

(2014) 11 DEL CK 0029
In the Delhi High Court
Case No : CRL. REV. P. 646/2008

A. K. Banerji

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 07-11-2014

Acts Referred:

Indian Medical Council Act, 1956 — Section 2(b), 2(j), 20A, 33
Penal Code, 1860 (IPC) — Section 201, 304A, 338

Citation : (2014) 11 DEL CK 0029

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Advocate : S.S. Gandhi, Sr. Adv., Keshav Mohan and Amrita Narayan, Advocate for the Appellant; Kusum Dhalla, APP, Advocate for the Respondent

Judgement

Indermeet Kaur, J.—There are three petitioners before this Court. Petitioner No. 1 Dr. A.K. Banerji, petitioner No. 3 Dr. Varindera Paul Singh are the two Neurosurgeons and petitioner No. 2, is a general physician. The present proceedings have arisen out of the complainant dated 06.02.2005 filed by Munni Devi Barthwal alleging medical negligence against the aforementioned doctors.

2. Record reflects that on 30.11.2004, the complainant Munni Devi Barthwal was admitted in VIMHANS Hospital (where the petitioners were working at that time) on being diagnosed as a case of Dorsal Myelitis. In the course of her treatment on 20.12.2004, her right hand had to be amputated. On 05.02.2005, a complaint was lodged by her husband before the Competent Authority of VIMHANS Hospital stating that they were dissatisfied with the treatment. The formal complaint was filed in the concerned police station one day after i.e. on 06.05.2005 pursuant to which the present FIR was registered on 07.02.2005. FIR was registered under Section 338 of the Indian Penal Code, 1860 (IPC) .

3. In the course of investigation, an opinion had been obtained from the Delhi Medical Council (DMC) about the negligence of the petitioners with respect to the medical treatment administered to the victim. On 31.01.2007, the DMC had

given its opinion that reasonable care does not appear to have been meted out to the complainant. The relevant extract of the order of the DMC reads herein as under:-

"The Council observes that as complication of intravenous administration of drugs, thrombophlebitis and extravagation occurred. The rapidly spreading inflammation progressed to compartment syndrome in the right forearm which necessitated amputation of right hand. The patient was treated conservatively with SUMAG dressing from 4th to 8th November and only on appearance of blisters, discoloration on 08.11.2004 she was diagnosed to have compartment syndrome with septicaemia for which Fasciotomy was done, which did not help the patient at all. As a result of failure to administer adequate corrective measures in time the consequences progressed rapidly and led to amputation.

In view of the above, it is observed that VIMHANS failed to exercise reasonable degree of care in the treatment administered to the patient, as a consequence of which the right hand of the patient had to be amputated. "

4. After investigation, charge-sheet was filed before the concerned Magistrate on 07.07.2008. The Magistrate on 04.08.2008 had directed notice under Section 201 of the IPC to be served upon aforesaid petitioners. Relevant extract of the order dated 04.08.2008 reads herein as under:-

"As far as Dr. A.K. Banerji, Dr. Ajay Sinha and Dr. V.P. singh are concerned, report of the Delhi Medical Council is against them. It is clearly observed that Vimhans Hospital failed to exercise due degree of care and treatment administered to the patient hence forearm was to be amputated. Thus the ruled cited by the counsel for the accused i.e. Jacob Mathew Vs. State of Punjab and Another, Dr. Suresh Gupta Vs. Govt. of N.C.T. of Delhi and Another, and Manoj Kumar Vs. State, yet are not applicable to these doctors because the report is dated 31.01.2007 and the charge sheet has been filed after complying the directions given by the Hon''ble Supreme Court regarding the negligence of the doctor or hospital. Hence a prima facie case under Section 338 IPC is made out against Dr. A.K. Banerji, Dr. Ajay Sinha and Dr. V.P. Singh who were working in Vimhans Hospital at the relevant time treating the complainant and due to lack of proper treatment, the amputation of forearm of the complainant was carried out which injury is grievous. Hence notice is to be given to them."

5. A perusal of this order shows that what had weighed primarily in the mind of the trial Judge was the report of the DMC. It was largely based on this report that the Court had returned a finding that a prima- facie case under Section 338 of the IPC is made out against the petitioners.

6. The VIMHANS Hospital preferred an appeal against the order of the DMC before the Medical Council of India (MCI) . The MCI on 24.10.2008 heard this appeal against the order of the DMC dated 31.01.2007. This appeal was heard by the Ethics Committee. Dr. P.R. Patel, Director, K.M. School of P.G. Studies and Dr. M. Mukherjee, Prof. & HOD of Surgery, Calcutta Medical College were both

requested to assist the Ethics Committee of Medical Council of India.

7. The relevant extract of the comments/opinion of Dr. P.R. Patel reads herein as under:-

"The complications arising in this was diagnosed in time, managed appropriately in consultation with various specialists whenever required. Therefore, it is observed that patient has been given reasonable decree of care and there is no negligence observed in the treatment of patient named Munni Devi by different consultants and staff of the Vidyasagar Institute of Mental Health and Neuro Sciences, New Delhi."

8. The comments of the second doctor i.e. of Dr. M. Mukherjee were as under:-

"It is difficult to accept that a patient under treatment for dorsal myelopathy should lose her limb as an intragenic complication. The question is whether the complication was avoidable or not. It is presumed that there was some gap in monitoring of the condition of the limb between 30.11.2004 and 04.12.2004. However, it cannot be clearly opined whether the limb could be made to survive by earlier fasciotomy or not."

9. Since both the doctors were at a variance with one another, a third opinion i.e. opinion/comment of Dr. P.K. Dave were sought for. Dr. P.K. Dave was the formal Ex.-Director, Prof. & Head of Orthopedics, All India Institute of Medical Sciences. Relevant extract of the comments/remarks of Dr. P.K. Dave reads as follow:-

"From the perusal from the records, I felt that timely and effective management strategies were instituted and the patients was given due care. It is unfortunate that the patient had to be amputated due to thrombophlebitis leading on to septicemia as a life saving measure and to avoid further morbidity.

The steroids are an immuno suppressive agent and whenever administered carry a grave prognosis particularly in patients who have other medical problems which in this case involved hypertension and hypothyroidism. In my opinion complications in this particular case were managed property and promptly. And all the consultants required gave their opinions for further management.

It is felt that she was given due care and the perusal of the records shows that there was no negligence in the treatment of condition on the part of Vidyasagar Institute of Mental and Health Sciences."

10. The order of the DMC was accordingly set aside. The Ethics Committee after a detailed discussion was of the unanimous opinion that no case of medical negligence could be substantiated against the treating doctors i.e. the petitioners.

11. The complainant i.e. Munni Devi Barthwal preferred a review petition against the order passed by the MCI. This review petition was dismissed by the MCI on 21.05.2009.

12. A writ petition i.e. W.P.(C) No.4499/2010 was filed by the complainant with a

prayer for setting aside the order dated 21- 22.05.2009 (passed by the MCI) . Notice was issued to the respondents. Reply was filed. The complainant/petitioner had to file rejoinder. At that stage, since there was no appearance on behalf of the petitioner, the writ petition was dismissed in default as also for non-prosecution. This was on 26.09.2011. This Court has been informed that this order has become final and no proceedings have been initiated against the dismissal of that writ petition.

13. It is in this background that the learned senior counsel for the petitioners has made his submissions. His foremost submission is that the impugned order dated 04.08.2008 was based only on the report of the DMC which order has now been set aside by the MCI and the review petition filed by the complainant against that order of the MCI also having been dismissed and so also the independent remedy of a writ petition filed by the complainant impugning the order of the MCI also having been dismissed, it has now finally been held that the petitioners are not guilty of any medical negligence. The charge under Section 338 of the IPC is thus not sustainable. Learned senior counsel for the petitioners has placed reliance upon the judgment reported as Commissioner of Income Tax, Bombay Vs. Amritlal Bhogilal and Co., to support his submission that where an appeal is provided against the order passed by the Tribunal, the decision of the appellate authority would become operative; this would be by the principle of merger. Attention has been drawn to the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002. Submission being that Rule 8.8 presupposes that any person who is aggrieved by the decision of the State Medical Council has the right to file an appeal to the MCI. These statutory Regulations had recognized the right of an appeal before the MCI which has since set aside the order passed by the DMC. This order has enured in favour of the petitioners. This order has reiterated a positive finding that the petitioners are not guilty of any medical negligence. Learned senior counsel for the petitioner has also placed reliance upon the judgment reported as Jacob Mathew Vs. State of Punjab and Another, to support his argument that every kind of negligence is not a medical negligence; even presuming that there is some negligence which was imputable to the petitioners it may be a civil liability; the jurisprudential concept of negligence both in civil and criminal law differ; unless there is a mens rea attributable to the petitioners, no action could lie against the petitioners. Reliance has also been placed upon Kusum Sharma and Others Vs. Batra Hospital and Medical Research Centre and Others, as also Martin F. D'Souza Vs. Mohd. Ishfaq, Submission being that where a doctor has performed his duty while exercising an ordinary degree of professional skill and competence, there is no scope of attributing any medical negligence to him; if such cases are allowed to continue and to permeate into the professional lives of doctors, no doctor would be able to perform his professional duty with a free mind.

14. Arguments have been countered. Learned counsel for the State has pointed out that the Regulations under which the petitioners are seeking directions are the Regulations relating to "professional mis- conduct", "etiquette" and "ethics"

as is the terminology used in the said Regulations. Submission being that professional conduct, etiquette and ethics are features distinct and separate from medical negligence in no manner can the two be equated. The MCI has in fact exceeded his jurisdiction and by setting aside the order of the DMC in toto, it has gone beyond the scope of the appeal which had been filed before it. The scope of the appeal in terms of Rule 8.8 of the said Regulations was only in relation to the conduct, etiquette and ethics of the petitioners. The second submission of the learned counsel for the State being that the order passed by the DMC was the opinion of independent doctors who were experts in the field and all of them were of the unanimous opinion that the petitioners were guilty of medical negligence. This expert opinion cannot be ignored. The next submission of the learned counsel for the State being that the report of the Department of Forensic Medicine and Toxicology, AIIMS dated 06.11.2007 was the another important document relied upon by the prosecution which had returned a positive finding that the victim had in fact sustained a grievous injury. The impugned order framing charge against the petitioners under Section 338 of the IPC calls for no interference.

15. Arguments have been heard. Record has been perused.

16. Record reveals that the present FIR has been registered on the complaint of Suman Barthwal. His allegation was that his wife Munni Devi Barthwal aged 43 years was admitted at VIMHANS Hospital on 30.11.2004 for a spinal cord related problem. Even after two months, her condition did not improve. It was in fact deteriorating. During the course of her treatment, an injection had been administered through a drip in her right hand which went into her muscles rather than in the veins. This ultimately led to the amputation of her forearm on 20.12.2004. On the basis of these allegations, the FIR had been registered. Charges had thereafter been framed.

17. The Supreme Court in the landmark judgment of Jacob Mathew (supra) has laid down the distinction between the negligence as a tort; and as a crime; the negligence of a professional and what may or may not amount to a medical negligence in criminal law has been discussed. The test to be applied is the standard of the ordinary skilled man exercising and professing to have that skill; a man need not possess the highest expert skill. This has been reiterated in (1957) 1 SLR 582 Bolam Vs. Friern Hospital Management Committee. In the subsequent judgment reported as (1988) 18 Con LR 1 Eckersley Vs. Binnie, it was held that a professional man should command a corpus of knowledge which forms a part of the professional equipment of an ordinary member of his profession; he should not lag behind other ordinary assiduous and intelligent members of his profession in the knowledge of new advances, discoveries and developments in his field; he should have the awareness of an ordinary competent practitioner; he should be alert of the hazards and risks inherent in the profession or task he undertakes to the extent that other ordinary competent members of his profession would be; he must bring to his professional task no

less an expertise, skill and care than other ordinarily competent professionals would bring, but need bring no more; the standard is that of the reasonable average; the law does not require a professional man to be a paragon combining the qualities of the polymath and prophet.

18. In Jacob Mathew, the Supreme Court had reiterated that a mere deviation from normal professional practice is not necessarily evidence of negligence. So also an error of judgment on the part of a professional is not negligence per se. The relevant extract of the said judgment reads here as under:-

"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.

30. 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 a surgeon can successfully wield his life-saving scalper to perform an essential surgery, nor can a physician successfully administer the life-saving dose of medicine. Discretion being 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 the society."

19. The conclusions were summed up as follows:-

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upon a doctor would be a disservice to the society.

(3) A professional may be held liable for negligence on one of the two findings: either he was not possessed of the requisite skill which he professed to have possessed, or, he did not exercise, with reasonable competence in the given case, the skill which he did possess. The standard to be applied for judging, whether the person charged has been negligent or not, would be that of an ordinary competent person exercising ordinary skill in that profession. It is not possible for every professional to possess the highest level of expertise or skills in that branch which he practices. A highly skilled professional may be possessed of better qualities, but that cannot be made the basis or the yardstick for judging the performance of the professional proceeded against on indictment of negligence.

(4) The test for determining medical negligence as laid down in Bolam's case [1957] 1 W.L.R. 582 holds good in its applicability in India.

(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 304A of 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 304A of the 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 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.

(8) Res ipsa loquitur is only a rule of evidence and operates in the domain of civil law specially in cases of torts and helps in determining the onus of proof in actions relating to negligence. It cannot be pressed in service for determining per se the liability for negligence within the domain of criminal law. Res ipsa loquitur has, if at all, a limited application in trial on a charge of criminal negligence."

20. In the subsequent judgment of Kusum Sharma (supra) , the earlier principles laid down in the case of Jacob Mathew were reiterated by the Apex Court in the following words:-

"(I) Negligence is the breach of a duty exercised by omission to do something which a reasonable man, guided by those considerations which ordinarily

regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do.

(II) Negligence is an essential ingredient of the offence. The negligence to be established by the prosecution must be culpable or gross and not the negligence merely based upon an error of judgment.

(III) The medical professional is expected to bring a reasonable degree of skill and knowledge and must exercise a reasonable degree of care. Neither the very highest nor a very low degree of care and competence judged in the light of the particular circumstances of each case is what the law requires.

(IV) A medical practitioner would be liable only where his conduct fell below that of the standards of a reasonably competent practitioner in his field.

(V) In the realm of diagnosis and treatment there is scope for genuine difference of opinion and one professional doctor is clearly not negligent merely because his conclusion differs from that of other professional doctor.

(VI) The medical professional is often called upon to adopt a procedure which involves higher element of risk, but which he honestly believes as providing greater chances of success for the patient rather than a procedure involving lesser risk but higher chances of failure. Just because a professional looking to the gravity of illness has taken higher element of risk to redeem the patient out of his/her suffering which did not yield the desired result may not amount to negligence.

(VII) Negligence cannot be attributed to a doctor so long as he performs his duties with reasonable skill and competence. Merely because the doctor chooses one course of action in preference to the other one available, he would not be liable if the course of action chosen by him was acceptable to the medical profession.

(VIII) It would not be conducive to the efficiency of the medical profession if no Doctor could administer medicine without a halter round his neck.

(IX) It is our bounden duty and obligation of the civil society to ensure that the medical professionals are not unnecessarily harassed or humiliated so that they can perform their professional duties without fear and apprehension.

(X) The medical practitioners at times also have to be saved from such a class of complainants who use criminal process as a tool for pressurizing the medical professionals/hospitals particularly private hospitals or clinics for extracting uncalled for compensation. Such malicious proceedings deserve to be discarded against the medical practitioners.

(XI) The medical professionals are entitled to get protection so long as they perform their duties with reasonable skill and competence and in the interest of the patients. The interest and welfare of the patients have to be paramount for the medical professionals."

21. It is in the light of all these principles that the medical negligence attributed to the present petitioners has to be viewed.

22. The victim was admitted in the hospital on 30.11.2004 with dorsal myelitis. Her forearm was amputated on 20.12.2004 i.e. within three weeks of her admission. The data and case papers evidence that an unfortunate viral infection had infected the spinal cord of the victim. She was also having other medical comorbidities. She was given intravenous methylprednisolone on 30.11.2004 pursuant to which she developed a swelling which progressed rapidly leading to septicemia. Record disclosed that at appropriate stages, consultants including neurosurgeon, orthopaedic surgeon, plastic surgeon, CT surgeon, skin specialist etc. had examined the patient and had treated her as per standard protocols and procedures; decision of amputation had also been taken in consultation with orthopaedic surgeon, CT surgeon and plastic surgeon together; this was essentially a life saving procedure for the patient. The opinion of Dr. P.R. Patel had noted that the patient was receiving injectable steroids; there were more chances of getting infection because of immunosuppression; she also had other comorbidities making her a high risk patient; it was unfortunate that thrombophlebitis progressed to necrotising fasciitis and subsequently into septicaemia which necessarily required an amputation of her right forearm as a life saving procedure. The confirming opinion of Dr. P.K. Dave had also noted that methylprednisolone is a standard treatment of transverse myelitis which had to be given to such a patient and administration of the steroids is because of complications of infection which in some cases lead to compartment syndrome; this consulting doctor had noted that the patient had been given proper treatment and was adequately managed at all stages. The minority view of Dr. M. Mukherjee had been overruled. The MCI had accordingly set aside the order of the DMC.

23. The Indian Medical Council Act, 1956 (hereinafter referred to as the "said Act") was promulgated with the object to provide for a reconstitution of the Medical Council of India.

"State Medical Council" has been defined in Section 2(j) and "Council" has been defined in Section 2(b) and refers to the Medical Council of India constituted under this Act.

Professional conduct has been defined in Section 20-A. It reads herein as under:-

"20A: Professional conduct-(1) The Council may prescribe standards of professional conduct and etiquette and a code of ethics for medical practitioners.

(2) Regulations made by the Council under sub-Section (1) may specify which violations thereof shall constitute infamous conduct in any professional respect, that is to say, professional misconduct, and such provision shall have effect notwithstanding anything contained in any law for the time being in force."

Section 33 empowers the MCI to make regulations generally to carry out the

purpose of the Act. Clause (m) empowers the MCI to frame standards of professional conduct and etiquette as also a code of ethics to be observed by medical practitioners.

24. The Indian Medical Council (Professional Conduct, Etiquettes and Ethics) Regulations, 2002 came into force with effect from 06.4.2002.

Chapter 2 lays down the duties of physicians to their patients. Regulation 2.4 states that a registered medical practitioner shall not willfully commit an act of negligence that may deprive the patient or patients from necessary medical care.

Chapter 7 defines "professional misconduct" making the physician liable for disciplinary action.

Chapter 8 confers powers upon the MCI and the State Medical Council to enlarge the scope of matters that may be defined as "professional misconduct". Regulation 8.1 states that the list as per the Regulations is not exhaustive and the MCI and the State Medical Council are in no way precluded from considering and dealing with any other form of professional misconduct that may arise from time to time.

Regulation 8.2 provides for the remedy to file a complaint before the appropriate Medical Council.

Regulation 8.8 provides the provision for an appeal to the MCI against the decision of the State Medical Council.

25. A perusal of Regulation 8.1 read with 8.2 and 8.8 show that under Regulation 8.1, the MCI exercises both original as also appellate jurisdiction. Where a complaint has been filed with regard to professional misconduct before the appropriate Medical Council which in a given case could be the State Medical Council or the MCI; in the eventuality that the medical practitioner has been found guilty of professional mis-conduct, he would have a right to file an appeal with the MCI if his original complaint has been decided by a State Medical Council. Regulation 8.8 has consciously used the expression "State Medical Council" as it provides for an appellate remedy; an appeal would lie against a decision under Regulation 8.2 if taken by a State Medical Council. Regulation 8.7 makes the position even clearer. It states that where the State Medical Council fails to decide a complaint against a delinquent physician within a period of six months from the date of receipt of complaint and the MCI has reason to believe that there is no justifiable reason for the State Medical Council not to conclude and decide the complaint within a period of six months, the MCI may either direct the concerned State Medical Council to conclude and decide the complaint within a time bound period or alternatively to withdraw the complaint to itself or refer the same to the Ethics Committee. These Regulations thus make it clear that an appeal would lie from an opinion rendered by the DMC. This has also been held by a Bench of this Court in *Dr. Alka Gupta Vs. Medical Council of India and Another*,

26. As noted supra, charges had been framed against the petitioners primarily on the report given by the team of doctors of DMC. The order of the DMC has since been set aside in toto by the MCI. The complainant was aggrieved by this order of the MCI and had sought a review of this order which was dismissed. The independent remedy of a writ petition filed by the complainant against the said order of the MCI also stands dismissed. The order of the MCI has since attained a finality. The MCI had taken the opinion of three expert doctors in this field before the order was passed. The majority opinion of the doctors was that there was no medical negligence attributable to the petitioners qua this incident of 20.12.2004.

27. The parameters and guidelines laid down by the Apex Court in Jacob Mathew (Supra) to decide what may or may not be medical negligence have also been noted supra. The Supreme Court has time and again reiterated that before rashness or negligence can be attributed to a professional and particularly to a doctor, certain special considerations must apply. A simple lack of care or an error of judgment may not be a proof of negligence on the part of a medical professional. At the cost of repetition, the record discloses that adequate treatment and care had been given to the victim; she was admitted as a patient with a spinal cord related problem; she had a peculiar disease which was diagnosed as Dorsal Myelitis. For the treatment of such a disease, methylprednisolone had to be injected into the patient. Such a patient was considered to be a high risk patient as she was a person suffering from viral transverse myelitis, which is a serious condition and carries a poor prognosis; more so the patient was also suffering from hypertension and hypothyroidism. The administration of such steroids was also a known cause of complications. On 8.12.2004 the patient developed increased swelling and blisters on the right forearm with other complications. She was diagnosed with Compartment Syndrome, hence an emergent surgery (fasciotomy) was done on the same day and the complainant was further diagnosed with Necrotizing Fasciitis.

28. An extract from the Emergency Medicine Journal, January 1997, Volume 14, Issue 1 has detailed the complexities of steroid injections and the complications which follow are termed as "Necrotising Fasciitis". This term had been first used in 1952 and described as a rapidly progressive inflammation and necrosis of subcutaneous tissue and adjacent fascia with secondary necrosis of the overlying skin. Unless appropriate intervention is taken, there is often a rapid progression to frank cutaneous gangrene, muscle necrosis and moderate or severe systemic toxicity which carries a high rate of morbidity and mortality. Where a diagnosis of necrotizing fasciitis is suspected, early aggressive surgical treatment after the initial resuscitation is essential if mortality and morbidity is to be prevented.

29. Record disclosed that doctors such as a consultant orthopaedic surgeon, a neurosurgeon and a skin specialist were all consulted before the amputation of right forearm of the victim, the advice of the orthopaedic surgeon was obtained; the amputation was however necessitated on 20.12.2004 as a life saving procedure.

30. In this background, the considered view of this Court is that the doctors had performed their duty and exercised the required degree of professional skill and competence which was required of such professionals. It is not the case of the victim that the treating doctors were not competent or that the said doctors were not qualified in the said field. It is also not as if that there are other cases of negligence pending against these professional doctors. In no manner can it be said that the doctors had not performed their duties without a reasonable care and without necessary competence. In fact it has been brought to the notice of the Court that petitioner No. 1 is a reputed neurosurgeon and so also petitioner No. 3 who was a part of his team. Petitioner No. 2 was the general physician in the hospital at that time.

31. This Court notes that it is also an obligation of society to ensure that professional persons and especially doctors are not unnecessarily harassed or doubted in a way which would impair or come in their way of performing their duties with a free mind. This Court is thus of the view that the opinion of the MCI must prevail; they being experts in the said field and having set aside the order of the DMC, no case even prima facie under Section 338 of the IPC is made out against the petitioners.

32. Petition is allowed. Impugned order is set aside.

33. Petition disposed off in the above terms.