

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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Civil Writ Petition No.9691 of 2015

Date of Decision: August 05, 2015

Gurpreet Singh son of Satpal Singh Resident of village Mehmoodpura,
Tehsil Patti, District Tarn Taran

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Vivek Salathia, Advocate
for the petitioner.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Petitioner has approached this Court alleging that there was medical negligence on the part of respondent No.6-Dhawan Nursing Home, Khalra Road, Village Bhikhiwind, District Tarn Taran, which resulted in death of his wife. Petitioner has submitted a representation to the Civil Surgeon, Civil Hospital, Tarn Taran, dated 04.04.2015 (Annexure P-2 Colly) and also sought for the records pertaining to the treatment given to his deceased wife-Sandeep Kaur, copies of which have also been appended along with the writ petition but no response thereto has been received.

Counsel for the petitioner contends that the petitioner has submitted a complaint dated 04.04.2015 to the Senior Superintendent of Police, Tarn Taran, copy whereof has been appended as Annexure P-2 Colly., according to which the petitioner alleges medical negligence on the part of doctors mentioned therein but no action has been taken thereon till date.

Learned counsel for the petitioner has referred to the judgment of the Supreme Court passed in case titled as *Jacob Mathew Versus State of Punjab and another, 2005 (6) SCC 1*, which pertains to medical negligence, where the Hon'ble Supreme Court in the absence of there being any statutory rules or instructions dealing with the aspect of the action to be taken in the case of medical negligence, has framed some procedure, which is to be followed. In support of this, he has referred to para 55 of the above said judgment. He, on this basis, contends that an action need to be taken in pursuance to the said observations/directions of the Hon'ble Supreme Court.

Keeping in view the judgment of the Hon'ble Supreme Court passed in **Jacob Mathew's case** (supra), specially para 55, which reads as follows:-

“55. 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”,

direction is issued to the Senior Superintendent of Police, Tarn

Taran-respondent No.4, to look into the complaint dated 04.04.2015

(Annexure P-2 Colly) and proceed further in accordance with law.

August 05, 2015
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE