IN THE HIGH COURT FOR THE STATE OF TELANGANA

AT HYDERABAD

THE HONOURABLE SRI JUSTICE N.TUKARAMJI

CRIMINAL PETITION No.1226 OF 2023

DATE: 05.08.2026

Between :

Manisha Singh and three others.

… Petitioners/Accused Nos.1 to 4

AND

The State of Telangana, Rep., by Public Prosecutor, High Court for the State of Telangana, Hyderabad and another.

… Respondents.

ORDER:

This Criminal Petition is filed under Section 482 of the *Code of Criminal Procedure*, 1973 (for short, "CrPC"), seeking quashing of the proceedings in C.C. No. 8530 of 2022 on the file of the IV Additional Chief Metropolitan Magistrate, Nampally, Hyderabad, by the Accused Nos. 1 to 4. The said Calendar Case arises out of Crime No. 291 of 2022 on the file of the Osmania University Police Station, registered for the offence punishable under Section 336 of the *Indian Penal Code,* 1860 (for short, "IPC").

2. Heard Mr. Raja Sripathi, learned Senior Counsel appearing on behalf of Mr. B. Dileep Kumar, learned counsel for the petitioners, and Mr. Syed Yasar Mamoon, learned Additional Public Prosecutor, representing the respondent-State.

3.1. The prosecution case, in brief, is that the de facto complainant, who had been advised to undergo a major surgical profile prior to hernia surgery, visited Vijaya Diagnostic Centre on 10.06.2022, where her blood sample was tested. The HBsAg (Rapid Test) was reported as “Reactive.” It is alleged that the said report caused her severe mental trauma, depression, suicidal thoughts, and an increase in the anticipated cost of her proposed surgery.

3.2. Subsequently, on the advice of doctors at Yashoda Hospital, she underwent a fresh HBsAg test, which was reported as “Non-Reactive,” thereby revealing a discrepancy between the two reports. Thereafter, the complainant visited Vijaya Diagnostic Centre on 17.06.2022 and questioned the staff regarding the conflicting test results. It is alleged that the accused responded rudely, insisted upon obtaining a fresh blood sample, and thereafter tested the retained blood sample by the *Chemiluminescent Microparticle Immunoassay* (CMIA) method, which also yielded a “Non-Reactive” result.

3.3. During the course of the investigation, the accused explained that the initial HBsAg test was only a rapid screening test *(Immunochromatography/Hepacard)* conducted as part of the surgical profile; that the complainant declined to provide a fresh blood sample; and that the retained sample was subsequently tested by the more specific CMIA method. The accused further contended that rapid HBsAg screening tests are susceptible to occasional false-positive results.

3.4. The Investigating Officer obtained an expert opinion from the Superintendent, Gandhi Hospital, who opined that whenever an HBsAg rapid test is found to be reactive, the result should be confirmed by a second method, such as CMIA, CLIA, or ELISA, preferably on a repeat blood sample, before issuing a final report. Relying upon the said opinion, the Investigating Officer concluded that the accused had negligently issued the initial reactive report without confirmation by a second method, thereby endangering the complainant's life and causing her severe mental distress. On the basis of the aforesaid allegations, the Investigating Officer filed a charge sheet against accused Nos. 1 to 4, whereupon a Calendar Case came to be registered.

4.1. Learned Counsel for the petitioners contended that, even if the allegations contained in the charge sheet are accepted in their entirety,

they do not satisfy the essential ingredients of the offence punishable under Section 336 of the IPC. It is submitted that the allegations, at the highest, disclose a case of alleged medical negligence giving rise to a civil claim for damages and do not attract criminal liability.

4.2. Learned Counsel further argued that the prosecution has been initiated in complete disregard of the principles laid down by the Hon'ble Supreme Court in *Jacob Mathew v. State of Punjab*, (2005) 6 SCC 1, governing the prosecution of medical professionals, inasmuch as no independent and competent expert medical opinion was obtained either before the registration of the FIR or prior to the filing of the charge sheet.

4.3. It is further submitted that the opinion obtained by the Investigating Officer from the Superintendent of Osmania General Hospital is merely a response to certain queries raised by the police during the course of investigation and cannot be construed as an independent expert medical opinion. It is also submitted that the petitioners had furnished a detailed explanation, enclosing scientific literature to demonstrate that the HBsAg rapid test is only a preliminary screening test and is inherently susceptible to false-positive results. However, the Investigating Officer failed to consider the said explanation while filing the charge sheet.

4.4. Learned Counsel for the petitioners further submitted that the laboratory report itself contained a clear disclaimer stating that the rapid test should not be treated as the sole criterion for diagnosis and that a confirmatory test was necessary. According to the learned counsel, the said disclaimer by itself negates any allegation of criminal intent, recklessness, or gross negligence on the part of the petitioners. It is further argued that the material collected during the course of investigation and the alleged subsequent communications between the petitioners and the de facto complainant, does not support the allegations of rude behaviour or criminal negligence. It is also pleaded that above all, the petitioners neither conducted the impugned test nor possessed any technical expertise in relation thereto, and that they were merely employees forming part of the management who neither conducted nor participated in any manner in the testing process.

4.5. Learned Counsel for the petitioners placed reliance upon the judgment of the Hon'ble Supreme Court in *Arun Kumar Manglik v. Chirayu Health and Medical Care Private Limited*, (2019) 7 SCC 401, wherein the Hon'ble Supreme Court reiterated that a finding of medical negligence must be founded upon proof that the medical professional failed to exercise the degree of skill, care, and competence expected of a reasonably competent medical practitioner. The Court further held that a mere error of judgment, an unsuccessful course of treatment, or

an adverse medical outcome, by itself, does not constitute medical negligence.

4.6. On the aforesaid grounds, it is contended that the continuance of the criminal proceedings against the petitioners amounts to an abuse of the process of law. Accordingly, the learned counsel prayed that this Court may be pleased to quash the proceedings against the petitioners.

5.1. Learned Additional Public Prosecutor opposed the petition and submitted that the averments made in the complaint and the material collected during the investigation clearly disclose that the accused issued a test report showing the complainant as HBsAg reactive, which created unnecessary panic and an unwarranted situation, thereby causing severe mental and financial trauma to the de facto complainant.

5.2. It is further submitted that the role of each of the petitioners and the question whether they were negligent are essentially disputed questions of fact, which can only be determined upon appreciation of evidence during a full-fledged trial. The learned Additional Public Prosecutor also emphasized the limited scope of this Court's jurisdiction while exercising its inherent powers under Section 482 of the CrPC and, on that basis, prayed for dismissal of the petition.

6. I have carefully considered the submissions and perused the material available on record.

7. A careful consideration of the averments contained in the complaint, the statements of L.Ws.1 and 2, the material collected during the course of investigation, and the contents of the charge sheet, when examined in juxtaposition with the ingredients of Section 336 of the Indian Penal Code, discloses that the principal question requiring determination is whether the acts attributed to the petitioners constitute a rash or negligent act so as to endanger human life or the personal safety of the de facto complainant.

8. Section 336 IPC contemplates criminal liability only where a person does any act so rashly or negligently as to endanger human life or the personal safety of others. It is well settled that every negligent act does not amount to a criminal offence. Criminal negligence is qualitatively different from civil negligence. To attract penal consequences, the negligence complained of must be gross, culpable, or of such a high degree as to exhibit utter disregard for the life and safety of others. Mere inadvertence, an error of judgment, or a lapse in the exercise of due care cannot, by themselves, constitute an offence under Section 336 IPC.

9. In the instant case, the material placed on record discloses that the initial HBsAg test conducted by the petitioners was admittedly a rapid screening test *(Immunochromatography/Hepacard)* forming part of the pre-surgical profile. It is also not disputed that the subsequent CMIA test conducted on the retained blood sample yielded a “Non-Reactive” result. Significantly, the prosecution itself relies upon the opinion furnished by the Superintendent, Gandhi Hospital. The said opinion merely states that where an HBsAg rapid screening test yields a reactive result, it should ordinarily be confirmed by a second method, such as CMIA, CLIA, or ELISA, preferably on a repeat blood sample, before issuing the final report. However, the opinion nowhere states that a reactive result obtained through a rapid screening test is necessarily erroneous or that issuance of such a report, without prior confirmation, would by itself amount to gross or criminal negligence. On the contrary, the opinion only reflects the accepted laboratory protocol that a reactive screening result should ordinarily be subjected to confirmatory testing before arriving at a definitive diagnosis.

10. The subsequent CMIA report yielding a non-reactive result merely establishes a discrepancy between the screening test and the confirmatory test. Such discrepancy, by itself, cannot automatically lead to an inference of criminal negligence. At the highest, it may warrant further clinical correlation or invite scrutiny regarding the

standard operating procedure adopted by the laboratory. However, criminal liability cannot be fastened merely because two diagnostic methods yielded different results, particularly when scientific literature itself recognises that rapid HBsAg screening tests are susceptible to occasional false-positive results.

11. The Hon'ble Supreme Court has consistently held that criminal prosecution of medical professionals cannot be sustained merely because another opinion is possible or because the diagnosis or treatment ultimately proves to be erroneous. Unless the conduct complained of demonstrates gross recklessness or a degree of negligence amounting to criminality, the matter remains within the realm of civil liability.

12. In *Jacob Mathew v. State of Punjab*, (2005) 6 SCC 1, the Hon'ble Supreme Court authoritatively held that before criminal liability can be fastened upon a medical professional, the negligence alleged must be gross or of a very high degree. The Court drew a clear distinction between civil and criminal negligence and observed that for criminal prosecution, the degree of negligence should be so gross as to amount to recklessness. The Court further held that, before initiating criminal proceedings against a medical professional, the investigating agency should ordinarily obtain an independent and competent medical opinion applying the principles enunciated in *Bolam v. Friern Hospital*

Management Committee, (1957) 1 WLR 582, popularly known as the "*Bolam Test*." The Supreme Court cautioned that indiscriminate criminal prosecution of medical professionals would have a serious adverse impact upon the discharge of their professional duties and would ultimately be detrimental to public interest.

13. The principles laid down in *Jacob Mathew* were subsequently reaffirmed in *Kusum Sharma v. Batra Hospital & Medical Research Centre*, (2010) 3 SCC 480, wherein the Hon'ble Supreme Court reiterated that negligence cannot be attributed merely because another doctor would have adopted a different course of treatment or because the treatment ultimately proved unsuccessful. The Court held that a mere error of judgment or a difference in professional opinion cannot constitute actionable negligence, much less criminal negligence. Likewise, in *Arun Kumar Manglik v. Chirayu Health and Medicare (P) Ltd.*, (2019) 7 SCC 401, the Hon'ble Supreme Court reiterated that medical negligence must be assessed on the touchstone of whether the medical professional exercised the degree of skill, care, and competence expected of an ordinarily competent practitioner in the particular field. An adverse medical outcome, by itself, is not proof of negligence.

14. Applying the aforesaid settled principles to the facts of the present case, this Court finds that the investigation does not disclose

any material indicating that the petitioners intentionally issued a false report or acted with such recklessness as to endanger the life or personal safety of the complainant. On the contrary, the material collected during the investigation demonstrates that the impugned report related only to a rapid screening test. It is also borne out from the record that the laboratory report itself contained a disclaimer indicating that the screening test was not intended to constitute the sole basis for diagnosis and that appropriate clinical correlation and confirmatory testing were necessary.

15. The explanation furnished by the petitioners, supported by scientific literature, that rapid HBsAg screening tests are capable of yielding occasional false-positive results, has not been effectively controverted by any independent expert medical opinion obtained in accordance with the parameters laid down in *Jacob Mathew*. The opinion relied upon by the Investigating Officer is advisory in nature, prescribing the preferable laboratory protocol to be followed upon obtaining a reactive screening result. It does not conclude that the petitioners were guilty of gross negligence, recklessness, or conduct amounting to criminal culpability. Even assuming that there was some lapse in issuing the initial screening report without awaiting confirmatory testing, such omission, at its highest, may furnish a cause of action in civil law or under the consumer protection jurisdiction for

alleged deficiency in medical services. However, such conduct falls far short of satisfying the stringent threshold required for constituting an offence punishable under Section 336 IPC. Criminal law cannot be invoked to punish every instance of professional negligence. Penal liability arises only where the negligence is so gross and reckless as to endanger human life within the meaning of the Penal Code.

16. The inherent jurisdiction of this Court under Section 482 of the CrPC, is intended to prevent abuse of the process of law and to secure the ends of justice. In *State of Haryana v. Bhajan Lal,* 1992 Supp (1) SCC 335, the Hon'ble Supreme Court illustratively enumerated the categories of cases in which criminal proceedings may be quashed, including cases where the uncontroverted allegations, even if accepted in their entirety, do not prima facie constitute any offence or where continuation of the criminal proceedings would amount to an abuse of the process of the Court. The present case squarely falls within the aforesaid category. Even if the allegations contained in the charge sheet are accepted in their entirety, the essential ingredients of Section 336 IPC are not made out. The material collected during the investigation, viewed in its entirety, fails to disclose gross rashness, recklessness, or criminal negligence on the part of the petitioners.

17. It is also pertinent to note that the record discloses that petitioner Nos.2 to 4 were functioning respectively as Associate

Director (Microbiology), General Manager (Operations), and Cluster Manager (Operations), while petitioner No.1 is the Consultant Microbiologist. The charge sheet does not attribute any specific overt act to any individual petitioner demonstrating his or her direct participation in the alleged omission. Their implication appears to be founded primarily upon the official positions held by them within the Diagnostic Centre.

18. It is trite that criminal liability is personal in nature. Unless the statute specifically creates vicarious liability, no person can be prosecuted merely because he occupies a managerial or supervisory position. In the absence of specific allegations demonstrating individual involvement, knowledge, or culpable conduct, criminal proceedings cannot be permitted to continue merely on the basis of designation or administrative responsibility. The prosecution has failed to identify the particular role played by each petitioner in issuing the impugned report or in the alleged omission to conduct confirmatory testing prior to issuance of the report. Such omnibus allegations are insufficient to sustain criminal prosecution.

19. For all the aforesaid reasons, this Court is satisfied that the continuation of the criminal proceedings against the petitioners would amount to an abuse of the process of the Court. The dispute essentially pertains to an alleged deficiency in professional services

arising out of discrepant laboratory reports and, at its highest, may give rise to civil consequences. However, the allegations and the material collected during the investigation fall far short of establishing the gross rashness or criminal negligence necessary to attract penal liability under Section 336 of the IPC.

20. Accordingly, the Criminal Petition is allowed. The proceedings in C.C. No.8530 of 2022 on the file of the IV Additional Chief Metropolitan Magistrate, Nampally, Hyderabad, insofar as the petitioners/Accused Nos.1 to 4 are concerned, hereby quashed.

Consequently, all pending miscellaneous applications, if any, shall stand closed.

Date: 05.08.2026 **N.TUKARAMJI, J**

MRKR

THE HON'BLE SRI JUSTICE N. TUKARAMJI

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