

Kannur as confirmed in order dated 11.07.2018 passed in Crl. R.P. No 17 of 2011 by the Court of Additional District & Sessions Judge-II, Thalassery was rejected by the High Court.

FACTUAL MATRIX

3. Briefly stated, the prosecution's case is that the patient, K.P. Muralidhar, was admitted at the Dhanalakshmi Hospital, Kannur on 28.05.2002 and piles surgery was scheduled on 29.05.2002. The appellant herein is a doctor who was working as a senior anaesthetist at the said hospital. On 29.05.2002 the surgery was conducted around 9:30 a.m. and the patient was shifted to the post-operative care ward in the evening wherein his health started deteriorating after 8 p.m. and eventually he collapsed on 30.05.2002 at around 4 a.m. Post-mortem conducted revealed that the deceased's left coronary had a blockage of 80% and the cause of death was identified to be 'death due to acute coronary insufficiency'. The prosecution alleges that the death was caused due to the negligence of the appellant, who was on call and was expected to administer anesthesia personally to the patient post-surgery, instead the appellant instructed the same to the attending nurse Rosamma Varghese (accused no. 3). Nurse Rosamma who following her instructions administered the analgesic 'sensorcaine' a few hours after which the patient lost

consciousness and collapsed.

4. Subsequent to the death, First Information Report (hereinafter referred to as 'FIR') bearing No. 432/2002 was lodged on 30.05.2002 at the Kannur Town Police Station against Dr. Mujeeb Rahiman (surgeon- accused no. 1) under Section 304-A of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC') by the brother of the deceased. No allegations were made against the appellant in this FIR.

5. On 15.04.2004, first chargesheet was filed under Section 304-A and Section 34 IPC against accused no. 1, the appellant (accused No. 2) and the nurse (accused No. 3). Being aggrieved, the accused filed Crl. M.C. No. 1813/2005. The High Court of Kerala at Ernakulam quashed charge-sheet against all accused with liberty to the investigating agency to move for further investigation seeking leave of the Magistrate concerned to conduct and complete further investigation. Therefore, an expert panel of four members was constituted which in its final report dated 10.07.2008 unanimously opined that the death occurred due to gross negligence on the part of the hospital staff and that the same could have been prevented if analgesia was ensured by proper introduction of the drug by qualified persons. Subsequently, another charge-sheet dated 09.09.2008 was thus

filed against accused no. 1 to accused no. 3 under Sections 304-A and 34 of the IPC. Cognizance was taken and the case was registered as C.C. No. 501/2008 on the files of Ld. JMFC, Kannur.

6. Thereafter, a second quashing petition CrI. M.C. No. 1603/2009 was preferred against the second charge-sheet which was dismissed by the Hon'ble High Court vide order dated 22.05.2009 giving liberty to the appellant to seek for discharge as provided under Section 239 of CrPC. Following which, CMP 2492/2009 in CC 501/2008 was filed by the appellant before the Ld. JMFC, Kannur which was dismissed vide order dated 09.06.2011. This order dated 09.06.2011 was challenged by the appellant in CrI. Rev. Petition No. 17/2011 which was dismissed by the Sessions Court vide order dated 11.07.2018. Aggrieved by the Sessions Court order, the appellant preferred CrI. M.C. No. 6415/2018 under Section 482 CrPC before the High Court. The High Court vide order dated 16.10.2024 dismissed the same observing that the contentions raised by the appellant are to be raised before the trial court at the appropriate stage.

7. In the interregnum, the deceased's family was also prosecuting the claim against the hospital and against accused no. 1 to accused no. 3 before the District Consumer Redressal Forum Kannur in CC No. 123/2004. The forum vide order dated

17.04.2017 found that the appellant had not given any instructions to the nurse to administer any injection and that it may have been the nurse's and the surgeon's calling and thus held the hospital liable and no liability was imposed on accused no. 1 to 3. This judgement was challenged by the family of deceased vide first appeal no. 369/2017 before the Kerala State Consumer Redressal Commission, Thiruvananthapuram but only to the extent of the inadequacy of compensation which was fixed at Rs. 12 Lakhs (Emphasis supplied).

8. The appellant herein has challenged the order dated 16.10.2024 passed by the High Court before us.

CONTENTIONS

9. Mr. Basant, learned senior counsel for the appellant submitted that the allegations against the appellant that she orally instructed the nurse (accused No. 3) to administer the analgesic injection instead of personally doing it is inconsistent and also quite belated. The learned senior counsel vehemently submitted that the expert panel report dated 10.07.2008, clearly shows that nurse Rosamma in her three statements changed her stand and these statements are inconsistent and contrary to each other. In the first two statements, it was stated by nurse Rosamma that it was the surgeon who instructed her to give

sensorcaine injection whereas in her 3rd statement, nurse Rosamma alleged that it was the appellant who instructed her while being physically present in the ward. Learned counsel further pointed out that as per statement of surgeon recorded by the expert panel, it is stated that nurse Rosamma consulted the appellant over phone about the sensorcaine injection and thereafter it was given to the patient. Thus, the learned counsel submits that in view of these inconsistent and contrary statements of nurse Rosamma, no evidentiary value can be attached to these statements, so as to sustain the allegations against the appellant. The learned counsel further submits that even assuming that the appellant instructed nurse Rosamma (accused no. 3) to administer the injection such instruction cannot be termed to be “rash and negligent act”. In support of his submission the learned counsel placed heavy reliance on the judgment of this Court in **Jacob Mathew vs. State of Punjab**¹ in which this Court, explained and interpreted the “rash and negligent act” holding that the act or omission must be such *“which is in the given fact and circumstances, no medical professional in his ordinary senses and prudence would have done or failed to do”*.

¹ (2005) 6 SCC 1

10. The learned counsel submitted that in the present case, her duty hours were over by 5 p.m. and on SOS call orally prescribed a medication, which there is no dispute was a proper prescription. It was contended that the nurse's failure to administer the injection properly or to call the RMO on duty or any other available doctor to give the injection cannot be a reason for the appellant to face a criminal prosecution, and doing so would only constitute giving a draconian interpretation to Section 304-A. Further, he submitted that it has been alleged that while conducting the postmortem test, a swelling was found by the doctor conducting the test based on which he concluded that the injection did not enter the epidural space. The counsel submitted that allegedly, four injections were given to the deceased by the nurse, and that there is not enough material to ascertain if each time the medicine did not enter the epidural space. Further, the existence of asymptomatic coronary artery disease was known for the first time only in the postmortem report which supplements the possibility that the cause of death cannot solely be attributed to the anesthetic injection not entering the epidural space. In the absence of positive material to prima facie make out a case of gross negligence, the learned counsel contended, no offence can be attracted under Section 304-A IPC. The learned counsel further

contended that even assuming the injection did not enter the epidural space where it was supposed to enter, at the worst it becomes a case of deficiency in service only incurring a civil liability.

11. Lastly, the learned senior counsel submitted that the District Consumer Redressal Forum Kannur in its judgment dated 17.04.2017 in CC No. 123/2004 only held the hospital along with accused no. 1 and accused no. 3 liable but did not hold the appellant liable. He submitted that it is a well settled position of law that once a person is exonerated in civil proceedings, allowing criminal proceedings to continue for the same allegation is an abuse of the process of law. Reliance for the same was placed on ***Radheyshyam Kejriwal v. State of West Bengal***², ***Videocon Industries Ltd. and Anr. V. State of Maharashtra and Ors***³, and ***Prem Raj v. Poonamma Menon***⁴. The learned counsel also submitted that the family of the deceased challenged the order of Kerala State Consumer Redressal Commission by filing First Appeal No. 396 of 2017 only to the extent of inadequacy of compensation by family, clearly suggests that the family was not aggrieved by the services rendered by accused no. 2 and accused

² (2011) 3 SCC 581

³ (2016) 12 SCC 315

⁴ (2024) 6 SCC 143

no. 3 as a medical professionals, and in such a situation, allowing a criminal prosecution against the appellant would be nothing but an abuse of process of law.

12. *Per contra*, the learned counsel for the respondent No.1 contended that the medical negligence on the part of the appellant has been duly proved through the postmortem report, inquiry conducted by the Directorate of Health Service, and also by the expert panel report.

13. The learned counsel submitted that after the surgery when the deceased suffered severe pain and complained of the same, epidural sensorcaine injection was administered by the nurse after consulting the appellant on call, and since this anesthesia was not effective, severe pain at the operation site was not alleviated which in turn triggered acute coronary insufficiency and eventually led to his demise. It is submitted that in the expert report the postmortem findings mention that *“even though it is noted in the case sheet that sensorcaine was given intrathecally repeatedly by the staff nurse, the lack of alleviation of pain and the swelling seen around the needle puncture mark in the lumbar region suggests that the catheter might have slipped (an expected complication) and thus the drug could not have reached intrathecally. On the other hand, the drug injected might have entered into the muscle around the*

needle puncture." which clearly states that the anesthesia administered never reached the targeted site which led to the death of the patient.

14. The learned counsel further submitted that as per the expert panel report, it is clearly observed that the sensorcaine injection given outside the epidural space were not diagnosed in time, and that the staff nurse who gave the injection as per the advice of the appellant, only had one year of experience which was not sufficient for taking up such a specialized technique of anesthesia and that neither was she supervised by the anesthetist nor the RMO was called in by her while administering the injection. The counsel submitted that the expert panel report states *"the death of Sri.K.P.Muralidharan was due to gross negligence on the part of the hospital staff. Death could have been prevented if analgesia was ensured by proper introduction of the drug by qualified persons"* which clearly established negligence on the part of the appellant and in turn induces liability.

15. On the issue of non-compliance of the direction laid down in the case of **Jacob Mathew (supra)** in constituting the expert panel without an anesthetist, the counsel vehemently contended that the issue was already dealt by the Hon'ble Additional Sessions Court-II, Thalasserry in its order dated 11.07.2018 in CrI. R.P. No.

17/2011 wherein it was observed that as in the State of Kerala, the Government circular No. 73231/SS-B4/92/Home dated 20.09.1993 was already issued prior to the judgement of this Hon'ble Court in **Jacob Mathew (supra)**, thus it was doubtful as to how the above guidelines were to be applied to the State. Further, in Para 27 of its order, the learned Court observed that the guidelines laid down by this Court in the case of **Jacob Mathew (supra)** in Para 52 of the judgement were only directory and not mandatory in using the word "preferably". It was also submitted by the counsel that the Hon'ble Commission on the issue whether there is any negligence, or deficiency of services on the part of the opposite parties found that there are gross negligence and deficiency of service on the part of the opposite parties and did not exonerate the appellant herein.

ANALYSIS

16. We have given our thorough consideration to the arguments advanced at the Bar and the material on record.

17. The High Court vide order dated 16.10.2024 dismissed the same observing that these contentions raised by the appellant are to be raised before the trial court at the appropriate stage, and disposed of the case with the following directions-

a. "All the contentions raised by the petitioner in this Crl.MC

are left open and the petitioner is free to agitate the same before the trial court at the appropriate stage.

b. While deciding the matter, the trial court will decide the matter independently, untrammelled by any observation in Annexures D and E orders.

c. The petitioner is free to file an application for personal exemption from appearance before the trial court, within a period of 30 days and if, such an application is filed, the learned Magistrate will allow the same on condition that the petitioner will appear on posting days on which her presence is inevitable.

d. Registry will forward a copy of this order to the trial court, forthwith.”

18. To consider the rival submissions of the learned counsel appearing for the respective parties, we find merit in the submissions of learned Senior Counsel Mr. R. Basant representing the appellant, who was justified in his submissions, that the Hon'ble High Court has failed to consider the expert panel in its proper perspective. There is a considerable force in the submissions of Ld. Counsel Mr. Basant that expert panel clearly shows an inconsistent and contrary stand taken by nurse Rosamma in her statements and as such these statements are devoid of any evidentiary value so as to constitute a criminal act, generally against the appellant and particularly the rash and negligent act against the appellant. It will not be out of place to state that the surgeon (accused no. 1) admitted before the expert

panel that she had consulted the appellant over phone regarding the injection after which the injection was administered. Now the statements of nurse Rosamma are giving a totally different version, as such there is absolutely no material having any evidentiary value against the appellant.

19. The report indicates that appellant completed her shift at 5:00 p.m. and left only after ensuring the patient was stable. When the emergency arose at 8:00p.m., other doctors on-duty, including an on-duty anaesthesiologist, were physically available at the hospital. Even if it is assumed that the appellant answered an SOS call from home and advised a painkiller, relying on the on duty hospital staff to properly execute standard post-operative pain management cannot be deemed factually negligent.

20. The prescribed medicine, sensorcaine, was undisputedly the correct and necessary analgesic for the situation. Any mishap occurred purely in the mechanical execution by the nurse allegedly failing to inject it properly into the epidural space which was entirely beyond the physical control of the off-duty appellant.

21. The most potent legal defence in favour of the appellant is her complete exoneration by the consumer courts. The family of the deceased pursued a parallel civil claim for medical negligence before the District Consumer Disputes Redressal Forum, Kannur

(CC No. 123/2004). Following a rigorous evaluation of evidence, the Forum passed a judgment on 17.04.2017 holding the hospital, the surgeon (A1), and the nurse (A3) liable for deficiency of service, but categorically exonerated the appellant from any liability. The Forum expressly accepted that the appellant had not given any instructions to the nurse to administer the injection.

22. When the deceased's family appealed this judgment before the State Consumer Redressal Commission (First Appeal No. 396/2017), they only challenged the quantum of compensation (Rs. 12 lakhs), explicitly leaving the appellant's exoneration unchallenged and finalized. Senior Advocate Mr. Basant relied on a formidable line of Supreme Court jurisprudence, including ***Radheyshyam Kejriwal (supra)***, wherein C.K. Prasad J., speaking for the majority summed up as under:

“38. The ratio which can be culled out from these decisions can broadly be stated as follows:-

- (i) Adjudication proceedings and criminal prosecution can be launched simultaneously;*
- (ii) Decision in adjudication proceedings is not necessary before initiating criminal prosecution;*
- (iii) Adjudication proceedings and criminal proceedings are independent in nature to each other;*
- (iv) The finding against the person facing prosecution in the adjudication proceedings is not binding on the proceeding for criminal prosecution;*

- (v) *Adjudication proceedings by the Enforcement Directorate is not prosecution by a competent court of law to attract the provisions of Article 20(2) of the Constitution or Section 300 of the Code of Criminal Procedure;*
- (vi) *The finding in the adjudication proceedings in favour of the person facing trial for identical violation will depend upon the nature of finding: If the exoneration in adjudication proceedings is on technical ground and not on merit, prosecution may continue; and*
- (vii) *In case of exoneration, however, on merits where the allegation is found to be not sustainable at all and the person held innocent, criminal prosecution on the same set of facts and circumstances cannot be allowed to continue the underlying principle being the higher standard of proof in criminal cases.”*

23. Learned Senior Counsel for the appellant also placed his reliance on ***Videocon Industries Ltd. (supra)***, and ***Prem Raj (supra)*** which firmly establishes that once an accused is exonerated on merits in civil proceedings, allowing a criminal prosecution to continue on identical allegations constitutes a gross abuse of the process of law.

24. For a criminal charge under Section 304-A of the IPC to survive, the prosecution must prove a "rash and negligent act." The appellant's counsel relied heavily on the landmark Supreme Court decision in ***Jacob Mathew (supra)***, which established that

criminal medical negligence requires a significantly higher threshold than civil torts. The act must be of such a nature that **"no medical professional in his ordinary senses and prudence would have done or failed to do"**.

25. Legally, an anaesthetist whose duty hours have concluded cannot be held criminally liable for a subsequent procedural error committed by a staff nurse. Even if the prosecution's case is taken at face value that the appellant suggested a painkiller over the phone, such an act constitutes standard medical advice for post-operative pain, not gross criminal recklessness. The failure of the nurse to accurately locate the epidural space might represent a deficiency in service (civil liability), but it fundamentally lacks the gross culpability or *mens rea* required to invoke Section 304-A IPC.

26. The ***Jacob Mathew (supra)*** guidelines strictly mandate that before initiating a criminal prosecution against a doctor, the investigating officer must obtain an independent medical opinion, preferably from a doctor qualified in the specific branch of medical practice involved.

" 48.

(5) 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. For negligence

to amount to an offence, the element of mens rea must be shown to exist. For an act to amount to criminal negligence, the degree of negligence should be much higher i.e. gross or of a very high degree. Negligence which is neither gross nor of a higher degree may provide a ground for action in civil law but cannot form the basis for prosecution.

(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 a 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.”

“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 the Bolam 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 investigating officer feels satisfied that the doctor proceeded against would not make himself available to face the prosecution unless arrested, the arrest may be withheld.”

27. The appellant has also raised a ground pointing out to a legal flaw, namely non-inclusion of the anaesthetic in the four-member expert medical panel constituted to review the case. The absence of a peer specialist renders the panel inherently incompetent to evaluate the technical nuances of epidural anaesthesia and catheter management. The panel's conclusion that the appellant was "grossly negligent" for not waiting to see the drug's effect, despite her shift ending hours prior to the emergency, was highlighted as medically absurd. The prosecution's reliance on this flawed expert report violates the protective legal safeguards laid down by the Supreme Court to

prevent the harassment of medical professionals.

28. Criminal liability under Section 304-A IPC necessitates a direct, proximate nexus between the negligent act and the death (*causa causans*). Legally, the appellant's actions were far too remote from the ultimate cause of death. The post-mortem certificate conclusively established that the deceased had an asymptomatic 80% blockage in his coronary artery. The medical evidence proved that the immediate cause of death was acute coronary insufficiency resulting in a heart attack. While the improper administration of the painkiller by the nurse might have failed to alleviate the surgical pain—which in turn induced stress that triggered the fatal cardiac event—this chain of events cannot legally be attributed to the appellant. Fastening criminal liability on an off-duty anaesthetist for an underlying, undisclosed cardiac condition stretches the legal doctrine of proximate cause beyond permissible limits.

29. In view of above, the appeal needs to be allowed. Resultantly, the appeal is allowed and disposed of. The order impugned in the appeal passed by the learned High Court of Kerala at Ernakulam in CrI. M.C. No. 6415 of 2018 are hereby quashed and set aside. Needless to state, that the prosecution against the appellant by way of criminal case in the C.C. No.

501/2008 pending before the Judicial Magistrate First Class-I, Kannur stands quashed and the appellant is discharged from the offences alleged against her. Pending applications, if any, stand disposed of.

.....**J.**
[PANKAJ MITHAL]

.....**J.**
[PRASANNA B. VARALE]

NEW DELHI;
MAY 25, 2026.