HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRM-M-8818-2023 (O&M)
Reserved on 20.02.2024
Pronounced on 10.05.2024

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M/s Ojas Medical Services P.Ltd. & Ors. ... Petitioners

VS.

State of Haryana & Ors. ... Respondents

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CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

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Present: Mr. RS Rai, Sr.Advocate with
Mr. TS Khaira and Ms. Rubina Virmani, Advocates
for the petitioners

Mr. GS Dhillon, AAG Haryana

Mr. JS Chandail, Advocate for respondents No.2&3

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Sandeep Moudgil, J.

(1). This petition under Section 482 CrPC filed by the petitioner-Company seeks quashing of the order dated 23.01.2023 (Annexure P1) passed by ACJM, Panchkula allowing the application filed by the respondents No.2&3 under Section 156(3) CrPC and also for quashing the FIR No.0053 dated 31.01.2023 under Sections 120-B/269/270/420/468/471/506 IPC registered at Police Station Chandimandir, District Panchkula.

(2). Brief facts of the case are that on 06.01.2022, the complainant/respondent No.3-Saurabh Singh brought his father, namely, respondent No.2-Tarsem Singh to Ojas Hospital due to heaviness in his chest, fever upon which respondent No.2 was diagnosed to be COVID positive. He was however, discharged on 11.02.2022 but at that time, no grouse of any kind was raised by the complainant party. Thereafter, after about 5 months, the complainant lodged 1st complaint before Civil Surgeon, Panchkula on

16.06.2022 (Annexure P3) followed by 2nd complaint before the DCP, Panchkula wherein, *inter alia*, it was averred that respondent No.2 was kept in COVID-19 ward, illegally and forcefully and that such information was not supplied to the Health Department which is mandatory in case of COVID admission. A notice was issued on 14.07.2022 (Annexure P4) by the Chairman, District Board of Medical Negligence-cum-Civil Surgeon, Panchkula directing the representative of the petitioner-Hospital to be present. Respondents No.2&3 even filed complaint before the District Consumer Redressal Forum under section 34 of the Consumer Protection Act wherein notice was issued. Thereafter, an application under Section 156(3) CrPC was moved by respondents No.2&3 which was allowed vide impugned order dated 23.01.2023 (Annexure P1) directing the police to register an FIR against the petitioner.

(3). Learned counsel for the petitioner contended that the Court below before passing an order for registering an FIR did not take into consideration that medical board constituted on the complaint of the respondent Nos. 2 and 3 was already carrying out investigation in the said matter and has also examined the complainant party in person and the said District Medical Board for Negligence constituted by the Civil Surgeon Panchkula had still not given its enquiry report on the complaint and as such, the impugned order directing registration of FIR before taking into consideration the opinion of the medial board, in case of medical negligence against the hospital and doctors, is in variance to the procedure established by the Supreme Court in (i) ***Lalita Kumari v. Govt. of U.P., AIR 2014 SC 187***, (ii) ***Jacob Mathew v. State of Punjab (2005) 6 SCC 1***, (iii) ***Anjana Agnihotri***

and Anr. Vs. State of Haryana & Anr. (2020) SCC Online SC 1399, wherein it has been held that before registering an FIR in any case of medical negligence against the doctor or the hospital, a preliminary enquiry needs to be conducted and it is imperative to obtain an independent and competent medical opinion preferably from a doctor in Government service qualified in that branch of medical practice to avoid harassment to doctors who may not be ultimately found to be negligent. However, in the present case, no such preliminary enquiry or medical opinion was sought.

(4). It is argued that the respondents No.2&3 are doing forum shopping as they have filed various complaints before different courts simultaneously on the same set of facts. He averred that the trial court has passed the impugned order in haste on the date of filing of the application under Section 156(3) CrPC, itself i.e. 23.01.2023 and without waiting for the enquiry report of the medical board or even without calling for the report of police, despite being fully aware of the fact that the medical board stands constituted and its report is pending, in total non-compliance of the procedure established in a catena of judgments for taking cognizance and dealing with applications under Section 156(3) CrPC.

(5). The further argument raised is that the motive behind filing various complaints and the lodging of the present FIR by respondent No.2 & 3 is nothing but a crude tact of arm-twisting to get monetary benefits by blackmailing the petitioners in order to get refund of the medical expenses and compensation from the petitioners on account of deficiency in medical service. He further urged that the complainant has not complied with Sections 156(1) & (3) CrPC before registration of the instant FIR.

(6). Learned counsel for the respondents No.2&3 have filed their reply wherein it has been averred that the present petition is not maintainable as the order of the Magistrate dated 23.01.2023 directing the Police to register FIR is not an interlocutory order and as such revision petition under Section 397 CrPC is maintainable before the Sessions Judge Panchkula. It is further submitted that there was sufficient compliance of Section 156 (1) inasmuch as the complaint dated 16/06/2022 was made by the respondents No.2 and 3 before the DCP Panchkula (Annexure R-2/4) which was downmarked to SHO, Police Station Chandimandir, Panchkula. Reliance has been placed on Delhi High Court judgment in ***Nishu Wadhwa vs. Siddharth Wadhwa & Anr. 2017(1) RCR (Crl.) 704***, to contend that an order dismissing or allowing an application under Section 156(3) CrPC is not an interlocutory order and a revision against the same is maintainable as when a direction is issued by the Magistrate for registration of FIR and immediately after its registration, the person against whom allegations are made in the FIR attain the status of an accused.

(7). Mr. JS Chandail, Advocate for respondents No.2&3 vehemently argued that the act of forgery and fabrication done by the petitioners is writ large as a RAT kit that was used allegedly for conducting COVID test on 07/01/2022 was apparently and allegedly retained by the Hospital authorities for a period of more than 6 months in their records, which was otherwise required to be destroyed after its use and thus it is highly unimaginable and improbable that an infected RAT kit was retained by the petitioners for a period of more than 6 months which was produced before the Medical Board for Negligence which only leads to one and only conclusion that the RAT kid

was a forged and fabricated document prepared with the motive of escaping liability from their wrongful acts in the light of the fact that as per RTI information dated 9.6.2022 (Annexure R-2/2), respondent No.2 was declared Covid-19 Positive on 12.1.2022 and as such, the matter requires thorough investigation.

(8). The further argument raised on behalf of respondents No.2&3 is that the District Medical Board For Negligence had convened its meeting on 08/08/2022 and again on 31/08/2022 and had received the detailed reply of the hospital/petitioners, however, it was only after registration of the present FIR on 31/01/2023, the said Medical Board gave its enquiry report opining that the hospital was justified in giving treatment to the complainant has relied on the forged and fabricated Covid Antigen Kit dated 7.1.2023 to conclude that Complainant Tarsem Chand was COVID positive on 7.1.2022, however the board observed that COVID protocol had not been complied, the advisory on strategy for Covid 19 testing in India, as SRF number and RAT test conducted on 7.1.2022 was not generated.

(9). The next assertion made by the respondents No.2&3 is that the petitioners are trying to make a case of 'medical negligence' and have cited various case laws to support their argument, whereas the petitioners were involved in cheating, fraud, forgery and administrative and as such, the same does not apply in the facts and circumstances of the present case. Reliance has been placed on ***Siddharth Mukesh Bhandari vs. State of Gujarat & Anr. (2022) 10 SCC 525*** and ***M/s Neeharika Infrastructure P.Ltd. vs. State of Maharashtra & Ors. 2021 AIR SC 1918***, to hold that grant of stay of investigation and/or any interim relief while exercising powers under Section

482 CrPC would be only in the rarest of rare cases. He further exhorted that if the petitioners are innocent they can produce the evidence with regard to their innocence before the investigating agency, however, no extraordinary circumstances are made out in the present case so as to stay the investigations and that thorough investigation by the police shall only bring out the true facts.

(10). Status report dated 18.07.2023 has been filed by respondent No.1 stating that after registration of FIR, investigation was conducted and statement of complainant and witnesses have been recorded and documents collected under Section 161 CrPC. It is further mentioned that this Court vide order dated 20.02.2023 stayed the proceedings pursuant to impugned order and also stayed the proceedings in the FIR.

(11). Heard learned counsel for the parties and gone through the record.

(12). In ***Lalita Kumari's*** case (supa), one of the issues that came up for consideration before the Apex Court was whether a police officer is bound to register an FIR upon receiving any information relating to the commission of a cognizable offense under Section 154 of the CrPC or whether in cases where the complaint does not clearly disclose the commission of a cognizable offence but the FIR is compulsorily registered, then does it infringe the rights of the accused. The Constitutional Bench held that as to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case and thus categorized "medical negligence" as one of the cases, amongst others, where preliminary enquiry may be made before registration of FIR.

(13). In a landmark judgment of the Supreme Court in ***Dr Jacob Mathew's*** case which held that in order to make a doctor criminally responsible for the death of a patient, it must be established that there was negligence or incompetence on the doctor's part which went beyond a mere question of compensation on the basis of civil liability. Criminal liability would arise only if the doctor did something in disregard of the life and safety of the patient. It further held that negligence, in simple terms, is the failure to take due care and caution. It is a breach of a duty caused by the omission to do something which a reasonable person – guided by those considerations which ordinarily regulate the conduct of human affairs – should have done. It may also be doing something, which a prudent and reasonable person would not have done. The Apex Court further held that the essential components of negligence are: 'duty', 'breach' and 'resulting damage' and that these definitions are rather relative and can change with the circumstances by quoting illustration that when trying to drag a person away from the clutches of an attacking animal, one cannot ask whether this would cause damage to the person's limbs. Doctors can also be faced with similar contingencies. On finding an accident victim in a dangerous condition, a doctor may have to attempt a crude form of emergency surgery to try and save the person's life. No negligence is involved in such cases. The Apex Court concluded in the following terms:-

> *(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.*
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> *(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.*

(14). Noticing the fact that the cases of doctors (surgeons and physicians) being subjected to criminal prosecution are on an increase and since 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 and once such process is initiated, it subjects the medical professional to serious embarrassment and sometimes harassment and also cognizing the need for protecting doctors from frivolous or unjust legal prosecutions used as a mean of pressurizing tactics by the complainant, the Apex Court issued the following directions:

> *"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."*

(15). To convict, therefore, a doctor, the prosecution has to come out with a case of high degree of negligence on the part of the doctor. Mere lack of proper care, precaution and attention or inadvertence might create civil liability but not a criminal one. The courts have, therefore, always insisted in the case of alleged criminal offence against doctor causing death of his patient during treatment, that the act complained against the doctor must show negligence or rashness of such a higher degree as to indicate a mental state which can be described as totally apathetic towards the patient. Such gross negligence alone is punishable.

(16). At this stage, it would be opposite to deal with another argument raised on behalf of the petitioner wherein it has been vehemently argued that

a perusal of the entire complaint under Section 156(3) Cr.P.C. would show that neither any complaint has been made to the Station House Officer nor to the Senior Superintendent of Police – a process mandatory under Section 154(1) and 154(3) Cr.P.C. and thus, the present complaint under Section 156(3) Cr.P.C. deserves to be outrightly rejected being in contravention to the law laid down by the Supreme Court of India in ***Priyanka Srivastava's*** case (supra).

(17). In ***Priyanka Srivastava's*** case, specific reference can be made to its para 31 wherein it has been mandated that a prior application under Section 154(1) and 154(3) Cr.P.C. before filing application under Section 156(3) Cr.P.C. had to be filed and the facts detailing the same had to be clearly spelt out in the application under Section 156 (3) Cr.P.C. and necessary documents to the said effect are also required to be filed. It would be relevant to take a note of Sections 154(1) and 154(3) CrPC, the relevant extract of which read as under:-

> ***"Section 154(1)***
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> *(1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read Over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.*
>
> ***Section 154(3)***
>
> *(3) Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information*

> *referred to in subsection (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence."*

(18). In the present case it is submitted that neither any averment with respect to respondent No.2 having filed the said applications under Sections 154(1) or 154(3) has been made nor any such document has been filed alongwith the same. A perusal of the complaint further shows that the said complaint is not accompanied by any affidavit. It is amply clear that as per Section 154(1) and Section 154(3) CrPC, every information relating to commission of cognizable offence has to be given orally or in writing to the Officer-in-Charge and the substance of such information shall be entered in the book kept in the office. This means a First Information Report has been lodged when the police received an information about cognizable offence. If there is a refusal to register a First Information Report, then the remedy lies in Section 154(3) CrPC, wherein the aggrieved person may send the substance of such information in writing by post to the Superintendent of Police, who can investigate or direct an investigation, if according to him, a cognizable offence is made out. In this case, nothing has been mentioned in the complaint, as to whether this provision of Section 154(1) or Section 154(3) was ever invoked. Rather, counsel for the respondent No.2 could not satisfy this Court on this question and also there is no whisper in the petition

about the same. Without exhausting the mandatory provisions, the complaint was filed, which was sent under Section 156(3) CrPC.

(19). Remedy available under Section 156(3) CrPC is not routine in nature. It requires application of mind and a speaking order to be passed. The Apex Court in ***Priyanka Srivastava's*** case (supra) has dealt with this issue extensively and highlighted the importance of compliance Section 154(1) and Section 154(3) CrPC and has also dealt with the misuse of the powers under Section 156(3) of the Code of Criminal Procedure and held as to how the Court has to deal in this situation by observing as under:

> *"In our considered opinion, a stage has come in this country where Section 156(3) Cr.P.C. applications are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. That apart, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations. This affidavit can make the applicant more responsible. We are compelled to say so as such kind of applications are being filed in a routine manner without taking any responsibility whatsoever only to harass certain persons. That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing orders under a statutory provision which can be challenged under the framework of said Act or under Article 226 of the Constitution of India. But it cannot be done to take undue advantage in a criminal court as if somebody is determined to settle the scores. We have already indicated that there has to be prior applications under Section 154(1) and 154(3) while filing a petition under Section 156(3). Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed. The warrant for giving a direction that an the application under*

> *Section 156(3) be supported by an affidavit so that the person making the application should be conscious and also endeavour to see that no false affidavit is made. It is because once an affidavit is found to be false, he will be liable for prosecution in accordance with law. This will deter him to casually invoke the authority of the Magistrate under Section 156(3). That apart, we have already stated that the veracity of the same can also be verified by the learned Magistrate, regard being had to the nature of allegations of the case. We are compelled to say so as a number of cases pertaining to fiscal sphere, matrimonial dispute/family disputes, commercial offences, medical negligence cases, corruption cases and the cases where there is abnormal delay/laches in initiating criminal prosecution, as are illustrated in Lalita Kumari are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR."*

(20). Therefore, compliance of requirement under Section 154(3) of CrPC prior to filing of the private complaint is mandatory and absence of such compliance would render the complaint defective. The trial Court ought not to have proceeded further on the basis of such defective complaint and the non-compliance of Section 154(3) of Cr.P.C. would be a incurable defect which would vitiate the proceedings before the trial Court. Under these circumstances, continuation of further proceedings before the trial Court against the petitioners would amount to abuse of process of law.

(21). Another issue of prime importance relates as to when and where the High Court would be justified in passing an interim order either staying the further investigation in the FIR/complaint or interim order in the nature of "no coercive steps" and/or not to arrest the accused either pending investigation by the police/investigating agency or during the pendency of the

quashing petition under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India pending before the High Court?

(22). In this regard, it would be apt to quote the celebrated decision of Supreme Court in ***State of Haryana v. Bhajan Lal 1992 Supp (1) SCC 335***, wherein the scope of the High Court powers under Section 482 Cr.P.C. and/or Article 226 of the Constitution of India to quash the FIR was considered and while referring to several judicial precedents, categorized the nature of cases, reproduced below, wherein the High Court can exercise its inherent powers under Section 482 CrPC either to prevent abuse of the process of the court, or otherwise, to secure the ends of justice:-

> *(1) Where the allegations made in the first information report or the complaint, 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.*
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> *(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.*
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> *(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*
>
> *(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.*

> *(5) Where the allegations made in the FIR or 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.*
>
> *(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*
>
> *(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.*

(23). In ***Gorige Pentaiah vs. State of AP & Ors. (2008) 12 SCC 531***, the Supreme Court held that the inherent powers of the High Court under Section 482 CrPC is to act *ex debito justitiae* to do real and substantial justice for the administration of which alone it exists, or to prevent abuse of the process of the court, to give effect to an order under the Code or to secure the ends of justice. Such inherent powers, though wide, ought to be exercised sparingly, carefully and cautiously and only when such exercise is justified by the tests specifically laid down in this Section itself.

(24). In ***M/s Neeharika Infrastructure Pvt. Ltd.*** case (supra), the Supreme Court held that in cases where it is found that non-interference would result into miscarriage of justice, the High Court, in exercise of its inherent powers under Section 482 CrPC and/or Article 226 of the Constitution of India, may quash the FIR/complaint/criminal proceedings and even may stay the further investigation. It further cautioned that the Courts

should be slow in interfering the criminal proceedings at the initial stage, i.e., quashing petition filed immediately after lodging the FIR/complaint and when no sufficient time is given to the police to investigate into the allegations of the FIR/complaint, which is the statutory right/duty of the police under the provisions of the Code of Criminal Procedure.

(25). Coming back to the facts of the present case, it can be culled out that the respondent No.2 was taken to Ojas Hospital, Panchkula on 06/07.01.2022 due to heaviness in chest and cough and was declared to be covid-19 positive without conducting any test and was kept admitted till 11.02.2022 with a bill of Rs.7,16,419/- was generated by the petitioners which was duly paid by the respondents No.2&3. Since respondent No.2 was an employee of Education Department, Haryana, a sum of Rs.3,94,000/- was reimbursed to the wife of respondent No.2. Respondent No.2&3 have alleged cheating, fraud, forgery and administrative malpractice by the petitioners. However, a perusal of the FIR would show that the ingredients to make out the case under Sections 269, 270, 420, 468, 471, 120-B, 506 IPC are missing and not supported by any documentary evidence.

(26). Furthermore, the respondents No.2&3 have not placed on record any evidence to establish that even after making various complaints before various authorities, there was conspicuous compliance of Section 154(1) and Section 154(3) CrPC inasmuch as there is no written complaint informing the SHO of the local jurisdiction of the commission of cognizable offence. Neither is there any material on record to show that if at all the SHO of the concerned Police Station refused to take cognizance of the offence, whether the Superintendent of Police was informed in writing disclosing the

commission of cognizable offence as per requirement of Section 154(3) CrPC. Even if the contention of the respondents No.2&3 that complaints were earlier filed before Civil Surgeon, Panchkula and then to DCP Panchkula followed by statutory complaint under Section 34 of Consumer Protection Act, the same is worthless and cannot be said to a 'complaint' under Sections 154(1) & (3) CrPC as has been mandated by the Supreme Court in ***Priyanka Srivastava's*** case (supra). That being so, the assertion made by the trial court to the effect that requirements laid down in ***Priyanka Srivastava's*** case (supra) are prima facie satisfied is ill-founded and not based on proper application of law and mind and deserves to be outrightly rejected.

(27). Though learned counsel for respondents No.2&3 have not cited any case law in support of their argument that even in case compliance of law laid down in ***Priyanka Srivastava's*** case (supra), has not been made, even then the FIR could not be quashed for want of compliance of Sections 154(1) & (3), still it is to be noted that the said argument has been dealt with and rejected *in toto* in an exhaustive judgment rendered in ***CRM-M-6692-2022 'Monishankar Hazra vs. State of Haryana'*** decided on 16.03.2022 (please refer to paras 55 & 57), on the basis of various judgments by a Coordinate Bench of this Court.

(28). Moreover, the petitioners have relied upon the enquiry report dated 10.02.2023 (Annexure P10) of the medical board constituted by the Civil Surgeon, Panchkula on 20.06.2022, wherein it has been categorically mentioned as under:-

> *"In view of the above facts and circumstances, this Board is of the opinion that Ojas hospital is justified in giving the treatment*

to Mr. Tarsem Chand considering the age and co-morbidities of patient as per COVID protocol but hospital has not completely complied the advisory on strategy for covid-19 testing in India as SRF number of RAT test conducted on 7th January was not generated and the information regarding positive test was shared on personal mail of Nodal Officer although."

(29). From the perusal of the Medical Board's Enquiry Report, it is manifest that the petitioners were justified in declaring the respondent No.2 as covid positive and putting him on mechanical ventilation, administering treatment as per his condition including cardiac arrest were justified and correct and the treatment given was well within the realm of medical science. That apart, the medical board did not find any laxity in the treatment administered by the petitioners-hospital or any of its doctors.

(30). A perusal of the impugned order dated 23.01.2023 passed by ACJM, Panchkula would show that before initiating any proceedings or directing registration of FIR for medical negligence against the doctor, the trial court did not called for an independent and competent medical opinion in deference to the dictum of the Apex Court in ***Dr.Jacob Mathew's*** case (supra) wherein the broad principles under which medical negligence as a tort have to be evaluated, have been laid down and which was subsequently affirmed in ***Nizam's Institute of Medical Sciences vs. Prasanth S Dhananka (2009) 6 SCC 1.*** That being so, this Court is satisfied that the FIR could not have been registered order passed by the trial court could not withstand the parameters laid down by the Apex Court in ***Dr. Jacob Mathew's*** case and as such, the same deserves to be quashed.

(31). Reliance can be placed on ***State of Karnataka v. L. Muniswamy, (1977) 2 SCC 699*** where the Supreme Court examined the scope of jurisdiction of the High Court under Section 482 CrPC and laid down several principles which govern the exercise of jurisdiction of the High Court under Section 482 CrPC and held that the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution.

(32). The exposition of law on the subject relating to the exercise of the extra-ordinary power under Article 226 of the Constitution or the inherent power under Section 482 CrPC are well settled and to the possible extent, the Supreme Court has defined sufficiently channelized guidelines, to give an exhaustive list of myriad kinds of cases wherein such power is exercisable by this Court. Present is the case which covered by those principles which have been enunciated in ***Bhajan Lal and Others***.

(33). In the light of the above discussion and cited case laws and on examining the case on the factual and legal aspects, this Court is of the considered opinion that there are many glitches in the prosecution case inasmuch as the respondents have not complied with the requirement of filing complaint under Sections 154(1) & (3) CrPC and in absence of compliane of such mandatory requirement, the trial court could not have entertained application under Section 156(3) CrPC and ordered registration of FIR and

that too in a matter pertaining to medical negligence by the doctors where it is incumbent upon the trial court to call upon prior medical report/opinion by an independent government medical institute or Civil Surgeon of the Government hospital to ascertain the genuineness of the private complaint. All these basic and paramount ingredients for proceeding under Section 156(3) CrPC is conspicuously missing in the impugned order.

(34). Accordingly, this petition is allowed and the impugned order dated 23.01.2023 (Annexure P1) passed by ACJM, Panchkula as well as consequential FIR No.53 dated 31.01.2023 registered at Police Station Chandimandir, District Panchkula are hereby quashed.

10.05.2024
V.Vishal

(Sandeep Moudgil)
Judge

1. Whether speaking/reasoned? ***Yes/No***
2. Whether reportable? *Yes/No*