

Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO.160 OF 2018

Ms. Annely D'Lima
36 years of age, Lecturer Pediatrics,
Goa Medical College, Bambolim,
Goa, R/o. House No.1017,
Muddo Carona, Bardez, Goa.

.... Petitioner

Versus

1. Police Inspector,
Agacaim Police Station,
Agacaim.
2. Public Prosecutor,
High Court of Bombay at
Panaji, Goa.
3. Mr. Ajit Gaonkar,
R/o House No.752,
Dhushire/Tisk, Usgaon, Goa.

.... Respondents

Mr. A. B. De Sa, Advocate for the Petitioner.

Mr. P. Faldessai, Additional Public Prosecutor for Respondents No.1
and 2.

Mr. A. D. Bhobe with Ms. K. Govenkar, Advocates for Respondent
No.3.

Coram:- M.S. SONAK &
NUTAN D. SARDESSAI, JJ.

Date:- 27th February, 2020

JUDGMENT (Per M.S. Sonak)

Heard Mr. A. B. De Sa, Advocate for the Petitioner, Mr. P. Faldessai, Additional Public Prosecutor for Respondents No.1 and 2 and Mr. A. D. Bhobe, Advocate for Respondent No.3.

2. The petitioner, who is a lecturer in the Department of Pediatrics at the Goa Medical College, Bambolim, Goa (a Government Medical College) invokes the jurisdiction of this Court both under Article 226 of the Constitution and Section 482 of the Code of Criminal Procedure (Cr. P.C.) and seeks the quashing of final form/report under Section 173 of Cr.P.C. in Special Case No.120/2017 and the process issued against her on 06.11.2017 by the President of Children's Court for State of Goa in Special Case No.120/2017. By all this, the petitioner and several other doctors and nurses from the Pediatrics Department at the Goa Medical College have been charged with offences under Section 8(2) of the Goa Children's Act, 2003 as well as Sections 336 and 337 of the Indian Penal Code (IPC).

3. The allegation against the petitioner is that she and other doctors and nurses in the Pediatrics Department were negligent in the treatment which they offered or rather, failed to offer to the new born child of the complainant-respondent no.3 on 03.01.2012, which, resulted in auto-amputation of the child's right forearm.

4. The material on record establishes that the child was one of the twins born to Mrs. Smita Gaonkar, wife of the complainant-respondent no.3 on 08.12.2011. One of the twins died after six days i.e. on 13.12.2011 and there is really no complaint with regard to the death of the said child. The complaint made by respondent no.3 on 15.02.2012 alleges that the surviving baby was afflicted with gangrene in the right hand. On 03.01.2012, a nurse Rozarita is alleged to have administered injection on the right hand of the baby and the respondent no.3 alleges that his wife Smita noticed that the hand was turning black and blue and therefore called the nurse Rozarita and the doctor on duty. However, it is alleged that neither the nurse nor the doctor attended to the baby. The complainant then states that the complainant came to know through newspapers that an inquiry was conducted by the Government Medical College authorities in which the nurse Rozarita and two doctors namely Dr. Diksha and Dr. Annely (the petitioner in the present case) were found to be guilty.

5. Before recording the FIR, the P. I. of Agassaim Police Station addressed a communication dated 15.02.2012 to the Dean of the Goa Medical College seeking copies of the entire inquiry report, relevant documents and findings in order to take legal action in the matter.

6. In response, the Dean of the Goa Medical College furnished to the P. I. concerned, a report of inquiry which is dated 09.02.2012. It is

the case of Mr. Bhobe, the learned counsel for respondent no.3 that it is on the basis of this report, including in particular, observations in paragraph 5 of this report that the FIR was registered. Mr. Bhobe submits that if this report dated 09.02.2012 is perused and the same is considered along with the complaint made by respondent no.3 on 15.02.2012, it is apparent that the case of cognizable offences has been clearly made out by the respondent no.3 and therefore, there was no infirmity whatsoever in the registration of FIR in this matter.

7. Mr. A. D. Bhobe, the learned counsel appearing for respondent no.3 in fact relied upon the decision in ***Lalita Kumari vs. Government of Uttar Pradesh and others – (2014) 2 SCC 1*** to point out that if the information given in the complaint merely mentions the commission of a cognizable offence, there is no other option but to register the FIR forthwith. Other considerations are not relevant at the stage of registration of FIR, such as, whether the information is falsely given, whether the information is genuine, whether the information is credible, etc. These are the issues that have to be verified during the investigation of the FIR. At the stage of registration of FIR, what is to be seen is merely whether the information given ex facie discloses the commission of a cognizable offence.

8. Mr. Bhobe submits that in this case, the P. I., in compliance

with the ruling of the Hon'ble Supreme Court in the case of *Jacob Mathew vs. State of Punjab and another – (2005) 6 SCC 1* also took care to obtain a report from the Dean of the Goa Medical College. Mr. Bhobe submits that the report suggests that there was lack of enthusiasm in taking cognizance, initiative and timely and close observation on the affected part of the baby on the part of the doctors and nurses in Neonatology. Mr. Bhobe submits that this material is more than sufficient not only for the registration of the FIR but also for the issuance of process.

9. Mr. Bhobe submits that since, no case is made out for interference with the registration of the FIR, the action of issuance of process may not be examined in this petition, since, the petitioner, has alternate and efficacious remedies available under the Cr.P.C. in this regard.

10. Mr. A. B. De Sa, the learned counsel for the petitioner has contested the preliminary objections raised by Mr. Bhobe on behalf of respondent no.3. He has also contested the submissions made on the merits of the matter by Mr. Bhobe. He submits that the report of the inquiry committee dated 09.02.2012 has to be read in its entirety and so read, very clearly rules out the commission of any cognizable offence by the petitioner or for that matter the other doctors and nurses. He submits that FIRs cannot be registered against a medical professional

based upon stray sentences torn out of the context in which the same are to be found in the inquiry report. He submits that in this case the doctors and nurses, including the petitioner, did their best in the matter, in order to save the life of the baby which was born highly prematurely i.e. of 26 weeks and weighed only 650 grams. He submits that if the test laid down in *Jacob Mathew (supra)* and several other decisions to which he referred to are to be taken into account there is absolutely no case of rash or gross negligence made out against the petitioner so as to sustain either the registration of FIR or the issuance of process.

11. Mr. De Sa has pointed out that the Vasodilator Pentoxifyline was not at all available in the inventory of the Goa Medical College on the relevant date and besides there is sufficient literature which indicates that Pentoxifyline was only an experimental drug at that stage, which was yet to get approval from the department of Food & Drugs Administration (FDA). Mr. De Sa submits that in these circumstances no fault can be attributed to the petitioner in not administering such drug to the baby. He submits that there is overwhelming material on record which indicates that the doctors and nurses tried their best and ultimately succeeded in saving the life of the baby. The unfortunate auto-amputation therefore, can never be attributed to any negligence on the part of the doctors and nurses. Mr. De Sa submits that this is in fact the thrust and conclusion of the

report of the inquiry committee which has been entirely misconstrued in the matter of registration of the FIR and issuance of process.

12. Mr. De Sa also points out that a sanction under Section 197 of Cr.P.C. was sought for by the prosecution and the same, has admittedly not been granted till date. He submits that in such circumstances, taking of cognizance or issuance of process was an act without jurisdiction.

13. Mr. Faldessai, learned Additional Public Prosecutor, very candidly left the matter for the decision of the Court. However, he admitted that no sanction under Section 197 of Cr.P.C. has been granted in the matter.

14. As noted earlier, respondent no.3, lodged his complaint to the P.I. Agassaim Police Station on 15.02.2012, in which, he made reference to the inquiry report, knowledge of which, he claimed to have acquired through the newspapers. The P. I., quite correctly sought for the copy of the inquiry report along with relevant documents and findings in order to take further action in the matter. The report of the inquiry committee dated 09.02.2012 was furnished to the P. I. on the basis of which it is stated that the FIR came to be lodged not only against the petitioner but also against several doctors and nurses in the neonatal ward of the Pediatrics Department of the

Goa Medical College. Thus, the crucial document in the present case is the report of the inquiry committee dated 09.02.2012.

15. We find that the inquiry committee comprised of the following:

- (i) Dr. Savita Chandra, Professor & HOD, Department of OBG (Chairperson).
- (ii) Dr. Anar Khandeparkar, Professor & HOD, Department of Medicine (Member).
- (iii) Dr. F.P. Noronha, Professor, Department of Surgery (Member).
- (iv) Ms. Romaldin Baretto, Assistant Matron (Member).

16. The inquiry committee, as indicated in the report dated 09.02.2012 inspected the clinical records of the baby maintained by the doctors and nurses in the neonatal section of the department of Pediatrics of Goa Medical College. They interrogated several nurses and doctors who had treated the baby with the particular focus on the events on 03.01.2012 and 06.01.2012. the report indicates that almost 16 doctors and nurses were interrogated. Similarly, Mrs. Smita Gaonkar, the wife of respondent no.3 and the mother of the baby was also interrogated.

17. The inquiry report then proceeds to list out the comments, observations and impressions. If the report is perused and further construed in its entirety, then, we are afraid the investigating agency,

failed to appreciate that the same, hardly discloses the commission of any cognizable offence on the part of the doctors and nurses, including in particular, the petitioner herein. The report sets out in detail the efforts put in by the doctors and nurses. The report also sets out that on 03.01.2012 there were 32 babies in the Neonatology section out of which some babies were on ventilators and some required exchange transfusion. There was only one junior resident on duty in the Neonatology while the second junior resident was taking external calls i.e. from labour room, OT, etc. There was only one senior resident Pediatrics on emergency duty on 03.01.2012 who had to look after the calls/admissions both in the Pediatric and Neonatology wards. It is therefore obvious that the ward was understaffed while the workload was heavy and at such times there is a potential risk for errors of inadvertent delay.

18. The report, significantly, in the particular context of the health status of the baby states that it is an established fact that extremely low birth weight preterm babies have an inherent risk and predisposition to developing complications like sepcis and thromboembolism particularly if central vein cannulation has been done. The report states that this baby had earlier developed sepcis and an I/V umbilical vein line had been put within the first few days of birth. The report in fact concludes by observing that it is an established fact that treatment of such extremely low birth weight preterms is technically difficult for

both nurses and doctors particularly with regards to intravenous medications and their complications. The members of the inquiry committee have unanimously agreed on this conclusion.

19. No doubt, in paragraph 5 of the report dated 09.02.2012 there are observations to the effect that there was some lack of enthusiasm in taking cognizance and initiative and timely and close observation on the progress of the cyanosis of the right hand digits and forearm at both levels i.e. by nurses and doctors in Neonatology till the 5th of January, 2012 afternoon, when Dr. Vishal Sawant examined the baby. It is reported that the clinical notes of this doctor documents the history of extravasation, dry gangrene of tips of fingers, bluish discoloration and its extent just short of the elbow, capillary refill absent, temperature decreased, movements at wrist joint absent and reduced at elbow and he advised I/V Lomodex which was started.

20. According to us, on the basis of the aforesaid comments it can hardly be said that any case of offence, much less, offence for which the petitioner has been charged was made out against the petitioner. The observation in paragraph 5, upon which particular stress was laid by Mr. Bhobe, the learned counsel for respondent no.3 have to be read in the context in which they appear and the same, cannot be torn out of the context.

21. In fact, the observations are preceded by further observations of the inquiry committee members based not only upon the interrogations of the various doctors and nurses but also inspection of the clinical records of the baby. In paragraph 4 of the report this is what is stated:

4. The Inquiry Committee members while inspecting clinical records of the baby noted that there was no documentation of the discoloration, cyanosis, gangrene of the right hand fingers, hand, forearm by any of the staff nurses on duty on 3rd Jan.2012 and 4th Jan.2012, nor by the doctors in Neonatology including the Consultant Lecturer Pediatrics on 3rd Jan and 4th Jan 2012. Though the clinical notes do not substantiate their awareness, the doctors in Neonatology were aware of this complication as during interrogation the senior resident Dr. Amarja Karande stated that at 9.30 am on 4th Jan 2012 she observed that there was no right radial pulsations and the forearm was cold. Senior Resident Pediatric surgery Dr. Varun V.K. Sarode was intimated telephonically by Dr. Amarja Karande. Dr. Amarja also brought it to the notice of the Lecturer Pediatrics, Dr. Annely D'Lima, when she came for rounds in the Neonatology on 4th Jan 2012 which Dr. Annely D'Lima confirmed on interrogation.

Senior Resident Pediatric surgery on interrogation acknowledged having received the telephonic intimation, came to Neonatology, and examined the baby and advised hot fomentation. He wanted to give the vasodilator Pentoxifyline and discussed this with consultant Dr. Annely D'Lima who had no experience of its use and so this injection was not given. However, there are no clinical records substantiating Dr. Varun's clinical findings, advice and discussion with Dr. Annely D'Lima.

No official reference was sent by the consultant posted in

Neonatology, Dr. Annily, to the consultant in Pediatric Surgery on 4th Jan.2012.

Hot fomentation was given by staff nurse Mayuri Onskar as advised by Dr. Varun and as expressed by the staff nurse during her interrogation; her duty ended at 2 pm on 4th Jan.2012. Further, Dr. varun V.K. Sarode, on 4/1/2012 afternoon/evening, discussed with his consultant Dr. Vishal Sawant who advised I/V lomodex for the baby which was telephonically communicated by Dr. Varun to the resident in Neonatology on 4/1/2012. There are however no clinical records substantiating this. No I/V Lomodex was started on 4th Jan 2012 afternoon/evening on checking clinical records or during interrogation of the staff listed above.”

22. On the aspect of admission of the Vasodilator Pentoxifyline, there is reference to the petitioner and it is stated that the petitioner, as a consultant, had no experience of its use and this injection was not given. According to us, this can hardly be regarded as any negligence on the part of the petitioner.

23. Mr. De Sa, the learned counsel for the petitioner has placed on record certification to indicate that in the first place such drug was not even available in the inventory of the Goa Medical College, which is a government medical hospital. Secondly he has referred to medical literature to suggest that such a drug is normally, not given to preterm babies. Thirdly he has placed some medical literature including certification from the doctors to state that such a drug was in fact in

the experimental stage which had no approvals from FDA. Mr. De Sa has submitted that in fact, were the petitioner to administer such a drug to the preterm baby, then, something would have been said in the matter but not otherwise.

24. We are conscious that in proceedings of the present nature, we are normally, not required to take cognizance of certifications or opinions which may not form a part of the charge-sheet or investigation papers. Therefore, it is not as if we are taking cognizance of the matter. However, to a great extent, the certification by the medical authorities showing that such a drug was not available in its inventory constitutes an unimpeachable material. In any case, based upon the observation in the report in relation to the drug Pentoxiphyline, even the members of the committee, who are the experts did not find anything amiss in the line of treatment adopted by the petitioner. This is not a case where the members of the committee have even whispered regards any negligence on the part of the petitioner.

25. The law in such matters, is well settled by the decisions of the Apex Court in *Jacob Mathew (supra)*. In fact, in this case, the Hon'ble Apex Court has noted that the criminal law has invariably placed medical practitioners on a pedestal different from ordinary mortals. In paragraph 47, the Apex Court, before summing up conclusion on

several issues of law which were dealt with, quoted the learned authors of *Errors, Medicine and the Law* (pp. 241-48), (recorded at the end of the book in the Chapter titled “*Conclusion*”) highlighting the link between moral fault, blame and justice in reference to medical profession and negligence. The quote reads as follows:

“(i) The social efficacy of blame and related sanctions in particular cases of deliberate wrongdoings may be a matter of dispute, but their necessity # in principle # from a moral point of view, has been accepted. Distasteful as punishment may be, the social, and possibly moral, need to punish people for wrongdoing, occasionally in a severe fashion, cannot be escaped. A society in which blame is overemphasized may become paralysed. This is not only because such a society will inevitably be backward- looking, but also because fear of blame inhibits the uncluttered exercise of judgment in relations between persons. If we are constantly concerned about whether our actions will be the subject of complaint, and that such complaint is likely to lead to legal action or disciplinary proceedings, a relationship of suspicious formality between persons is inevitable. (ibid, pp. 242-243)

(ii) Culpability may attach to the consequence of an error in circumstances where substandard antecedent conduct has been deliberate, and has contributed to the generation of the error or to its outcome. In case of errors, the only failure is a failure defined in terms of the normative standard of what should have been done. There is a tendency to confuse the reasonable person with the error-free person. While nobody can avoid errors on the basis of simply choosing not to make them, people can choose not to commit violations. A violation is culpable. (ibid, p. 245).

(iii) Before the court faced with deciding the cases of professional negligence there are two sets of interests which are

at stake : the interests of the plaintiff and the interests of the defendant. A correct balance of these two sets of interests should ensure that tort liability is restricted to those cases where there is a real failure to behave as a reasonably competent practitioner would have behaved. An inappropriate raising of the standard of care threatens this balance. (ibid, p.246). A consequence of encouraging litigation for loss is to persuade the public that all loss encountered in a medical context is the result of the failure of somebody in the system to provide the level of care to which the patient is entitled. The effect of this on the doctor-patient relationship is distorting and will not be to the benefit of the patient in the long run. It is also unjustified to impose on those engaged in medical treatment an undue degree of additional stress and anxiety in the conduct of their profession. Equally, it would be wrong to impose such stress and anxiety on any other person performing a demanding function in society. (ibid, p.247). While expectations from the professionals must be realistic and the expected standards attainable, this implies recognition of the nature of ordinary human error and human limitations in the performance of complex tasks. (ibid, p. 247).

(iv) Conviction for any substantial criminal offence requires that the accused person should have acted with a morally blameworthy state of mind. Recklessness and deliberate wrongdoing, are morally blameworthy, but any conduct falling short of that should not be the subject of criminal liability. Common-law systems have traditionally only made negligence the subject of criminal sanction when the level of negligence has been high # a standard traditionally described as gross negligence. In fact, negligence at that level is likely to be indistinguishable from recklessness. (ibid, p.248).

(v) Blame is a powerful weapon. Its inappropriate use distorts tolerant and constructive relations between people. Distinguishing between (a) accidents which are life's misfortune

for which nobody is morally responsible, (b) wrongs amounting to culpable conduct and constituting grounds for compensation, and (c) those (i.e. wrongs) calling for punishment on account of being gross or of a very high degree requires and calls for careful, morally sensitive and scientifically informed analysis; else there would be injustice to the larger interest of the society. (ibid, p. 248).

Indiscriminate prosecution of medical professionals for criminal negligence is counter-productive and does no service or good to the society.”

26. In paragraph 48 the Hon'ble Apex Court has summed up its conclusions which read as follows:

“(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.”

27. Finally, in paragraph 50 the Apex Court, has prescribed guidelines in matters of prosecution of medical professionals. In this paragraph, the Hon'ble Apex Court has noted that 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 the 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 304A 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.

28. From the conclusions recorded by the Hon'ble Apex Court in *Jacob Mathew (supra)* it is clear that 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.

29. Applying the aforesaid test, we are satisfied that the petitioner, cannot be said to have conducted herself in any negligent manner when it came to the treatment of the baby. Besides, the Apex Court has held that 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.

30. In the facts of the present case, there is not even any allegation

that the petitioner was not possessed with the requisite skill which she professed to have possessed, or, that she did not exercise, with reasonable competence in the given case, the skill which she did possess. Applying the standards laid down in ***Bolam v. Friern Hospital Management Committee – (1957) 2 All ER 118 (QBD)***, which standards have been specifically adopted by the Apex Court in *Jacob Mathew (supra)*, we are satisfied that no case of negligence, much less, any gross negligence has been made out against the petitioner. In fact, the Apex Court has pointed out that 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 IPC has to be read as qualified by the word “grossly”.

31. Mr. De Sa referred to several other decisions of the Apex Court including, the decision in the case of ***Dr. Sou Jayshree Ujwal Ingole vs. State of Maharashtra & Anr. - 2017 ALL MR (Cri) 2652 (S.C.)*** as also the latest decision of the Hon'ble Apex Court in ***Anjana Agnihotri & Anr. vs. The State of Haryana & Anr. - Criminal Appeal No.779 of 2009 decided on 06.02.2020***. All these decisions reiterate the principles laid down in *Jacob Mathew (supra)* and emphasize that any error of judgment or mere inaction is not sufficient to prosecute medical professionals.

32. Applying all the aforesaid principles to the facts as borne out from the record, we are satisfied that it would not be appropriate to continue the prosecution against the petitioner. As noted earlier, we are of the opinion that the investigating officer, misconstrued the report of the inquiry committee dated 09.02.2012 and such misconstruction resulted in registration of the FIR. Upon consideration of the report in its entirety, it would have been evident that no case of any cognizable offence has been made out against the petitioner so as to warrant registration of FIR.

33. For all the aforesaid reasons, we quash the final report in Special Case No.120/2017 and resultantly we also quash the order dated 06.11.2017 regarding issuance of process in Special Case No.120/2017. The Rule in this petition is therefore made absolute in terms of its prayer clause (a).

34. Before we conclude however, we wish to point out that the observations made by us in this judgment and order are only in the context of quashing of criminal proceedings and therefore, the same, will have no bearing upon any civil proceedings or any claims made on behalf of the baby for benefits under various government schemes. In fact, we are of the opinion that this is a fit case where, the State should adopt proactive role in extending all medical and financial benefits to the baby.

35. With the aforesaid observations, we make the Rule absolute in terms of prayer clause (a) to this petition. There shall be no order as to costs in this petition.

36. We place on record the reasonable approach of all the learned counsel who appeared in this matter. In particular, we appreciate the submissions made by Mr. Bhobe, the learned counsel appearing on behalf of respondent no.3. Although, we may not have agreed with all his submissions, we do appreciate the effort put by him in this matter.

NUTAN D. SARDESSAI, J.

M. S. SONAK, J.