

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.4096 of 2019

Arising Out of PS. Case No.-2557 Year-2012 Thana- PATNA COMPLAINT CASE District-
Patna

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Dr. Govind Mohan Jee, son of Late Nageshwar Das, M.S. (Ortho), Lecturer,
P.M.C.H. Patna, Jagdamba Nurshing Home, Boring Canal Road, Near Indira
Bhawan, P.S.-Shri Krishna Puri, District-Patna Petitioner
Versus

1. The State of Bihar
2. Satish Yadav, son of Late Bindeshwar Yadav, Resident of Village-Chak
Mandhol, P.S.-Tajpur, District-Samastipur
... .. Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Sujit Kumar Singh, Advocate
For the Opposite Party/s : Md. Fahimuddin, APP
For the complainant : Mr. Ashok Kumar Yadav, Advocate

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CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 21-07-2026

Heard learned counsel for the petitioner and
learned APP for the State duly assisted by learned counsel
appearing for the informant.

2. The present application has been preferred by
the petitioner for quashing of the order dated 12.12.2017
passed by the learned Sub-Judge-II-cum-Additional Chief
Judicial Magistrate, Patna in Complaint Case No.2557 of
2012, whereby and whereunder the learned Magistrate has
dismissed the petition dated 03.03.2017 filed on behalf of
the petitioner under Section 245 of the Code of Criminal
Procedure (in short 'Cr.P.C.') with a prayer to allow the



petition and discharge the petitioner/accused from the present case.

3. The case of prosecution, in brief, is based on written complaint of one Satish Yadav, son of Late Bindeshwar Yadav, who filed Complaint Case No.2557 of 2012 in the court of learned Chief Judicial Magistrate, Patna on 06.09.2012 alleging therein *inter alia* that on 05.08.2012, his father namely, Bindeshwar Yadav fell down near hand pump and due to that, his hand was fractured and for the treatment, the father of informant consulted with the petitioner at Village-Sari, District-Samastipur and petitioner advised him to admit his father at Jagdamba Nursing Home, Boring Canal Road, Patna for conducting operation. Thereafter, the informant admitted his father at Patna on the advice of petitioner, where the petitioner took Rs.18,000/- in place of Rs.10,000/- forcibly from the complainant for which some altercation took place. It was further alleged that his father was forcibly operated and excessive anesthesia and poisoned injection were given to his father and due to that reason, during operation, his father became unconscious



and, thereafter, he brought his father at P.M.C.H. Patna and admitted there on 08.08.2012, where the condition of his father was deteriorated. Thereafter, the informant informed the police regarding the occurrence but, the police has not taken any action and his father was died. Thereafter, the postmortem examination was conducted at P.M.C.H. Patna.

4. On the basis of aforesaid complaint, after inquiry and examination of complainant on oath and also the witnesses, learned Jurisdictional Magistrate took cognizance against petitioner for offences punishable under Sections 420, 304-A and 504 of the Indian Penal Code (in short 'IPC') against the petitioner.

5. Mr. Sujit Kumar Singh, learned counsel appearing for the petitioner submitted that petitioner has been falsely implicated in this case and no case is made out against the petitioner. It is further submitted that the father of the complainant namely, Bindeshwar yadav was admitted at Jagdamba Nursing Home, Boring Canal Road, Patna on 07.08.2012 and on 08.08.2012, complainant asked staff of the nursing home and the petitioner to discharge the patient



and accordingly, the patient was discharged on 08.08.2012. It is further argued that father of complainant was operated only after conducting essential tests at the initial stage.

6. Arguing further, Mr. Singh submitted that on 08.08.2012, after discharging from Jagdamba Nursing Home, the father of complainant was admitted to Arvind Hospital, Patna and from there, he was taken to P.M.C.H., Emergency Ward at 6:41 P.M., where he died after two days i.e. on 10th August, 2012, which is apparent from Annexure-6 of the present quashing petition. It is pointed out that considering the health conditions of father of the informant, his operation was stopped in Jagdamba Nursing Home, which is apparent from Annexure-5. It is submitted that there is all chance that some negligence may be done at Arvind Hospital due to which, the complication was developed, as patient was discharged from Jagdamba Nursing Home in good condition.

7. In support of his submissions, learned counsel has relied upon the legal reports of Hon'ble Supreme Court as available through **State of Haryana vs. Bhajan Lal**



reported in **1992 Supp (1) SCC 335; Jacob Mathew vs. State of Punjab and Another** reported in **(2005) 6 SCC 1; Rajiv Thapar and Others vs. Madan Lal Kapoor** reported in **(2013) 3 SCC 330; Dipakbhai Jageishchandra Patel vs. the State of Gujarat** reported in **(2019) 16 SCC 547; and Kanchan Kumar vs. State of Bihar** reported in **(2022) 9 SCC 577.**

8. Arguing further, it is submitted that the Hon'ble Supreme Court in a landmark judgment in **Jacob Mathew (supra)** has held in paragraph 52 of the judgment as follows:-

"52. Indian Penal Code, 1860, Section 304-A prosecuting Medical Professionals guidelines a private complaint may not be entertained unless the complainant had produced prima facie evidence before the Court in the form of a credible opinion given by another competent doctor to support the charge of restness or negligence on the part of the accused doctor".

9. The same view was affirmed by the Hon'ble Supreme Court in other judgment also, where it has been held that Courts have to be extremely careful to ensure that unnecessarily professionals are not harassed as they will not be able to carry out their professional duties without fear,



medical professional are entitled to get protection so long as they perform their duties with reasonable skill and competence, which is in the interest of the patient.

10. In support of his submission, learned counsel has relied upon para 81 of the legal report of Hon'ble Supreme Court as available through **Kusum Sharma vs. Batra Hospital and Medical Research Centre** reported in **(2010) 3 SCC 480**, which are as under:-

"81. In Laxman Balkrishna Joshi (Dr.)
[AIR 1969 SC 128], the Court observed that :

"11. ... 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. The doctor no doubt has a discretion in choosing treatment which he proposes to give to the patient and such discretion is relatively ampler in cases of emergency."

In that case, the death of patient was caused due to shock resulting from reduction of the fracture attempted by doctor *without taking the elementary caution of giving anaesthetic to the patient*. The doctor was held guilty of negligence and liable for damages in civil law. We hasten to add that criminal negligence or liability under



criminal law was not an issue before the Court—as it did not arise and hence was not considered.”

11. In view of aforesaid legal positions, it is submitted that the petitioner is a highly qualified doctor, who did his MBBS from R.M.C.H., Ranchi and M.S. (Orthopedics) from P.M.C.H. in 1997 and was appointed as a Lecturer in the Department of Orthopedics, P.M.C.H., Patna on 24.09.2001 by the examination conducted by Bihar Public Service Commission.

12. It is submitted that from impugned order of cognizance, it can gathered safely that the learned trial court was well aware about the legal positions, as settled aforesaid, by the Hon’ble Apex Court but, same is not required to be looked into at the stage of framing of charge, supplying the reasons that it is not easy for any private person to make agree to any doctor to depose against doctor.

13. It is submitted that this observation of the learned trial court while taking cognizance against petitioner is completely contrary to the law settled by the Hon’ble Supreme Court, where it is clearly settled that no private



complaint would be entertained against doctor until and unless the complainant had produced prima face evidence before the court in the form of credible opinion given by another competent doctor to support the charge of restness or negligence on the part of the accused-doctor and on this ground alone, the present petition is fit to be quashed/set aside, as same has been lodged only to pressurize the petitioner out of ulterior and oblique motive, due to which, the petitioner being a professional, having no fault facing the trauma of criminal prosecution since last 14 years, being a medical practitioner.

14. On the other hand, Mr. Ashok Kumar Yadav, learned counsel for the complainant/O.P. No.2 submitted that the case of petitioner was tested legally after considering the material available on records, whereafter, the learned trial court found that the allegation is not groundless and, therefore, rightly ordered to put petitioner on trial for offence as alleged to be committed for offences punishable under Section 304-A of the IPC.

15. While concluding argument, Mr. Ashok Kumar



Yadav, learned counsel for the complainant submitted that the issues as raised by the learned counsel appearing for the petitioner can be looked into only during the trial.

16. In support of his submission, learned counsel for the complainant has relied upon the legal report of Hon'ble Supreme Court as available through **Central Bureau of Investigation vs. Aryan Singh, etc.** as reported in **2023 SCC OnLine SC 379**.

17. It would be apposite to reproduce para-102 of the legal report of Hon'ble Supreme Court as available through **Bhajan Lal case** (supra), which is as under:-

"**102.** In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined



and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(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.

(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.

(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”.

18. It would further be apposite to re-produce



para-38 and 48 of the legal report of Hon'ble Supreme Court as available through **Jacob Mathew case** (supra), which is as under:-

"**38.** The question of degree has always been considered as relevant to a distinction between negligence in civil law and negligence in criminal law. In *Kurban Hussein Mohammedali Rangwalla v. State of Maharashtra* [(1965) 2 SCR 622] while dealing with Section 304-A IPC, the following statement of law by Sir Lawrence Jenkins in *Emperor v. Omkar Rampratap* [(1902) 4 Bom LR 679] was cited with approval:

"To impose criminal liability under Section 304-A, Penal Code, 1860, 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*."

48. We sum up our conclusions as under:

- (1) xxx xxx xxx
- (2) xxx xxx xxx
- (3) xxx xxx xxx
- (4) xxx xxx xxx
- (5) xxx xxx xxx

(6) The word "gross" has not been used in Section 304-A 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 304-A 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."

19. It would be relevant to reproduce para-26 and 27 of the legal report of Hon'ble Supreme Court as available through **Rajiv Thapar case** (supra), which are as under:-

"26. This Court had an occasion to examine the matter in State of Orissa v. Debendra Nath Padhi [(2005) 1 SCC 568] (incidentally the said judgment was heavily relied upon by the learned counsel for the respondent complainant), wherein it was held thus:

"29. Regarding the argument of the accused having to face the trial despite being in a position to produce material of unimpeachable character of sterling quality, *the width of the powers of the High Court under Section 482 of the Code and Article 226 of the Constitution of India is unlimited whereunder in the interests of justice the High Court can make such*



orders as may be necessary to prevent abuse of the process of any court or otherwise to secure the ends of justice within the parameters laid down in Bhajan Lal case [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335]."

27. Recently, this Court again had an occasion to examine the ambit and scope of Section 482 CrPC in *Rukmini Narvekar v. Vijaya Satardekar* [(2008) 14 SCC 1] wherein in the main order it was observed that the width of the powers of the High Court under Section 482 CrPC and under Article 226 of the Constitution of India, was unlimited. In the said judgment, this Court held that the High Court could make such orders as may be necessary to prevent abuse of the process of any court, or otherwise to secure the ends of justice. In a concurring separate order passed in the same case, it was additionally observed that under Section 482 CrPC, the High Court was free to consider even material that may be produced on behalf of the accused, to arrive at a decision whether the charge as framed could be maintained. The aforesaid parameters shall be kept in mind while we examine whether the High Court ought to have exercised its inherent jurisdiction under Section 482 CrPC in the facts and circumstances of this case."

20. It would also be relevant to reproduce para-16 of the legal report of Hon'ble Supreme Court as available through **Dipakbhai Jageishchandra Patel** case (supra),



which is as under:-

"16. In Union of India v. Prafulla Kumar Samal [Union of India v. Prafulla Kumar Samal, (1979) 3 SCC 4], after survey of case law, this is what the Court has laid down:

"10. Thus, on a consideration of the authorities mentioned above, the following principles emerge:

(1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.

(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and



experienced court cannot act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.”

21. The jurisprudence governing medical negligence consistently recognizes the distinction between civil liability and criminal culpability, lest the fear of criminal prosecution erodes independent medical decision making and adversely impacts public health care. The Constitutional guarantee under Article 21 of the Constitution of India encompasses not only the patient’s right to life but also the medical professionals right to practice the profession with dignity, fairness and protection against arbitrary criminal prosecution. In the absence of *prima facie* material disclosing gross negligence supported by competent medical opinion permitted the prosecution to continue would result in manifest injustice and defeat the very object of criminal justice system.



22. Accordingly, in exercise of the inherent jurisdiction of this Court to secure the ends of justice and prevent the abuse of process of law the impugned criminal proceeding, insofar as it relates to the petitioner, deserve to be quashed in view of **Jacob Mathew case** (supra).

23. Hence, the impugned order dated 12.12.2017 with all its consequential proceedings *qua* petitioner as passed by learned Sub-Judge-II-cum-Additional Chief Judicial Magistrate, Patna in Complaint Case No.2557 of 2012, is hereby set aside/quashed.

24. Accordingly, the present petition stands allowed.

25. Let a copy of this judgment be sent to the learned trial court forthwith.

(Chandra Shekhar Jha, J.)

Sanjeet/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	23-07-2026
Transmission Date	23-07-2026

