* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of order: 11th February, 2025**

\+ W.P.(CRL) 2137/2022 and CRL.M.A. 18475/2022

VENKATESHWAR HOSPITAL & ANR. .....Petitioners

Through: Ms. Petal Chandhok, Ms. Kashish Rehan, Advocates.

versus

STATE OF NCT DELHI & ANR. .....Respondents

Through: Mr. Rahul Tyagi, ASC with Mr. Pardeep Dhaiya and Ms. Mahima Benipuri, Advocates for R-2
SI Durgesh, PS Dwarka North

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant writ petition under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 (hereinafter "Code") has been filed on behalf of the petitioners seeking quashing of the FIR bearing no. 0455/2022 dated 14th July, 2022 registered at Police Station – Dwarka North, Delhi under Sections 336/337/34 of the Indian Penal Code, 1860 (hereinafter "IPC") and the consequential proceedings arising therefrom.

2. The brief facts of the case that led to the filing of the instant petition are as follows:

a. The petitioner no. 1, namely Venkateshwar Hospital, is a multi-specialty hospital located at Sector 18A, Dwarka, New Delhi and the petitioner no. 2 is an Obstetrician and Gynecologist working at petitioner no. 1-hospital. The respondent no. 2 was a patient taking treatment for her pregnancy at petitioner no. 1-hospital, wherein petitioner no. 2 was attending her.

b. As per the FIR, on 12th January, 2021, the respondent no. 2 was admitted to the petitioner no. 1-hospital due to her final stages of pregnancy. After assessing the condition, the petitioner no. 2 conducted LCSC surgery on respondent no. 2 and she gave birth to a girl child. However, the respondent no. 2 continued to remain admitted in the hospital due to severe pain in her abdomen.

c. In order to ascertain the cause of pain, the respondent no. 2 was made to undergo multiple blood tests, urine tests and X-rays of the abdomen and upon receipt of the test results, it was observed that there existed multiple air fluid levels in her abdomen.

d. In terms of the X-ray reports dated 15th January, 2021 and 21st January, 2021, the patient was advised for a Contrast Enhanced Computed Tomography (hereinafter "CECT") for further evaluation and understanding of the pain caused in her abdomen. However, it was alleged that the petitioner no. 2 decided not to conduct CECT upon respondent no. 2.

e. On 22nd January, 2021, the respondent no. 2 was discharged from the petitioner no.1-hospital and was given a 5-day medication course. It is

stated that due to severe pain, the respondent no. 2 was rushed to Indraprastha Apollo Hospital, Sarita Vihar on 25th January, 2021, where she underwent a surgery based on the results of CECT, wherein, it indicated the presence of a foreign object in her abdomen.

f. Aggrieved by the treatment provided by the petitioners and alleging them for conducting gross negligence while providing her the treatment, the respondent no. 2 filed a complaint with the concerned police station on 23rd February, 2021.

g. The SHO of Police Station- Dwarka North, Delhi requested the petitioner no. 1 to provide requisite documents for further investigation and accordingly, vide letter dated 25th March, 2021, the petitioner no. 1 sent the requisite documents as sought by the SHO.

h. A notice bearing no. DMC/DCF.14/Comp.3277/2/2021/295338 dated 30th March, 2021 was received by the petitioners from the learned Delhi Medical Council (hereinafter "DMC") with respect to the representation from the concerned SHO seeking medical opinion in the respondent no. 2's case as allegations of medical negligence was levelled against the petitioners herein. A reply thereto was given by the petitioners on 31st May, 2021.

i. Thereafter, a notice dated 14th March, 2022 was given by the DMC to the petitioners for making their appearance before the Disciplinary Committee of DMC on 29th March, 2022 and accordingly, the petitioners complied with the same.

j. The DMC vide order dated 10th May, 2022 observed that the

petitioner no. 2 did not exercise due diligence while providing treatment to the respondent no. 2 and recommended that the petitioner no. 2 be removed from the State Medical Register of DMC for a period of 30 days.

k. Accordingly, the instant FIR was registered.

l. Aggrieved by the registration of the aforesaid FIR, the petitioners filed the instant petition seeking quashing of the same.

3. Learned counsel for the petitioners submitted that the instant FIR was registered without taking into consideration the medical opinion provided by expert body i.e., the DMC and hence, the same is bad in law.

4. It is submitted that as per the settled principles of law, for registering an FIR against a doctor, an expert opinion prior to the same is necessary. However, in the instant case, the expert body i.e., DMC opined that the petitioners were *not reckless or patently wanton to invite criminal liability* and yet, the instant FIR was registered erroneously without giving due consideration to the medical opinion provided by the DMC.

5. It is further submitted that it is trite law that while registering a case against a medical practitioner for committing medical negligence, it is required to ensure that the degree of negligence committed therein is unusually higher, thereby exhibiting gross lack of competence and grave recklessness. However, as per the medical opinion provided by the DMC, no such gross negligence is detected on part of the petitioners and therefore, no case is made out against them under Sections 336/337/34 of the IPC.

6. It is further submitted that considering that the DMC has opined that

the petitioner no. 2 has not committed any criminal negligence, the instant FIR cannot be registered and therefore, it is prayed that the instant petition may be allowed, thereby quashing the instant FIR.

7. *Per Contra*, Mr. Tyagi, learned ASC for the State vehemently opposed the instant petition and submitted that the instant petition is devoid of any merits as the FIR was registered based on the sufficient material provided by the complainant/respondent no. 2 in her complaint.

8. It is submitted that the investigation has been completed, chargesheet has been filed and cognizance has been taken by the Court concerned and therefore, the petitioner may take its case at the stage of framing of charges as this is not the appropriate stage to invoke the plenary powers of this Court as upon plain reading of the FIR discloses that cognizable offence has been made out against the petitioners under Section 337 of the IPC.

9. It is submitted that upon perusal of the contents of the expert opinion vide order dated 10th May, 2022 and the instant FIR, a case of medical negligence can be made out against the petitioners herein as the contents therein suggest that the petitioners have not provided the treatment with due-diligence. Hence, it is prayed that the instant petition may be dismissed.

10. Thereafter, learned counsel for the respondent no. 2 also vehemently opposed the instant petition submitting to the effect that serious allegations of medical negligence have been levelled against the petitioners and therefore, no case for quashing of FIR can be made out at this stage. It is submitted that it is settled position of law that an FIR against doctors for medical negligence can be registered only after attaining expert opinion to

that effect and therefore, the DMC's opinion that the petitioner no. 2 has not provided treatment with due diligence is sufficient for registration of the instant FIR.

11. It is further submitted that the Court concerned has taken cognizance in the instant case after *prima facie* satisfaction of the material available on record and given that the medical negligence is gross misuse of necessary care, it is prayed that the instant petition, being devoid of any merits, may be dismissed.

12. Heard learned counsel for the parties and perused the record.

13. At this juncture, it is imperative to note that the powers envisaged under Article 226 of the Constitution as well as Section 528 of the BNSS (Section 482 of the Code) are wide in nature and hence, the same must be used sparingly, carefully and in exigent cases. When Section 482 of the Code i.e., Section 528 of the BNSS is invoked, the Court must exercise its adverse powers sparingly, cautiously and in exigent cases as it is bestowed with inherent jurisdiction to exercise its powers to either "prevent any abuse of process of law" or "secure the ends of justice".

14. The Hon'ble Supreme Court in the case of ***Pepsi Foods Ltd. vs. Special Judicial Magistrate*****, (1998) 5 SCC 749,** also observed that the power conferred on the High Court under Articles 226/227 of the Constitution and under Section 482 of the Code have no limits, however, with more power, due care and caution is to be exercised while invoking these powers.

15. Therefore, keeping the aforesaid position of law in mind and

adverting to the instant case, a question arises before this Court as to whether this Court can exercise inherent powers for quashing the impugned FIR.

16. In light of the same, it is apposite to understand the concept of medical negligence. Negligence concerning medical practitioners has been categorized differently due to the higher level of skill that is expected and required from a professional due to their service to the community at large. Therefore, the degree of negligence concerning medical practitioners is also distinguished from other professionals, thereby requiring an exhibition of gross lack of competence or inaction to the patient's safety. The said objective was discussed exhaustively in the case of ***Suresh Gupta vs. Govt. of N.C.T. of Delhi and Ors.,*** **MANU/SC/0579/2004**, wherein the Hon'ble Supreme Court observed as follows –

> *"20. For fixing criminal liability on a doctor or surgeon, the standard of negligence required to be proved should be so high as can be described as "gross negligence" or recklessness". It is not merely lack of necessary care, attention and skill. The decision of the House of Lords in R. v. Adomako (Supra) relied upon on behalf of the doctor elucidates the said legal position and contains following observations:-*
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> *"Thus a doctor cannot be held criminally responsible for patient's death unless his negligence or incompetence showed such disregard for life and safety of his patient as to amount to a crime against the State."*
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> *21. Thus, when a patient agrees to go for medical treatment or surgical operation, every careless act of the medical man cannot be termed as 'criminal'. It can be termed 'criminal' only*

when the medical men exhibits a gross lack of competence or inaction and wanton indifference to his patient's safety and which is found to have arisen from gross ignorance or gross negligence. Where a patient's death results merely from error of judgment or an accident, no criminal liability should be attached to it. Mere inadvertence or some degree of want of adequate care and caution might create civil liability but would not suffice to hold him criminally liable.

22. This approach of the courts in the matter of fixing criminal liability on the doctors, in the course of medical treatment given by them to their patients, is necessary so that the hazards of medical men in medical profession being exposed to civil liability, may not unreasonably extend to criminal liability and expose them to risk of landing themselves in prison for alleged criminal negligence."

17. At this juncture, it is pertinent to mention the case of ***Jacob Mathew v. State of Punjab,* (2005) 6 SCC 1**, wherein the Hon'ble Supreme Court laid down guidelines for prosecution of doctors in the cases of criminal medical negligence. The said principles have been reiterated in the case of ***Martin F. D'Souza v. Mohd. Ishfaq,* (2009) 3 SCC 1.** The relevant paragraph of the former case is as follows –

*"**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 [(1957) 1 WLR 582 : (1957) 2 All ER 118 (QBD)] 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."

18. From the aforementioned extracts, it is clear that the objective behind necessitating an expert opinion before entertaining the private complaint is due to the higher degree of negligence involved in proving medical negligence. As discussed earlier, it is a settled position of law that in cases of medical negligence, gross lack of competence or recklessness must be displayed by the medical practitioner as the duty imposed on such professional concerns the public interest.

19. In the instant case, the expert body i.e., DMC passed an order dated 10th May, 2022 stating that the petitioner no. 2 has not exercised due diligence in providing treatment to the respondent no. 2. The relevant portion of the said order is as follows –

"In *light of the observations made hereinabove, it is the*

decision of the Disciplinary Committee that Dr. Dipti K. Yadav did not exercise due diligence which is expected from an ordinary prudent doctor, in the treatment of the complainant Smt Tamanna. The Disciplinary Committee, therefore, recommends that the name of Dr. Dipti K. Yadav (Dr. Dipti Kumari, Delhi Medical Council Registration No. 17457) be removed from State Medical Register of Delhi Medical Council for a period of 30 days. The Disciplinary Committee, however, observes that the acts or omissions on the part of Dr. Dipti K. Yadav in the management of the complainant were not reckless or patently wanton to invite criminal liability, It is also directed that a copy of this Order be sent to Delhi Nursing Council for taking appropriate disciplinary action against Nursing Staff Nurse, Ms. Menika Singh for her omission during the LSCS procedure done at Venkateshwar Hospital, as she was the scrub nurse who was responsible for taking proper count of all the surgical equipments used during the surgery (LSCS) including the mops. The Disciplinary Committee further directs that a copy of this Order be sent to the Directorate General of Health Services, Govt , of NCT of Delhi with a request that the aforementioned guidelines be circulated to ail the hospitals functioning under its jurisdiction."

20. Upon perusal of the aforesaid order, it is sufficiently indicated that the petitioner no. 2 has not exercised due diligence which is expected from an ordinary prudent doctor. Moreover, it is also observed that the respondent no. 2 has undergone severe abdomen pain due to the irregularity during her admission in petitioner no. 1-hospital.

21. Furthermore, this Court has also perused the contents of the FIR, wherein the respondent no. 2 has categorically stated that the petitioners did not perform due care while treating her abdomen pain, thereby, refusing to

conduct the CECT of the abdomen for efficient treatment. The relevant paragraphs of the said FIR are as follows –

> "*Respected Sir, I am residing at the below mentioned address alongwith my family. On 04.05.2020, for the first time I visited accused Venkateshwar Hospital, Sector 18A Dwarka, where I had been attended by accused Dr. Dipti K Yadav in relation to my pregnancy. After the examination accused Dr. Dipti K Yadav prescribed certain medicines and also advised certain tests. Thereafter, follow up continued to visit the accused Venkateshwar Hospital and were attended by accused Dr Dipti K Yadav. During the said period, I followed the advice of accused Dr Dipti K Yadav. All the tests and reports did not indicate any abnormalities/irregularities till the time I was admitted in the accused Venkateshwara Hospital for surgery on 12.01.2021.*
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> *During the pregnancy, I noticed leaking of fluids and therefore visited the accused Venkateshwar Hospital on 12.02.2021, where I was advised consultation by Dr Dipti k Yadav and was admitted under the control and supervision of accused Dr. Dipti K. Yadav. Thereafter, accused Dr Dipti K Yadav conducted delivery by C Section surgery, where I gave birth to a girl child. After the surgery by accused Dr. Dipti K Yadav and giving birth to child, I continued to remain admitted in the accused hospital due to severe pain in my abdomen. Since the operation conducted by accused Dr. Dipti K Yadav at Venkateshwar Hospital, I was suffering from agonizing pain in my lower abdomen. Due to pain, I remained admitted in the hospital for its diagnosis. In order to ascertain the cause of pain, I made to undergo multiple Blood Tests, Urine Tests and X-Rays of the abdomen. In the said reports of x-ray conducted at accused Venkateshwar Hospital though certain abnormalities / irregularities were pointed out but still the accused Hospital was unable to diagnose the cause of the pain*

suffered by me. In the X-Ray Reports dated 15.01.2021 as well as on 21.01.2021 done at the accused Venkateshwar Hospital itself, the report advised of a Contrast Enhanced Computed Tomography (CECT) or colloquially referred to as a CT Scan of the abdomen, wherein a detailed image of the internal organs, soft tissues and blood vessels in the abdomen would be available for viewing and assessing but the accused Hospital and accused Dr Dipti K Yadav took a decision not to conduct the CECT and refused to conduct the same for the reasons best known to them , On 22.01.2021. I was discharged from the accused Hospital with a persisting pain in my lower abdomen. (Copy of the discharge summary of Venkateshwar Hospital is enclosed as Annexure-1). I continued to suffer from severe pain in my abdomen on the following days at home. Due to severe pain and having no relief with the medicine prescribed by DR Dipti K Yadav, I was compelled to book an online appointment with Dr. Amit Bhasin on 24.01.2021.

However, after assessing my discharge summary and the complications therein, Dr. Amit Bhasin refused to suggest any treatment. Due to severe pain, I had to go to Indraprastha Apollo Hospital at Sarita Vihar on 25.01.2021 in emergency condition, wherein I consulted Dr. Praveen Sodhi. Upon examining the condition, Dr Sodhi advised to undergo certain tests and admission for treatment of pain. On the very same day, I underwent CT full abdomen and pelvis with contrast. On getting the report, as the same was not normal and hinted at some foreign object presence, I was advised surgery on emergency basis by Dr Sodhi. I underwent another major surgery again due to botched up surgery done by accused Dr Dipti K Yadav at accused Vekateshwar Hospital. Dr Sodhi conducted surgery 26.01.2021 in an emergent and life threatening condition. It was traumatic for me to undergo a major surgery after giving birth to baby girl who has been just 13-14 days old. Dr Sodhi after completion of surgery has

informed that there was an abdominal mop retained anterior to uterus left inside my abdominal cavity during the Cesarean Section done by the Doctor, who conducted the surgery at the accused Venkateshwar Hospital which has resulted in pus collection with slough surroundings. During the treatment I have gone through immense pain and trauma. (Copy of the discharge summary of Apollo Hospital is enclosed as Annexure C-2) From the test reports and findings of Apollo Hospital, it is clear that Dr Dipti K Yadav while doing cesarean delivery has left behind a piece of cotton/mop, which was later on got removed by Dr Sodhi by conducting a major surgery. Therefore accused Dr Dipti k Yadav and the accused Venkateshwar Hospital are grossly negligent in their duties and put my life at great risk. The act of Dr Dipti K Yadav is with knowledge that by her wrong and negligent act, I would have died and thus acts of accused persons constitute offences punishable under the Indian Penal Code. In the aforesaid facts, your goodself is requested to take necessary steps to register an FIR against the accused Venkateshwar Hospital and the accused Dr Dipti k Yadav and their directors and associates under Sections 337, 338, 308/34 of the Indian Penal Code, 1860 and/or any other Acts in accordance with the provisions of law, and in the interest of justice investigate the matter and punish the accused persons for the offences committed. Thanking you."

22. Considering the expert opinion provided by the DMC *vide* order dated 10th May, 2022 and the aforesaid contents of the FIR, this Court is of the view that *prima facie* it is evident that the petitioner no. 2 has not provided treatment as per the due diligence, which led to the respondent no. 2 experience severe pain in the abdomen. The DMC has arrived at this observation after recording that respondent no. 2 was not properly advised to undergo CECT of the abdomen.

23. Moreover, the respondent no. 2 has stated in the impugned FIR that she has suffered severe pain in her abdomen after delivering the baby and despite the same, the petitioners have not advised the respondent no. 2 to undergo CECT of her abdomen in order to ascertain the source. It is further observed that the petitioners have immediately discharged the respondent no. 2 despite the X-ray results dated 21st January, 2021. However, it is only after she was rushed to the Indraprastha Appollo Hospital, Sarita Vihar that the respondent no. 2 was subjected to CECT and an operation to that effect was conducted by the doctors therein upon finding a foreign material in her abdomen. It is also observed that the investigation is completed, chargesheet has been filed and the cognizance has been taken by the Court concerned in this matter.

24. Given the aforesaid statement of the respondent no. 2, it *prima facie* shows that the petitioners have not provided proper treatment to the respondent no. 2, thereby compromising due-diligence expected from medical practitioners. As discussed above, the degree of negligence in medical negligence is higher and therefore, considering the same, this Court is of the view that the veracity of the allegations as well as whether the same amounts to criminal liability of the petitioners can be taken up before the Court concerned at the stage of framing of charges.

25. Taking into consideration the foregoing discussions, this Court is of the view that the instant case is not a fit case to exercise its powers under Article 226 of the Constitution of India or Section 528 of the BNSS (Section 482 of the Code) and in view of the same, this Court does not find any merit

in allowing the instant petition, at this stage.

26. Accordingly, the instant petition is dismissed alongwith pending applications, if any.

27. It is made clear that any observations made therein are only for the purpose of deciding the present petition and shall not be construed as an expression on the merits of the case. The Court concerned shall proceed with the matter uninfluenced by any observations made by this Court and shall decide the case strictly in accordance with law.

28. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

FEBRUARY 11, 2025
Ab/mk/ryp