

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
(APPELLATE SIDE)**

Present:
The Hon'ble Justice Rai Chattopadhyay

C.R.R No. 3649 of 2016

**Dr. Pabitra @ Pabitra Kumar Biswas
Vs.
The State of West Bengal & Anr.**

For the Petitioners : Mr. Milon Mukherjee,
Ld. Senior Adv.

: Mr. Biswajit Manna.

For the State : Mr. Madhusudan Sur,
Ld.APP

: Mr. Dipankar Pramanick.

Hearing concluded on: 23/03/2023

Judgment on: 08/05/2023

Rai Chattopadhyay, J.

- 1) Assailed in this case are two orders of the Magistrate and the Sessions Judge, Dakshin Dinajpur at Balurghat dated 15.02.2016 and 20.07.2016 respectively. The Magistrate, 2nd Court, Balurghat, Dakshin Dinajpur in G.R. Case

No.107 of 1997 has delivered the impugned order dated 15.02.2016 thereby rejecting the petitioner's prayer under section 258 of the Cr.P.C. The same order has been affirmed in a revision by the Sessions Judge, by dint of his judgment dated 20.07.2016.

2) The petitioner is a doctor by profession. Against him the de facto complainant alleges the culpable act of being negligent in treatment of his minor son, resulting into death of the said minor. The de facto complainant has lodged FIR in Balurghat Police Station, being registered as Balurghat Police Station Case No. 38/1997 dated 25.01.1997 under section 304 of the IPC. Chargesheet was submitted on 31.5.2003, under section 304A of the IPC.

3) The FIR has enumerated *inter alia* that on 20.04.1997 the thirteen months old son of the de facto complainant was indisposed being suffered with diarrhoea and vomiting. Initially the child was treated by a doctor in the locality, who however, prescribed for providing the child with the saline treatment. The de facto complainant has stated that

immediately thereafter at about 10:25 p.m. in the night the child was admitted at Balurghat Hospital. The de facto complainant has stated further that since after admission the physical condition of the child was continuously deteriorating, call was recorded in the '*call book*' for the petitioner. The de facto complainant has also stated that they, as the family members of the patient, insisted severely for calling the petitioner to attend, and treat the ailing child, but to no avail. Allegedly in spite of calling him for several times, no response was received. According to the de facto complainant, they have even inquired for any other doctor, if available, to attend the child in the emergency, but allegedly was declined by the attending nurse in the hospital on the plea that only the petitioner was assigned with the duty at the relevant point of time. The de facto complainant stated further that ultimately the petitioner attended the patient at the early morning but by that time the child was only in a grasping condition. Ultimately the child died at 6:55 a.m. in the morning on 21.04.1997. On these facts and circumstances the de facto complainant has alleged that in spite of calling the petitioner for several times in emergency, as he did not attend the patient and did not offer him the appropriate treatment and

medication, thus acted negligently and intentionally avoiding his responsibilities. Allegations have been made against him of culpable negligence resulting into death of the child. On these allegations the FIR was lodged, a case was registered under section 304 of the IPC and the investigation proceeded.

- 4) After initiation of the prosecution against him as mentioned above, the petitioner challenged the proceedings in this Court, and prayed for quashing of the same in case no.CRR 2659 of 2003. The same was disposed of by dint of an order dated 10.01.2005, in which the Co-ordinate Bench of this Court disposed of the same with the observation that objection as to the continuation of the prosecution may be raised by the present petitioner before the Magistrate by espousing provision under Section 258 of the Cr.P.C. Further facts relevant to be discussed would be that in the said proceeding before the Magistrate the petitioner preferred an application under Section 258 of the Cr.P.C which was, however, dismissed by the Court, vide the impugned order. For better understanding the provision is extracted, as herein bellow :-

“258. Power to stop proceedings in certain cases.

In any summons case instituted otherwise than upon complaint, a Magistrate of the first class or, with the previous sanction of the Chief Judicial Magistrate, any other Judicial Magistrate, may, for reasons to be recorded by him, stop the proceedings at any stage without pronouncing any judgment and where such stoppage of proceedings is made after the evidence of the principal witnesses has been recorded, pronounce a judgment of acquittal, and in any other case, release the accused, and such release shall have the effect of discharge.”

5) Therefore, as per the design of the statute, an order of the Magistrate recorded under Section 258 of the Cr.P.C, shall have the effect of discharge of the accused person, in this case the petitioner, from the proceedings.

6) Mr. Mukherjee, Ld. Senior Advocate, appearing for the petitioner has raised the initial point of argument regarding no negligence, much less of any culpable negligence to be attributed to his client, while discharging duty in a government hospital. He points out to the relevant ‘call book’ and submits further that the petitioner has duly prescribed medicine and measures as per protocol, at 10:25 p.m. in the night, upon receiving the notification regarding the child being in serious condition. Later on, it has been pointed out too, that receiving emergency call in the early morning at 5:00

a.m. requesting him to attend the patient immediately, the petitioner rushed to attend the patient at 5:05 a.m. According to Mr. Mukherjee it is only that the child succumbed in spite of having been treated with appropriate medical care and no negligence, as alleged, is attributable to the petitioner for the death of the child. Mr. Mukherjee has further relied on the internal inquiry committee report to submit that the internal inquiry committee has also taken note of the fact as above and come to the finding that there is no reason to attribute cause of death of the child to any negligent act of the petitioner as alleged and that the internal inquiry committee has exonerated the petitioner from any charge as afore stated. Later Mr. Mukherjee has relied on the following two celebrated judgments in advancement of his arguments that to assess any culpable negligence on part of a doctor, the Hon'ble Supreme Court has set a different standard all together, to be applicable in recording a finding of negligence. Mr. Mukherjee has taken this Court through the concerned judicial pronouncements thoroughly and has also emphasized that the law laid down in the said verdicts are the prevalent law as on the date regarding the standard of proof of

an act of negligence by the professional, like a doctor. The said two judgments are

(i) **Jacob Mathew vs. State of Punjab & Anr.** reported in (2005) 2 C Cr. LR (SC) 472, and

(ii) **Martin F. D'Souza vs. Mohd. Ishfaq** reported in (2009) 1 SCC (Cri) 958.

- 7) The contention and prayer of the petitioner has however been strongly opposed on behalf of the State. Mr. Sur, Ld. APP, by referring to the materials available in the case diary has submitted that those are categorical and unambiguous enough to prima facie find out the causal connection between the negligent act of the petitioner, to the unfortunate death of a minor. It is submitted that the petitioner being '*in charge*' on the fateful night, has not acted with appropriate promptitude or desired sensitivity, to attend the child in an emergency, in spite of having knowledge of deteriorating physical condition of the child. He elaborates that the petitioner should be considered to have adequate knowledge about the probable result and outcome in not attending the child in a serious condition. Thus according to Mr. Sur

petitioner's alleged acts shall definitely come within the four corners of the provisions under Section 304A of the IPC and obviously the FIR and other materials on record are prima facie sufficient and strong enough to make out cognizable offence and a prosecutable case against the petitioner. He has stated that the orders as above delivered by the Magistrate as well as the Sessions Judge, suffer with no impropriety, on the basis of the records so available. It is stated that the said Courts have come to a just and proper finding regarding existence of strong prima facie material against the petitioner and has in due consideration thereof rejected petitioner's prayer under section 258 of the Cr.P.C, which may not warrant any interference of this Court in exercise of its power under Section 482 of the Cr.P.C. Mr. Sur has insisted that petitioner's case may be dismissed and immediate and expeditious trial may be ensured by an order of this Court.

- 8) Upon lodging the FIR by the de facto complainant on 25.01.1997, police registered Balurghat Police Station Case No.38/1997 dated 25.01.1997 under Section 304 IPC, against the present petitioner. Investigation of the case has ultimately resulted into filing of a chargesheet by the police under

section 304A of the IPC. Therefore, at the outset it would be beneficial if the said provision is remembered once again, which is as follows:

“304A. Causing death by negligence

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.”

- 9) Thus, section 304A of the IPC has provided for an offence of rash and negligent act of the perpetrator, not amounting to culpable homicide and also the punishment for such an offence. Necessary ingredients of an offence under this provision may be listed to be, that (i) there must be death of the person in question, (ii) the accused must have caused such death and (iii) that such act of the accused was rash and negligent and that it did not amount to culpable homicide. Needless to mention that an ‘act’ of culpability, or the ‘omission’ resulting into occurrence of a crime with the intention to cause the same and/or the knowledge of the probability of the occurrence of a crime due to such ‘act’ or ‘omission’, would form the necessary ingredient/component of an offence, under the afore stated provision of law.

10) In the light of the statutory provision as above, this Court is now to assess as to whether the impugned confirmatory order of the Sessions Judge, dated 20.7.2016, rejecting petitioner's prayer under section 258 of the CrPC has been proper or not, vis-a-vis the materials available against the petitioner.

11) Before that, it would be prudent to look into the precedents as relied on behalf of the petitioner in this case. *Jacob Mathew's* case of 2005 (supra) of the Supreme Court is the path breaking judicial pronouncement, a compendium as to what would be the standard regarding assessing culpability of the action of a professional, a doctor in particular. On the said occasion, the Supreme Court was dealing with a case where the accused persons, who were doctors by profession, were charged with the offence under section 304A of the IPC. The Court has set in place the law regarding the standard of assessing culpability of action and negligence of professionals, a doctor in particular, while discharging his duties. The matter related to prosecution of the medical practitioners for rashness and

negligence while offering medical treatment. The Sessions Judge as well as the High Court, dismissed doctor's plea that charge could not be framed against them under sections 304A and 34 of the IPC, as was done by the Magistrate. Hence, the accused doctors moved the Supreme Court. The Court was pleased to hold that

“25. A mere deviation from normal professional practice is not necessarily evidence of negligence. Let it also be noted that a mere accident is not evidence of negligence. So also an error of judgment on the part of a professional is not negligence per se. Higher the acuteness in emergency and higher the complication, more are the chances of error of judgment. 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 incharge of the patient if the patient is not be 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.”

- 12) The Court took into consideration various other previous judicial pronouncements and confirmed that tests as were laid down in 'Bolam's case' should be held good and govern the field. The following portions of the said judgment may be quoted:

"19. An oft quoted passage defining negligence by professionals, generally and not necessarily confined to doctors, is to be found in the opinion of McNair J. in Bolam v. Friern Hospital Management Committee, [1957] 1 W.L.R. 582, 586 in the following words:

"Where you get a situation which involves the use of some special skill or competence, then the test as to whether there has been negligence or not is not the test of the man on the top of a Clapham omnibus, because he has not got this special skill. The test is the standard of the ordinary skilled man exercising and professing to have that special skill. A man need not possess the highest expert skill... It is well-established law that it is sufficient if he exercises the ordinary skill of an ordinary competent man exercising that particular art."

20. The water of Bolam test has ever since flown and passed under several bridges, having been cited and dealt with in several judicial pronouncements, one after the other and has continued to be well received by every shore it has touched as neat, clean and well- condensed one. After a review of various authorities Bingham L.J. in his speech in Eckersley v. Binnie, [1988] 18 Con.L.R. 1, 79 summarised the Bolam test in the following words:-

"From these general statements it follows that a professional man should command the corpus of knowledge which forms part of the professional equipment of the ordinary member of his profession. He should not lag behind other ordinary assiduous and intelligent members of his profession in knowledge of new advances, discoveries and developments in his field. He should have such an awareness as an ordinarily competent practitioner would have of the deficiencies in his knowledge and the limitations on his skill. He should be alert to the hazards and risks in any professional task he undertakes to the extent that other ordinarily competent members of the profession would be

alert. He must bring to any professional task he undertakes no less expertise, skill and care than other ordinarily competent members of his profession would bring, but need bring no more. The standard is that of the reasonable average. The law does not require of a professional man that he be a paragon combining the qualities of polymath and prophet."

21. The degree of skill and care required by a medical practitioner is so stated in Halsbury's Laws of England (Fourth Edition, Vol.30, Para 35):-

"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, and a person is not liable in negligence because someone else of greater skill and knowledge would have prescribed different treatment or operated in a different way; nor is he guilty of negligence if he has acted in accordance with a practice accepted as proper by a responsible body of medical men skilled in that particular art, even though a body of adverse opinion also existed among medical men.

Deviation from normal practice is not necessarily evidence of negligence. To establish liability on that basis it must be shown (1) that there is a usual and normal practice; (2) that the defendant has not adopted it; and (3) that the course in fact adopted is one no professional man of ordinary skill would have taken had he been acting with ordinary care."

13) In the other case of *Martin F. D'Souza* (*supra*) the Court has propounded the law, so settled by it earlier. The following may be quoted for emphasis.

"67. The basic principle relating to the law of medical negligence is the Bolam Rule which has been quoted above. The test in fixing negligence is the standard of the ordinary skilled doctor exercising and professing to have that special skill, but a doctor need not possess the highest expert skill. Considering the facts of the case we cannot hold that the appellant was guilty of medical negligence."

14) Now, coming back to the facts of the present case vis-à-vis the charges levelled against the petitioner, an one liner expositor would be that the petitioner has been alleged of negligence by not attending the minor in serious condition, resultantly causing his death. It is necessary that the impugned orders of the Courts of first instance may be glanced for once.

15) The Magistrate, in his order dated 15.02.2016, has held that, for an accused to get protection from conviction under section 304A, there should neither be intention nor knowledge to cause death. It was held that in this case, prima facie it comes out that the doctor did not have intention to cause death. But whether he had knowledge is a different thing. It was further found that in this case, the very fact that, the patient was admitted in the emergency ward, suggests some gravity in his sickness. Moreover, the doctor was "call booked" when the condition of the patient deteriorated. But, the doctor prescribed medicine without even examining him in person. Whether the medicines prescribed and the medical amenities administered to the patient were sufficient for that situation,

is indeed a matter for trial. It was further held that there must be both knowledge and intention to such act of negligence. In this case, the victim was a minor and the doctor had full knowledge that he was "call booked" for attending the patient when his condition deteriorated. The Magistrate rejected petitioner's prayer under section 258 of the CrPC.

- 16) While confirming the order of the Magistrate as above, the Sessions Judge found in his judgment dated 20.7.2016, that "the profession of doctor is supposed to have requisite knowledge and skill needed for the purpose of and has a duty to exercise reasonable due care while dealing with the patient. But at the same time if the doctor or specialist does not act in the patient admitted in emergency or under the supervision and the patient dies or becomes victim of consequences, which could have been avoided with due care from the doctor. In such a case doctor can be held liable under medical negligence." He has further found that "from the case in hand, it appears that the doctor failed to discharge his duties as casted upon him by the government hospital. In this case, the victim was a minor and the doctor has a full knowledge that his condition was deteriorating and the nurses

calling him on several occasions, but with full knowledge of that he did not attend in a proper time, so that the health of the victim was deteriorated and finally succumb to death.”

17) Medical negligence is the misconduct by medical practitioners or doctors by not providing enough care and taking proper safeguards or measures resulting in the breach of their duties harming the patients. In the case of the medical practitioner, negligence way failure to act through the standards of moderately ready clinical men on the time. There may be one or more perfectly proper or reasonable standards of care, and if he conforms to one of these standards, then he is not negligent. Medical negligence occurs because of improper, unskilled or negligent treatment provided to the patients. Medical negligence also known as medical malpractice occurs when the medical practitioners fail to perform their duty with the necessary amount of standard of care.

18) Medical negligence is caused by lack of proper care or carelessness of the medical professionals during diagnosis, medication, operations and alike. The most common causes for medical negligence include lack of procedural safeguards, incorrect dosages, surgical errors, operation theatre

contamination, blood transfusion contamination, mistreatment, wrong diagnosis, etc., which can be potentially prevented by taking a proper standard of care which is required. Every medical professional or doctor has a duty of care towards their patients and when they commit a breach of this duty of care it causes injury to the patients and gives the patient's right to bring an action against negligence. In the case of *State of Haryana v. Smt Santra (reported in 2000 5 SCC 182)*, the Supreme Court stated that each and every health practitioner has a responsibility to act with an affordable amount of care and skill. The Court has held that in criminal law, the degree of negligence is a factor in determining the liability. However, the elements like the motive or the intention behind the offense, the magnitude or degree of the offense and the character of the offender must be established to determine the criminal liability.

- 19) In *Poonam Verma v. Ashwin Patel (reported in 1996 4 SCC 332)*, the Supreme court has distinguished between negligence, recklessness, and rashness, and also defined what amounts to criminal liability. It stated that a person is said to be acted in a negligent manner when he/she unintentionally commits an

act or omission that causes a breach of his/her legal duty. A person who acted in a rash manner when he/she knows the consequences but foolishly thinks that they won't occur as a result of his/her act. A reckless person knows the consequences but doesn't care whether or not they result from his/her act. The Court has stated that 'any conduct falling short of recklessness and deliberate wrongdoing should not be the subject of criminal liability.'

- 20) Medical malpractice occurs when a healthcare professional or provider neglects to provide appropriate treatment, omits to take an appropriate action or gives substandard treatment that causes harm, injury or death to a patient. The law acknowledges that there are certain medical standards that are recognised by the profession as being acceptable medical treatment by reasonably prudent healthcare professionals under like or similar circumstances. This is known as the standard of care. A patient has the right to expect that healthcare professionals will deliver care that is consistent with these standards. If it is determined that the standard of care has not been met, then negligence may be established.

21) “*Bolam test*” is the classical test, a touchstone against which existence of the element of negligence by a doctor may be assessed. In the case of *Dr. Laxman Balkrishna Joshi* reported in *AIR 1969 SC 128*, the Supreme Court held in the following words:

“In the context of criminal liability, classic statement of law by Sir Lawrence Jenkins in *Emperor v. Omkar Rampratap* (1902) 4 Bom LR 679 made in reference to Section 304A IPC approved by the Supreme Court subsequently and followed by the High Courts in general may also be quoted: “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 be 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*.” This is known as Bolam test propounded by McNair J in *Bolam v. Friern Hospital Management Committee* (1957) 2 All ER 118 in the UK. It has been approved and followed by the courts in India.”

“Bolam test” states that when the doctors accept standard practice then he is not doing breach of duty. A doctor is not guilty of negligence if he has acted in accordance with the practice accepted as proper by a responsible body of medical men skilled in that particular act. In the words of McNair L.J. in the judgment, “... *where you get a situation which involves the use of some special skill or competence, then the test as to whether there has been negligence or not is not the test of the man on the top of a Clapham omnibus, because he has not got this special skill. The test is the standard of the ordinary skilled man exercising and professing to*

have that special skill” and also that “... I myself would prefer to put it this way, : A doctor is not guilty of negligence if he has acted in accordance with a practice accepted as proper by a responsible body of medical men skilled in that particular art.”

Applicability of this classical test so as to assess if negligence, as propounded by the criminal law exists, has also been appreciated by the Apex Court, in the case of *Jacob Mathew (supra)*, as discussed above.

22) For best understanding of the principles governing the field which, as a matter of fact shall be followed by this court while assessing the merits of this case, the ratio of the decision of the Supreme Court in the judgment of *Kusum Sharma v. Batra Hospital, (reported in 2010 3 SCC 480)* may also be referred to, where the Court found

“62. We are here concerned with criminal negligence. We have to find out that the rashness was of such a degree as to amount to taking a hazard knowing that the hazard was of such a degree that injury was most likely imminent. The element of criminality is introduced by the accused having run the risk of doing such an act with recklessness and indifference to the consequences.”

23) The degree of skill and care required by a medical practitioner is so stated in *Halsbury's Laws of England* (4th Edn., Vol. 30, Para 35):

*“35. Degree of skill and care required.—*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, and a person is not liable in negligence because someone else of greater skill and knowledge would have prescribed different treatment or operated in a different way; nor is he guilty of negligence if he has acted in accordance with a practice accepted as proper by a responsible body of medical men skilled in that particular art, even though a body of adverse opinion also existed among medical men.

Deviation from normal practice is not necessarily evidence of negligence. To establish liability on that basis it must be shown (1) that there is a usual and normal practice; (2) that the defendant has not adopted it; and (3) that the course in fact adopted is one no professional man of ordinary skill would have taken had he been acting with ordinary care.”

24) It is worth noting in this case, that the principles settled as above and still governing the field, have not been considered by the two initial Courts, in their

respective orders, while considering petitioner's prayer. The result is an error occurring in the decision making process, rendering both the orders as erroneous and devoid of being backed by the settled laws. Prima facie material emerging from the FIR is that a child was admitted in the hospital at 10:25 PM, in a serious condition having been suffered from diarrhoea. It is not the case of the prosecution that the child was not put to the medication as per the settled and accepted medical protocol. Fact remains that in spite of administration of due medication, the condition of the child deteriorated. At this stage, the petitioner was notified by way of generally accepted procedure, that is by sending note in a call book. The time has been stated to be at 10:25 p.m. It is the case of the prosecution that in response to such information, the petitioner suggested further proper medication but did not personally attend the child. The prosecution has not made up any case that such prescription of the petitioner was not adequate or appropriate or that the child was not provided with the medical support in terms of such prescription, in absence of the petitioner. Prosecution's case is based on the sole fact that after being notified, the petitioner did not attend the ailing child. Of course, the petitioner could have attended the

ailing child at that point of time. However having not attended the child at that point of time and prescribing medicines and treatment for him, due administration of which has not been denied in this case, the petitioner has complied with the standard of care of an ordinary prudent medical practitioner. It is needless to reiterate that the standard of care necessary to be undertaken by a doctor is propounded to be that of an ordinary prudent practitioner following the due process and protocol prevalent in the field. Highest degree of care may not be imparted, to indicate that no negligence was exercised in caring and treating the patient. This being the settled law, governing the field, as elaborately discussed above, in this case so far as the petitioner is concerned it can be held that the petitioner has maintained the ordinary degree of care, while treating the patient. It is worth noting that the prosecution has not brought forward a case that the treatment extended to the child was not adequate and petitioner's presence to attend the patient at that very moment, would have ensured any better, adequate or appropriate treatment for the child. It is not the case of the prosecution, that the course adopted was one of such kind that no professional man of ordinary skill would have taken, had he been acting with

ordinary care. The "*Bolam's test*" is satisfied in this case, that the procedure adopted has to be in terms of the practice accepted as proper. The plight of parents who have lost their child can always be understood, though the liability cannot be thrashed blindly on the doctor, who prima facie is seen to have exercised reasonable care, undertaken appropriate procedure and extended adequate treatment to the patient.

- 25) Therefore, in this case, in view of the settled laws, the ingredients of offence under section 304A of the IPC, i.e, the accused has caused death of the victim, due to rashness and negligent performance of his duties, are not fructified, even if the allegations in the FIR are taken at their face value and the other materials on the case diary are taken into consideration. There is no prima facie material to show the higher standard or degree of breach of duty by the petitioner, so much so that it can be characterised as gross negligence by him, to be covered within the four fold of the provision of law as afore stated. The law settled as above has not found place in the two impugned orders of the Courts of first instance. Thus both the said orders are liable to be set aside being illegal.

26) Hence, this revision succeeds. The order of the Sessions Judge dated 20.07.2016 in Criminal Revision No.10 of 2016 and that of the Ld. Judicial Magistrate, 2nd Court, Balurghat, Dakshin Dinajpur dated 15.02.2016 in G.R. Case No.107 of 1997 are set aside. Prosecution started against the petitioner, pursuant to the Balurghat Police Station Case No. 38/1997 dated 25.01.1997, is hereby quashed and set aside. CRR 3649 of 2016 is allowed. Connected application/s, if any, is/are disposed of. The case diary be immediately returned.

27) Urgent certified copies of this judgment, if applied for be supplied to the parties subject to compliance with all the requisite formalities.

(Rai Chattopadhyay)