

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CRR 2245 OF 2022

PERVINDER KAUR @ Dr. PARVINDER KAUR

VERSUS

STATE OF WEST BENGAL

For the Petitioner : Mr. Shibaji Kumar Das, Adv.

Ms. Deblina De, Adv.

For the respondent : Mr. Rachit Lakhmani, Adv.

Mr. Piyush Kumar, Adv.

Mr. Kishor Gupta, Adv.

For the State : Mr. Debasish Roy, Adv.

Mr. Saryati Datta, Adv.

Ms. Rajashree Tah, Adv.

Last heard on : 01.04.2026

Judgement on : 15.06.2026

Uploaded on : 15.06.2026

CHAITALI CHATTERJEE DAS, J.:-

1. The instant application under Section 482 Cr.P.C., 1973 for quashing of the proceedings in connection with C.G.R no. 1159 of 2016 (State of West Bengal versus Dr. Parvinder Kaur) arising out of Alipore Police Station case no. 82 of

2016, dated 13 March 2016, which culminated in charge sheet no. 374 of 2018 dated 20.12.2018, under Section 338 of the Indian Penal Code, 1860.

Brief Fact of the case

2. The petitioner is a registered medical practitioner passed her MBBS examination from R.G Kar Medical College and Hospital under the University of Calcutta in the year 1996 and also obtained her degree in master of surgery in obstetrics and gynaecology in the year 2004 from the faculty of medicine, Kasturba medical College. The petitioner came to learn that the Opposite Party no. 2 had lodged a written complaint addressed to the Officer-in-Charge, Alipore 70027 against the present petitioner and one Dr. Shantanu Roy, alleging medical negligence and mismanagement during Caesarean, birth of his baby boy at Woodland multi-speciality Hospital at Alipore. It is the case of the petitioner that in connection with the said criminal proceeding, the present petitioner surrendered before the court of learned Chief Judicial Magistrate, 24 Parganas South at Alipore on 16.3.2016, and thereafter on the basis of such criminal proceeding and enquiry was conducted by the enquiry committee of the Deputy Director of Health Services, Government of West Bengal, and it was alleged that the petitioner herein could not satisfy the enquiry committee and the police authorities on conclusion of a defective investigation, submitted charge sheet against the present petition under Section 338 IPC alone. The learned court took cognizance of the said charge sheet and it supported the documents supplied to the petitioner under the provision of Section 207 of the Code of Criminal Procedure, 1973.

3. It is further the case of the petitioner that the Opposite Party no. 2 also lodged a written complaint on 12 March 2016, before the West Bengal Medical Council inter alia and the petitioner was asked to offer her explanation by the medical council on 22nd September, 2016 and accordingly she submitted her reply and thereafter the matter was referred to the panel and ethical cases committee of the state Council, where after recording deposition of witnesses, including the petitioner and after going the same was of the opinion that the fatal scalp injury which occurred inadvertently during the Caesarean delivery was properly managed. Necessary steps were taken for care of the wound by the accused doctors and the baby was discharged after healing of the wound, healthy and in satisfactory condition and therefore it was found that there was no negligence on the part of the treating doctors and recommended to close the case. The said order was duly communicated to the petitioner. It is the further case that there was no negligence on the part of the present petitioner, which is clearly evident from the patient history and the complaint has been lodged with false, frivolous, and baseless allegations only in order to harass the petitioner and tarnishing her social image. Accordingly, this revisional application has been filed to quash the entire proceeding.

Submissions

4. The learned advocate representing the petitioner submitted before the court that the entire allegations levelled against her in the written complaint and charge sheet are totally false, frivolous and baseless and after that the fact remains that the medical treatment sheet of the patient will clearly and categorically prove the fact that there was no medical negligence on the part of

the petitioner herein . The charge sheet has been submitted in collusion and connivance with the Opposite Party no.2 to illegally implicate the petitioner with a view to the defame and harass her unnecessarily. The learned advocate strenuously argued that the Medical Council which has been enacted under Bengal Medical Act, 1914 in order to provide for the registration of medical practitioner in Bengal and for matters connected therewith, which is the specified authority to enquire about any medical negligence committed on the part of the Doctor or not did not find any negligence against the petitioner. That apart the such opinion of the medical council was duly forwarded to the petitioner who in terms of such act if dissatisfied with any decision can very well challenge the same which has not been done. It is further submitted that the difference between medical negligence and criminal negligence was discussed in ***Kusum Sharma and others versus Batra Hospital and Medical Research Centre and Others.***¹ where it was held that the medical practitioner would be held liable only where his conduct fell below that of the standards of a reasonably competent practitioner in this field. Negligence cannot be attributed to a doctor so long he performs his duty with reasonable skill and competence. Merely because the doctor chooses one course of action in preference to the other one available, he would not be liable if the course of action chosen by him was acceptable to the medical profession.” The learned Advocate also referred the famous case of ***Jacob Matthew versus State of Punjab***² whereby in a case of medical negligence alleged by a patient against a doctor or hospital must be first supported with an opinion of a doctor opened

¹ (2010) 3 SCC 480

² (2005) 6 SCC 1

the field or of the council prior to lodging an FIR. It is also submitted that the report of the Medical Council was dated 29.3.2019 and the charge sheet has been submitted on 20th December, 2018, prior to the report furnished by the medical Council.

- 5.** However , at the time of taking cognizance, the learned Magistrate did not consider the same and the investigating authority did not enquire in court of investigation about the complaint lodged by the opposite party no.2 before the Medical Council and its outcome. Therefore, in view of the subsequent observation made by the Medical Council, it is evident that the investigation was perfunctory, and hence the proceeding is not maintainable in the eye of law.
- 6.** The learned advocate representing the opposite party no.2 on the other hand vehemently opposed to the above contention and argued that when the child was shown to the complainant, they found an injury over the head of the baby and the doctor only explained it as a minor cut mark and on stitching, it will be cured within few days. It is the further case that his first baby was delivered by the same doctor at the same hospital about 4 years back and , the baby girl of the couple after delivery also had a similar nature of injury almost on the same place , a hairless spot on the middle side of the head and on asking same reply came from her being about a minor mistake and it will be cured and the hair will come on the spot, but it did not happen and their child is suffering due to that. Therefore, when similar nature of mistakes happen by the same doctor in the same hospital certainly it suggest there is medical negligence and after filing the charge sheet it has been primarily well established for which the present petitioner should face the trial.

7. The learned prosecution also argued that the charge sheet has been submitted in this case, which Prima facie established the allegation level against the petitioner, and therefore, in order to test the veracity of the same, the present petitioner should face the trial.

Analysis

8. Heard submissions of the learned advocates of the respective parties, including the prosecution. On careful perusal of the record it appears that the present opposite party no.2, lodged the complaint before Alipore Police Station on 12.3.2016, alleging medical negligence and mismanagement during caesarean delivery, of his baby boy at Woodland Multi-Speciality Hospital Limited, Alipore. It is the specific contention that on 11.3.2016 at about 1. 10 PM, his wife gave birth to a baby boy through a Caesarean process by a panel of medical professionals like the present petitioner as gynaecologist, and Dr. Shantanu Roy, a child specialist. When the child was shown to him, he found a cut mark above the ear over the head of the baby and on asking it was explained it as a minor cut and it will be cured within few days after stitching. On asking the petitioner said that it was the second Caesarean operation, such mistake happened in her 12 years of life experience, and unfortunately, the first mistake happened to the first baby girl born at Woodland multi-speciality Hospital of the present opposite party no. 2 around four years ago on 15.4.2012. The opposite party no.2 has further narrated that initially it was informed that the hairless spot appeared on her baby girls head on the middle side is a minor cut will be cure and hair will grow on the spot but it did not happen and the child is suffering due to that. The second time the same unfortunate incident happened with his baby boy. Therefore, the kind of

Caesarean error happens on account of medical negligence and it was admitted by the doctor before the petitioner and he being the father of both the children is the worst sufferer and hence lodged such complaint. He forwarded the complaint to the Shastha Bhavan, PBT, India and West Bengal Medical Council.

9. The document filed by the petitioner in his revisional application consist of the explanation given by her as called for from the West Bengal medical Council and their doctor the order passed by the council and all other materials and it is evident from that the minor suffered a scalp injury which occurred at the time of scissor and delivery and it was properly managed. The opposite party no. 2 has also not lodged any complaint about the post Caesarean medical care given to the minor of the mother and he was discharged with the baby healthy and in satisfactory condition. In the decision relied upon by the petitioner, the complaint was filed under Section 21 of Consumer Protection Act 1986, claiming compensation, attributing deficiency in services and medical negligence in the treatment of the deceased. It related to removal of abdominal tumour which was found on test to be malignant, and the surgery was carried out by the doctor and during surgery, the pancreas was damaged which was treated and the drain was fixed to drain out the fluids . The patient was discharged, with two bags on his body on 23.6.1990 and on 9.10.1990, the patient vomited and arrangements were made for shifting him to the hospital and the patient died on 11.10.1990 on account of pyogenic meningitis. The appeal was filed before the Supreme Court against the decision of the National Commission, where by such complaint was dismissed and the Hon'ble Supreme Court did not interfere with such order of dismissal of the

complaint. While dealing with the case, the Hon'ble Supreme Court dealt with the definition of negligence as follows:

“45. According to Halsbury's Laws of England.,4th edition, Vol 26 pp17-18 where the definition of negligence is as under;

“22. Negligence.-Duties owed to patient. A person who holds himself out as ready to give medical advice or treatment impliedly undertakes that he is possessed of skill and knowledge for the purpose. Such a person, whether he is a registered medical practitioner or not, who is consulted by a patient, owes him certain duties, namely, a duty of care in deciding whether to undertake the case; a duty of care in deciding what treatment to give; and duty of care in his administration of the treatment. A breach of any of these duties will support an action for negligence by the patient.””

10. The Supreme Court discussed a number of Judicial pronouncements where the question of medical negligence was considered in the context of treatment of a patient including the case of **Jacob Matthew versus State of Punjab (supra)**, where it was held that *“higher the acuteness in emergency and higher the complication, more at the chances of error of judgement”*. The court further referred paragraph 25 of the same judgement, which is as follows.;

“25..... At times, the professional is confronted with making a choice between the devil and deep sea and he has to choose the lesser evil. The medical profession is often called upon to adopt a procedure which involves higher element

of risk, but which he honestly believes as providing greater chance 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 in charge of the patient if the patient is not 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 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.”

In paragraph 78 of the decision of Hon'ble Supreme Court in same Judgment, it was observed observed;

“78. It is a matter of common knowledge that after happening of some unfortunate event, there is a marked tendency to look for a human factor to blame for an untoward event, a tendency which is closely linked with the desire to punish. Things have gone wrong and, therefore, somebody must be found to answer for it. A professional deserves total protection. The Penal Code, 1860 has taken care to ensure that people who act in good faith should not be punished. Section 88, 92 and 370 of the Penal Code gives

adequate protection to the professionals and particularly medical professionals.”

11. In the present case, the Charge sheet has been submitted under section 338 of IPC, which reads as follows;

“338. Causing grievous hurt by act endangering life for personal safety of others-*whoever causes grievous hurt to any person by doing any act, so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term, which may extend to two years, or with fine, which may extend to one thousand rupees or with both.”*

Essential ingredient to attract this offences is that the accused must did it rashly or negligently and the act was such as to endanger, human life, or personal safety of others and give us how it was caused in consequence of such act. In the case of **Jacob Mathew versus State of Punjab (Supra)** it is held that only until the committee constituted as per direction, given its report about the medical negligence of the doctor, the doctors should not be prosecuted. It was held in this case that whenever a complaint is received against a doctor or hospital by the consumer forum,(weather, it is District, State or National) or by criminal Court, but before issuing a notice to the doctor or hospital against whom the complaint was made, the consumer forum or the court must first refer the matter to a competent doctor or committee of doctors specified in the field relating to which the medical negligence is attributed, and only after that, the doctor or the report that there is prima

facie case of medical negligence should issue the notice to the doctor/Hospital concerned. This is to avoid harassment. Further, it was observed that private complaint may not be undertaken unless the complaint has produced prima facie evidence in the form of credible opinion by another competent doctor.

12. On close scrutiny of the written complaint, it nowhere appears that there was any rashness or negligence to endanger human life or the personal safety of others. In this case a procedure was adopted by the petitioner or being a doctor having sufficient experience in the field and while doing so there is an injury or over the scalp area at the time of Caesarean delivery and subsequently all the necessary steps were taken since no allegations of negligence in not taking appropriate steps were raised or assailed by the opposite party No.2, and thereafter the patient was discharged in satisfactory condition. Subsequently, also, no complaint was made by the opposite party no. 2 regarding the health condition or the wound was not being sufficiently healed. It is found from his own case that the minor baby girl was delivered by the same gynaecologist at the same hospital when similar nature of injury mark suffered by the baby girl long four years back, and despite that, the patient came before the same doctor and definitely, she was under the treatment of the present petitioner till birth of the baby which manifest the faith on the doctor /petitioner herein as well as had no grievance against the service provided by the hospital for which for the second time came before the same hospital and admitted under the same doctor. That apart the order of the medical Council was not made a part of the investigation and the charge sheet was submitted much before the opinion was given by the medical

council. However, the investigating officer in course of investigation ought to have enquire about the fate of the complaint forwarded before the medical council when under the Bengal Medical Act of 1914, there is a provision for enquiry with regard to any such complaint against any doctor about medical negligence. The opposite party has not filed any proceeding before the consumer court about any deficiency of service or medical negligence, but lodged criminal complaint against the petitioner over which the case started and charge sheet has been submitted.

13. It is a settled proposition of law that since negligence amounts to criminal offence, the element of mens rea must be shown to exists against the petitioner. In the case of **Jacob Mathew versus State of Punjab (Supra)** it was observed by the Hon'ble Supreme Court that a case of occupational negligence is different from one of the professional negligence .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 that practice or procedure which the accused followed. It was held in the said decision that to prosecute a medical professional for negligence under something which in the given facts and circumstances no medical professionals 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. Most importantly the Hon'ble court made the guidelines that-

“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. ”

Conclusion

- 14.** Therefore, on careful consideration of the fact and circumstances of the case, and the discussions made herein above this court do not find that the petitioner /doctor was not a qualified doctor to treat the patient or any negligence was there on her part in following the procedure.
- 15.** This Court hence is of the view that the power of the court under section 482 Cr.P.C should be exercised as if the proceeding is allowed to be continued, would be a sheer of abuse of the process of law.
- 16.** Accordingly this C.R.R is hereby allowed.
- 17.** The entire proceeding pending before the learned Court is hereby quashed qua the petitioner and is discharged and be released forthwith from the bail bond.
- 18.** All connected applications are hereby disposed of.

19. Urgent certified copy of the order if applied for be provided to the parties upon observance of all necessary requirements.

[CHAITALI CHATTERJEE (DAS), J.]

