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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-12023-2019

Date of decision 16.03.2026

DR. RAJESH VERMA

..... PETITIONER

VERSUS

N.S. KATARIA

..... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SURYA PARTAP SINGH

Present : Mr. Sahil Khunger, Advocate
for the petitioner.

None for the respondent.

SURYA PARTAP SINGH. J.

1. This petition under Section 482 of Code of Criminal Procedure Code has been filed for the quashing of criminal complaint No.247 of 2014. The above-mentioned complaint has been filed with regard to commission of offence punishable under Section 338 of Indian Penal Code, titled as 'N.S. Kataria Vs. Dr. Rajesh Verma' and the same is pending in the Court of learned Judicial Magistrate, 1st Class, Gurugram.

2. Briefly stating the facts emerging from record are that the complainant/respondent, hereinafter being referred as respondent only, filed the above-mentioned complaint on 08.08.2014 alleging that on 17.10.2006, when he was going to his home on his bicycle, he met with an accident, as he was hit by a biker. According to respondent, in the above-mentioned accident, he



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suffered injury in his left leg and got admitted in Aryan Hospital, Gurugram, where he was attended by the doctor as an emergency case. According to complainant after a thorough check up and consultation, the doctors of Aryan Hospital decided to fix screws and plates in the left leg of the respondent and for that purpose Dr. Rajesh Verma (petitioner herein) performed surgery. The respondent further alleged that he was discharged from the hospital on 24.10.2006, and that on 23.11.2006 he was operated again and the screws were removed from his leg by the petitioner, who prescribed certain medicines also.

3. The respondent further had alleged that despite surgery and removal of the screws, he was having pain and swelling in his left leg, and therefore, he consulted the petitioner again, but did not get any relief, and therefore, he decided to take second opinion, and consulted 'Lal Nursing Home', Gurugram, where he was advised to undergo x-ray examination. As per respondent, when he went for x-ray examination, one ring metallix artifact was detected in his medial malleolus. The respondent further alleged that when he consulted the doctors in 'Lal Nursing Home', alongwith above-mentioned x-ray report, he was advised to undergo second surgery, because the first surgery had created the above-mentioned complication, owing to negligence of the petitioner in the earlier surgery. The respondent further alleged that on 05.07.2014, on account of persistent pain he had visited Civil Hospital, Gurugram, where he was told by the doctor that on account of Ring/Metallix substance left by the petitioner in his leg, he was facing the above-mentioned problem.

4. In the backdrop of above-mentioned fact, the respondent alleged that in view of above-mentioned medical advice he filed a complaint before



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DIG but no action has been taken by the police against the petitioner. Hence, the complaint.

5. It is relevant to note here that when the above-mentioned complaint was filed by the respondent, the Court of learned Judicial Magistrate, hereinafter being referred to as trial Court only, recorded the preliminary evidence and then took cognizance against the petitioner vide order dated 17.09.2018, and issued summons for him to face trial for the commission of offence punishable under Section 338 of IPC.

6. Heard.

7. It has been contended on behalf of petitioner that the present case, which has been given the shape of a case of medical negligence, has been filed on the complaint of respondent, and that in such cases the cognizance should not have been taken by the learned trial Court. Firstly, because the taking of cognizance in the year 2018, in view of alleged negligence in the year 2006, was barred by the law of limitation, and secondly, because the evidence relied upon by the respondent was self contradictory and unreliable. According to learned counsel for the petitioner the contents of the complaint make it abundantly clear that the injury in the accident was suffered by the respondent on his left leg and the surgery, too, was performed by the petitioner was on the left leg of respondent only, but on 23.01.2009 the x-ray examination of the right ankle of the respondent was conducted, which means that on the basis of above-mentioned x-ray examination any opinion with regard to negligence in the surgery performed by the petitioner, could not have been found.

8. In support of his arguments, the learned counsel for the petitioner has also referred to the principles of law laid down by the Hon'ble Supreme



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Court of India in the case of 'Jacob Mathew vs. State of Punjab & Anr.' 2005(3) R.C.R.(Criminal) 836 and in the case of 'Sirajul & Ors. Vs. The State of U.P. & Anr.' 2015(3) R.C.R. (Criminal) 661.

9. The learned counsel for the petitioner has also referred to the observations made by this Court in the case of 'Dr. A.K. Gupta vs. Smt. Raj Sharma' 1998(1) R.C.R. (Criminal) 30 and in the case of 'Dr. Vanita Jhunthra and Anr. Vs. State of Haryana and Anr.' 2008(4) R.C.R. (Criminal) 222.

10. In the light of above-mentioned principles of law, if the facts and circumstances of the present case are analyzed, it transpires that in the present case cognizance against the petitioner has been taken for the commission of offence punishable under Section 338 of IPC. With regard to above-mentioned offence, for which the punishment prescribed is imprisonment up to two years, the Section 468(2)(c) of Cr.P.C. prescribes the limitation of three years. However, in the case in hand the contents of the complaint itself shows that the surgery was performed by the petitioner in the year 2006, whereas the complaint was filed, by the respondent, in the year 2014 i.e. after a gap of eight years. Thus, on the face of it the complaint has been filed beyond the period of limitation.

11. The second relevant aspect to be noted in the present case is that the respondent has tried to build up his case by alleging that he had suffered an injury in his left leg and that the surgery of his left leg was performed by the petitioner. However in order to prove the medical negligence the petitioner has relied upon an x-ray report which pertains to right leg of the petitioner. Thus, it is hereby observed that the learned trial Court committed an error of judgment



when it based its findings against the petitioner on the basis of above-mentioned x-ray report, which was not relevant at all.

12. In the present case, it is also relevant to mention here that in order to ascertain as to whether any negligence was attributable to the petitioner, in performing surgery, there was no report of expert committee. Thus, on account of above-said deficiency also, the cognizance taken by the learned trial Court is apparently defective. The above-mentioned observation find support from the principles of law laid down by the Hon'ble Supreme Court of India in the case of Martin F.D'Souza vs. Mohd. Ishfaq AIR 2009 SC 2049. With regard to above-mentioned observation, the law propounded by the Hon'ble Supreme Court of India in the case of Jacob Mathew (supra) is also relevant, wherein it has been laid down that a private complaint may not be entertained unless the complainant has produced prima faice evidence in the form of credible opinion by another competent doctor. There is no such opinion in the instant case.

13. Taking into consideration the cumulative effect of all the mentioned factors, it is hereby observed that, firstly, the procedure adopted by the learned trial Court is not in conformity with the law, secondly, the evidence adduced by the respondent is inconsistent, contradictory and unreliable and thirdly, the cognizance has been taken beyond the prescribed period of limitation. Therefore, it is hereby observed that the impugned order passed by the learned trial Court needs interference and indulgence of extraordinary jurisdiction of this Court.

14. As a sequel to above-mentioned observations, it is hereby observed that the complaint filed by the respondent vis-a-vis impugned order deserves to be quashed, by accepting the present petition. Thus, the present petition is



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hereby accepted and the complaint filed by the respondent against the petitioner
vi-a-vis the impugned order, and all other consequential proceedings are hereby
quashed.

**(SURYA PARTAP SINGH)
JUDGE**

16.03.2026

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Whether speaking/reasoned	:	Yes
Whether Reportable	:	No