



AFR

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**CRMP No. 18 of 2023**

1. Dr. Prabhat Panigrahi, A/o 51 years, S/o Lt. Trinath Panigrahi, R/o C-12, Power Imperial Blue, Sharda Vihar, Korba, District Korba (CG)
2. Dr. Pratik Dhar Sharma, A/o 35 years, S/o Shri Chandrahas Dhar Sharma, R/o Quarter No.77/B/01, Balco Nagar, District Korba (CG)
3. Dr. Jyoti Shrivastava, A/o 52 years, W/o Dr. Prabhat Panigrahi, R/o C-12, Power Imperial Blue, Sharda Vihar, Korba, District Korba (CG)

---- Petitioners

**Versus**

1. State Of Chhattisgarh Through Station House Officer, Police Station-Balco, District Korba C.G.
2. Manoj Kewat, A/o 33 years S/o Shri Mahaveer Kewat, R/o Belgiri Basti, Ward No.34, P.S.Balco Nagar, District Korba (CG)
3. Sub-Divisional Magistrate, Korba, District Korba (CG)

---- Respondents

(Cause title is taken from CIS Software)

For Petitioners : Mr. Vivek Ranjan Tiwari, Sr. Advocate with Mr. Atul Kumar Kesharwani, Advocate.

For Respondents/State : Mr. Vinay Pandey, Dy. Advocate General.

For Respondent No.2 : Mr. L.S. Bhadoriya, Advocate.

**Division Bench:**

**Hon'ble Shri Ramesh Sinha, Chief Justice**

**Hon'ble Smt. Rajani Dubey, Judge**

**Order on Board**

**Per Ramesh Sinha, Chief Justice**

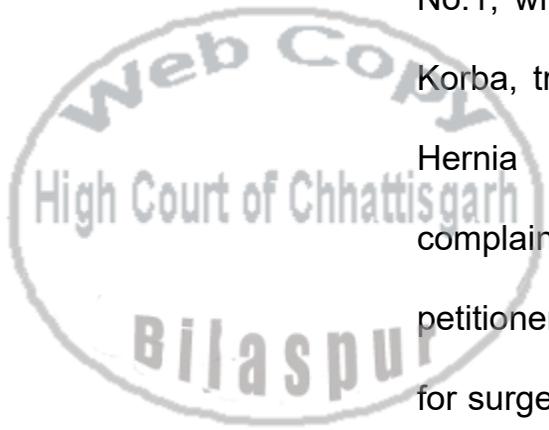
**01.05.2024**

1. The petitioners have preferred the instant petition under Section



482 of Cr.P.C. for quashing the FIR No.10/2021 registered at Police Station-Balco, Distt. Korba (C.G.) for the offence punishable under Section 304A/34 of IPC as also the subsequent final report and proceedings of Criminal Case No.1842/2022 pending before learned Judicial Magistrate First Class, Korba.

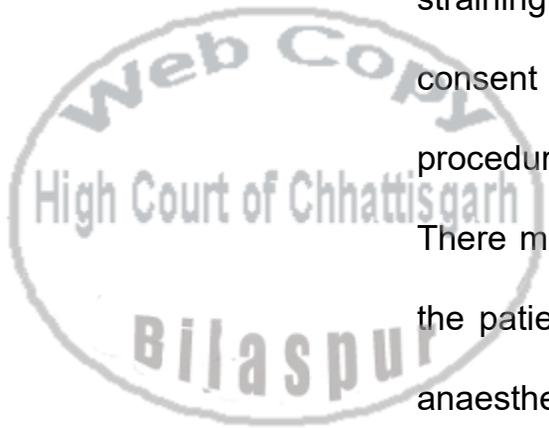
2. Brief facts of the case are that on 6.1.2021 the complainant/respondent No.2 Manoj Kewat took his 06 years old child to District Hospital, Korba for treatment where petitioner No.1, who is a medical practitioner posted at District Hospital, Korba, treated the child and informed that he is suffering from Hernia and advised for sonography. On 7.1.2021 the complainant got sonography of the child done and on 8.1.2021 petitioner No.1 after going through the sonography report opined for surgery of the child. On the next day the complainant and his wife took the child to Ayushman Hospital, Korba where petitioner No.2 was present and surgery was performed by petitioners No.1 & 2 on 9.1.2021. However, after surgery the condition of the child started deteriorating, so he was taken to another hospital by his parents where he died. Since the surgery was performed without sufficient means in a negligent manner, the complainant lodged a report to this effect which led to registration of the impugned FIR. After completion of investigation charge sheet has been filed and Criminal Case





No.1842/2022 is pending before the learned Judicial Magistrate First Class, Korba.

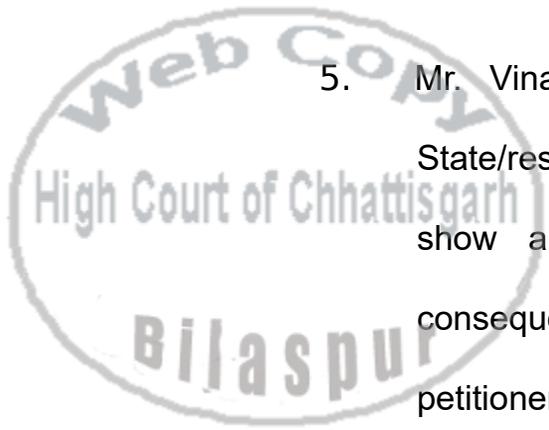
3. Learned counsel for the petitioners submits that a bare perusal of the final report goes to show that no prima facie case of medical negligence is made out against the petitioners. There is not a single allegation against petitioner No.2, even then she has been arrayed as an accused. In fact, the complainant's son was suffering from congenital Hernia with hydrocoele of the cord. After proper examination, it was found that the pain occurs while straining (any stress, crying etc.) therefore, surgery under due consent of his parents was planned and consequences of the procedure and anesthesia were well explained to the parents. There might have been some anaesthetic drug interactions that the patient delayed recovering from anesthesia, hence another anaesthetic doctor was called to tide over the crisis and looking to the chaotic situation and on the insistence of the complainant, the patient/child was shifted to another nearby hospital with anaesthetic doctor where the unfortunate death of the child took place.
4. Learned counsel for the petitioners further argued that the FIR was lodged without obtaining any evidence of medical negligence. Apart from the FIR, the complainant also made complaint against the petitioners to CG Medical Council which was duly examined by a committee of expert doctors who did not





find the petitioners guilty of any medical negligence. Copy of reports of the committee are filed as Annexure P/4 & P/5. He submits that Ayushman Surgical Nursing Home is duly registered under the Nursing Home Act and all kind of surgical cases are taken up there and it complies with all the norms of the government as per the Nursing Home Act. There is nothing to show any kind of medical negligence on the part of the petitioners. Therefore, the present petition deserves to be allowed and the impugned FIR as well as the consequential final report and criminal proceedings are liable to be quashed.

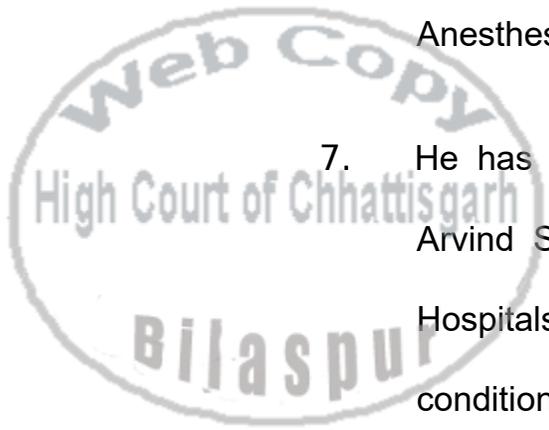
5. Mr. Vinay Pandey, learned Dy. Advocate General for the State/respondents submits that the petitioners have failed to show any good ground for quashing the FIR and the consequential criminal proceedings. The defence raised by the petitioners cannot be appreciated at this stage and the same can very well be raised during the course of trial. As per contents of the FIR, prima facie a case under Section 304A of IPC is made out against the petitioners. The investigation is already complete and the trial has commenced. If the petitioners are aggrieved, they ought to have filed a revision challenging the order of charge framing. This apart the present petition is filed with an inordinate delay. Therefore, looking to the overall material on record and the limited scope of interference under Section 482 of CrPC, the present petition is liable to be dismissed.





6. Mr. Lakhan Singh Bhadoriya, learned counsel appearing for respondent No.2/complainant vehemently argued that petitioner No.1 is a General Surgeon and not a Pediatric Surgeon; petitioner No.2 holds the degree of BAMS from Chhattisgarh Ayurvedic Tatha Unani Chikitsa Paddhati Avam Prakritic Chikitsa Board whereas petitioner No.3, who is wife of petitioner No.1, is not having adequate degree of pediatric surgery. Thus the petitioners are performing their duties only for monetary purpose without having adequate degree and experience in Pediatric Surgery or Doctorate of Medicine in Pediatric and Neonatal Anesthesia.

7. He has further contended that as per medical opinion of Dr. Arvind Sabharwal, consultant in Pediatric Surgery in Manipal Hospitals, Delhi, Hernia is one of the most common surgical conditions in children and can be treated easily with very minor surgery and has a 100% cure rate. However, due to medical negligence on the part of the petitioners, son of the complainant suffered unfortunate death. He submits that the enquiry reports of Annexures P/4 & P/5 are of no significance because the said conclusion has been arrived at without receiving viscera report of the deceased child only on the basis of statements of the parties. As per viscera report dated 30.3.2023 (Annexure R/3), there is no chemical poison in the viscera of the deceased which negates the possibility of side effects of the medicines used





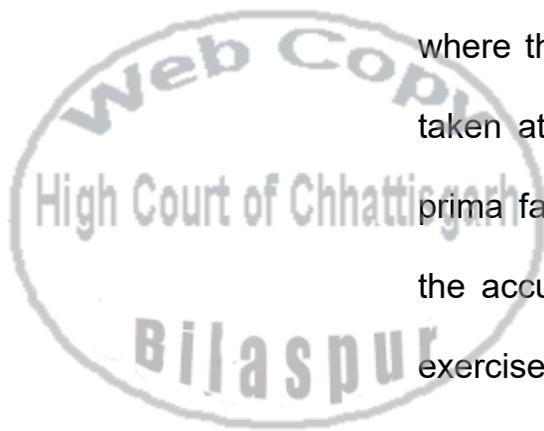
during surgery. In view of above, the present petition lacks any substance and is liable to be dismissed.

8. We have heard learned counsel for the parties and perused the material available on record including the impugned FIR.

9. The legal position on the issue of quashing of criminal proceedings is well-settled that the jurisdiction to quash a complaint, FIR or a charge-sheet should be exercised sparingly and only in exceptional cases and Courts should not ordinarily interfere with the investigations of cognizable offences. However, where the allegations made in the FIR or the complaint even if taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused, the FIR or the charge-sheet may be quashed in exercise of powers under Article 226 or inherent powers under Section 482 of the Cr.P.C.

10. In the well celebrated judgment reported in **AIR 1992 SC 605** **State of Haryana and others Vs. Ch. Bhajan Lal**, the Apex Court held that those guidelines should be exercised sparingly and that too in the rarest of rare cases. Guidelines are as follows:

“(1) Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety to do not prima facie constitute any offence





or make out a case against the accused.

(2) Where the allegations in the First Information Report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 156(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.





(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

11. In case of **Rupan Deol Bajaj v. K.P.S. Gill**; reported in (1995) SCC (Cri) 1059, **Rajesh Bajaj v. State of NCT of Delhi**; reported in (1999) 3 SCC 259 and **Medchl Chemicals & Pharma (P) Ltd. v. Biological E Ltd. & Ors**; reported in 2000 SCC (Cri) 615, the Apex Court clearly held that if a prima facie case is made out disclosing the ingredients of the offence, Court should not quash the complaint. However, it was held that if the allegations do not constitute any offence as alleged and appear to be patently absurd and improbable, Court should not hesitate to quash the complaint. The note of caution was reiterated that while considering such petitions the Courts should be very circumspect, conscious and careful. Thus, there is no controversy about the legal proposition that if a prima facie case is made out, the FIR or the proceedings in consequence thereof cannot be quashed.
12. In **Neharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra and others** : 2021 SCC OnLine SC 315, the Apex Court has observed that the power of quashing should be exercised sparingly with circumspection in the rarest of rare cases. While examining an F.I.R./complaint, quashing of which is sought, the



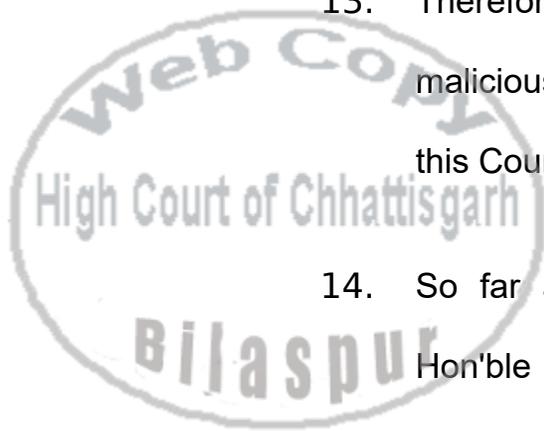


Court cannot inquire about the reliability, genuineness, or otherwise of the allegations made in the F.I.R./complaint. The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the Court to be cautious. The Apex Court has emphasized that though the Court has the power to quash the F.I.R. in suitable cases, the Court, when it exercises power under Section 482 Cr.P.C., only has to consider whether or not the allegations of F.I.R. disclose the commission of a cognizable offence and is not required to consider the case on merit.

13. Therefore, it is very well settled that criminal proceedings maliciously instituted with ulterior motives can be quashed by this Court while exercising the power under Section 482 Cr.P.C.

14. So far as cases of medical negligence are concerned, the Hon'ble Supreme Court has consistently held in plethora of its decisions that the standard of care which is expected of a medical professional is the treatment which is expected of one with a reasonable degree of skill and knowledge. A medical practitioner would be liable only where the conduct falls below the standards of a reasonably competent practitioner in the field.

15. In **Jacob Mathew v State of Punjab, (2005) 6 SCC 1**, a three judge Bench of the Apex Court upheld the standard of the ordinary competent medical practitioner exercising an ordinary degree of professional skill, as enunciated in **Bolam v Friern**





***Hospital Management Committee, [1957] 1 WLR 582.*** The Court held that the standard of care must be in accordance with “general and approved practice”:

“24. The classical statement of law in Bolam has been widely accepted as decisive of the standard of care required both of professional men generally and medical practitioners in particular. It has been invariably cited with approval before the courts in India and applied as a touchstone to test the pleas of medical negligence. In tort, it is enough for the defendant to show that the standard of care and the skill attained was that of the ordinary competent medical practitioner exercising an ordinary degree of professional skill. The fact that a defendant charged with negligence acted in accord with the general and approved practice is enough to clear him of the charge. Two things are pertinent to be noted. Firstly, the standard of care, when assessing the practice as adopted, is judged in the light of knowledge available at the time (of the incident), and not at the date of trial. Secondly, when the charge of negligence arises out of failure to use some particular equipment, the charge would fail if the equipment was not generally available at that point of time on which it is suggested as should have been used.”

16. In the present case, the son of the respondents No.2/complainant died on 9.1.2021 and the complainant lodged FIR against the petitioners on 10.1.2021 alleging medical negligence. He also made complaint to the CG Medical Council against the petitioners. The experts of the Medical Board upon



minute examination of all the aspects of the matter and recording statements of parents of the deceased child, the treating doctors and the concerned medical staff, found that the surgery was conducted by the well qualified doctors with due care and caution and opined that untimely death of Divyansh is possibly due to side effects of the medicines vide Annexure P/4. As per Annexure P/5 i.e. order dated 16.12.2022 also the Registrar, CG Medical Council, Raipur acquitted petitioner No.1 Dr. Prabhat Panigrahi of the charges leveled by the complainant.

17. The petitioners are the well qualified and registered medical practitioners vide Annexure P/3. The material collected during investigation do not disclose any such act committed by the petitioners which falls below the standards of a reasonably competent practitioner in the field. True it is that son of the complainant suffered untimely death after surgery of Hernia being done by the petitioners, however, the fact that the petitioners charged with negligence acted in accordance with the general and approved practice is enough to clear them of the charge.

18. Thus, having regard to the facts and circumstances of the case, the act committed by the petitioners and the principles of law laid down by the Hon'ble Supreme Court in the aforementioned judgments, this court is of the opinion that present is a fit case for quashing of the FIR and the consequential criminal proceedings





against the petitioners.

19. In the result, the petition is allowed. The impugned FIR No.10/2021 registered at Police Station-Balco, Distt. Korba (C.G.) under Section 304A/34 of IPC as also the subsequent final report and criminal proceedings pending in the form of Criminal Case No.1842/2022 before learned Judicial Magistrate First Class, Korba against the petitioners, are hereby quashed.

**Sd/  
(Rajani Dubey)  
JUDGE**

**Sd/  
(Ramesh Sinha)  
CHIEF JUSTICE**

Khan

