

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
(Criminal Revisional Jurisdiction)
APPELLATE SIDE**

PRESENT:

THE HON'BLE JUSTICE AJOY KUMAR MUKHERJEE

CRR 116 of 2024

**Management of Ambuja Neotia Healthcare Venture Ltd & anr.
Vs.
The State of West Bengal & anr.**

For the petitioners : Mr. Rajdeep Mazumder
Mr. Avrojoyti Das
Mr. Rajdeep Das

For the State : Mr. Aditi Shankar Chakraborty, Ld. A.P.P,
Mr. Sourav Ganguly,

Heard on : 10.07.2024

Judgment on : 23.07.2024

Ajoy Kumar Mukherjee, J.

1. Mr. Rajeddep Majumder, learned counsel appearing on behalf of the petitioner referring Apex Court judgment in ***Martin F D Souza Vs. Md. Ishfaq***, reported in **(2009) 3 SCC 1** and ***Jacob Mathew Vs. State of Punjab*** reported in **(2005) 6 SCC 1**, strenuously argued that in a case of medical negligence, FIR cannot be registered without an expert opinion, supporting such an allegation.

2. The brief background in the present case is that on 16.03.2024 the son of defacto complainant was admitted in general ward of the petitioner

hospital under the observation of one doctor Nazuma Subba, dermatologist but the said doctor was not present physically and he diagnosed through video conference. On the next day when the patient was feeling unbearable pain in his body, the hospital authority assured that Dr. Subba is on leave and will join the hospital on 18th March, 2024 and thereafter will treat the patient. On 18.03.2024, when Dr. Subba came to hospital, he found that the patient was suffering from chicken pox but the patient was in serious condition as he was kept in the hospital without any proper treatment for two days. On the same day at about 8.30 p.m. when the condition of the patient deteriorated gradually he was shifted to ventilation by said doctor. During ventilation the attending doctor did not allow the defacto complainant to meet his son, nor the hospital authority/accused persons replied anything about the progress of the patient. At 11.45 P.M. the defacto complaint found that the doctor and the attendants are not giving any satisfactory response to them and as such they doubted that something wrong has been happened to his son and thereafter forcefully entered the ventilation room and found that his son already died. The question posed to the FIR named accused persons by the FIR maker is that his son had travelled alone all the way from Chennai to Bagdogra and had also reached hospital without any help and was subsequently admitted in the hospital with healthy body in general bed but suddenly how can the condition so deteriorated that he died within three days of admission to the hospital. It is alleged in the FIR that the doctor did not have any answer to this question and they started defending themselves by making false excuses.

3. The written complaint was received on 22.03.2024 at 13.05 hrs. vide G.D. No. 1295 and the FIR was instantly registered on the same day under section 304A IPC.

4. Mr. Mazumder referring Lalita Kumari's Judgment (AIR 2014 SC 187) argued that registration of an FIR under section 154 will come after completion of inquiry as directed by the Apex Court in **Jackob Mathew** (Supra) and **Martin F D Souza** (Supra). He further submits that if after preliminary inquiry prima facie cognizable offence discloses against any of the accused, only then FIR can be registered and criminal law against the accused, would be put in motion. In this context he relied upon a judgment of a co-ordinate bench of this court dated 14.03.2024 passed in **CRR 230 of 2023 (Manager of Ambuja Neotia Health Care Venture Ltd. Vs. Shri Pradipta Saha)** where a co-ordinate Bench of this court relying upon **Lalita Kumari** (supra), **Martin F D. Souza** (supra) and **Jackob Mathew** (supra), was pleased to quash the entire proceeding, as concerned magistrate without making preliminary investigation or having any substantial material on record had taken cognizance of the complaint and had issued process under section 204 Cr.P.C.

5. Mr. Mazumder in this context further relied upon another co-ordinate bench Judgment of Chattisgarh High Court reported in **2019 SCC Online CHH 47 (Smt. Krishna Dixit Vs. State of Chattisgarh)** where court held that for registration of criminal case against a doctor before registering an FIR under section 154(1) of the Cr.P.C. by getting an expert opinion from a qualified doctor would apply with equal force while registering/directing for registration of offence under section 156(3) of the Cr.P.C. He further relied

upon co-ordinate Bench judgment of Delhi High Court in **Ashoke Raj Gopal Vs. State and another.** (WPCRL 1440/220 and CRL M.A. 12538/2020) dated 1st December, 2020 where it was held that indisputably an FIR in a case of medical negligence cannot be registered without an expert opinion supporting such an allegation. Mr. Mazumder accordingly submits that the case laws as cited above have equal force in the present context and therefore, FIR which has been registered violating the law, laid down by the Supreme Court is bad in law and thereby the present proceeding, if allowed to be continued, it will be abuse of process of the court and therefore, the FIR is to be quashed.

6. Mr. Chakraborty on behalf of the State and Mr. Singhal on behalf of the opposite party no.2 relying upon the guidelines laid down in **Jacob Mathew** (supra), **Martin F D Souza** (Supra) and **Lalita Kumari** (supra) contended that the prosecution agency after registering the FIR has already called for a report from a competent medical board and they are awaiting reply from the board and as such the prosecution agency has not violated any direction laid down by the Apex Court in the present medical negligence case. It is further argued on their behalf that the petitioners are not correct in interpreting **Lalita Kumari's case** (supra) stating that in each and every medical negligence case the investigating agency or the complainant first required to obtain a report from competent medical expert about alleged medical negligence and after receipt of report on being satisfied that a case of medical negligence prima facie discloses only then FIR can be registered and the investigation can be started. He further submits that from the FIR it appears that the FIR has been lodged against seven doctors but the present

application under section 482 has been preferred by management of Ambuja Neotia Health Care Venture Limited, who has no locus standi to prefer the present Application.

7. In reply Mr. Mazumder pointed out that in the FIR it has been clearly prayed for taking immediate legal action against all concerned doctor and also against management of Neotia Hospital. Accordingly the Hospital Authority certainly has locus standi to prefer the present application.

8. From the aforesaid facts and circumstances of the case the moot question that has been raised in the present context is whether in all medical negligence cases, it is mandatory for the police authority to first go for preliminary enquiry and on being satisfied from the preliminary enquiry report made by a competent medical expert that prima facie cognizable offence discloses, only then FIR can be registered under section 154 of Cr.P.C.

9. In this context the law laid down by the Apex Court in **Lalita Kumari's Case** (supra), as summarized in para 120 is very clear. It says that the registration of FIR is mandatory under section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary enquiry is permissible in such a situation. However if the information received does not disclose a cognizable offence but indicates the necessity for an inquiry a preliminary inquiry may be conducted only to ascertain whether cognizable offence attracts or not. It has also been made clear in para 120.5 that the scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

10. In *State of Telengana Vs. Managipet* reported in **(2019) 19 SCC 87** Supreme Court in Para 30 clearly observed that the judgment in *Lalita Kumari's case* (supra) does not state that the proceedings cannot be initiated against an accused without conducting a preliminary enquiry or a preliminary inquiry is a must in all cases. The ratio laid down in Lalita Kumari's Case is that a preliminary inquiry may be conducted pertaining to matrimonial disputes/family disputes commercial offences, medical negligence cases corruption cases etc.

11. In *Sindhu Jank Nagargoje Vs. State of Maharashtra*, reported in **2023 Live Law (SC) 639**, Supreme Court reiterated that in view of decision rendered by the Constitution Bench of the Apex Court in *Lalita Kumari's Case* (Supra), the registration of FIR is mandatory under section 154 of Cr.P.C. if the information discloses commission of cognizable offence and police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. It was further pointed out in the judgment that action must be taken against erring officers, who do not register the FIR, if information received by him discloses a cognizable offence

12. In the present case it is not the case of the petitioner that the FIR does not disclose any cognizable offence

13. In *State of Telengana Vs. Habib Abdulla Zilani and others* reported in **(2017) 2 SCC 779** the Supreme Court held if the information given clearly mentions the commission of cognizable offence, there is no other option but to register an FIR forthwith. Other considerations are not relevant at this stage of registration of FIR, such as, whether the information is falsely given, whether the information is genuine, whether the information

is credible etc. At the stage of registration of FIR, what is to be seen is merely whether the information given exfacie discloses the commission of a cognizable offence.

14. Even if I take a look in ***Martin F D Souza Case*** (supra), in para 106 it has been clearly spelt out that before issuance of notice to the doctor /hospital concerned the report needs to obtain that a prima facie case discloses about medical negligence. Needless to say that in the present case, the stage of issuance of notice to the accused doctors has not yet come and accordingly there is no scope to interpret ***Martin F D Souza case*** in some other way in the present context. Similarly, ***Jacob Mathew*** (supra) has also stated for obtaining expert report to get an impartial and unbiased opinion, applying *Bolam test*, to facts concerns in the investigation but what has been stressed in the said judgment is that a doctor who is 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 investigation or for collecting evidence or unless the investigating officer feels satisfied that the doctor proceeded against, would not make himself available to face the prosecution, unless arrested.

15. Coming back to the facts and circumstances of the case in hand, I find from the case diary that on 31.05.2024 the investigating agency had written letter to the chief medical officer of health (Darjeeling) with a prayer for forming a medical board for inquiry and to provide valuable opinion enclosing copy of FIR, written complaint and other related documents.

16. In such view of the matter I find nothing to interfere in the said proceeding nor I am agreeable with Mr. Mazumder that in all medical

negligence cases, it is mandatory for the investigating agency to go for preliminary inquiry before registering FIR under section 154 Cr.P.C.

17. In view of aforesaid discussion **CRR 116 of 2024** stands dismissed.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, on priority basis on compliance of all usual formalities.

(AJOY KUMAR MUKHERJEE, J.)