



2026:KER:58751

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MRS. JUSTICE PREETA A.K.

TUESDAY, THE 4TH DAY OF AUGUST 2026/13TH SRAVANA, 1948

W.A.NO.1417 OF 2026

AGAINST THE JUDGMENT DATED 01.07.2026 IN W.P(C).NO.19514 OF 2023
OF HIGH COURT OF KERALA

APPELLANT(S)/PETITIONERS:

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BY DR.S.GOPAKUMARAN NAIR (SR.)
BY ADV.SRI.S.PRASANTH
BY ADV.SMT.HELEN P.A.
BY ADV.SRI.ATHUL ROY

RESPONDENT(S)/RESPONDENTS:

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2 STATE OF KERALA
REP. BY ITS PRINCIPAL SECRETARY,
DEPARTMENT OF HEALTH AND FAMILY WELFARE,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.,
PIN - 695001



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3 STATE LEVEL APEX BODY FOR INVESTIGATION OF COMPLAINTS
 AGAINST DOCTORS, REP. BY ITS CONVENER,
 DIRECTORATE OF HEALTH SERVICES, GOVERNMENT OF KERALA,
 THIRUVANANTHAPURAM., PIN - 695001

BY ADV.SRI.JOSEPH P.ALEX
BY ADV.SRI.JACOB P.ALEX
BY ADV.SRI.MANU SANKAR P.
BY ADV.SRI.AMAL AMIR ALI
BY SRI.T.P.SAJID, SENIOR GOVERNMENT PLEADER

 THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON
29.07.2026, THE COURT ON 04.08.2026 DELIVERED THE FOLLOWING:



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"C.R."**J U D G M E N T****Dr. A.K. Jayasankaran Nambiar, J.**

The petitioners in W.P.(C).No.19514 of 2023 are the appellants before us, aggrieved by the judgment dated 01.07.2026 of a learned Single Judge that dismissed their writ petition.

2. The brief facts necessary for disposal of the Writ Appeal are as follows:

The appellants had approached the writ court challenging Ext.P4 report of the State Level Apex Body constituted in connection with the Investigation of Complaints Against Doctors. The said report had recorded the *prima facie* opinion of the Apex Body that there was gross negligence on the part of the doctors who had treated the patient Megha at Christian Mission Hospital, Pandalam. Megha, the 10 year old daughter of the 1st respondent was admitted to the Christian Mission Hospital on 02.08.2010, with complaints of abdominal pain and vomiting. She was apparently administered Bigtun 600 m.g. IV along with Rantac 0.5 cc almost immediately after which, she showed signs of discomfort necessitating her shifting to the ICU and thereafter to the



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Medical Trust Hospital, Kochi with mechanical ventilation. She later expired while in the critical care unit at the Medical Trust Hospital, Kochi. The autopsy report showed the cause of death as on account of “choking”.

3. The 1st respondent filed a complaint before the police alleging criminal negligence, based on which, an FIR was registered at Pandalam Police Station. As part of the investigation into the complaint, the case was referred to the District Level Expert Panel constituted in terms of Circular dated 16.06.2008 of the Government of Kerala in the Home Department that provided for a two-tier system of scrutiny by Expert Panels, who have to submit their views on the incident from a medico-legal perspective so that the Investigating Agency could be guided in its investigation into the complaint received against the doctor(s) concerned.

4. The pleadings reveal that the Apex Committee had considered the matter on two earlier occasions, as evidenced by Annexure A3 [2016] and Annexure A4 [2018] reports, where it had entered “findings” exonerating the appellants in relation to the charge of criminal negligence. The said reports were however set aside in proceedings initiated before this Court at the instance of the 1st respondent as evidenced by Exts.R1(f), R1(g) and R1(h) judgments of this Court. By the last mentioned judgment, the Apex Body was directed to examine



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the matter afresh and submit their views within two months from the date of the judgment. It is pursuant to the direction in Ext.R1(h) judgment that the Apex Body submitted Ext.P4 report that was assailed by the appellants in the writ petition.

5. The learned Single Judge, who considered the writ petition, found that Ext.P4 report only recorded the views of the Expert Panel on the medico-legal aspects of the incident, and it was the duty of the Investigating Officer to consider the said views and continue further investigation. Relying on the judgment of a Division Bench of this Court in **Suvarna v. Reni Philip - [2014 (1) KLT 799]**, it was held that the powers of the Investigating Officer under the Code of Criminal Procedure are not given a go-by on account of the views of the Apex Body. Finding that no prejudice was caused to the appellants merely on account of the submission of Ext.P4 report, and that the appellants were not shut out from contending before the Criminal Court that they have taken utmost care required with regard to the incident in question, the writ petition, in its challenge against Ext.P4 report, was dismissed.

6. In the appeal before us, the submissions of Sri.S.Gopakumaran Nair, the learned senior counsel appearing for the appellants, are threefold. Firstly, he refers to the judgment in **Jacob Mathew v. State of Punjab and Another - [(2005) 6 SCC 1]** to point out that



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negligence in the context of the medical profession necessarily calls for a treatment with a difference. To infer rashness or negligence on the part of a professional, such as a doctor, additional considerations would apply. A simple lack of care, an error of judgment or an accident, is not proof of negligence on the part of a medical professional, and so long as a doctor follows a practice acceptable to the medical profession of the 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 charged doctor followed. It is further pointed out that 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. Negligence which is neither gross nor of a higher degree may provide for a ground for action in civil law, but cannot form the basis for prosecution. It is his case therefore that, in the instant case, there was no material found by the Apex Body that would justify its taking the view that there was gross negligence on the part of the appellants. Secondly, he would contend that cases of doctors being subjected to criminal prosecution are on the increase, and it is well known that prosecutions are filed by private complainants, and police sometimes lodge FIRs and take cognizance without understanding the legal significance of their actions. A private complaint ought not to be entertained unless the complainant has produced *prima facie* evidence before the court in the form of a credible



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opinion given by another competent doctor to support the charge of rashness or negligence on the part of a charged doctor. It is his case that an Investigating Officer should, before proceeding against a 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 in the matter. It is his case that such a precaution was not taken in the instant case, albeit the referral of the case by the Investigating Agency to the two-tier Expert Panel constituted by the Government. Thirdly, he would submit that the Apex Body constituted through the Circular of the Government aforementioned, does not comprise of domain experts in Pediatrics, and hence, their findings cannot be used against the appellants as they cannot be viewed as experts in the relevant field of medicine.

7. Per contra, Sri.Jacob P. Alex, the learned counsel appearing for the 1st respondent would point out that Ext.P4 report is only in the nature of a piece of scientific evidence given by an Expert Body on a significant aspect in a criminal trial. It does not by itself constitute a finding against the appellants by a criminal court and hence the appellants cannot be seen as persons aggrieved for maintaining a writ petition at this stage. It is his further contention that Ext.P4 report was drawn up pursuant to the directions issued from this Court with regard to the manner in which such report was to be prepared and in



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compliance with the Circular of the Government that made it abundantly clear that the report was to contain only the “views” of the Expert Panel and not its finding on the aspect of criminal negligence which it was, at any rate, not competent to enter. That being the case, the appellants were not deprived of their opportunity to test the report in cross examination at the time of the trial.

8. We have considered the rival submissions, and for the reasons that are to follow, we are of the view that this writ appeal must necessarily fail.

9. The two-tier system of scrutiny by Expert Panels to determine the existence of *prima facie* material suggestive of medical negligence, was put in place by the State Government in 2008 pursuant to the observations of the Supreme Court in **Jacob Mathew [supra]** to provide safeguards against arbitrary and misguided arrests of doctors in connection with complaints received against them alleging criminal negligence. The views expressed by the Expert Panels concerned are only in the nature of expert evidence led by the prosecution, the veracity of which can be tested in cross-examination in a trial where it is relied upon by the prosecution. The opinion of the Expert Panel cannot, by itself, be seen as a finding or as an irrebuttable fact established against the appellants in a manner that is prejudicial to them. We are therefore in complete agreement with the finding of the learned Single Judge on



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this aspect that eventually led to the dismissal of the writ petition.

10. As regards the contention of the appellants that the composition of the Expert Panel was not proper, we find that the Circular dated 16.06.2008 has not been impugned by the appellants in any proceedings. That apart, the appellants were in fact beneficiaries of two reports submitted by the Apex Body on earlier occasions and they did not have any objection to the constitution of the Apex Body at that stage. It is only when the Apex Body took a view that was adverse to the expectations of the appellants that they have chosen to raise such a contention. We have not come across any material that would lead us to doubt the competence of the Apex Body to offer their views on the medico legal aspects of the incident under consideration.

11. The incident in question occurred in 2010, and even after 16 years, the trial has not commenced. Any further procrastination of the matter would lead to an erosion of public faith in our criminal justice system. As far as the appellants are concerned, they have sufficient opportunity to seek a discharge or acquittal in the criminal proceedings that stand initiated against them. To contend that as members of the medical profession, they should be immune from prosecution would tantamount to ignoring the constitutional mandate that the governance of the people of this country must be by the rule of law. It is a cardinal aspect of the rule of law that nobody is above the law and everybody is



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equal before the law. Those who swear by the Hippocratic oath at the time of entering the noble profession of Medicine, cannot ignore or avoid the commitment expected of them in the practice of medicine by the laws of our country.

The Writ Appeal fails, and is accordingly dismissed.

**Sd/-
DR. A.K.JAYASANKARAN NAMBIAR
JUDGE**

**Sd/-
PREETA A.K.
JUDGE**

prp/



APPENDIX OF W.A.NO.1417 OF 2026

PETITIONER'S ANNEXURES:

ANNEXURE A1	TRUE COPY OF THE POSTMORTEM REPORT OF THE DECEASED
ANNEXURE A2	THE DISTRICT LEVEL TRUE COPY OF THE REPORT OF THE DISTRICT LEVEL EXPERT PANEL DATED 18.01.2011
ANNEXURE A3	TRUE COPY OF THE REPORT OF THE STATE LEVEL APEX BODY DATED 06.02.2016
ANNEXURE A4	TRUE COPY OF THE REPORT OF THE STATE LEVEL APEX BODY DATED 10.08.2018
ANNEXURE A5	TRUE COPY OF THE REPORT OF THE STATE LEVEL APEX BODY DATED 20.08.2022
ANNEXURE A6	TRUE COPY OF THE STATEMENT OF THE FORENSIC SURGEON WHO HAD BEEN EXAMINED BY THE APEX BODY

RESPONDENTS ANNEXURES: NIL.

//TRUE COPY//

P.S. TO JUDGE