

(2018) 04 J&K CK 0024

In the Jammu And Kashmir High Court

Case No : Pet u OF s 561-A No. 285 OF OF 2014

DR. MUQARAB HUSSAIN AND ANR

APPELLANT

Vs

STATE OF JAMMU & KASHMIR

RESPONDENT

Date of Decision : 16-04-2018

Acts Referred:

Code of Criminal Procedure, 1973 — Section 161, 173, 174, 561A
Jammu and Kashmir High Court Rules, 1999 — Rule 138(3)
Constitution of India, 1950 — Article 21
Jammu and Kashmir State Ranbir Penal Code, 1989 — Section 304A

Citation : (2018) 04 J&K CK 0024

Hon'ble Judges : M.K. HANJURA

Bench : Single Bench

Final Decision : Allowed

Judgement

1. The petitioners-doctors by profession, have by invoking the inherent jurisdiction of this Court under and in terms of Section 561-A Cr.P.C, sought

the indulgence of this Court in quashing the order impugned dated 16th May, 2014 passed by the learned Judicial Magistrate, 1st Class, Surankote,

Poonch in case titled, "State Vs. Muqarab Hussain and Another" (bearing File No. 131/2006), arising out of FIR No. 148/2005 for an

offence under Section 304-A RPC.

2. The factual scenario of the case is that on the 27th day of August, 2005, the police authorities of Police Station, Surankote came to know from a

reliable source that on the 26th day of August, 2005, one-Shamim Akhter W/o Mohd. Rafi, Caste Thakar R/o Chandi Madh, who was pregnant and

was admitted by her husband in Sub District Hospital, Surankote (in brevity, SDH) died on the hospital bed at about 10 P.M along with the newly born

baby. According to the attendants, the lady died in the hospital due to the

negligence of the operating doctors.Â On the receipt of this information, the police authorities initiated inquest proceedings under Section 174 Cr.P.C, whereafter it was on 08th of September, 2005 that a case for an offence under Section 304-A RPC was registered against the petitioners with which the investigation commenced.

3. During the course of the investigation of the case, what came to the fore is that the deceased was admitted in S.D.H, Surankote by the petitioners and they failed to treat her properly.Â They handled her with negligence, as a consequence of which she breathed her last in the hospital itself.Â On the culmination of the investigation of the case, the police authorities of Police Station, Surankote, Poonch laid a report on the 09th day of October, 2006 against the petitioners before the Court of JMIC, Surankote in terms of Section 173 Cr. P.C.

4. At the pre-trial stage, the learned Magistrate after taking a cue from the law laid down in case titled, â??Jacob Mathew v. State of Punjab & Anr.â?, reported in â??AIR 2005 Supreme Court 3180â? directed the police authorities to re-investigate the matter in the light of the guidelines laid down in the said judicial precedent.Â The police authorities subsequently filed a charge-sheet before the Court of learned Magistrate, Surankote on the 01st day of October, 2013 on the same set of facts and circumstances, as detailed earlier. The learned Magistrate, Surankote charged the accused for the commission of an offence under Section 304-A RPC by his order dated 16th May, 2014 whereafter the prosecution was asked to produce the evidence in support of its case.

5. Aggrieved by the order dated 16th May, 2014 of the learned Magistrate, the petitioners assailed the same before this Court in this petition, filed under Section 561-A Cr. P.C on the grounds, inter alia, that it was at the behest of the relatives of the deceased that an FIR was registered on the 08th day of September, 2005 against the petitioners at Police Station, Surankote for the commission of an offence under Section 304-A RPC.Â It is further stated that the inhabitants of the locality where the deceased dwelled, raised a hue and cry, whereafter Mr. A.K. Raina (IAS) was appointed as a Commissioner of inquiry vide Government Order No. 179-HME of 2006 dated 24th March, 2006 read with Government Order No. 193-HME of 2006 to conduct an inquiry against the petitioners for their alleged negligence in

handling the deceased. The Inquiry Officer, as per the mandate of the Government Order (supra), conducted an inquiry in the matter, in which he concluded that no negligence can be attributed and imputed to the petitioners for causing the death of the deceased.

6. The petitioners have proceeded to state that when the charge-sheet was produced before the Court of Sub Judge JMIC, Surankote, Poonch, the learned Court observed that the surgery of the deceased was conducted by the surgeon specialist and not by the petitioner No. 2, who was an

Assistant Surgeon and the petitioner No. 1 was an anesthetic, which is also reflected in the statements of Dr. Niaz (B.M.O) and surgeon specialist

recorded by the police authorities under Section 161 Cr.P.C. The learned Court observed that certain aspects of the matter require further

investigation. The learned Trial Court also opined that every negligence cannot be said to an act of liability under the criminal law. On these set of

facts and circumstances, the learned Court below directed the respondents to re-investigate the matter in light of the judgment of the Hon

Supreme Court, detailed above. It has also been stated that it has taken a long time of approximately eight years for the police authorities to file the

second charge-sheet after the re-investigation of the case was directed and such a course is in complete violation of the mandate of Article 21 of the

Constitution of India, which provides that the right to speedy trial and investigation is a fundamental right.

7. Heard and considered.

8. What requires to be said at the outset is that from an analysis of the entire material placed on record by the police authorities, the learned Trial

Magistrate in the first charge-sheet filed against the petitioners directed the police authorities to follow the mandate of law laid down by the Supreme

Court in Jacob Mathew's case (supra) in the re-investigation of the case. The police authorities, however, did not make a request to the

competent authority in the Health and Medical Education Department to constitute a Board of Doctors that would examine the contours of the case to

find out whether there was any negligence on the part of the doctors as would render them liable to a criminal action, as postulated under the

provisions of Section 304-A RPC. The police authorities also failed to seek the opinion of the medical expert in the field although it took them a long

time to reinvestigate the matter.Â

9. Dealing with an almost identical case, this Court in the case bearing OWP No. 1729/2014, titled, 'Ghulam Ahmad Wani Vs. State of JK and

others', c/w 561-A No. 02/2015 and 'Dr. Mufti Mehmood Ahmad Farooqi Vs. State of JK and Anr.', decided on 15th November, 2017 by a

Bench adored by me, it was held as under:-

The law is that the concept of negligence differs in civil and criminal law. What may be negligence in civil law may not necessarily be negligence in

the criminal law. The element of 'mens rea' has to be shown to exist for concluding that the negligence amounted to an offence. To bring an act

within the definition of criminal negligence, the degree of negligence has to be of a higher order, i.e. it should amount to gross negligence. Negligence,

which can neither be rated as gross nor of a higher degree, may give a person the teeth to seek the settlement of his claim in Civil law, but it cannot

form the baseline for the prosecution of an accused under Section 304-A RPC. The expression 'Rash or Negligent Act', as it occurs in Section

304-A RPC, has to be read to mean 'gross negligence' as is the settled position in the Criminal law. 10. In a case of prosecution of a medical

professional for negligence under criminal law, it has to be shown authoritatively that the acts of omission and commission attributed to a person were

such that no medical professional in his ordinary senses and prudence would have done or failed to do. The act of the accused doctor should be of

such a nature that the injury which resulted was most likely imminent. The law laid down on the subject is beaming and clear. In 'Dr. Suresh Gupta

v. Govt. of N.C. T. of Delhi', reported in 'AIR 2004 Supreme Court 4091', it has been held as under:Â

'24. No doubt in the present case, the patient was a young man with no history of any heart ailment. The operation to be performed for nasal

deformity was not so complicated or serious. He was not accompanied even by his own wife during the operation. From the medical opinions

produced by the prosecution, the cause of death is stated to be 'not introducing a cuffed endo-tracheal tube of proper size as to prevent aspiration of

blood from the wound in the respiratory passage'. This act attributed to the doctor, even if accepted to be true, can be described as negligent act as

there was lack of due care and precaution. For this act of negligence he may be

liable in tort but his carelessness or want of due attention and skill

cannot be described to be so reckless or grossly negligent as to make him criminally liable.Â

25. Between civil and criminal liability of a doctor causing death of his patient the court has a difficult task of weighing the degree of carelessness and

negligence alleged on the part of the doctor. For conviction of a doctor for alleged criminal offence, the standard should be proof of recklessness and

deliberate wrong doing i.e. a higher degree of morally blameworthy conduct.Â

26. To convict, therefore, a doctor, the prosecution has to come out with a case of high degree of negligence on the part of the doctor. Mere lack of

proper care, precaution and attention or inadvertence might create civil liability but not a criminal one. The courts have, therefore, always insisted in

the case of alleged criminal offence against doctor causing death of his patient during treatment, that the act complained against the doctor must show

negligence or rashness of such a higher degree as to indicate a mental state which can be described as totally apathetic towards the patient. Such

gross negligence alone is punishable.Â

27. See the following concluding observations of the learned authors in their book on medical negligence under the title 'Errors, Medicine and the Law'

[by Alan Merry and Alexander McCall Smith at pg. 247-248]. The observations are apt on the subject and a useful guide to the courts in dealing with

the doctors guilty of negligence leading to death of their patients :-Â

Criminal punishment carries substantial moral overtones. The doctrine of strict liability allows for criminal conviction in the absence of moral

blameworthiness only in very limited circumstances. Conviction of any substantial criminal offence requires that the accused person should have acted

with a morally blameworthy state of mind. Recklessness and deliberate wrong doing, levels four and five are classification of blame, are normally

blameworthy but any conduct falling short of that should not be the subject of criminal liability. Common-law systems have traditionally only made

negligence the subject of criminal sanction when the level of negligence has been high a standard traditionally described as gross negligence.Â

Blame is a powerful weapon. When used appropriately and according to morally defensible criteria, it has an indispensable role in human affairs. Its

inappropriate use, however, distorts tolerant and constructive relations between

people. Some of life's misfortunes are accidents for which nobody is morally responsible. Others are wrongs for which responsibility is diffuse. Yet others are instances of culpable conduct, and constitute grounds for compensation and at times, for punishment. Distinguishing between these various categories requires careful, morally sensitive and scientifically informed analysis."

28. After examining all the medical papers accompanying the complaint, we find that no case of recklessness or gross negligence has been made out

against the doctor to compel him to face the trial for offence under section 304A of the IPC. As a result of the discussion aforesaid on the factual and

legal aspect, we allow this appeal and by setting aside the impugned orders of the Magistrate and of the High Court, quash the criminal proceedings

pending against the present doctor who is accused and appellant before us.

10. In the case of Jacob Mathew's case (supra) the legal principles and the law laid down in Dr. Suresh Gupta's case have been re-affirmed.

The relevant excerpts of the judgment germane in the context of the issues raised here in these petitions are detailed as under:-

49. We sum up our conclusions as under:-

(1) Negligence is the breach of a duty caused 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. The definition of negligence as

given in Law of Torts, Ratanlal & Dhirajlal (edited by Justice G.P. Singh), referred to hereinabove, holds good. Negligence becomes actionable on

account of injury resulting from the act or omission amounting to negligence attributable to the person sued. The essential components of negligence

are three: 'duty', 'breach' and 'resulting damage'.

(2) Negligence in the context of medical profession necessarily calls for a treatment with a difference. To infer rashness or negligence on the part

of a professional, in particular a doctor, additional considerations apply. A case of occupational negligence is different from one of professional

negligence. A simple lack of care, an error of judgment or an accident, is not proof of negligence on the part of a medical professional. So long as a

doctor follows a practice acceptable to the medical profession of that day, he cannot be held liable for negligence merely because a better alternative

course or method of treatment was also available or simply because a more skilled doctor would not have chosen to follow or resort to that practice or procedure which the accused followed. When it comes to the failure of taking precautions what has to be seen is whether those precautions were taken which the ordinary experience of men has found to be sufficient; a failure to use special or extraordinary precautions which might have prevented the particular happening cannot be the standard for judging the alleged negligence. So also, the standard of care, while 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. Similarly, 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 particular time (that is, the time of the incident) at which it is suggested it should have been used.Â

(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.Â

(4) The test for determining medical negligence as laid down in Bolam's case [1957] 1 W.L.R. 582, 586 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.Â

(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'.Â

(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.Â

(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.Â

50. In view of the principles laid down hereinabove and the preceding discussion, we agree with the principles of law laid down in Dr. Suresh Gupta's

case (2004) 6 SCC 422 and reaffirm the same. Ex abundant cautela, we clarify that what we are affirming are the legal principles laid down and the

law as stated in Dr. Suresh Gupta's case. We may not be understood as having expressed any opinion on the question whether on the facts of that

case the accused could or could not have been held guilty of criminal negligence as that question is not before us. We also approve of the passage

from Errors, Medicine and the Law by Alan Merry and Alexander McCall Smith which has been cited with approval in Dr. Suresh Gupta's case

(noted vide para 27 of the report).Â

Guidelines re: prosecuting medical professionals

51. As we have noticed hereinabove that the cases of doctors (surgeons and physicians) being subjected to criminal prosecution are on an increase.

Sometimes such prosecutions are filed by private complainants and sometimes by police on an FIR being lodged and cognizance taken. The

investigating officer and the private complainant cannot always be supposed to have knowledge of medical science so as to determine whether the act

of the accused medical professional amounts to rash or negligent act within the domain of criminal law under Section 304-A of IPC. The criminal

process once initiated subjects the medical professional to serious embarrassment and sometimes harassment. He has to seek bail to escape arrest, which may or may not be granted to him. At the end he may be exonerated by acquittal or discharge but the loss which he has suffered in his reputation cannot be compensated by any standards.Â

52. We may not be understood as holding that doctors can never be prosecuted for an offence of which rashness or negligence is an essential

ingredient. All that we are doing is to emphasize the need for care and caution in the interest of society; for, the service which the medical profession

renders to human beings is probably the noblest of all, and hence there is a need for protecting doctors from frivolous or unjust prosecutions. Many a

complainant prefers recourse to criminal process as a tool for pressurizing the medical professional for extracting uncalled for or unjust compensation.

Such malicious proceedings have to be guarded against.Â

53. 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 Bolam's 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 investigation officer feels satisfied that the doctor proceeded against

would not make himself available to face the prosecution unless arrested, the arrest may be withheld.Â

54. Reverting back to the facts of the case before us, we are satisfied that all the averments made in the complaint, even if held to be proved, do not make out a case of criminal rashness or negligence on the part of the accused appellant. It is not the case of the complainant that the accused-appellant was not a doctor qualified to treat the patient whom he agreed to treat. It is a case of non-availability of oxygen cylinder either because of the hospital having failed to keep available a gas cylinder or because of the gas cylinder being found empty. Then, probably the hospital may be liable in civil law (or may not be we express no opinion thereon) but the accused appellant cannot be proceeded against under Section 304A IPC on the parameters of Bolam's test.Â

The appeals are allowed. The prosecution of the accused appellant under Section 304A/34 IPC is quashed.

56. All the interlocutory applications be treated as disposed of.Â??

11. Dealing on the subject further, the Apex Court of the country in Civil Appeal No. 368/2013 arising out of the SLP (C) No. 26043/2010 directed that 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 him 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 chances of success may be 10 percent (or so), rather than taking a 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 disservice to the Society.

12. Taking the above aspect into consideration, the Apex Court of the country in Jacob Mathew's case felt the need to incorporate certain guidelines in the Statutory Rules and Executive Instructions by the Government of India and/ or the State Governments in consultation with the

medical Council of India. It directed further that till such time this is not done, certain guidelines which should govern the future prosecution of the

doctors for offences of which criminal rashness or criminal negligence is an ingredient, require to be regulated. In the guidelines incorporated by the

Apex Court, the Court ordained that the private complaint may not be entertained unless the complainant has produced, prima facie, evidence before

the Court in the form a credible opinion given by another competent Doctor to support the charge of rashness or negligence on the part of the accused

Doctor. The Supreme Court commanded that the investigating Officer should before proceeding against the Doctor accused of a rash or negligent act,

obtain an independent and competent medical opinion preferably from a Doctor in Government service in that branch of medical practice who can

normally be expected to give an impartial and unbiased opinion applying the Bolam's test to the facts collected in the investigation. The Supreme

Court further held that a Doctor, accused of rashness or negligence, may not be arrested in a routine manner (simply because a charge has been

leveled 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.Â

13. The guidelines as contained in Jacob Mathew's case (supra) had to be followed by the police authorities before filing the second charge-sheet

against the accused/petitioners, which has not been done although a direction was extended by the Trial Court on that court.Â These guidelines have

been violated with impunity.Â In the second charge-sheet, it has, however, been stated by the police authorities that the directions contained in the

order of the learned JMIC, Surankote to seek recourse to the guidelines evolved on the subject by the Supreme Court have been followed in their

entirety and the opinion of the Block Medical Officer has been solicited in that behalf. The Block Medical Officer, as can be seen from his certificate

attached to the file has opined that the deceased Shamim Akhter (lady) was admitted in the labour room of SDH, Surankote by the petitioners along

with other patients and the patient was neither under his supervision nor had he any knowledge about her admission in the hospital.Â He has

proceeded to state that the petitioner Dr. Muqarab Hussain (Anesthetic) is the husband of Dr. Nusrat Bhatti and Dr. Nusrat Bhatti has been working

as a Lady Surgeon and been regularly conducting deliveries since the date of her posting in S.D.H, Surankote.Â He has not stated anywhere that the deceased died due to any negligence on the part of the petitioners.

14. There is not even a whisper of evidence in the certificate of Block Medical Officer to state that the petitioners handled the deceased in such a manner as would constitute criminal negligence.Â Relying upon the statements of the witnesses, who are raw and have no knowledge of medical science in the absence of any expert opinion on record to state that the petitioners committed a reckless and a deliberate wrong will neither be in tune nor in line with the law delivered by the Supreme Court. A simple lack of care, or an error of judgment or an accident cannot be construed as the proof of negligence by a medical professional.Â

In Jacob Mathew's case (Supra), the Supreme Court spelt out and emphasized the need to produce prima facie evidence before the Court in the form of credible opinion given by another competent doctor, preferably from a doctor in government service qualified in that branch of medical practice to support the charge of rashness or negligence on the part of an accused doctor.Â The Supreme Court viewed that such a doctor is normally expected to give an impartial and independent opinion, applying Bolam's test to the facts collected during the investigation of the case.Â No such opinion has been solicited in the instant case and, therefore, the case cannot solely rest on the statements of those who have no expertise and are not conversant with the medical science.Â They cannot be said to be the ones who can determine and decide whether the act of the petitioners falls within the purview and the definition of rash and negligent act, as postulated and provided in Section 304-A RPC.

15. The other aspect of the case, which requires consideration is that the Government directed that an inquiry be conducted into the matter and Mr.

A.K. Raina (IAS) was appointed as a Commissioner of Inquiry.Â His findings, as these form a part of the file are detailed below:-

â??It is a cock and bull story where Anesthetist and lady Assistant Surgeon had been targeted since they subsequently having been accused of

having demanded a bribe, the inquiry officer has woven a pernicious story, which can be summed up. â??Give a dog a bad name and then hang it,â??

Regarding the acceptance and giving of bribe, it may be mentioned that the

Gynecologist/BMO have categorically stated that no bribe had been demanded or accepted by them.Â In fact, in the FIR, which has lodged within 24 hours before Police Station, Surankote, there is no mention of demanding bribe or registration of case u/s 161 RPC.Â Though death of negligence had been reported in the FIR, there is no material available on record to suggest that any bribe had been demanded/accepted by Dr. Muqarab Hussain, Anesthetic and Dr. Nusrat-UI-Nissa, lady Surgeon, nor is it corroborated by the evidence except the statement of the deceased relatives.Â This charge could not be proved and the inquiry officer is handicapped because he can not wield powers under criminal procedure code to probe into this aspect because he cannot exercise any power under any act outside Rule 33 of Classification, Control and Appeal Rules.Â The allegation of bribe is not proved at all.

This hospital, though in a militancy infested area is working in pitiable condition, there is lax Superintendence, control and supervision. There is want of synchronization between different organs so that the hospital could work as an organic whole.Â Perhaps the patient could have been saved, had the bold being given in time, but the Laboratory Assistant refused to give it there being no HIV kit and no blood bank as is averred by the BMO and Surgeon Specialist. Where there is no HIV kit, there, no operation is possible.Â It is manifest and apparent breach of medical pre-requisite even the lesser evil would have been to give blood without HIV Testing, but there was diluted command and control.Â The head of unit/BMO was far away from the hospital.Â Such administration needs much to be deserved.Â The BMO being a gynecologist should have taken the case in time to save the lady patient and it is lack of commandrie to assign the blame to subordinates.

No charge does stand against Dr. Muqarab Hussain, who has acted as an Anesthetist and the patient did not die of Anesthetic irregularity or deficiency.Â The imputation of negligence or dereliction does not stand against him or he has at any point of time crossed the centre and circumference of medical credo or Hippocratic oath.Â The death of the patient may be a divine inevitably and death has a million exits.Â

Whichever providence chooses prevails, but organization, management of criticality of time and synchronicity and availability of all facilities could reduce loss of lives and limb is governed by scientific principles of management,

control, supervision, vigilance or a unit or entity working with cohesiveness and co-ordination.â??

16. On the face of the findings of the Commissioner of inquiry, it can well be stated that the charge against the petitioners/accused cannot be sustained in the eyes of law. The Inquiry Officer has gone into the minutest details of the case and has reported that no case of negligence is made out against the petitioners.Â

17. In view of the preceding analysis on the application of the law laid down in Jacobs Mathewâ??s case (supra), buttressed with the report of the

Commissioner of Inquiry, this is not a case where the petitioners should face trial, as that would be a sheer abuse of the process of law, particularly,

when the occurrence has taken place on the 26th August, 2005.Â The case has wended its tortuous course by now for a long period of more than

twelve years and the petitioners have during this period been tottering or rather doddering their way to register their presence, in the Court.Â The

sword of Damocles has been kept hanging high on the heads of the petitioners during this period and their fate has been kept hanging like that of a

â??Trishunkaâ?as a consequence of which, the order impugned dated 16th May, 2014 passed by the learned Judicial Magistrate, 1st Class,

Surankote, Poonch in File No. 131/2006 dated 09th October, 2006, arising out of FIR No. 148/2005 in case titled, â??State Vs. Muqarab Hussain and

Anr.â?? for an offence under Section 304-A RPC is quashed along with all other proceedings emanating therefrom.