CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date: 18-05-2015
1. The petitioners, who are medical professionals, have challenged the order dated 6.07.2012 passed by the learned Sessions Judge, Bhagalpur, whereby the revision application filed by the petitioners against an order dated 15th March, 2012 passed by the learned Judicial Magistrate, 1st Class, Bhagalpur in connection with Complaint Case No. 1951 of 2009, holding that a prima facie case is made out for the offences under Sections 304-A, 420 read with 34 of the Indian Penal Code against the petitioners and one another and summoning them to face trial, has been dismissed.

2. The prosecution case, in brief, as alleged by the complainant in his written report filed before the learned Chief Judicial Magistrate, Bhagalpur with regard to an occurrence which took place on 9.3.2008 is that the complainant's brother Pankaj Chaudhary was taken to the clinic of petitioner no. 1, Dr. Ashok Kumar Singh for treatment of his ailment. The medical history of the patient was told to him and all earlier prescriptions relating to treatment of the patient was also shown to him. After examining the patient and going through his medical history,

petitioner no. 1 Dr. Ashok Kumar Singh advised him for operation of hernia. He told that he would charge Rs. 5,500/- as operation fee and the anesthetist assisting him would charge Rs. 800/- as his fee. On 8th March, 2008, the complainant paid Rs. 2,800/- to the petitioner no.1and promised to pay the remaining amount after operation. On 9.3.2008 at 10.00 a.m., the patient was taken to the clinic of petitioner no. 1 and on the same day, at about 4.15 p.m., he was taken to the operation theatre for operation of hernia. After a few while, the family members of the complainant heard cry of the patient and when they tried to inquire about the same, the nurse chided them. At about 6.00 p.m., the nurse told them that the operation was successful and the patient would be taken out of the operation theatre very soon. After about half an hour, when petitioner no. 2. Dr. Abha Singh was contacted by the family members of the complainant in order to inquire about the condition of the patient, she also reprimanded them, but after a few while, petitioner no. 1 told that the condition of the patient was deteriorating and a senior doctor had to be called to attend the patient. Thereafter, the family members of the complainant rushed into the operation theatre. They were shocked to see that the patient was already dead by that time. When they questioned the necessity of calling the senior doctor when the patient was already dead, they were pushed out of the clinic.

3. It has further been alleged in the complaint that the matter was reported to the police, pursuant to which, Industrial Area P.S. Case No. 12 of 2008 was registered. The anesthetist, Dr. Vikash Kumar, was arrested and taken to the police station but he was released on police bail after initial inquiry. It has been claimed that due to the medical negligence of the petitioners, the patient had died.
4. As noted above, on the basis of the written complaint submitted by the complainant to the police, Bhagalpur Industrial Area P.S. Case No. 12 of 2008, was already registered under Section 304-A of the Indian Penal Code on 9.3.2008 itself.
5. The allegations made in the first information report are verbatim the same as alleged in the present complaint petition. The police investigated the case and on completion of investigation, found the accusation to be false. Accordingly, a final report was submitted by the police in the matter.
6. During pendency of investigation of the police case, the aforementioned complaint case was filed before the learned Chief Judicial Magistrate, Bhagalpur on 20.03.2008 in the form of protest petition. While accepting the final report submitted by the police, the learned Chief Judicial Magistrate, Bhagalpur directed the protest petition to be registered as a complaint pursuant to which Complaint Case No. 1951 of 2009 was registered.
7. In the complaint case, the statement of complainant was recorded on solemn affirmation under Section 200 of the Code of Criminal Procedure (hereinafter referred to as "the Code"). Apart from the complainant, four other witnesses were also examined in course of inquiry conducted under Section 202 of the Code.
8. After perusal of the complaint petition, the statement of the complainant made on oath and the statement of witnesses recorded during inquiry, the learned Judicial Magistrate-1st Class, Bhagalpur summoned the petitioners and one another namely, Dr. Vikash Kumar to face trial for the offences punishable under Sections 304-A and 420 read with 34 of the Indian Penal Code vide order dated 15th March, 2012.
9. The aforementioned order dated 15th March, 2012 was challenged in revision before the learned Sessions Judge, Bhagalpur in Criminal Revision No. 191 of 2012. After hearing the parties, the learned Sessions Judge, Bhagalpur dismissed the revision application vide impugned order dated 16.07.2012.
10. Mr. Ramakant Sharma, learned senior counsel for the petitioners, has submitted that both the petitioners are qualified doctors and are serving the patients since long. They have good track record of their service and till date no one has raised any grievance against them. The petitioner no.1 is an eminent surgeon of the State. The patient was brought to his clinic on

6th March, 2008. Prior to that he was being treated by other doctors and was suffering from the protrusion of tissue through its opening in surrounding walls in the abdominal region. After taking into consideration the seriousness of problem, as the patient was in severe pain, he was advised for operation of hernia. The attendants were informed about seriousness of the deceased and the risk involved in the operation and after obtaining consent of the patient and his attendant Gopal Lal Chaudhary, his operation was conducted on 9.3.2008 after taking all necessary precautions by petitioner no.1. The operation was successful and the patient was brought out of the operation theatre. However, suddenly his condition started deteriorating and
then the doctors attending him tried their best to save his life, but unfortunately, the efforts of the petitioners to save the life of the patient failed and the patient died. He has submitted that the facts alleged do not make out even a prima facie case against the petitioner no.2.

11. It is further submitted that in the police case lodged by the opposite party no. 2, after thorough investigation and supervision by senior police officers, the accusation against the petitioners was found false and final form was submitted.
12. It is further submitted that the impugned order passed by the learned Magistrate, whereby summons have been issued against the petitioners for the offences under Sections 304-A and 420 of the Indian Penal Code is patently bad, as the same has been passed mechanically and without judicial application of mind. According to him, despite there being no allegation of cheating, the Magistrate has taken cognizance for the offence under Section 420 of the Indian Penal Code.
13. Per Contra, Mr. Akhileshwar Prasad Singh, learned senior advocate, appearing on behalf of the opposite party no. 2, has submitted that it is a gross case of medical negligence and the brother of the complainant died due to the negligence of the petitioners as necessary precautions were not taken before the surgical interference caused on the person of the deceased patient.
14. Mr. Singh has further submitted that there is no illegality in the impugned order by which the learned Magistrate has summoned the petitioners and one another to face trial for the offences punishable under Sections 304-A and 420 read with 34 of the Indian Penal Code, as the complainant has fully supported the allegations made in the complaint petition in his statement made on oath and the statement of the complainant has duly been corroborated by the four witnesses examined in course of inquiry conducted under Section 202 of the Code. According to him, the doctor who conducted postmortem examination on the dead body of the deceased had opined that the death was caused due to cardiogenic shock precipitated by anesthetic and surgical procedure. He has further contended that the conduct of the petitioners was clearly in violation of the established practice of medical profession and, hence, a clear case of gross negligence warranting punishment for the offences punishable under Sections 304-A and 420 of the Indian Penal Code is made out.
15. Mr. S. Dayal, learned Additional Public Prosecutor for the State has also supported the contention of the learned counsel for the opposite party no. 2. He has submitted that there is no error either in the order passed by the learned Magistrate or in the revisional order passed by the learned Sessions Judge, Bhagalpur. According to him, it is not the stage when the defence of the petitioners is required to be sifted and weighed. The materials placed before the Court disclosed a prima facie case against the petitioners and, hence, this Court should not exercise its inherent jurisdiction to interdict a criminal prosecution at the initial stage.
16. I have heard respective counsel for the parties and with their assistance perused the materials available on record. I find that there is absolutely no allegation of cheating in the complaint petition against any accused person. I am completely at a loss as to how the Magistrate could even think of taking cognizance for the offence punishable under Section 420 I.P.C. the materials on record do not make out case against the petitioners under Section 420 I.P.C. There was no dishonest intention on the part of the petitioners right from the beginning to induce the patient into parting with money for his treatment.
17. The only other section under which cognizance has been taken is section 304-A of the Indian Penal Code. Section 304- A of the Indian Penal Code states that whoever causes the death of a person by a rash or negligent act not amounting to culpable homicide shall be punished with an imprisonment for a term of two years or with fine or with both.
18. It would appear from the allegations made in the complaint petition that there is a vague and omnibus allegation of negligence against the petitioner no.1 and the anesthetist, Dr. Vikash Kumar, which has not been supported by an independent medical expert. In absence of any medical expert report it would be unsafe to straightway draw a conclusion that there is a prima facie case against the petitioners for committing the offence of criminal medical negligence.
19. It is a matter of concern that after happening of some unfortunate event, there is a tendency to put blame upon medical professionals. The changing doctor patient relationship and commercialization of modern medical practice has brought spurt in launching prosecution against the medical professionals in recent times. On the one hand, there can be unfavourable result of treatment and on the other hand, the patient/attendant suspects negligence as a cause of their suffering.
20. However, the medical professionals are duly protected if the action is taken in good faith. The criminal law has invariably placed the medical professionals on a pedestal different from ordinary mortals.
21. Section 80 of the Indian Penal Code states that nothing is an offence which is done by accident or misfortune, and without any criminal intention or knowledge in the doing of a lawful act in a lawful manner by lawful means and with proper

care and caution. It protects a person from criminal liability if the act which killed the other person is done "with proper care and caution", which can be expected of him by a prudent and reasonable man in the circumstances of a particular case.

22. Similarly, Section 81 IPC states that nothing is an offence merely by reason of its being done with the knowledge that it is likely to cause harm, if it be done without any criminal intention to cause harm, and in good faith for the purpose of preventing or avoiding other harm to person or property.

23. Thus, in view of the provisions of Section 80 and 81 of the Indian Penal Code, a doctor cannot be held criminally responsible for a patient's death unless it is shown that he/she was negligent or incompetent, with such disregard for the life and safety of patient that it amounted to a crime against the State.

24. Section 88 of the Indian Penal Code provides for exemption for acts not intended to cause death, done by consent in good faith for person's benefit. The illustration given in section 88 of 1860 of the Indian Penal Code is of great importance which reads as under:-

"A, a surgeon, knowing that a particular operation is likely to cause the death of Z, who suffers under a painful complaint, but not intending to cause Z's death, and intending, in good faith, Z's benefit, performs that operation on Z, with Z's consent. A has committed no offence".

25. From a bare perusal of the illustration given under Section 88 of the Indian Penal Code, it is manifest that a medical professional has been given total protection, if the action is taken in good faith for the person's benefit after taking his consent whether express or implied.

26. Section 92 of the Indian Penal Code provides for exemption of acts done in good faith for the benefit of a person without his consent though the acts cause harm to the person and that person has not consented to suffer such harm.

27. The illustration (c) of the proviso to Section 92 would be important for considering a case of medical negligence which reads as under:-

"92(c) *A*, a surgeon, sees a child suffer an accident which is likely to prove fatal unless an operation be immediately performed. There is no time to apply to the child's guardian. *A* performs the operation in spite of the entreaties of the child, intending, in good faith, the child's benefit. *A* has committed no offence."

28. Section 93 of the Indian Penal Code saves from criminality certain communications made in good faith. It is introduced to protect the innocent without cloaking the guilty. It requires that the communication should have been made (1) in good faith, and (2) for the benefit of the person to whom it is made.

29. The illustration given in Section 93 of the Indian Penal Code speaks of a surgeon. It reads as under:-

"*A,* a surgeon, in good faith, communicates to a patient his opinion that he cannot live. The patient dies in consequence of the shock. *A* has committed no offence, though he knew it to be likely that the communication might cause the patient's death".

30. A careful scrutiny of Sections 80, 81, 88, 92 and 93 IPC would make it clear that the Indian Penal Code, 1890 has taken care to ensure that a medical professional, who act in good faith, should not be punished.

31. Despite the protection given to the medical professionals under the penal code, the increasing trend of litigation by unsatisfied patients drew attention of the Supreme Court in more than one case. It has recognized the fact of malicious prosecution of medical professionals and ruled against their criminal prosecution unless gross negligence is established. It has held that a medical practitioner cannot be held liable simply because things went wrong from mischance or misadventure or through an error of judgment in choosing one reasonable course of treatment in preference of another. A medical practitioner would be liable only when conduct fell below that of standards of a reasonably competent practitioner in his field.

32. In a landmark judgment in **Jacob Mathew v. State of Punjab & Another [(2005) 6 SCC 1]**, while dealing with the case of negligence by professionals, the Supreme Court succinctly stated in the following words:-

"**18.** In the law of negligence, professionals such as lawyers, doctors, architects and others are included in the category of persons professing some special skill or skilled persons generally. Any task which is required to be performed with a special skill would generally be admitted or undertaken to be performed only if the person possesses the requisite skill for performing that task. Any reasonable man entering into a profession which requires a particular level of learning to be called a professional of that branch, impliedly assures the person dealing with him that the skill which he professes to possess shall be exercised with reasonable degree of care and caution. He does not assure his client of the result. A lawyer does not tell his client that the client shall win the case in all circumstances. A physician would not assure the patient of full recovery in every case. A surgeon cannot and does not guarantee that the result of surgery would invariably be beneficial, much less to the extent of 100% for the person operated on. The only assurance which such a professional can give or can be understood to have given by implication is that he is possessed of the requisite skill in that branch of profession which he is practising and while undertaking the performance of the task entrusted to him he would be exercising his skill with reasonable competence. This is all what the person approaching the professional can expect. Judged by this standard, a professional may be held liable for negligence on one of 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 necessary for every professional to possess the highest level of expertise in that branch which he practises. In *Michael Hyde and Associates* v. *J.D. Williams & Co. Ltd. 2001 PNLR 233(CA)* Sedley, L.J. said that where a profession embraces a range of views as to what is an acceptable standard of conduct, the competence of the defendant is to be judged by the lowest standard that would be regarded as acceptable."

33. The Court further observed higher the acuteness in emergency and higher the complication, more are the chances of error of judgments. It held in para 25 as under:-

"**25.** A mere deviation from normal professional practice is not necessarily evidence of negligence. Let it also be noted that a mere accident is not evidence of negligence. So also an error of judgment on the part of a professional is not negligence *per se*. Higher the acuteness in emergency and higher the complication, more are the chances of error of judgment. At times, the professional is confronted with making a choice between the devil and the deep sea and he has to choose the lesser evil. 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.

Which course is more appropriate to follow, would depend on the facts and circumstances of a given case. The usual practice prevalent nowadays is to obtain the consent of the patient or of the person in- charge of the patient if the patient is not in a position to give consent before adopting a given procedure. So long as it can be found that the procedure which was in fact adopted was one which was acceptable to medical science as on that date, the medical practitioner cannot be held negligent merely because he chose to follow one procedure and not another and the result was a failure."

34. Further, in para 28 and 29, the Court observed about a doctor faced with an emergency as under:-

"**28.** 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.

29. 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."

35. The Court went on to remind in para 47 as under:-

"47. .....Indiscriminate prosecution of medical professionals for criminal negligence is counter-productive and does no service or good to society."

36. The Court exhaustively considered various aspects of negligence on the part of a doctor and summed up its conclusions in para 48 as under:-

" **48.** 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 the 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.
(*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 case (1957) 1 WLR 582*, WLR at p. 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.
(*6*) The word "gross" has not been used in Section 304-A 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 304-A 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."

37. While dealing with a case of medical negligence, the Supreme Court in case of **Kusum Sharma & others** v. **Batra Hospital & Medical Research Centre and others ((2010) 3 SCC 480)** observed in para 87 as under:-

"87. 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 or 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 or most likely imminent."

38. The Court considered leading cases of medical negligence and observed in para 89 as under:-

"**89.** On scrutiny of the leading cases of medical negligence both in our country and other countries specially the United Kingdom, some basic principles emerge in dealing with the cases of medical negligence. While deciding whether the medical professional is guilty of medical negligence following well-known principles must be kept in view:
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 pressurising 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."

39. In **MARTIN F. D'SOUZA** Vs. **MOHD. ISHFAQ ((2009) 3 SCC 1)**, a two-Judge Bench of the Supreme Court has lucidly and elaborately explained the subject of medical negligence and held in para 106 as under:-

"106. We, therefore, direct that whenever a complaint is received against a doctor or hospital by the Consumer Fora (whether District, State or National) or by the criminal court then before issuing notice to the doctor or hospital against whom the compliant was made the Consumer Forum or the criminal court should first refer the matter to a competent doctor or committee of doctors, specialized in the field relating to which the medical negligence is attributed, and only after that doctor or committee reports that there is a prima facie case of medical negligence should notice be then issued to the doctor/hospital concerned. This is necessary to avoid harassment to doctors who may not be ultimately found to be negligent. We further warn the police officials not to arrest or harass doctors unless the facts clearly come within the parameters laid down in *Jacob Mathew case (Jacob Mathew v. State of Punjab, (2005) 6 SCC 1),* otherwise the policemen will themselves have to face legal action."

40. Applying the aforementioned law to the facts of the present case, it is evident that the minimum requirement of the law as regards evidence of a competent medical expert has not been satisfied.

41. As noted above, the patient was suffering from certain ailment. He needed immediate medical attention. He was being treated by different doctors from before. The patient was taken to the Nursing Home of the petitioner no. 1 by the complainant and others. The patient and his attendant had consented for operation of hernia. It is also an admitted fact that the petitioners are qualified doctors. Petitioner no. 1 had conducted the operation with assistance of an anesthetist. Unfortunately, the condition of the patient deteriorated after the operation and despite efforts taken by the doctors, the life of the patient could not be saved. These admitted facts make it amply clear that it was not a case of gross medical negligence or rashness of such a degree as to indicate a mental state that can be described as totally apathetic towards the patient for which the petitioners could have been criminally prosecuted.

42. I further find that there is absolutely no allegation in the complaint against the petitioner no. 2, but the learned Magistrate mechanically summoned her to face trial. While passing the order, neither the court of magistrate nor the revisional court has appreciated the facts or the law involved in the case.

43. For all the aforementioned reasons, I am of the opinion that there was no prima facie material against the petitioners for summoning them for the offence of criminal medical negligence or for the offence of cheating.

44. Accordingly, the order dated 15th March, 2012 passed by the learned Judicial Magistrate, 1st Class, Bhagalpur in Complaint Case No. 1951 of 2009 and the order dated 16.07.2012 passed by the learned Sessions Judge, Bhagalpur in Criminal Revision No. 191 of 2012, as well as the entire criminal prosecution arising out of Complaint Case No. 1951 of 2009, pending before the learned Judicial Magistrate-1st Class, Bhagalpur, are quashed.

45. The application stands allowed.

(Ashwani Kumar Singh, J.)