treatment to be appropriate considering the gravity of illness and clinical conditions performed Angiography and Percutaneous Coronary Intervention (PCI) and thereby two Drug Eluting Stent (DES) were placed in LAD and D-1 coronary artery.

(4) The condition of Shri Pingle remained stable for three days and he was to be discharged on 07.08.2008 but he developed a febrile illness, which continued for four days and treated by physicians of the said hospital.

(5) That, ECG done on 09.08.2008 showed no changes but the fever continued up to 11.08.2008.

(6) That on 11.08.2008 the staff nurse attending Shri Pingle looking to his condition specially sweating with hypotension requested the petitioner on phone to attend Shri Pingle.

(7) The petitioner attended Shri Pingle on 6.00 pm and coronary angiogram was repeated, which revealed blockage of LAD, as Stent was found to be occluded.

(8) That Shri Pingle was declared dead by the hospital on 12.08.2008 at 3.40 pm.

(9) According to the death certificate, cause of death is Stent Thrombosis and left main Thrombosis C Sepsis C Cardio Respiratory Arrest.

(10) The State Government constituted an enquiry committee of three doctors headed by Dr. G. B. Gupta, Head of the Department (Medicine), Pt. Jawaharlal Nehru Medical College, Raipur which gave its report on 31.08.2008.

(11) State of Chhattisgarh through Station House Officer, Sarkanda charge-sheeted the petitioner for offences punishable under Sections 304-A, 201 and 468 IPC, on which the jurisdictional criminal court took cognizance.

(12) The petitioner filed instant petition under Section 482 Cr.P.C. seeking quashment of the charge-sheet on 04.10.2010, and during the pendency of this petition, Chief Judicial Magistrate framed charges against the petitioner for aforesaid offences.

(13) On a complaint filed by Miss. Mandakini Pingle against the petitioner and Apollo Hospital, Bilaspur alleging medical negligence by them in treatment of Shri Ashok Pingle claiming compensation, the Chhattisgarh State Dispute Redressal Commission, Raipur by its order dated 31.03.2012 has held that petitioner being a cardiologist had performed his duties in good faith and with a reasonable care expected from medical professional and he is not liable for the death of Shri Ashok Pingle, however the Tribunal has held the Apollo Hospital is liable for deficiency in service in respect of a post Operative Management of deceased and awarded compensation to the extent of 3,50,000/- along with cost.

(10) The twin question that arises for determination is firstly whether the petition as framed and filed is maintainable in view of alternative remedy available to the petitioner to invoke the jurisdiction of this Court under Section 397 Cr.P.C. against the order framing charges for the impugned offences and secondly as to whether

considering and accepting the entire charge-sheet/material available on record as absolutely correct and true, the charges under Section 304-A IPC and under Section 201, 468 IPC are made out against the petitioner and proceeding with the trial would result in an abuse of the process of the court and would not serve ends of justice.

(11) The first question is whether inherent power of this Court under Section 482 Cr.P.C. stands excluded when the revisional jurisdiction under Section 397 Cr.P.C. is available to the petitioner. In order to consider the plea so raised it would be appropriate to notice Section 482 Cr.P.C. which states as under:-

> "**482. Saving of inherent power of High Court.-** Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court of otherwise to secure the ends of justice."

From a plain and careful reading of above-quoted provision, it is clear that power under Section 482 of the Cr.P.C. can be exercised to give effect to any order under the Code of Criminal Procedure, or to prevent abuse of the

process of the court or otherwise to secure the ends of justice.

(12) Way back, in the matter of **Madhu Limaye v. State of Maharashtra**[1] their Lordships of the Supreme Court observed that jurisdiction under Section 482 Cr.P.C. can be exercised in an appropriate case.

> "10……The answer is obvious that the bar will not operate to prevent the abuse of the process of the Court and/or to secure the ends of justice. The label of the petition filed by an aggrieved party is immaterial. The High Court can examine the matter in an appropriate case under its inherent powers. The present case undoubtedly falls for exercise of the power of the High Court in accordance with Section 482 of the 1973 Code, even assuming, although not accepting, that invoking the revisional power of the High Court is impermissible."

(13) Their Lordships of the Supreme Court in the matter of **Rajkapoor and others v. State and others**[2] held that availability of revisional jurisdiction under Section 397 Cr.P.C. does not exclude jurisdiction of the court under Section 482 of Cr.P.C. and Court can exercise its inherent jurisdiction by observing as under:-

> "In short, there is no total ban on the exercise of inherent power where abuse of the process

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1 (1977) 4 SCC 551
2 (1980) 1 SCC 43

> of the court or other extraordinary situation excites the court's jurisdiction. The limitation is self-restraint, nothing more. The policy of the law is clear that interlocutory orders, pure and simple, should not be taken up to the High Court resulting in unnecessary litigation and delay. At the other extreme, final orders are clearly capable of being considered in exercise of inherent power, if glaring injustice stares the court in the face……..."

(14) Thus, availability of revisional jurisdiction would not bar the jurisdiction of this Court under Section 482 Cr.P.C. in appropriate case. Turning back to the facts of the case, it would appear that this petition was filed before this Court on 04.10.2010 and during the pendency of this petition, charges against the petitioner were framed by the jurisdictional criminal court for the offences charged on 08.02.2012. Thus, in light of the principles enunciated by the Supreme Court in aforesaid cases and the factual position obtaining in the case in hand, it would be inappropriate to dismiss the present petition holding that remedy of the petitioner is to challenge the order framing charge under Section 397 Cr.P.C. as such the objection raised in this behalf stands overruled.

(15) The determination of the objection so raised leads me to the next question regarding criminal medical negligence governed by Section 304-A of the Indian Penal Code, which reads thus:-

> **"<u>304-A. Causing death by negligence</u>:** 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."

(16) The essential ingredients of offence under Section 304-A of the Indian Penal Code are as under:-

1. Accused caused the death of any person;
2. Death was caused by the accused doing any rash act; or such death was caused by the accused doing any negligent act; and
3. Such a death did not amount to culpable homicide.

(17) In order to prove criminal negligence, the prosecution must prove the following ingredients:

(i) Exercise of duty to take care;
(ii) breach of duty to take care causing death; and
*(iii)*breach of duty must be characterized as gross negligence.

(18) At this stage, it would be appropriate to notice the relevant law on the subject, which are as under:-

(18.1) In the matter of **Dr. Suresh Gupta v. Govt. of NCT of Delhi and another**[3], Their Lordships of the Supreme Court has held that in order to fix the 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" and observed as under:

> **"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 lack of necessary care, attention and skill. The decision of the House of Lords in *R.* v. *Adomako*[4] relied upon on behalf of the doctor elucidates the said legal position and contains the following observations:
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> > "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."

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3 (2004) 6 SCC 422
4 (1994) 3 All ER 79 (HL)

(18.2) The correctness of the aforesaid judgment came to be considered by the Supreme Court in case of **Jacob Mathew v. State of Punjab and another**[5]**,** wherein Their Lordships of the Supreme Court considered elaborately various aspects of the medical negligence on the part of medical professional and summed up their conclusion in paragraph 48 of the report which states 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".
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> (*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

5 (2005) 6 SCC 1

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*[9], 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, 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".

(*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."

(18.3) Similarly, in the matter of **Kusum Sharma & others v. Batra Hospital & Medical Research Centre and others**[6], their Lordships of the Supreme Court have considered earlier decision on the question of medical negligence on the part of the doctor and held that it is necessary that death should be direct result of the rash & negligent act of the accused and it was further held that the doctor has discretion in choosing treatment in which he proposes to give treatment to the patient and culled out the following principles, summed up in paragraph 89 of the report which reads thus:-

> **"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-know principles must be kept in view:
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> ***I.*** Negligence is the breach of a duty exercised by omission to do something

[6] (2010) 3 SCC 480

which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which is 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 sill 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.

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.

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 patient have to be paramount for the medical professionals."

(18.4) In the case of **Malay Kumar Ganguly v. Dr. Sukumar Mukherjee & others**[7]**,** Their Lordships of the Supreme Court have again reiterated that negligence must

[7] (2009) 9 SCC 221

be of a gross or a very high degree to amount to "criminal negligence" by observing as under:-

> **"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.
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> **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.
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> **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."

(18.5) Very recently, in the case of **P.B. Desai v. State of Maharashtra & another**[8], Their Lordships of the Supreme Court observed as under:-

> **"59.** While the two experts might differ on the level of risks involved in the critical surgical operation but for the sake of life which any way was struggling to live, is a mild respite to doctors in their decision to operate the patient or not. A long catena of medical cases on this theme does provide relief to doctors. One of the many indispensable duties which is of utmost importance is that when such a decisional shift is taken by a doctor against the line of renowned doctor who had earlier treated the patient, that doctor must exercise required personal attention to the patient during the operation. On this aspect, *the Medical Council of Maharashtra, while reprimanding, reasoned that Dr P.B. Desai, instead of merely advising surgery which was in spite of the opinion of cancer specialists from USA, ought to have voluntarily taken more interest and personally seen the situation faced by Dr A.K. Mukherjee which he did not do so*. Since the appellant has not challenged the findings of the Medical Council who had found him guilty of misconduct, those findings do provide the legal fortification and along with the oral and documentary evidence adduced before the court below speaks much on the professional duty which the appellant owed to the patient.
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> **61.** No doubt, in the present case the appellant not only possesses requisite skills but is also an expert in this line. However, having advised the operation, he failed to take

[8] (2013) 15 SCC 481

> care of the patient. Thereafter, at various stages, as observed by the courts below, he was held to be negligent by the Maharashtra Medical Council and thus found to be guilty of committing professional misconduct. Thus, it was the appellant's "duty" to act contractually, professionally as well as morally and such an omission can be treated as an "act". We again clarify that undoubtedly, within the realm of civil liability, the appellant has breached the well essence of "duty" to the patient."

(18.6) Quite recently, in the matter of **A.S.V. Narayanan Rao v. Ratnamala and another**[9], the Supreme Court while following the principles of law laid down in **Jacob Mathew**(supra) has held that in order to prosecute the medical professional, the negligence must be "gross" by holding as under:-

> "15. The High Court unfortunately overlooked this factor. We, therefore, are of the opinion that the prosecution of the appellant is uncalled for as pointed out by this Court in Jacob Mathew case that the negligence, if any, on the part of the appellant cannot be said to be "gross". We, therefore, set aside the judgement under appeal and also the proceedings of the trial court dated 11.12.2006."

(19) In light of the principles of law enunciated by their Lordships of the Supreme Court in above-stated judgments, it is transparently clear that in order to

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9 (2013) 10 SCC 741

prosecute and punish a medical professional under Section 304-A of Indian Penal Code negligence contemplated is “gross negligence” that is negligence of very high degree and as such expression “rash or negligent act” occurring in Section 304-A IPC has to be read as “gross negligent act”.

(20) The charge-sheet filed against the petitioner, indicates that after performing angioplasty on 02.08.2008, patient Shri Pingle was supposed to be discharged on 06.08.2008, but on account of febrile illness, his discharge was withheld and he was given broad spectrum antibiotics to arrest fever as he was treated by Internal Physician for the Management of Fever, as per physician advice. Negligence, which is attributed to the petitioner was he was called by the attending staff/nurses at 3.00 p.m. on 11.08.2008 whereas he attended the patient Shri Pingle at 5.30 p.m. / 6.00 p.m. and conducted test and found the implanted stents placed on 02.08.2008 to be blocked, repeated angioplasty on him. Further allegation of the prosecution is that the Enquiry Committee constituted by the State Government on 20.08.2008 to enquire into the

allegation of rashness and negligent act of the petitioner has recorded a finding that conservative medical line of therapy ought to have been performed first and failure to respond to it, invasive medical treatment of angiography & angioplasty would have been performed and full investigation ought to have been done before the procedure.

(21) At this stage, it would be appropriate to notice recommendations, findings and conclusions of enquiry committee. The enquiry committee consisting of Dr. R. R. Tiwari, Superintendent, CIMS, Bilaspur, Dr. U.S. Paikra, Professor (Medicines), Govt. Medical College, Jagdalpur and Dr. G.B. Gupta, Professor (Medicine), Pt. J. N. Medical College, Raipur submitted a report on 31.08.2009 to the Secretary, Health and Family Welfare, Govt. of Chhattisgarh, Raipur. It is worthwhile to reproduce recommendations and conclusions of the committee, which read as under:-

Recommendations-

(i) Instruments as per page No.22-6 of the report be seized from Apollo Hospital, Bilaspur for retrieval of datas by the computer engineer and experts.

(ii) All attempts must be made to pursue the report of the Technical Committee of experts of Apollo, dated 18.08.2008 based on which services of Dr. Iyer were terminated.

(iii) The permanent address etc of the paramedical staff, nurses and doctors during 02.08.2008 to 12.08.2008 in the Apollo Hospital who served late Pingle Ji, be obtained to secure them whenever required as some of them may leave the job and become untraceable in the near future and leave the place.

Conclusions-

(i) Regarding time of death, there is no finding neither physical nor instrumental evidence that could suggest the patient survived beyond 09:02 PM on 11.08.2008 so he was dead at this time.

(ii) There are many gaps in investigation and post operative management in this case – might be responsible for this unfortunate event.

(iii) Dr. J. R. Iyer was In-Charge of the case and he is responsible for the management of the patient, so he is a t fault.

(iv) Apollo Hospital, Bilaspur Management failed to provide the medicare to late Shri Ashok Pingle in the event of need, so they are also at fault.

The enquiry committee recorded the following findings:-

Findings-

(i) Late Shri Ashok Pingle son of late T. R. Pingle, aged 60 years, male, mayor of Bilaspur C.G. was admitted at Apollo Hospital, Bilaspur on 02.08.2008 on the advice of Dr. Jairam Iyer at 01:40 PM Dr. Iyer was In-charge Consultant of the case. Patient was admitted in the Hospital till his demise. He was planned to

discharge on 07.08.2008 date and it was withheld due to fever.

(ii) In such type of patient a medical line of therapy which is conservative should have been tried. Failure to respond to it, persistence of chest pain and development of hypotension, PTCA would have been more appropriate.

(iii) It also appears that patients would have been fully investigated before the procedure.

(iv) In the absence of daily ECG the development of myocardial ischemia could not be detected earlier in spite of the fact that the patient was complaining of chest pain and difficulty in breathing.

(v) Late Ashok Pingle had chest pain for which diagnosis of acute coronary syndrome (Non ST – Elevated AMI – Anterior leads) was made. For this late Pingle was given primary invasive line of treatment. Coronary angiography was done on 02.08.2008 and two drug eluting stents were placed in the LAD and D 1 coronary artery by Dr. Jairam Iyer.

(vi) Fever with rigors was coming daily for five days before his demise. Total duration of fever was for eight days which started on third post of day. It could have been diagnosed and treated. Tests done on 11.08.2008 revealed spleenomegaly and positive urine culture which, might be an indicator of cause of fever-either Malaria (Spleen Positive) or urinary tract infection, both of which are treatable conditions.

(vii) On the day of event (11.08.2008) in the evening sister on duty informed Dr. Jairam Iyer on mobile by Hospital intercom around 03:00 PM and Dr. Iyer came around 05:30 PM to see the patient.

(viii) Dr. Jairam Iyer did repeat coronary angiography on 11.08.2008 around 08:10 PM which revealed blockage of LAD and blockage of stents.

(ix) Cause of death:

Final diagnosis as per Apollo Hospital records is "CAD with acute anterior NSTEMI with post primary PTCA status to LAD and D1 with acute re-infarction with stent thrombosis and Lt. Main Thrombosis with Sepsis with cardio respiratory arrest. It appears that the cause of death may be a block in the left main coronary artery and blockage of the implanted stents.

(x) Time of death

The first cardiac arrest occurred around 08:10 PM and second cardiac arrest occurred in cathlab before 09:02 PM and CPR was carried out in this period. The last evidence of cardiac activity is available up to 09:02 PM. There is no certain proof of cardiac activity beyond this time. As per the available pace maker tracing heart continued to contract up to 08:37:01 PM and procedure was done up to 09:02 PM on 11.08.2008.

(22) The charge-sheet filed against the petitioner, based on findings and conclusions of the Enquiry Committee, would show that offence under Section 304-A IPC is based on following broad facts:-

(i) That, the petitioner ought not to have performed angiography/angioplasty directly at the first instance and it could have been performed only after applying conservative medical line of therapy.

(ii) That deceased Shri Ashok Pingle was not fully investigated before the procedure and in absence of daily ECG, the development of

Myocardial Ischemia could not be detected earlier.

(iii) That, on 11.08.2008, the petitioner did not attend the patient, promptly at 3.00 p.m. when the call was made by the Staff Nurse attending the patient Shri Pingle, and thereby committed negligence which amounts to criminal negligence.

(23) The sole question in order to establish gross negligence on the part of medical professional in diagnosis /treatment would be whether he has acted with reasonable competence and the course of action chosen by him was acceptable to the medical profession / science. In this regard the following judgments of the Supreme Court may be noticed herein usefully and profitably.

(23.1) In the matter of **Bolam v. Friern Hospital Management Committee**[10] Queens Bench laid down the test for judging the medical negligence and relying upon *Scottish case, Hunter v. Hanley* (1) ([1955] S.L.T. at p. 217), which dealt with medical matters, Lord President (LORD CLYDE) said this:-

[10] (1957) 2 All ER 118 (QB)

> "In the realm of diagnosis and treatment there is ample scope for genuine difference of opinion, and one man clearly is not negligent merely because his conclusion differs from that of other professional men, nor because he has displayed less skill or knowledge than others would have shown. The true test for establishing negligence in diagnosis or treatment on the part of a doctor is whether he has been proved to be guilty of such failure as no doctor of ordinary skill would be guilty of if acting with ordinary care."

(23.2) In **Kurban Hussein Mohamedalli Rangawalla v. State of Maharashtra**[11], while dealing with Section 304-A IPC, the following statement of law by Sir Lawrence Jenkins in *Emperor* v. *Omkar Rampratap*[12] was cited by the Supreme Court with approval:-

> "To impose criminal liability under Section 304-A, Indian Penal Code, it is necessary that the death should have been the direct result of a rash and negligent act of the accused, and that act must b e the proximate and efficient cause without the intervention of another's negligence. It must be the causa causans; it is not enough that it may have been the causa sine qua non."

(23.3) In the case of **Achutrao Haribhau Khodwa v. State of Maharashtra**[13], their Lordships of the Supreme Court have clearly held that if more than one alternative

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11 AIR 1965 SC 1616
12 (1902) 4 Bom LR 679
13 (1996) 2 SCC 634

course is available and the doctor chooses one course of action in preference to the other one available, he cannot be made liable if the course of action chosen by him is acceptable to the medical profession. Relevant paragraph of the report states as under:-

> "14. The skill of medical practitioners differs from doctor to doctor. The very nature of the profession is such that there may be more than one course of treatment which may be advisable for treating a patient. Courts would indeed be slow in attributing negligence on the part of a doctor if he has performed his duties to the best of his ability and with due care and caution. Medical opinion may differ with regard to the course of action to be taken by a doctor treating a patient, but as long as a doctor acts in a manner which is acceptable to the medical profession and the court finds that he has attended on the patient with due care, skill and diligence and if the patient still does .not survive or suffers a permanent ailment, it would be difficult to hold the doctor to be guilty of negligence."

(23.4) In the case of **Laxman Balkrishna Joshi (Dr.) v. Dr. Trimbak Bapu Godble**[14], their Lordships of the Supreme Court have held that the medical professional has discretion in choosing the treatment, which he proposes to give to the patient and observed as under:

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[14] AIR 1969 SC 128

"11. The duties which a doctor owes to his patient are clear. A person who holds himself out ready to give medical advice and treatment impliedly undertakes that he is possessed of skill and knowledge for the purpose. Such a person when consulted by a patient owes him certain duties viz. a duty of care in deciding whether to undertake the case, a duty of care in deciding what treatment to give or a duty of care in the administration of that treatment. A breach of any of those duties gives a right of action for negligence to the patient. The practitioner must bring to his task 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 (*cf. Halsbury's Laws of England 3rd Edn. Vol. 26 p. 17*). The doctor no doubt has a discretion in choosing treatment which he proposes to give to the patient and such discretion is relatively ampler in cases of emergency. But the question is not whether the judgment or discretion in choosing the treatment be exercised was right or wrong, for, as Mr Purshottam rightly agreed, no such question arises in the present case because if we come to the same conclusion as the High Court viz. that what the appellant did was to reduce the fracture without giving anaesthetic to the boy, there could be no manner of doubt of his being guilty of negligence and carelessness. He also said that he was not pressing the question whether in this action filed under the Fatal Accidents Act (13 of 1858) the respondents would be entitled to get damages. The question, therefore, is within a small compass, namely, whether the concurrent findings of the trial court and the

> High Court that what the appellant did was reduction of the fracture without giving anaesthetic to the boy and not mere immobilisation with light traction as was his case, is based on evidence or is the result of mere conjecture or surmises or of misunderstanding of that evidence."

(23.5) Their Lordships of the Supreme Court in the matter of **Jacab Mathew** (supra) have held, that medical practitioner cannot be held negligent so long as the procedure adopted was one which was acceptable to the medical science as on that date by observing as under:-

> "25. … At times, the professional is confronted with making a choice between the devil and the deep sea and he has to choose the lesser evil. 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. Which course is more appropriate to follow, would depend on the facts and circumstances of a given case. The usual practice prevalent nowadays is to obtain the consent of the patient or of the person in charge of the patient if the patient is not in a position to give consent before adopting a given procedure. So long as it can be found that the procedure which was in fact adopted was one which was acceptable to medical science as on that date, the medical practitioner cannot be held negligent merely because he chose to follow one procedure and not another and the result was a failure."

A doctor 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."

Their Lordships very aptly observed that:

> "28. … 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."

(24) In the light of principles of law laid down by their Lordships of the Supreme Court in above-quoted judgments in relation to criminal negligence on the part of medical professional holding such a professional has a discretion in choosing the line of treatment which he proposes to extend to the patient and if more than one alternative line of treatment is available to him and if he chooses one line of treatment over the other and such course of action taken is acceptable to the medical profession, the professional cannot be held to be guilty of criminal negligence. Reverting back to the factual score of the case, it would appear that the petitioner being an interventional cardiologist, finding the position of patient

Shri Ashok Pingle after conducting angiography and based on other requisite tests and other test reports decided to perform angioplasty on him, which was undertaken by him on 02.08.2008 and again on 11.08.2008, angioplasty was repeated finding Stent Thrombosis. It is not in dispute and it is not the case of the prosecution that the petitioner was not a doctor qualified to treat the patient Shri Ashok Pingle whom he treated. It is the case of the prosecution based on the report of three members committee constituted by State Government that the petitioner ought to have applied conservative line of treatment and failure to respond he ought to have extended invasive line of treatment (Angioplasty). The aforesaid basis of the prosecution in prosecuting the petitioner for criminal medical negligence runs contrary to the well settled law in this regard noticed hereinabove. The petitioner being a qualified doctor after examining and taking note of gravity of illness decided to adopt the invasive line of treatment and thereby treating him in the same line by successfully performing angioplasty on 02.08.2008 and thereafter process for his discharge had already been initiated but due to

subsequent fever which the patient developed and for which he was treated by the internal physician of the Hospital, as such the line of treatment adopted by the petitioner *i.e.* invasive line of treatment by performing angiogram cannot be questioned by the prosecution in view of the settled legal position stated hereinabove and it cannot be held that the line of treatment applied by the petitioner no professional man of ordinary skill would have been taken had he been acting with ordinary skill. As such there is no evidence to suggest that petitioner as a Cardiologist failed to provide reasonable standard of care or violated standard guideline and practice followed in this regard by medical professional.

(25) The document filed along with the charge-sheet would clearly show that the patient was fully investigated before the procedure undertaken and thereafter considering the gravity of illness it was decided to perform angioplasty and thereafter as and when required ECG was done time to time. There is no material to suggest that Shri Pingle was not fully investigated before the procedure was undertaken.

(26) This brings me to the next submission vehemently raised before this Court for consideration on behalf of respondent/State, that the petitioner did not attend Shri Pingle in time on call made by staff Nurses on 11.08.2008 at 3.00 p.m. and attended the patient only as late as 5.30 p.m. and thereafter repeated the unsuccessful angioplasty, and that is gross negligence on the part of the petitioner.

(27) In the charge sheet filed against the petitioner, nothing has been brought on record to indicate that mere delay in attending the patient is the sole cause of death. Fact remains that patient Shri Pingle was treated by Internal Physician for the Management of Fever and it is not the case that non-attending the patient Shri Pingle by the petitioner at 3.00 pm is the sole cause for the death of the patient, especially when according to the record of Apollo Hospital, Bilaspur, cause of death of patient Shri Pingle is Stent Thrombosis; and according to the report of the three doctors Committee cause of death is due to block in the left main coronary artery and blockage of the implanted stents.

(28) Their Lordships of the Supreme Court in the matter of **Rakesh Ranjan Gupta v. State of U.P.**[15], while considering the effect of delay by medical professional to attend the patient have held that mere delay to attend on the patient would not attract Section 304-A IPC by holding as under:-

> **"3.** The above allegations do not disclose, prima facie, a case of rash or negligent act on the part of the appellant so as to attract the penal provision under Section 304-A IPC. If there was delay on the part of the doctor to attend on the patient, that may at the worst be a case of civil negligence and not one of culpable negligence falling under the above section. That apart, the cause of death has now been disclosed from the report of the chemical examiner, as one of consuming poison. The viscera examined in the chemical laboratory showed that result. It is nobody's case that the appellant has administered poison to the patient. It is now apparently clear that death was not on account of anything which the appellant did to the patient. It was primarily due to the poison being consumed by the deceased. Therefore, by no stretch of imagination can it be said that death of the deceased was caused by any act done by the appellant."

(29) Thus, taking the allegations against the petitioner as it is and its face value, merely on account of alleged delay by the petitioner in attending the patient (Shri Pingle) in

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15 (1999) 1 SCC 1888

absence of material on record that delay is sole reason for the death of patient Shri Pingle, the petitioner cannot be held to be “gross negligent” requiring prosecution of the petitioner for commission of offence under Section 304-A of the Indian Penal Code.

(30) It is well settled law, that the inherent powers under Section 482 of the Code can be exercised either to prevent abuse of the process of the court or otherwise to secure the ends of the justice, where the allegation made in the complaint or charge-sheet, even if they are taken at their face value and accepted in their entirety do not *prima facie* constitute any offence or make out a case against the accused or allegations made in the complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused or where a criminal complaint is manifestly attended with malafide. [Kindly see **State of Haryana and others v. Bhajan Lal and others**[16]]

[16] 1992 Supp (1) SCC 335

(31) Thus, applying the principles of law enunciated by their Lordships of the Supreme Court in aforesaid case **Bhajan Lal**(supra) in the facts of the present case and on the basis of aforesaid analysis, taking the allegations in the charge-sheet in its face value, no offence under Section 304-A IPC is made out requiring continuance of petitioner's prosecution for the aforesaid offence, rather its continuance is clearly an abuse of the process of the Court warranting exercise of jurisdiction under Section 482 Cr.P.C. to prevent abuse of the process of the Court.

(32) The determination of the above question brings me to the next question as to whether the petitioner can be prosecuted for the offence under Sections 201 and 468 IPC.

(33) The charge under Section 201 IPC against the petitioner is that though Shri Ashok Pingle died on 11.08.2008 at 9.02 pm, yet he was put on ventilator by the petitioner and thereby his death was suppressed which is an offence punishable under Section 201 of the Indian Penal Code. Section 201 of the Indian Penal Code provides as under:-

"**201. Causing disappearance of evidence of offence, or giving false information to screen offender**.- Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false;

if a capital offence.- shall, if the offence which he knows or believes to have been committed is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

if punishable with imprisonment for life.- and if the offence is punishable with [imprisonment for life], or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

if punishable with less than ten years' imprisonment.- and if the offence is punishable with imprisonment for any term not extending to ten years, shall be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth part of the longest term of the imprisonment provided for the offence, or with fine, or with both."

The essential ingredients of the offence under Section 201 IPC are as under:-

1. That an offence has been committed;
2. That the accused knew or had reason to believe the commission of such an offence;

3. That with such knowledge or belief he:
   (a) caused any evidence of the commission of that offence to disappear, or
   (b) gave any information relating to that offence which he then knew or believed to be false.
4. That he did so as aforesaid with the intention of screening the offender from legal punishment.
5. If the charge be of an aggravated form, it must be further proved that the offence, in respect of which the accused did as in Para 3 and 4 above, was punishable with capital sentence, life imprisonment or sentence up to 10 years' imprisonment.

(34) Having noticed the provision contained in Section 201 IPC and the ingredient of the said offence, it appears that in order to attract Section 201 IPC, commission of an offence and the knowledge on the part of the accused of such an offence is *sine qua non*. At this stage it would be appropriate to notice the charge framed against the petitioner for offence under Section 201 IPC by the trial court on 08.12.2012 as under:-

> "द्वितीय– आपने इसी दिनॉक, समय व स्थान पर अशोक पिंगले की मृत्यु होने के बावजूद उसे पेश नहीं कर एवं वेन्टीलेटर में रखकर उसकी मृत्यु को छिपाने का प्रयास किया। इस प्रकार आपने ऐसा अपराध किया, जो भारतीय दण्ड संहिता की धारा 201 के अधीन दण्डनीय है, और इस न्यायालय के संज्ञान के अंतर्गत है।"

A careful perusal of the aforesaid charges would show that none of the ingredients of offence under Section 201 IPC is made out against the petitioner assuming the charge-sheet and charge framed to be true on its face value as also for the reason that this Court has already held in foregoing paragraph, that no offence is made out under Section 304-A IPC in the charge-sheet filed against the petitioner. As such prosecution of the petitioner for the offence under Section 201 IPC is nothing but clear abuse of the process of the court.

(35) The aforesaid conclusion takes me to prosecution of the petitioner for offence under Section 468 of the IPC that is forgery for the purpose of cheating. It is the case of the prosecution that the petitioner forged documents relating to treatment of Shri Pingle for the purpose of cheating and thereby committed the offence under Section 468 of the IPC. It is the stand of the prosecution based on enquiry report of the three doctors that Shri Pingle died on 11.08.2008 at 9.02 p.m. but he was declared dead on 12.08.2008 at 3.45 a.m. by the petitioner and death certificate was issued by Dr. Yashwant K. Dubey on behalf

of the petitioner declaring so. Whereas it is the case of the petitioner that death certificate was neither signed by him nor he has authorized Dr. Yashwant K. Dubey to issue such certificate. The enquiry committee has concluded that Shri Pingle died on 11.08.2008 at 9.02 pm whereas death certificate issued by Apollo Hospital duly signed by Dr. Yashwant K. Dubey on behalf of the petitioner indicates that he expired on 12.08.2008 at 3.45 a.m.. Thus, date and time of death of Shri Pingle, issuance of death certificate with such an information and authorization on behalf of the petitioner is a matter of evidence and can be decided only upon evidence is adduced by the parties during trial and at this stage, it cannot be held that no offence under Section 468 IPC is made out against the petitioner.

(36) Thus, the fallout and consequence of the above-stated analysis and discussion is that initiation and continuance of the petitioner's prosecution for offences under Sections 304-A and 201 IPC is nothing but clear abuse of the process of the court and as such, initiation and prosecution of the petitioner and charge-sheet filed

and subsequent proceeding thereto pending in the court of Chief Judicial Magistrate, Bilaspur vide Criminal Case No.1550/2010 for the above-stated offences, deserve to be and accordingly quashed. However, prosecution of the petitioner for offence under Section 468 IPC would continue. Concludingly, the petition filed under Section 482 CrPC is partly allowed to the extent indicated herein-above. No order as to cost(s).

(37) Before parting with the record, I deem it appropriate to notice the pertinent observation made by Queens Bench in case of **Bolam v. Friern Hospital Management Committee** (supra) with reference to medical professional which states as under: -

> "We ought always to be on our guard against it, specially in cases against hospitals and doctors. Medical science has conferred great benefits on mankind, but these benefits are attended by considerable risks. Every surgical operation is attended by risks. We cannot take the benefits without taking the risks. Every advance in technique is also attended by risks. Doctors, like the rest of us, have to learn by experience; and experience often teaches in a hard way. Something goes wrong and shows up a weakness, and then it is put right. That is just what happened here.
>
> One final word. These two men have suffered such terrible consequences that

> there is a natural feeling that they should be compensated. But we should be doing a disservice to the community at large if we were to impose liability on hospitals and doctors for everything that happens to go wrong. Doctors would be led to think more of their own safety than of the good of their patients. Initiative would be stifled and confidence shaken. A proper sense of proportion requires us to have regard to the conditions in which hospitals and doctors have to work."

(38) Their Lordships of the Supreme Court in matter of **Kusum Sharma** (supra) sounded a note of caution by holding that a medical professional deserves total protection and the courts have to be extremely careful in prosecuting them by observing as under:-

> "77. Doctors in complicated cases have to take chance even if the rate of survival is low. The professional should be held liable for his act or omission, if negligent; is to make life safer and to eliminate the possibility of recurrence of negligence in future. But, at the same time courts have to be extremely careful to ensure that unnecessarily professionals are not harassed or they will not be able to carry out their professional duties without fear.
>
> 78. It is a matter of common knowledge that after happening of some unfortunate event, there is a marked tendency to look for a human factor to blame for an untoward event, a tendency which is closely linked with the desire to punish. Things have gone wrong and, therefore, somebody must be found to

> answer for it. A professional deserves total protection. The Penal Code, 1860 has taken care to ensure that people who act in good faith should not be punished. Sections 88, 92 and 370 of the Penal Code give adequate protection to the professionals and particularly medical professionals."

(39) I hope and trust, the State of Chhattisgarh/ prosecuting agency will follow the binding observation of the Supreme Court in its letter and spirit.

Sd/-
(Sanjay K. Agrawal)
Judge