

**IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO. 2063 OF 2010**

**ARUNA & ANR.** **Appellant(s)**

**VERSUS**

**MUKUND & ORS.** **Respondent(s)**

**O R D E R**

Heard the learned counsel appearing for the parties.

The appellants have come up in this appeal, aggrieved by the Judgment and order dated 24.09.2008 passed by the High Court of Judicature of Bombay, Bench at Nagpur, in CrI. Writ Petition No. 482 of 2006, thereby quashing the order passed by the Sessions Court of discharging the appellants from the charges under Section 304 A read with Section 34 IPC.

The matter relates to administering medicine of Lariago. The Trial Court framed the charges after examining the witnesses. On revision being filed, the revision was allowed by the Sessions Court. The order had been questioned before the High Court. The High Court has set aside the order of the Sessions Court and restored the order of the Magistrate.

We have heard the learned counsel for the parties. Mr. Dhruv Mehta, learned senior counsel, has placed reliance on a decision of this Court in "*Jacob Mathew Vs. State of Punjab & Anr.*", reported

in (2005) 6 SCC 1. Paragraph 52 of the Judgment reads as under :-

*"52. Statutory Rules or Executive Instructions incorporating certain guidelines need to be framed and issued by the Government of India and/or the State Governments in consultation with the Medical Council of India. So long as it is not done, we propose to lay down certain guidelines for the future which should govern the prosecution of doctors for offences of which criminal rashness or criminal negligence is an ingredient. 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. A doctor accused of rashness or negligence, may not be arrested in a routine manner (simply because a charge has been levelled against him). Unless his arrest is necessary for furthering the investigation or for collecting evidence or unless the investigation officer feels satisfied that the doctor proceeded against would not make himself available to face the prosecution unless arrested, the arrest may*

*be withheld."*

As admittedly, no medical expert has been examined in this case, we set aside the impugned orders passed by the courts below and remand the case to the trial court to examine the witnesses and to take the view of the medical expert on behalf of the complainant and only thereafter, to form an opinion whether any charge is made out in the case or not. Obviously, the trial court shall not be influenced by any of the observations made by this Court or in the impugned order passed by the High Court. The matter to be decided strictly in accordance with law on the basis of the evidence and after hearing both the sides.

The appeal is allowed to the aforesaid extent.

.....J.  
[ ARUN MISHRA ]

.....J.  
[ VINEET SARAN ]

.....J.  
[ S. RAVINDRA BHAT ]

New Delhi;  
OCTOBER 03, 2019.

**ITEM NO.105**

**COURT NO.4**

**SECTION II-A**

**S U P R E M E C O U R T O F I N D I A**  
**RECORD OF PROCEEDINGS**

**Criminal Appeal No(s). 2063/2010**

**ARUNA & ANR.**

**Appellant(s)**

**VERSUS**

**MUKUND & ORS.**

**Respondent(s)**

**Date : 03-10-2019 This appeal was called on for hearing today.**

**CORAM : HON'BLE MR. JUSTICE ARUN MISHRA**  
**HON'BLE MR. JUSTICE VINEET SARAN**  
**HON'BLE MR. JUSTICE S. RAVINDRA BHAT**

**For Appellant(s) Mr. Dhruv Mehta, Sr. Adv.**  
**Mr. Gagan Sanghi, Adv.**  
**Mr. Rameshwar Prasad Goyal, AOR**

**For Respondent(s) Mr. Nishant Ramakantrao Katneshwarkar, AOR**  
**Mr. Anoop Kandari, Adv.**  
**Ms. Nidhi, AOR**

**UPON hearing the counsel the Court made the following**  
**O R D E R**

**The appeal is allowed to the extent indicated in the signed order.**

**Pending interlocutory application(s), if any, is/are disposed of.**

**(JAYANT KUMAR ARORA)**  
**COURT MASTER**

**(JAGDISH CHANDER)**  
**BRANCH OFFICER**

**(Signed order is placed on the file)**