IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE G.GIRISH

MONDAY, THE 19TH DAY OF MAY 2025 / 29TH VAISAKHA, 1947

CRL.MC NO. 5692 OF 2018

CRIME NO.432/2013 OF ERNAKULAM NORTH POLICE STATION, ERNAKULAM

AGAINST THE FINAL REPORT IN CC NO.174 OF 2018 OF ADDITIONAL CHIEF JUDICIAL MAGISTRATE, ERNAKULAM

PETITIONER/ACCUSED:

DR. JOSEPH JOHN MD, D.M,
AGED 41 YEARS,
S/O. A.J.JOHN, CONSULTANT GASTROENTEROLOGIST,
RENAI MEDICITY, NOW RESIDING AT 7F,
DD NEST APARTMENT, KATHRIKADAVU,
KALOOR, KOCHI.

BY ADVS.C.R. SYAMKUMAR
P.A. MOHAMMED SHAH
SOORAJ T.ELENJICKAL
K. ARJUN VENUGOPAL
V.A. HARITHA
SIDHARTH B PRASAD
R. NANDAGOPAL
GAYATHRI MURALEEDHARAN

RESPONDENTS:

1 **THE STATE OF KERALA**
REPRESENTED BY THE ASSISTANT COMMISSIONER OF POLICE,
DISTRICT CRIME BRANCH, KOCHI CITY, THROUGH THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM, KOCHI 682031.

2 **MR. M.M.THANKAN**
S/O MADHAVAN, MATTATHIL HOUSE,
MULAKKULAM NORTH P.O., PIRAVOR,
ERNAKULAM 686664.

SRI. SANGEETHARAJ N.R., PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 19.03.2025, THE COURT ON 19.05.2025 PASSED THE FOLLOWING:

"CR"

O R D E R

"A medical practitioner faced with an emergency ordinarily tries his best to redeem the patient out of his suffering. He does not gain anything by acting with negligence or by omitting to do an act. Obviously, therefore, it will be for the complainant to clearly make out a case of negligence before a medical practitioner is charged with or proceeded against criminally. A surgeon with shaky hands under fear of legal action cannot perform a successful operation and a quivering physician cannot administer the end-dose of medicine to his patient.

If the hands be trembling with the dangling fear of facing a criminal prosecution in the event of failure for whatever reason — whether attributable to himself or not, neither can a surgeon successfully wield his life-saving scalpel to perform an essential surgery, nor can a physician successfully administer the life-saving dose of medicine. Discretion being the better part of valour, a medical professional would feel better advised to leave a terminal patient to his own fate in the case of emergency where the chance of success may be 10% (or so), rather than taking the risk of making a last ditch effort towards saving the subject and facing a criminal prosecution if his effort fails. Such timidity forced upon a doctor would be a disservice to society." ***(Jacob Mathew v. State of Punjab (2005) 6 SCC 1)***

2. The Hon'ble Supreme Court had spelt out the above words of caution to sensitise the Trial Courts about the need to be extremely diligent while dealing with cases of medical negligence wherein Doctors are booked for the commission of offence under Section 304A Indian

Penal Code, 1860 *(in short, 'IPC')* for the death of the patients treated by them. The general psyche of the society at large is that aspersions are cast about the negligence of the Doctors and other medical personnel whenever a patient treated by them meets with untimely death. It is really unfortunate that the tendency to blame the Doctor for the death of the patient, notwithstanding the fact that it was inevitable in the nature of the ailment suffered by him, is far high when compared with the gratitude shown to a medical professional for saving the life of a patient. This does not mean that the mighty hands of law shall always remain tied whenever a complaint sprouts up about rash and negligent conduct of a medical professional. All that is intended to be conveyed is that the authorities concerned shall not be swayed away by the predilections of aggrieved persons whose minds, due to desperation, tend to find fault with the unsuccessful medical practitioner who strived hard to save the life of his patient.

3. Here is a case where the petitioner, a specialist Doctor and Consultant Gastroenterologist of a private hospital at Ernakulam, has been booked by the Ernakulam Town North Police for the commission

of offence under Section 304A IPC for the death of his patient due to renal complications.

4. The facts of the case, in conspectus, are as follows:

One Praveen, a 29 year old youth, had undergone kidney transplant at a private hospital in Kochi on 12.07.2011. After about 10 months, he was again admitted at the same hospital on 14.05.2012 for abdominal pain and vomiting as a result of intestinal complaints. The petitioner, who was attached to the Gastroenterology Department of the hospital during that time, had the occasion to treat him for the said ailment. He was also subjected to daily monitoring by the Nephrologist of that hospital in view of the kidney transplant done on the same hospital months before. After successful medical management of the intestinal complaint, on 25.05.2012, Praveen was advised discharge subject to review by the Nephrology Department. At about 12:00 midnight in the intervening night between 25.05.2012 and 26.05.2012, the patient complained about breathlessness. The duty Nurse administered oxygen and returned saying that there is sufficient oxygen saturation in his blood. But, the complaint subsisted, and the patient developed fever and vomiting within a few hours. When the mother of the patient, who was attending him, again complained, the duty Nurse made a telephone call to the petitioner at about 4:30 a.m., on 26.05.2012, while the petitioner was at his residence. Upon interaction with the duty Nurse about

the symptoms and other vital statistics of the patient over telephone, the petitioner advised to administer certain medicines for the fever and vomiting, and also prescribed to conduct blood and urine tests to ascertain the cause of sudden illness. By about 8:00 a.m., on 26.05.2012, the patient was shifted to Nephrology Intensive Care Unit (NICU) after the examination by a Nephrologist. He was treated at NICU till 2:00 p.m., on 27.05.2012 when he breathed his last due to renal complications. The postmortem examination of the patient was not done, presumably due to the reason that the death of the patient was the natural consequence of the serious renal issues suffered by him. The allegation against the petitioner is that his act of administering treatment over telephone, instead of directing the duty Nurse to arrange examination of the patient by a Nephrologist, had resulted in the death of that patient due to renal complications, after about 34 hours.

5. A complaint submitted by the father of the patient before the Chief Minister of Kerala, attributing medical negligence for the death of the patient, was forwarded to the District Police Chief, Ernakulam, for appropriate action. As per directions from the Office of the District Police Chief, the Ernakulam Town North Police registered Crime No.432/2013 under Sections 304 & 34 IPC mentioning the suspect/accused as 'the Doctor and Nurse at the time on duty' at that

hospital. Later on the matter was referred to the Expert Panel constituted under Circular Memorandum No.73304/SSB3/2007/Home dated 16.06.2008 which prescribed the procedures to be followed after registration of any case against Doctors in Government and Private Service, for criminal negligence. The Expert Panel which consisted of three medical officers including the District Medical Officer, and also the District Government Pleader, analysed the case in detail and arrived at the finding that the patient appeared to have been given reasonable medical and nursing care. Dissatisfied with the above report of the Expert Panel, the Investigating Officer obtained expert opinion from Dr K.R. Vijayakumar and Dr Jacob George, Professors and Heads of Department of Gastroenterology and Nephrology, respectively of Government Medical College, Thiruvananthapuram. The above experts gave the opinion that the treatment given to the patient during the period 00.00 hours from 25.05.2012 to 08:00 a.m., on 26.05.2012 is the usual management given under the circumstances, and it appeared to be reasonable and sufficient. It was further stated in the above report that it was unlikely that shifting of the patient at 02:30 a.m. on 26.05.2012 to the ICU would have saved the life of that patient. Again,

having been not satisfied by the report of the two experts of Government Medical College Hospital, Thiruvananthapuram, the Investigating Officer sought the intervention of the State Level Apex Body provided under the Circular Memorandum cited above, to consider the case and to submit its views on the medical negligence attributed upon the treatment of that patient. The State Level Apex Body consisting of Director of Health Services, Director General of Prosecution, Director of Medical Education and Additional Director of Health Services (Vigilance), found fault with the petitioner herein and directed investigation against him on the charge of criminal negligence, for the following reasons:

(i) The petitioner did not attend the patient for urgent direct evaluation in spite of the call from the duty Nurse about the illness of the patient.

(ii) Despite having been aware of the fact that the patient had undergone renal transplant surgery, the petitioner did not refer the case to a Nephrologist instead of administering treatment over telephone.

(iii) By the above omission, the petitioner failed to do something which in the given facts and circumstances of the case, no medical professional in his ordinary sense and prudence would have omitted to do.

6. On the basis of the aforesaid report of the State Level Apex Body, the Investigating Officer concluded the investigation and laid the final report against the petitioner, alleging the commission of offence under Section 304A IPC. The learned Additional Chief Judicial Magistrate, Ernakulam, took cognizance of the offence and issued summons to the petitioner to answer the charge under the aforesaid Section.

7. In the present petition, the petitioner would contend that the continuation of the proceedings against him based on the final report filed by the Investigating Officer, is an abuse of process of court, since there is no material to implicate the petitioner in the crime. For the above reason, the petitioner seeks to quash the final report and the further proceedings initiated against him in C.C. No.174/2018 on the files of the Additional Chief Judicial Magistrate Court, Ernakulam.

8. Heard the learned counsel for the petitioner and the learned Public Prosecutor representing the State of Kerala.

9. As already stated above, criminal negligence coming under the purview of Section 304A IPC is attributed to the petitioner for the treatment administered over telephone upon the deceased at 04:30

a.m., on 26.05.2012 at a time when the deceased developed sudden breathlessness and fever, while remaining under the expectation of discharge from the hospital after the cure of his intestinal complaints. It is pertinent to note that the patient was advised discharge after successful medical management of the intestinal complaint for which he got admitted in the hospital on 14.05.2012. The statement given by the father of the deceased (CW1) to the Investigating Officer under Section 161 Cr.PC, would reveal that his son was being examined on a daily basis by the Doctors of Nephrology and Gastroenterology Departments, and that the Doctors of both the above units had intimated that he would be discharged on 26.05.2012 since the ailment has been cured. It is at such a stage that the patient developed complications of breathlessness, fever and vomiting, past midnight of the intervening night between 25.05.2012 and 26.05.2012. Admittedly, the petitioner was not even having 'on-call duty' at that time, and he was enjoying a leisure night at his home when he received the telephone call of the duty Nurse. True that the petitioner had been administering treatment to that patient at that hospital for the Gastroenterological complaint suffered by him, and that might be the reason why the duty Nurse

sought his advice over telephone instead of alerting the duty Doctor, casualty Doctor or the Doctor assigned with on-call duty during that night. Thus, the pertinent issue to be looked into is whether the conduct of the petitioner prescribing some medicine over telephone and directing the laboratory analysis of blood and urine of the patient, instead of requiring the duty Nurse to arrange examination of the patient by the Nephrologist, would amount to criminal negligence to fasten him with the culpability under Section 304A IPC.

10. In this context, it is pertinent to note that the materials on record, including the statement given by the mother of the deceased to the State Level Expert Panel would reveal that the patient had identical complaint on 21.05.2012, which was medically managed by the petitioner by administering medicines. Even thereafter, the patient was admittedly being examined on a daily basis by the Nephrologist, and that he was advised discharge by 26.05.2012 since the Physicians from the Nephrology and Gastroenterology Departments found that the patient had recovered from his illness. It is at such a stage that the unexpected eventuality developed past the midnight of 25.05.2012, which prompted the duty Nurse to make a telephone call to the

petitioner at 04:30 a.m., on 26.05.2012. The course adopted by the petitioner prescribing certain medicines for the same illness of the patient which he had medically managed on 21.05.2012, and also directing the laboratory evaluation for ascertaining renal complications, has not been found to be wrong by any of the members of the Expert Panel. It is pertinent to note that Dr Jacob George, Professor and Head of Nephrology Department of Government Medical College, Thiruvananthapuram, stated before the State Level Apex Body, in unequivocal terms, that even he would have administered the same treatment to that patient as done by the petitioner at the relevant time. Thus, it is not possible to say that the petitioner had administered any treatment upon the patient which precipitated his death after about 34 hours of treatment in NICU. It is true that giving a direction to the duty Nurse to get the patient examined by a Nephrologist, was one of the options which the petitioner could have done when he was woken up at the dawn of 26.05.2012 by the duty Nurse by her telephone call. That would have been the most convenient way which was open to the petitioner to be adopted, to avoid such disturbing calls during his leisure hours. Still he advised some medicines to assuage the sufferings

of the patient, and prescribed laboratory tests to detect the cause of illness, presumably to avoid further delay in administering the proper treatment by the Department concerned. By no stretch of imagination, it could be said that the above course adopted by the petitioner would amount to an act of criminal negligence coming within the purview of Section 304A IPC. It may be true that the failure to have the patient examined by a Doctor during the period of about 08:00 hours past the midnight of 25.05.2012, may give rise to civil liability for negligence on the part of the hospital concerned. But, as far as the petitioner is concerned, the way in which he acted at 04:30 a.m., on 26.05.2012, when called and intimated over telephone by the duty Nurse concerned about the medical complications of the deceased, cannot be classified as criminal negligence coming within the purview of Section 304A IPC.

11. The definition and concept of medical negligence in almost all judicial precedents, has got its basis in the law laid down in ***Bolam v. Friern Hospital Management Committee*** **[(1957) 1 W.L.R. 582]** wherein it has been held as follows:

> "Where you get a situation which involves the use of some special skill or competence, then the test as to whether there has been negligence or not is not the test of the man on the top of a Clapham omnibus, because

he has not got this special skill. The test is the standard of the ordinary skilled man exercising and professing to have that special skill. A man need not possess the highest expert skill; it is well established law that it is sufficient if he exercises the ordinary skill of an ordinary competent man exercising that particular art." (Charlesworth & Percy, ibid, Para 8.02)"

12. Following the above principle, the Hon'ble Apex Court in ***Suresh Gupta (Dr) v. Government of NCT of Delhi*** **[(2004) 6 SCC 422]** held as follows in paragraph Nos.20 & 21 of that judgment:

"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* [(1994) 3 All ER 79 (HL)] relied upon on behalf of the doctor elucidates the said legal position and contains the following observations:

> "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."

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 man 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."

13. The law is thus trite that even in a case where a patient's death results merely from error of judgment or an accident, no criminal liability could be attached to it, and mere inadvertence or some degree of want of adequate care and caution might create civil liability, but would not suffice to hold the medical professional concerned criminally liable. Only in such cases where there is gross lack of competence or inaction and wanton indifference to the patient's safety which arose out of gross ignorance or gross negligence, could the Doctor concerned be compelled to face the trial for criminal negligence in the treatment administered by him. For every mishap or death during the treatment, the Doctor concerned cannot be proceeded against for punishment. It has been observed by the Hon'ble Apex Court in ***Suresh Gupta (Dr)*** (supra) that criminal prosecution of Doctors would amount to great disservice to the community at large, if it has been initiated without sufficient materials to show that there was gross ignorance or negligence on the part of such medical professional which were never expected from a Doctor of ordinary skill and prudence. It has been

further observed thereunder that if courts were to impose criminal liability on hospitals and Doctors for everything that goes wrong, the Doctors would be more worried about their own safety than giving all best treatment to their patients, which would lead to the disruption of mutual confidence between the Doctor and the patient. It is by taking the cue from the aforesaid decision, as well as from the principles laid down in ***Bolam*** (supra) that the Hon'ble Apex Court made the observations which are quoted in the opening portion of this order.

14. As far as the present case is concerned, it has to be stated that there is absolutely nothing on record to show that the act of the petitioner prescribing some medicines and directing the laboratory evaluation of the vitals of the patient, amounted to gross negligence which is never expected from a Doctor of similar stature. On the other hand, there are materials to show that the course so adopted by him would have been followed if the same contingency was faced by any other medical professional in the field. That being so, the criminal prosecution initiated against the petitioner can only be termed as an abuse of process of court which has to be terminated at the threshold. Needless to say that the prayer in this petition to quash the

proceedings in C.C.No.174/2018 on the files of the Additional Chief Judicial Magistrate Court, Ernakulam, has to be allowed.

In the result, the petition stands allowed. The proceedings pending against the petitioner as C.C.No.174/2018 on the files of the Additional Chief Judicial Magistrate Court, Ernakulam, are hereby quashed.

(Sd/-)
G. GIRISH, JUDGE

DST

APPENDIX

PETITIONER ANNEXURES

ANNEXURE A1	**PHOTOCOPY OF THE LETTER ISSUED BY THE 2ND RESPONDENT DATED 1.6.2012.**
ANNEXURE A2	**PHOTOCOPY OF THE REPLY ISSUED BY THE HOSPITAL DATED 12.6.2012.**
ANNEXURE A3	**PHOTOCOPY OF THE COMPLAINT OF THE 2ND RESPONDENT DATED 12.6.2012.**
ANNEXURE A4	**PHOTO COPY OF THE FIR IN CRIME NO.432/2013 DATED 5.4.2013.**
ANNEXURE A5	**PHOTOCOPY OF THE STATEMENT OF THE PETITIONER DATED 25.2.2013.**
ANNEXURE A6	**PHOTOCOPY OF THE STATEMENT OF THE STAFF NURSE DATED 1.2.2013.**
ANNEXURE A7	**PHOTOCOPY OF THE STATEMENT OF THE DUTY NURSE DATED 29.12.2012.**
ANNEXURE A8	**PHOTOCOPY OF THE CIRCULAR NO.73304/SSB3/07/HOME DATED 16.6.2008.**
ANNEXURE A9	**PHOTOCOPY OF THE REPORT OF THE EXPERT PANEL DATED NIL.**
ANNEXURE A10	**PHOTOCOPY OF THE REPORT OF THE EXPERTS DATED NIL.**
ANNEXURE A11	**PHOTOCOPY OF THE STATEMENT OF THE PETITIONER BEFORE THE APEX BODY DATED 6.2.2016.**
ANNEXURE A12	**PHOTOCOPY OF THE STATEMENT OF THE EXPERT BEFORE THE APEX BODY DATED 6.2.2016.**
ANNEXURE A13	**PHOTOCOPY OF THE STATEMENT OF THE MOTHER OF THE DECEASED PATIENT DATED 19.3.2016.**
ANNEXURE A14	**PHOTOCOPY OF THE STATEMENT OF THE INVESTIGATING OFFICER DATED 22.8.2015.**
ANNEXURE A15	**PHOTOCOPY OF THE REPORT OF THE APEX BODY DATED**

19.3.2016.

ANNEXURE A16 **PHOTOCOPY OF THE FINAL REPORT IN C.C.174/2018 DATED 30.11.2017 .**