

possible by fixing dates on weekly basis. The parties shall appear before the trial court on 27th of May, 2025.

39. With the aforesaid directions and observations, this Court finds that the revisions lacks merit and is, accordingly, **dismissed**. The order passed by the trial court dated 26.07.2011 is upheld. Costs are made easy.

40. The record of the trial court shall be remitted to the court concerned most expeditiously by sending a special messenger within a week from today.

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(2025) 5 ILRA 1783

**ORIGINAL JURISDICTION**

**CRIMINAL SIDE**

**DATED: ALLAHABAD 12.05.2025**

**BEFORE**

**THE HON'BLE MRS. MANJU RANI  
CHAUHAN, J.**

CrI. Misc. Application U/S 482 No. 39316 of  
2023

**Dr. Neeraj Kumar** ...Applicant  
**Versus**  
**State of U.P. & Anr.** ...Opp. Parties

**Counsel for the Applicant:**

Sri Shekhar Chaudhary, Sri Vishal Kashyap,  
Sri G.S. Chaturvedi (Sr. Advocate)

**Counsel for the Respondents:**

Sri Anuruddh Chaturvedi, Sri Dinesh Kumar  
Sharma, G.A.

**Criminal Procedure Code, 1973 - Section 482 — Indian Penal Code, 1860 - Sections 304 & 304A — Medical negligence — Prosecution of doctor — Scope of criminal liability — Confessional St.ment to police — Inadmissibility — Medical Board exonerating the applicant — Magistrate's failure to consider expert opinion before**

**summoning — Held, confession recorded under Section 161 Cr.P.C. inadmissible — Medical practitioner cannot be prosecuted under Section 304, 304AIPC unless gross or reckless negligence of a very high degree is proved- Proceedings quashed. (Paras 29, 48, 55, 59, 66 and 69)**

**HELD:**

Coming to the merits of the case, two issues have been touched upon by learned counsel for the applicant. The primary issue for consideration is whether a St.ment recorded by the Investigating Officer under Section 161 of the Code of Criminal Procedure can form the basis for initiating criminal proceedings against the applicant, and whether such a St.ment is admissible as evidence for that purpose. (Para 29)

In light of the legal principles established in Jacob Mathew (supra) case, the liability of a doctor for medical negligence must be assessed carefully. A doctor who diligently treats and cures a patient should not be held criminally liable for mere errors in judgment or minor lapses. However, those doctors who act with gross negligence, demonstrating a blatant disregard for standard medical practices, can be held accountable under criminal law. (Para 48)

In Jacob Mathew Vs St. of Punj. & anr.11 , the Hon'ble Apex Court, in paragraph 12 of the judgment, held that mere lack of care or an act of negligence, which may give rise to civil liability, is not sufficient to attract criminal liability. The Court emphasized that negligence, for the purpose of establishing a criminal offence, must be of a gross or very high degree. Only such aggravated negligence can amount to a criminal act warranting penal consequences. (Para 55)

It is an admitted position that the applicant was a qualified doctor. There are no specific allegations of any act of omission or commission against the accused persons in the entire plethora of documents relied upon by learned counsel for the parties. The act of giving injections as attributed to the doctor, even if accepted to be true, could be described as an act of negligence as there may have been a lack of due care and precaution prior to giving the

injections. But, the Court cannot categorically hold the applicant criminally liable for this act of negligence as he may be his carelessness or want of due attention. As has already been discussed and observed by the Hon'ble Apex Court in the case of S.VS Narayan Rao (supra) that an error of judgment in giving five injections consequently, as in the present case, does not amount to criminal negligence. (Para 59)

In the case of Dr. Mohan vs. St. of T.N. & anr.14 , the Apex Court has held that after reading over accusation of instructing a staff nurse to administer an injection over telephone which injection when administered to the patient, apparently reacted, resulting into his death would not constitute an offence under Section 304 Part-I IPC and could be covered by Section 304A IPC. (Para 66)

**Application allowed.** (E-14)

**List of Cases cited:**

1. Dipakbhai Jagdish Chandra Patel Vs St. of Gujarat, (2019) 16 SCC 547
2. Agnoo Nagesia Vs St. of Bihar, AIR 1966 SC 119
3. Jacob Mathew Vs St. of Punj., (2005) 6 SCC 1
4. Dr. Suresh Gupta Vs Government of NCT of Delhi, AIR 2004 SC 4091
5. S.VS Narayan Rao Vs Ratnamala, (2013) 10 SCC 741
6. Dr. Mohan Vs St. of T.N., Criminal Appeal Nos. 720–722 of 2025 (SC)
7. St. of Punj. Vs Davinder Pal Singh Bhullar, (2011) 14 SCC 771
8. Martin F. D'Souza Vs Mohd. Ishfaq, AIR 2009 SC 2049
9. St. of Punj. Vs Shiv Ram & ors.
10. R.P. Kapur Vs St. of Punj. AIR 1960 SC 866, St. of Har. Vs Bhajan Lal 1992 SCC (Cr.) 426, (2005) 7 SCC 1

11. St. of Bihar Vs P.P. Sharma 1992 SCC (Cr.) 192

12. Zandu Pharmaceutical Works Ltd. Vs Mohd. Saraful Haque & anr. (Para-10) 2005 SCC (Cr.) 283

13. Badrinath Vs St. of T.N. & ors., AIR 2000 SC 3243

14. St. of Kerala Vs Puthenkavu N.S.S. Karayogam & Anr, (2001) 10 SCC 191

15. Mangal Prasad Tamoli (dead) by Lrs. Vs Narvadeshwar Mishra (dead) by Lrs. & Ors., (2005) 3 SCC 422

(Delivered by Hon'ble Mrs. Manju Rani Chauhan, J.)

1. Mr. G.S. Chaturvedi, learned Senior Counsel assisted by Mr. Vishal Kashyap and Mr. Shekhar Chaudhary, learned counsels appeared to represent the applicants, Mr. Anuruddha Chaturvedi and Mr. Dinesh Kumar Sharma, learned counsels appeared for the opposite party no.2 and Mr. Amit Singh Chauhan, learned AGA-I for the State. Perused the record.

2. The present 482 Cr.P.C. application has been filed to quash the charge-sheet No.593 of 2023, dated 25.08.2023 and cognizance/summoning order dated 19.09.2023 as well as the entire proceedings of Criminal Case No.7991 of 2023 (State vs. Dr. Neeraj Kumar), arising out of Case Crime No.376 of 2023, under Sections 304 IPC, Police Station-Khurja Nagar, District-Bulandshahar, pending before the court of Chief Judicial Magistrate, Bulandshahar.

3. Earlier on 27.10.2023, the present application under Section 482 CrPC was disposed of, wherein a direction was given to the applicant to surrender before the

court concerned within a period of one month from that date and apply for bail, which was to be decided expeditiously by the court below, in accordance with law.

4. It appears that the applicant filed anticipatory bail application No.1431 of 2024 in which some order dated 29.02.2024 was passed. A recall application No.3 of 2023 was filed for recalling the order dated 27.10.2023 in which, on 12.03.2024, the Co-ordinate Bench of this Court passed the following order:-

**“Ref:- Criminal Misc. Recall Application No. 3 of 2023**

1. Vide order dated 29.02.2024 the coordinate Bench was passed the order. Para 9 of the order is quoted below:-

"9. Connect with Criminal Misc. Application 482 No. 39316 of 2023 (Dr. Neeraj Kumar Vs. State of U.P. and another) and place the matter before Hon'ble The Chief Justice for nominating a Bench to hear both the matters and list, if possible, on 06.03.2024 before the appropriate Bench."

2. Office is directed to place the record before Hon'ble the Chief Justice for nomination in pursuance of the order dated 29.02.2024. As per perusal of record there is no nomination by Hon'ble the Chief Justice.

3. This Court is of the view that Criminal Misc. Anticipatory Bail Application No. 1431 of 2024 moved on behalf of the applicant should be heard by the Court having jurisdiction and Application U/s. 482 No. - 39316 of 2023 is on different cause in which recall application is pending.

4. Since counsel for 482 application who has moved recall application is not present, the case is passed

over and for hearing of Criminal Misc. Anticipatory Bail Application No. 1431 of 2024 the same should be placed before Hon'ble the Chief Justice for nomination of Criminal Misc. Anticipatory Bail Application No. 1431 of 2024.

5. In Court opinion, there is no need to tag the Anticipatory Bail Application with U/s. 482 Application, as both the proceedings are different proceedings and Anticipatory Bail Application be detached from 482 Application.”

5. The applicant approached before the Apex Court by means of filing Petition for Special Leave to Appeal (Crl.) No.14974 of 2023, wherein on 24.11.2023, the Apex Court passed the following order:-

"Having regard to the submissions made by the learned Senior Counsel and having gone through the impugned order passed by the High Court, we are not inclined to entertain the present petition at this juncture. However, considering the affidavit filed by the concerned counsel-Mr.Shekhar Chaudhary before this Court, it shall be open for the petitioner to approach the High Court with a request to consider the said affidavit.

The High Court, on such request being made, may consider the same and pass appropriate orders in accordance with law, without being influenced by the dismissal of the present Special Leave Petition.

With the above observations, the Special Leave Petition is dismissed.

Pending applications, if any, shall stand disposed of."

6. In view of the aforesaid order, on the recall application no.3 of 2023 counsel for the applicant was heard and the

application was rejected by the Co-ordinate Bench of this Court vide order dated 04.04.2024 holding it not maintainable in pursuance of provisions contained under Section 362 Cr.P.C.

7. Subsequently, the applicant again approached before the Apex Court by means of filing Criminal Appeal No.3929 of 2024 (Petition for Special Leave to Appeal (Crl.) No.5059 of 2024, wherein the Apex Court, vide order dated 23.09.2024, requested the High Court to decide the matter on merits as expeditiously as possible. Till the final disposal of the said proceedings, the trial of the case being Sessions Case No.854 of 2024 pending before the court of Session Judge, Bulandshahar, U.P. was stayed.

8. The matter was again placed before Hon'ble Mr. Justice Deepak Verma, who had earlier decided the case on 27.10.2023 and had also rejected the recall application on 04.04.2024. Thereafter, on 23.11.2024, the Co-ordinate Bench of this Court passed the following order:-

1. Hon'ble The Chief Justice vide order dated 17.11.2024, nominated this matter to this Bench.

2. This Court vide order dated 27.10.2023 decided the instant application under Section 482 Cr.P.C., after hearing learned counsel for the parties. On persuasion of learned counsel for the applicant that applicant would apply for bail if some protection is granted to him, the matter was decided, thereafter, applicant challenged the order of this Court dated 27.10.2023 before Hon'ble Apex Court by filing an affidavit that his counsel has never made any averment for disposing of the instant application under Section 482 Cr.P.C., as stated in the order dated 27.10.2023. Paragraph no. 3 of the

affidavit filed before the Hon'ble Apex Court is quoted as under:-

"That with all due respect, I stated that I did not make any statement indicating a lack of intent to press the case on its merits. I would like to emphasize that considering the circumstances of the present case, where I am representing a highly esteemed doctor, and in light of the Medical Board's report exonerating the doctor from any negligence, there was never any reason for me to avoid arguing the case on its merits. Further, the prayers sought in the petition before the Hon'ble High Court cannot be agitated before the Ld. Trial Court and hence there was no occasion for me to take any such oral prayer as recorded in the impugned order."

3. Since, the order of this Court dated 27.10.2023, was passed after hearing learned counsel for the parties but applicant has fully mistrusted this Court, in such scenario, this Court is not inclined to hear the instant matter again. Accordingly, this matter is released.

4. This order has been passed in the presence of Sri Vishal Kashyap, learned counsel for the applicant and Sri Aniruddh Chaudhary, learned counsel for the informant.

5. Let the matter be placed before appropriate Bench after obtaining nomination from Hon'ble The Chief Justice, if possible, on 27.11.2024, showing the name of Sri Aniruddh Chaudhary as counsel for the informant.

9. In view of the order of Hon'ble The Chief Justice dated 26.11.2024 as well as Office report dated 27.11.2024, the matter was placed before this Court to be heard on merits. Therefore, on 06.01.2025, the following order was passed:-

"Earlier learned counsel, Mr. Vishal Kashyap (Adv Roll No. A/V

0830/13) appearing in the matter is directed to be present before this Court along with Mr. Shekhar Chaudhary, (Adv. Roll No. A/S 0965/12) learned counsel for the applicant.

From the records, this Court has noted the conduct of aforesaid counsels, who are directed to be present before this Court on the next date fixed along with counsel, who appeared in the matter.

Mr. Anuruddha Chaturvedi, learned counsel for opposite party no.2 and Mr. Amit Singh Chauhan, learned A.G.A. for the State are present.

List this case on 21.01.2025 at 2:00 P.M.”

10. Thereafter, on 21.01.2025, the following order was passed:-

“Heard Mr. G.S. Chaturvedi, learned Senior Counsel assisted by Mr. Shekhar Chaudhary and Mr. Vishal Kashyap, learned counsels for the applicant, Mr. Anuruddh Chaturvedi, learned counsel for opposite party no.2 and Mr. Amit Singh Chauhan, learned A.G.A. for the State.

Mr. G.S. Chaturvedi, learned Senior Counsel for the applicant submits that vide order dated 23.09.2024 the Apex Court has directed this Court to decide the instant application on merits in accordance with law, though, the fact about charge being framed by the trial court has been noticed by the Apex Court, on an objection raised by the respondents therein. He further submits that while deciding the case on merits, the subsequent developments have also to be considered by this Court.

In view of the above, learned Senior Counsel for the applicant prays for and is granted ten days time to file amendment application.

As prayed by Mr. G.S. Chaturvedi, learned Senior Counsel for the applicant, list this case on 06.02.2025 at 2:00 P.M.”

11. Again on 17.02.2025, this Court passed the following order:-

“Mr. Vishal Kashyap, learned counsel for the applicant, Mr. Dinesh Kumar Sharma, learned counsel for opposite party no.2 and Mr. Amit Singh Chauhan, learned A.G.A. for the State are present.

On 21.01.2025, Mr. Mr. G.S. Chaturvedi, learned Senior Counsel for the applicant had requested time for filing of amendment application.

Amendment applicant is not filed on behalf of the applicant.

On the matter being taken up, Mr. Vishal Kashyap, learned counsel for the applicant states that applicant has engaged Senior Counsel to argue the matter and he is not in a position to argue the matter.

On the request of learned counsel for the applicant, list this case on 24.02.2025 at 12:00 O'clock.”

12. On 24.02.2025, the following order was passed:-

“Learned counsel for the applicant has filed amendment application in the Court today, which is taken on record. Office is directed to register the same.

Learned counsel for the opposite party no.2 submits that certain documents have to be brought on record for proper adjudication of the matter.

List this case on 5th March, 2025 at 12 pm.

In the meantime, learned counsel for the opposite no.2 may file an affidavit annexing all the necessary documents.”

13. On 05.03.2025, this Court reserving the judgment passed the following order:-

“Short counter affidavit on behalf of opposite party no.2 filed today in the Court, is taken on record. Office is directed to register the same.

Learned Senior Counsel for the applicant does not wish to file rejoinder affidavit.

Heard Mr. G.S. Chaturvedi, learned Senior Counsel assisted by Mr. Vishal Kashyap and Mr. Shekhar Chaudhary, learned counsels for the applicants, Mr. Anurudh Chaturvedi, learned counsel assisted by Mr. Dinesh Kumar Sharma, learned counsel for opposite party no.2 and Mr. Amit Singh Chauhan, learned A.G.A. for the State.

Judgement reserved.

Learned counsels for both the parties are directed to file their written submission within a week.”

14. Before proceeding with the case, brief facts of the case are, that for the incident dated 13.02.2023, the Opposite Party No.2 moved an application under Section 156(3) Cr.P.C. on 27.02.2023 before Chief Judicial Magistrate, Bulandshahar, against the applicant. Subsequently, another application U/s 156(3) Cr.P.C. was moved by the Opposite Party No.2 before the Chief Judicial Magistrate, Bulandshahar implicating another person, namely, Prem Prakash Arora, Administrative Manager, Kailash Hospital, Khurja, alleging additional charges of medical negligence against the applicant Dr. Neeraj Kumar and another co-accused.

15. On the aforesaid application, the Chief Judicial Magistrate, Bulandshahar

vide its letter dated 20.03.2023, directed the Chief Medical Officer, Bulandshahar to constitute a Medical Board. Accordingly, the Chief Medical Officer, Bulandshahar vide its letter dated 25.03.2023 constituted a Medical Board comprising of five doctors. The Medical Board submitted its report on 08.04.2023 before the court below and cleared the applicant from all charges.

16. Mentioning about the said report, wherein the applicant was cleared from all charges, the application U/s 156(3) Cr.P.C. moved by the opposite party no.2 was allowed by the court below vide order dated 10.05.2023 directing the Police to register the FIR against the applicant and other co-accused persons. Accordingly, the first information report dated 12.05.2023 was registered as Case Crime No.370 of 2023, under Section 304 IPC, Police Station-Khurja, District-Bulandshahar.

17. The aforesaid FIR was challenged by means of filing Criminal Misc. Writ Petition No.8295 of 2023 and the Division Bench of this Court vide order dated 30.05.2023 granted protection to the applicant till submission of police report.

18. After investigation, the charge sheet has been submitted on 25.08.2023, under Section 304 IPC. Pursuant to which, the applicant has been summoned by the court concerned vide order dated 19.09.2023. Hence the present application has been filed.

19. Learned counsel for the applicant has made the following submissions:-

(i) There is a delay in filing the complaint against the applicant as the son of opposite party no.2 died on 14.02.2023

and the application U/s 156(3) Cr.P.C. was given on 27.02.2023 and again after some improvement on 17.03.2023.

(ii) The applicant is a doctor by profession and holds an M.B.B.S., M.D. degree and runs a private clinic at Khurja, District-Bulandshahar.

(iii) The enquiry report submitted by the Medical Board “nowhere” discloses that any negligence was committed by the applicant during the treatment of deceased.

(iv) The charge sheet u/s 304 IPC was submitted on 25.08.2023 on which the Investigating Officer recorded the second statement of applicant U/s 161 Cr.P.C.

(v) The second statement of applicant recorded U/s 161 Cr.P.C. on 25.08.2023 upon which the Investigating Officer relied in submitting the charge sheet, can't be used as the same is a confessional statement and cannot be taken as an admissible piece of evidence as provided under Sections 25 and 26 of the Indian Evidence Act 1872, which prohibits the use of such statement and confessional statement made by the accused before the Police. In support of his submission, he has relied upon the judgement of Apex Court in the case of **Dipakbhai Jagdish Chandra Patel vs. State of Gujarat and another**<sup>1</sup>. Relevant portion of the aforesaid judgment is as under:-

“6.....while dealing with the question of framing charges. At that stage, the court is required to confine its attention to only those materials collected during investigation which can be legally translated into evidence and not upon further evidence (dehors those materials) that the prosecution may adduce in the trial which would commence only after the charges are framed and the accused denies the charges. The Designated Court was, therefore, not at all justified in taking into consideration the confessional statement

(vi) Again in para 21 of the aforesaid judgment, the Apex Court held as under:-

“21. At the stage of framing the charge in accordance with the principles which have been laid down by this Court, what the Court is expected to do is, it does not act as a mere post office. The Court must indeed sift the material before it. The material to be sifted would be the material which is produced and relied upon by the prosecution. The sifting is not to be meticulous in the sense that the Court dons the mantle of the Trial Judge hearing arguments after the entire evidence has been adduced after a full-fledged trial and the question is not whether the prosecution has made out the case for the conviction of the accused. All that is required is, the Court must be satisfied that with the materials available, a case is made out for the accused to stand trial. A strong suspicion suffices. However, a strong suspicion must be founded on some material. The material must be such as can be translated into evidence at the stage of trial. The strong suspicion cannot be the pure subjective satisfaction based on the moral notions of the Judge that here is a case where it is possible that accused has committed the offence. Strong suspicion must be the suspicion which is premised on some material which commends itself to the court as sufficient to entertain the prima facie view that the accused has committed the offence.

(vii) He further submits that admissibility of statement of accused, in law, made to a police officer is barred under Section 162 Cr.P.C. He has relied upon Para 37 to 41 of the aforesaid judgement, which are as follows:-

“37. Thus, quite clearly, a person who stands in the shoes of the accused being named in the First Information

Report, can be examined by the Police Officer under Section 161 of the Cr.PC. The next question however is, as to whether the statement given by a person who stands in the shoes of an accused and who gives a statement, whether the statement is admissible in law? It is here that Section 162 of the Code comes into play:

“162. Statements to police not to be signed: Use of statements in evidence.

(1) No statement made by any person to a police officer in the course of an investigation under this Chapter, shall, if reduced to writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose, save as hereinafter provided, at any inquiry or trial in respect of any offence under investigation at the time when such statement was made: Provided that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused, and with the permission of the Court, by the prosecution, to contradict such witness in the manner provided by section 145 of the Indian Evidence Act, 1872 (1 of 1872 ); and when any part of such statement is so used, any part thereof may also be used in the re- examination of such witness, but for the purpose only of explaining any matter referred to in his cross- examination.

(2) Nothing in this section shall be deemed to apply to any statement falling within the provisions of clause (1) of section 32 of the Indian Evidence Act, 1872 (1 of 1872), or to affect the provisions of section 27 of that Act. Explanation.- An omission to state a fact or circumstance in the statement referred to in sub- section (1)

may amount to contradiction if the same appears to be significant and otherwise relevant having regard to the context in which such omission occurs and whether any omission amounts to a contradiction in the particular context shall be a question of fact.”

38. A Bench of three learned Judges of this Court in Mahabir Mandal and others v. State of Bihar<sup>14</sup>, had this to say:

“39. Coming to the case of Kasim, we find that there is no reliable evidence as may show that Kasim was present at the house of Mahabir on the night of occurrence and took part in the disposal of the dead body of Indira. Reliance was placed by the prosecution upon the statement alleged to have been made by Kasim and Mahadeo accused at the police station in the presence of Baijnath PW after Baijnath had lodged report at the police station. Such statements are legally not admissible in evidence and cannot be used as substantive 14 AIR 1972 1331 evidence. According to Section 162 of the Code of Criminal Procedure, no statement made by any person to a police officer in the course of an investigation shall be signed by the person making it or used for any purpose at any enquiry or trial in respect of any offence under investigation at the time when such statement was made. The only exception to the above rule is mentioned in the proviso to that section. According to the proviso, when any witness is called for the prosecution in the enquiry or trial, any part of his statement, if duly proved, may be used by the accused and with the permission of the court by the prosecution, to contradict such witness in the manner provided by Section 145 of the Indian Evidence Act and when any part of such statement is so used, any part thereof may

also be used in the re-examination of such witness for the purpose only of explaining any matter referred to in his cross-examination. The above rule is, however, not applicable to statements falling within the provisions of Clause 1 of Section 32 of the Indian Evidence Act or to affect the provisions of Section 27 of that Act. It is also well established that the bar of inadmissibility operates not only on statements of witnesses but also on those of the accused (see *Narayan Swami v. Emperor* [AIR 1939 PC 47]). Lord Atkin, in that case, while dealing with Section 162 of the Code of Criminal Procedure observed:

“Then follows the section in question which is drawn in the same general way relating to ‘any person.’ That the words in their ordinary meaning would include any person though he may thereafter be accused seems plain. Investigation into crime often includes the examination of a number or persons none of whom or all of whom may be suspected at the time. The first words of the section prohibiting the statement if recorded from being signed must apply to all the statements made at the time and must therefore apply to a statement made by a person possibly not then even suspected but eventually accused.” Reference may also be made to Section 26 of the Indian Evidence Act, according to which no confession made by any person whilst he is in the custody of a police officer, unless it be made in the immediate presence of a Magistrate, shall be proved against such person. There is nothing in the present case to show that the statements which were made by Kasim and Mahadeo accused on September 18, 1963, at the police station in the presence of Baijnath resulted in the discovery of any incriminating material as may make them admissible under Section

27 of the Indian Evidence Act. As such, the aforesaid statements must be excluded from consideration.” (Emphasis supplied)

39. Therefore, the combined effect of these provisions can be summarized as follows:

Unless a person is accused of an offence, he cannot claim the protection of Article 20(3) of the Constitution of India.

40. Such a person, viz., person who is named in the FIR, and therefore, the accused in the eyes of law, can indeed be questioned and the statement is taken by the Police Officer. A confession, which is made to a Police Officer, would be inadmissible having regard to Section 25 of the Evidence Act. A confession, which is vitiated under Section 24 of the Evidence Act would also be inadmissible. A confession unless it fulfills the test laid down in *Pakala Narayana Swami* (supra) and as accepted by this Court, may still be used as an admission under Section 21 of the Evidence Act. This, however, is subject to the bar of admissibility of a statement under Section 161 of the Cr.PC. Therefore, even if a statement contains admission, the statement being one under Section 161, it would immediately attract the bar under Section 162 of the Cr.PC.

41. Bar under Section 162 Cr.PC, no doubt, operates in regard to the statement made to a Police Officer in between two points of time, viz., from the beginning of the investigation till the termination of the same. In a case where statement containing not a confession but admission, which is otherwise relevant and which is made before the investigation commences, may be admissible. We need not, however, say anything more.

(viii) He further submits that no confession made to a police officer shall be proved against a person accused of an offence. Section 162 of the Code of

Criminal Procedure forbids the use of any statement made by any person to a Police Officer in the course of investigation for any purpose at any enquiry or trial in respect of the offence under investigation. The aforesaid has been held by the Apex Court in the case of **Agnoo Nagesia (appellant) vs. State of Bihar**<sup>2</sup>.

(ix) The present case has been lodged after due thought and consultation as the son of the opposite party no.2 expired on 14.02.2023 and first application U/s 156(3) Cr.P.C. was filed on 27.02.2023, thereafter, with an improved version, second application U/s 156(3) Cr.P.C. was filed on 17.03.2023, which shows considerable and unexplained delay.

(x) The Hon'ble Supreme Court in a catena of decisions has held that medical practitioner found responsible cannot be exposed to criminal prosecution. The Apex Court in a case of **Jacob Mathew vs. State of Punjab**<sup>3</sup>, while quashing the prosecution of the accused appellant in detail described the term "negligence" but the same has not been followed by the court below while passing the order dated 19.09.2023 in a mechanical manner without applying its judicial mind.

(xi) In the aforesaid judgment, the Apex Court has gone to the extent of holding that a private complaint cannot 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 charges of rashness or negligence on the part of the accused doctor. The investigating officer should act before proceeding against the doctor accused of rashness or negligent act or omission, obtain an independent and complete 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.

(xii) The Hon'ble Supreme Court in the case of **Martin F. D'Souza vs. Mohd. Ishfaq**<sup>4</sup> upholding the case of Jacob Mathew (supra) and gave certain directions in para 117, which is as follows:-

"117. 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 complaint was made the Consumer Forum or 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 concerned doctor/hospital. 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's case (supra), otherwise the policemen will themselves have to face legal action."

(xiii) The court below while passing the order dated 10.05.2023 directing for registration of FIR and issuing summons vide order dated 19.09.2023 has not considered the expert report given by the Medical Board, which is totally illegal and against the directions of the Hon'ble Supreme Court.

(xiv) Thus on the aforesaid grounds, the proceedings are nothing but an abuse of process of law and hence, the prosecution against the applicant is wholly unjustified and liable to be quashed.

20. On the other hand, learned counsel for the opposite party no.2 submits that:-

(i) An application U/s 156(3) Cr.P.C. was filed by the father of the deceased on 27.02.2023 but the aforesaid application was not pressed by the opposite party no.2 as certain relevant facts were not mentioned in the said application. The second application U/s 156(3) Cr.P.C. was moved on 17.03.2023, on which, the Chief Judicial Magistrate, Bulandshahar directed the Chief Medical Officer, Bulandshahar to set up a Medical Board of five doctors to enquire and submit its report before the Court.

(ii) Pursuant to the direction of the concerned court, Medical Board was constituted comprising five doctors of B.B.D., District Hospital, Bulandshahar whereas the applicant was working as Government Doctor (Chest Physician) from November, 2006 to 2015 at S.S.M.J. Hospital, Khurja District Bulandshahar.

(iii) The Medical Board submitted its report on 08.04.2023 before the court concerned, exonerating the applicant without conducting a proper enquiry and without considering the fact that high dose of antibiotics and anti-malarial injections would have been given to the patient, who has empty stomach. The injections given were Mero SB 1.5mg, 2 doses and injection Artesunate Falcigo 60mg, 3 doses. These injections were prescribed by the applicant in his hand written prescription (Slip) and the informant placed said prescription along with the Bill which is part of the evidence

collected by the I.O. The aforesaid 5 injections were intravenous and were injected only in 10-15 minutes and this was the reason from where the condition of the patient started deteriorating and this was not considered by the Medical Board, despite evidence of the same being on record and specifically pleaded in application under section 156(3) Cr.P.C.

(iv) After submission of the medical report, the trial court vide order dated 10.05.2023, categorically recorded a finding that a prima-facie cognizable offence is made out and the correct facts can be determined only in investigation and hence, court directed for investigation.

(v) He further submits that the report submitted by the Medical Board is not conclusive for the Magistrate to exonerate the accused Doctor and the Magistrate after perusal of the report can proceed to pass order for investigation by the police after considering the report. However the order dated 10.05.2023 was never challenged by the applicant and thus the present F.I.R. came to be lodged on 12.05.2023, Police Station-Khurja Nagar, District-Bulandshahar, under section 304 I.P.C.

(vi) The aforesaid first information report was challenged before this Court by means of Criminal Misc. Writ Petition No.8295 of 2023 in which the Division Bench of this Court vide order dated 30.05.2023 stayed the arrest of the applicant during the Investigation.

(vii) Initially the Investigation was being carried out by Inspector Shri Dheeraj Singh which subsequently was transferred to Inspector, Crime Branch on 25.07.2023 by the order of Additional S.P., Bulandshahar.

(viii) Inspector, Crime Branch, on 04.08.2023, after going through the Investigation carried out by the previous

Investigating Officer and the evidence collected by him as well as considering the report of the Medical Board came to the conclusion that the Medical Board had not performed its duty in a proper manner and had concealed the facts and had further presented the same in a fraudulent manner.

(ix) On 22.08.2023, Investigating Officer in order to verify the contents and statements of the applicant as well as the findings of the Medical Board examined Dr. Neeraj Kumar on those aspects which were noted by the I.O. on 04.08.2023. The applicant in the affidavit filed in support of the application under Section 482 Cr.P.C. had never claimed that no such statement was given that he was examined by the Investigating Officer. In fact, the aforesaid statements were concealed and not filed by the applicant.

(x) On 25.08.2023, the chargesheet was filed by the Investigating Officer giving therein the details of the entire investigation and the evidence collected during the course of investigation, in respect of the allegation levelled in the First Information Report as well as the statements of the witnesses recorded during the course of investigation.

(xi) Initially, the present application was dismissed by the Co-ordinate Bench of this Court vide order dated 27.10.2023 on the concession of the counsel for the applicant. The aforesaid concession was made by the present counsel and alternative prayer was orally made which was accepted by the Co-ordinate Bench of this Court but on the basis of false affidavit filed before Hon'ble Supreme Court by the counsel for the applicant while challenging the order dated 27.10.2023, stating therein that no such concession was given by him before the Hon'ble Court which was recorded. The Hon'ble Supreme Court vide order dated

24.11.2023 remanded back the matter without setting aside the order passed by the Co-ordinate Bench of this Court directing the applicant to file recall application with the averments made in the affidavit filed before Hon'ble Supreme Court. The aforesaid order dated 24.11.2023 was ex-parte order.

(xii) Pursuant to the order dated 24.11.2023 passed by the Hon'ble Supreme Court, Criminal Misc. Recall Application No.03 of 2023 was filed by the applicant on 01.12.2023 and when the averments made in the affidavit were confronted then the applicant himself admitted that the concession was given by him and since the present recall application under section 362 Cr.P.C. is not maintainable hence the Co-ordinate Bench of this Court vide order dated 04.04.2024 rejected the said recall application on this ground.

(xiii) The aforesaid order dated 04.04.2024 passed by the Co-ordinate Bench of this Court was again challenged before the Hon'ble Supreme Court stating that the Co-ordinate Bench of this Court had not decided the application considering the affidavit filed before Hon'ble Supreme Court as was directed vide order dated 24.11.2023 by Hon'ble Apex Court.

(xiv) Ultimately, the Hon'ble Supreme Court vide order dated 23.09.2024 again remanded back the matter without setting aside the previous two orders passed by the Co-ordinate Bench of this Court directing this Court to decide the application under section 482 Cr.P.C. on merits, in accordance with law.

(xv) The aforesaid order dated 23.09.2024 passed by the Hon'ble Supreme Court was brought on record by the applicant vide Application No. I.A. 6 of 2024 filed on 23.10.2024.

(xvi) When the aforesaid Application No.I.A. 6 of 2024 came up

before this Court for hearing, an objection was raised before this Court that since the charge has been framed and the discharge application filed by the applicant has been dismissed vide order dated 16.07.2024, as such the present application is liable to be dismissed on this ground only, then the request was made on behalf of the applicant to amend the prayer made in the application under Section 482 Cr.P.C. as is evident from the order dated 21.01.2025 passed by this Court.

(xvii) Thereafter the amendment application dated 10.02.2025 was served upon the counsel for the Informant on 20.02.2025 and was filed before this Court. In the aforesaid amendment application, the other relevant documents were not brought on record by counsel for the applicant, therefore, time was sought to bring on record those documents for proper adjudication of the case, which was permitted by this Court vide order dated 24.02.2025.

(xviii) In paragraph no.4 of the affidavit dated 24.02.2025, it has been categorically submitted that the order dated 16.07.2024 framing charge and the order dated 16.07.2024 dismissing application for discharge is not amendable under Section 482 Cr.P.C. thus the amendment application is liable to be rejected and even the Hon'ble Supreme Court had not permitted for filing amendment application challenging the order of framing charges despite taking note of the same in its order dated 23.09.2024. Thus at this stage, the petition alongwith amendment application was liable to be rejected.

(xix) Learned counsel for the opposite party no.2 while answering to the argument as raised by counsel for the applicant that the enquiry report was not considered by the Magistrate while passing the order for registration of FIR, submits

that the same is fallacious as the Chief Judicial Magistrate has taken the cognizance of the report of the Medical Board and thereafter concluded that the matter needs investigation and thus directed to lodge F.I.R. as against the applicant and proceed for investigation.

(xx) He further submits that the argument of the applicant that the report of the Medical Board had not recited any negligence on the part of the applicant is misconceived as the report of the Medical Board is not substantive and final document by which the Chief Judicial Magistrate was legally bounded and ought to have dismissed the application of the informant. On the contrary, it is the formality which has to be done only in order to ascertain the correctness of the allegations levelled by the informant and if the Medical Board so constituted had not conducted enquiry in an impartial manner, the Chief Judicial Magistrate is empowered to proceed to pass the orders for registration of the First Information Report and get the investigation conducted as has been done in the present case. The enquiry by the Medical Board was impartial, as is evident from the fact that the informant had specifically in an application alleged that five intravenous injections were administered, which were anti-malarial and antibiotic, despite having information that the patient was empty stomach and the aforesaid intravenous injections proved to be fatal and the condition of the patient deteriorated and resultantly died within 24 hours.

(xxi) The aforesaid aspect was not considered by the Medical Board. The investigating officer while submitting the chargesheet made an observation to this aspect. Investigating Officer while submitting the chargesheet further observed that the treatment of Malaria was given by

the applicant to the patient despite there being no symptoms or report to this effect and the same was injected anti-malarial injections empty stomach to the patient. The anti-malarial and antibiotics injections were not injected in an interval period and no anti-dote was given to the patient even when the health of the patient deteriorated. It is pertinent to state that as per the statement of Doctor Narendra Gupta of Kailash Hospital, Noida recorded by the Medical Board, the cause of death was acute Subarachnoid Hemorrhage with cerebral oedema with sepsis with refractory shock, Acute Kidney Injury, Respiratory Failure. The patient died within 24 hours, i.e. on 14.02.2023 at 05:19 P.M. after administering those five injections by applicant.

(xxii) The argument as placed by counsel for the applicant that chargesheet was submitted on 25.08.2023 after recording the second statement of the applicant on 25.08.2023 is also against the record as the second statement of the applicant which was in question & answer form recorded only to verify the report of the Medical Board and the statement of the informant and other witnesses recorded during the course of investigation. The aforesaid statement was recorded on 22.08.2023 and not on 25.08.2023 as argued by counsel for the applicant.

(xxiii) The argument of counsel for the applicant that the investigating officer relied upon the confessional statement of the applicant recorded on 25.08.2023 (as per the counsel for the opposite party no.2, on 22.08.2023) for filing the chargesheet is totally misconceived. The aforesaid question of fact is evident from Annexure No.C.A.2, wherein prior to submitting the chargesheet, investigating officer had given the conclusions relying upon the statement

of the witnesses as well as the evidence collected during the course of investigation which cannot be questioned at this stage in application under section 482 Cr.P.C. as the said conclusion is based on prima-facie evidence collected by the I.O. as against the applicant so that the applicant had committed an offence for which he is liable to be prosecuted by the Court.

(xxiv) He further submits that the argument as placed by the counsel for the applicant that there was delay in lodging the FIR and the same was lodged afterthought and with consultation is misconceived as the reply to this effect is evident from the Second Application moved under Section 156(3) Cr.P.C.

(xxv) As regards the argument placed by counsel for the applicant that medical professionals when found to have taken reasonable care and caution cannot be exposed to criminal prosecution and heavily relied upon the judgments of the Hon'ble Apex Court in the case of **Jacob Mathew (supra)** and **Martin F. D'Souza (supra)**, learned counsel for the opposite party no.2 submits that the facts of the present case are distinguishable as in the present case, Medical Board submitted an impartial report without meeting the allegations levelled by the applicant in respect of 5 injections administered together, details of which have been collected by the Investigating Officer during the course of investigation.

(xxvi) It is further submitted that the order dated 10.05.2023 by which the First Information Report was lodged, was not challenged by the applicant at the time of filing of Criminal Misc. Writ Petition challenging the F.I.R. and since the same was not challenged at the first instance, hence the order dated 10.05.2023 cannot be questioned now, subsequently, while challenging the chargesheet. It is further

submitted that after perusing the entire investigation by the trial court, cognizance in the chargesheet was taken after finding a *prima-facie* case of medical negligence and notices were issued to the applicant to face a trial vide order dated 19.09.2023.

(xxvii) From the entire investigation *prima-facie* medical negligence of the Doctor has been established after considering the evidence collected by the I.O. and the statement of the Doctors made before the Medical Board, as such the judgment of the Hon'ble Supreme Court passed in the case of **State of Punjab versus Shiv Ram and others**<sup>5</sup> will not come in help to the applicant.

(xxviii) The informant being an Advocate is alleged to have abused the process of law, is totally misconceived. In fact, the informant had adopted the legal procedure established under the law to get justice for his deceased son who died untimely at a young age due to the medical negligence of a doctor, who was not only familiar to the family of the informant but is treated to be God in the society.

(xxix) As per the facts narrated in the evidence collected by the Investigating Officer during the course of Investigation in medical negligence on the part of the Doctor *prima-facie* stands proved. The charges have been framed in the present case and the application for discharge has been rejected as such in view of the law laid down by Division Bench of this Court in the case of (Ram Shankar Singh versus State of U.P. and another) Application under section 482 No. 27288 of 2016, the amendment application as well as the application under section 482 Cr.P.C. are liable to be dismissed as the applicant had tried to extend the litigation at the pre-trial stage itself which renders justice ineffective but also ill-founded as it leads to erosion of evidence.

(xxx) From the perusal of the material on record and looking into the facts of the case, it cannot be said that no offence is made out against the applicant at this stage. All the submissions made at the bar, relate to the disputed questions of fact, which cannot be adjudicated upon by this Court under Section 482 Cr.P.C. at this stage only *prima-facie* case is to be seen in the light of the law laid down by the Hon'ble Supreme Court in cases of **R.P. Kapur Versus State of Punjab AIR 1960 SC 866, State of Haryana Versus Bhajan Lal 1992 SCC (Cr.) 426, State of Bihar Versus P.P. Sharma 1992 SCC (Cr.) 192** and lastly **Zandu Pharmaceutical Works Ltd. Versus Mohd. Saraful Haque and another (Para-10) 2005 SCC (Cr.) 283.**

21. While assisting the Court, learned A.G.A. submits that the applicant is a qualified medical practitioner and the offence alleged against him is of administering injections to the patient, which may have apparently reacted, deteriorating his condition, ultimately resulting into his death. The aforesaid allegation would not constitute an offence under Section 304 Part-I IPC (culpable homicide not amounting to murder) but at most, the same could be covered by Section 304 A IPC (causing death due to negligence). In support of his contention, he has relied upon the judgment of Apex Court in the case of **Jacob Mathew v. State of Punjab.**

22. I have considered the submissions made by the learned counsel for the parties and gone through the records of the present application.

23. Before proceeding to decide the matter on merits, it would be pertinent for this Court to consider the operative portion

of the Apex Court's order dated 23.09.2024, which necessitated listing this matter for hearing. The operative portion of the order reads as follows:-

“8. Having regard to the submissions made by the learned counsels for the parties and the chronology of dates and events, we are of the opinion that when the matter was sub-judice before this Court, the Trial Court should have waited for the outcome of the present proceedings. Since the High Court has not decided the application of the appellant filed under Section 482 Cr.P.C. on merits either in the first round or in the second round, we deem it appropriate to remand the matter to the High Court for deciding the application No.39316/2023 filed by the appellant under Section 482 Cr.P.C. on merits and in accordance with law.

9. The High Court is requested to decide the same as expeditiously as possible. Till the final disposal of the said proceedings, the trial of the case being Session Case No. 854 of 2024 pending before the Court of Sessions Judge, Bulandshahar, U.P. shall remain stayed.

10. Before parting with this order, we clarify that we have not expressed any opinion on the merits of the case.

11. The appeal stands disposed of.”

24. Thus, as per the understanding of this Court, from the aforesaid it is clear that the Apex Court has directed the matter, i.e. Application U/s 482 Cr.P.C. to be decided on its own merits. It would also be appropriate to mention that no order has been passed on the amendment application filed by the counsel for the applicant as the Apex Court had not expressed its view to take into consideration the subsequent developments, i.e. rejection of discharge application and charges being

framed against the applicant. As the Apex Court has already expressed its view that when the matter was subjudice before it, the trial court should have waited for the outcome of the pending proceedings.

25. Before proceeding with the case, it is pertinent to note that the matter is being decided on its merits, as directed by the Hon'ble Apex Court. This adjudication is made without taking into consideration the amendment application that challenges the rejection of the discharge plea as well as the framing of charges, since, to the best understanding of this Court, no such directions have been issued by the Hon'ble Apex Court in this regard.

26. Be that as it may, in case the summoning order, i.e. the initial order passed in the proceedings under question is found to be bad, the consequential orders, i.e. rejection of the discharge application and framing of charges would automatically go in vain. In this regard, it is a settled legal proposition that if an initial action is not in consonance with law, all subsequent and consequential proceedings would be vitiated. The Apex Court in the case of *State of Punjab vs. Davinder Pal Singh Bhullar*<sup>6</sup>, has held that if initial action itself is illegal, all subsequent actions emanating from that act are also a nullity.

27. In *Badrinath v. State of Tamil Nadu & others*<sup>7</sup> and *State of Kerala v. Puthenkavu N.S.S. Karayogam & Anr*<sup>8</sup>, the Apex Court observed that once the basis of a proceeding is gone, all consequential acts, actions, orders would fall to the ground automatically and this principle is applicable to judicial, *quasi-judicial* and administrative proceedings equally.

28. Similarly in *Mangal Prasad Tamoli (dead) by Lrs. v. Narvadeshwar*

*Mishra (dead) by Lrs. & Ors.*<sup>9</sup>, the Apex Court held that if an order at the initial stage is bad in law, then all further proceedings, consequent thereto, will be *non est* and have to be necessarily set aside.

29. Coming to the merits of the case, two issues have been touched upon by learned counsel for the applicant. The primary issue for consideration is whether a statement recorded by the Investigating Officer under Section 161 of the Code of Criminal Procedure can form the basis for initiating criminal proceedings against the applicant, and whether such a statement is admissible as evidence for that purpose.

30. Secondly, it is pertinent to consider whether the accused can be prosecuted under Section 304 of the Indian Penal Code, in light of the landmark judgment delivered by the Hon'ble Supreme Court in **Jacob Mathew v. State of Punjab**<sup>10</sup>. The applicability of Section 304 IPC must be examined in the context of the present facts.

31. To address the first issue, it is appropriate to consider Section 25 of the Indian Evidence Act, 1872. This section pertains to confessions made by an accused person to a police officer. According to the provision, such confessions are inadmissible and cannot be used as evidence against the accused in a court of law.

32. To be considered a statement made to a police officer, the term necessarily implies that there was a communication directed at the officer. In other words, it is not enough that words were merely spoken; they must have been communicated to the officer with the intent or effect of conveying information. The phrase "by any person"

further indicates that the origin of the communication is not limited, but the essential element remains that there must be some form of expression or disclosure made to a police officer for the purpose of informing or conveying meaning. Thus, a statement is only regarded as such when it is effectively communicated to a police officer.

33. **Section 26 of the Indian Evidence Act, 1872—“Confession by accused while in police custody”**. This section states that any confession made by an accused while in the custody of a police officer shall not be admissible in evidence against him, unless it is made in the immediate presence of a Magistrate. The objective is to prevent the possibility of coercion or undue influence by the police, thereby safeguarding the rights of the accused.

34. Section 27 of the Indian Evidence Act provides that when any fact is deposed to, as discovered in consequence of information received from a person accused of an offence, while in the custody of a police officer, so much of that information as distinctly relates to the fact thereby discovered may be proved. This provision is applicable regardless of whether the information amounts to a confession or not.

35. In essence, the aforesaid Section acts as a proviso to Sections 25 and 26 of the Act, which generally render confessions to police officers inadmissible. However, Section 27 carves out an exception, allowing for the admissibility of that portion of the accused's statement which leads directly to the discovery of a relevant fact, thereby lending it evidentiality value.

36. Section 162 of the Criminal Procedure Code bars the use of statements made by an accused to a police officer

during investigation, except for the limited purpose of contradiction as provided under Section 145 of the Indian Evidence Act. However, this exclusion does not extend to the conduct of the accused, particularly when such conduct is incriminatory or indicative of guilt, observed either before, during, or after the occurrence of the alleged offence.

37. The prosecution is not precluded from relying on the accused's conduct, especially when such behaviour is deemed suspicious, evasive, or self-incriminatory, as evidenced during police questioning or interaction. Such conduct may be relevant under Section 8 of the Indian Evidence Act, which allows the admissibility of motive, preparation, previous or subsequent conduct of any party involved in the proceeding, if such conduct directly relates to the fact in issue or a relevant fact.

38. Furthermore, if the investigating officer observes and testifies to such conduct, independent corroboration by a neutral or public witness enhances the evidentiary value, this corroboration strengthens the reliability of the evidence and supports the narrative of the accused's behaviour as indicative of guilt or consciousness of wrongdoing.

39. Thus, while Section 162 CrPC protects the accused from self-incrimination through inadmissible statements, it does not immunize the accused from the evidentiary consequences of their own conduct, especially when it is properly observed, documented, and corroborated.

**40. Section 161 CrPC provides Examination of Witnesses by police. It says:-**

Police can examine any person acquainted with case facts.

Person is legally bound to answer (except self-incriminating questions).

Statements are not signed by the witness.

Recorded during the investigation stage.

**41. Section 162 CrPC envisages Bar on Use of Police Statements. It provides:-**

General rule: Statements made to police cannot be used as evidence.

Exception: Can be used to contradict the witness in court (as per Section 145 of Indian Evidence Act).

Prevents coercion, false confessions, or misuse during trial.

Applies to both prosecution and defence witnesses.

42. Only the actual portion of the statement that contradicts the witness can be used under Section 162 CrPC. Entire statement cannot be used as substantive evidence. Reinforced the purpose of Section 162 CrPC as a safeguard against police abuse.

43. When an accused person provides information to the investigating officer that leads to the discovery of material facts previously unknown to the investigation, such information may fall within the ambit of Section 27 of the Indian Evidence Act, 1872. This provision serves as an exception to the general rule of inadmissibility of confessions made to police officers, as outlined in Sections 25 and 26 of the Act.

44. If the facts discovered through the accused's disclosure are corroborated by a public witness and could not have been discovered but for the accused's

information, such evidence becomes admissible and relevant. The expression "fact discovered" under Section 27 encompasses not just the physical object recovered, but also the location and the knowledge relating to it that the accused uniquely possesses.

45. The probative value and weight of such evidence, however, depend on the factual matrix of each case. Merely because a disclosure statement has been recorded does not render it automatically admissible. The conduct of the accused, if relevant, adds to the credibility of the evidence and must be evaluated carefully in light of surrounding circumstances.

46. Thus, while Section 27 provides a crucial tool for investigation, courts must assess the voluntariness, credibility, and corroboration of the disclosure before relying on it to establish the complicity of the accused.

47. Coming to the second issue, certain provisions are needed to be understood, which are as follows:-

(a) Section 300 of the Indian Penal Code (IPC) defines murder. It lays out specific conditions under which culpable homicide becomes murder. However, the section also provides five exceptions, under which the act, though falling under the general definition of murder, is considered culpable homicide not amounting to murder.

**(b) Section 304 IPC – Punishment for Culpable Homicide Not Amounting to Murder:**

Section 304 IPC prescribes punishment for culpable homicide not amounting to murder and is divided into two parts:

Part I: Applies when the act is done with the intention of causing death or such bodily injury as is likely to cause death.

Punishment: Imprisonment for life, or imprisonment up to 10 years, and fine.

Part II: Applies when the act is done with the knowledge that it is likely to cause death, but without intention to cause death or such bodily injury.

Punishment: Imprisonment up to 10 years, or fine, or both.

(c). Scope of Section 304 IPC: The scope of Section 304 of the Indian Penal Code (IPC) arises when the act of causing death does not amount to murder, as defined under Section 300 IPC. For an accused to be convicted under this section, the prosecution must establish that the accused is indeed guilty, but the case falls within any of the five exceptions to Section 300 IPC.

(i). First Part of Section 304: The first part of Section 304 applies when the act is done with the intention to cause death or to cause such bodily injury as is likely to cause death. The punishment under this part can extend to life imprisonment, or imprisonment of up to ten years, along with a possible fine.

(ii). Second Part of Section 304: The second part applies when the act is done with knowledge that it is likely to cause death, but without any intention to cause death or bodily injury likely to cause death. For this part to apply, the death must have been caused by the assailant under circumstances covered by one of the five exceptions to Section 300 IPC. The punishment is imprisonment of up to ten years, or fine, or both.

48. In light of the legal principles established in **Jacob Mathew (supra)** case,

the liability of a doctor for medical negligence must be assessed carefully. A doctor who diligently treats and cures a patient should not be held criminally liable for mere errors in judgment or minor lapses. However, those doctors who act with gross negligence, demonstrating a blatant disregard for standard medical practices, can be held accountable under criminal law.

49. The aforesaid judgment draws a crucial distinction between simple negligence, which may attract civil liability, and gross negligence, which could invite criminal prosecution. The Hon'ble Supreme Court emphasized that criminal liability should be imposed only when the negligence is of such a high degree that it amounts to a crime against the State. In **Jacob Mathew (supra)** case, the Apex Court has held as under:-

i) Issue: Whether a doctor can be held criminally liable for negligence under Section 304A of the Indian Penal Code (IPC).

ii) Ruling: The Supreme Court held that to prosecute a doctor for criminal negligence, it must be shown that the doctor's conduct was grossly negligent or reckless.

iii) Principle Laid Down: A medical professional cannot be held criminally liable for negligence unless it is proved that they failed to exercise reasonable competence or acted with gross recklessness.

iv) Requirement for Prosecution: Before initiating criminal proceedings, an independent and competent medical opinion must support the charge of gross negligence.

50. Negligence carries different interpretations depending on the legal

context in India, particularly when distinguishing between civil and criminal liability. It would be apt to discuss criminal negligence. Criminal negligence involves a gross and culpable disregard for human life and safety, going beyond mere carelessness. In cases where negligence results in death, the relevant provision is Section 304A of the Indian Penal Code (IPC), which addresses causing death by negligence. This section applies when death occurs due to a rash or negligent act that was not premeditated or intentional, effectively, a form of manslaughter arising from reckless conduct.

51. In more serious instances, where negligence borders on intentional or knowing conduct, Section 304 IPC may come into play. This section deals with culpable homicide not amounting to murder, and may be invoked if the negligence reveals a higher degree of recklessness or gross indifference.

52. When the negligent act causes harm or endangers human life but does not result in death, other relevant provisions include:-

a) Section 336 IPC – Acts endangering life or personal safety of others,

b) Section 337 IPC – Causing hurt by act endangering life or personal safety of others,

c) Section 338 IPC – Causing grievous hurt by act endangering life or personal safety of others.

53. Medical Negligence: In the medical context, criminal negligence is established when a medical professional demonstrates a gross lack of competence or care, essentially, a reckless disregard for a

patient's life or safety. This could amount to *mens rea* (criminal intent), one of the essential elements to establish criminal liability, along with *actus reus* (the guilty act).

54. The Supreme Court of India has repeatedly emphasized that to hold a medical professional criminally liable for negligence, the negligence must be of a gross or reckless nature, not a mere error in judgment or an accident.

55. In **Jacob Mathew v. State of Punjab and Another**<sup>11</sup>, the Hon'ble Apex Court, in paragraph 12 of the judgment, held that mere lack of care or an act of negligence, which may give rise to civil liability, is not sufficient to attract criminal liability. The Court emphasized that negligence, for the purpose of establishing a criminal offence, must be of a gross or very high degree. Only such aggravated negligence can amount to a criminal act warranting penal consequences.

56. The concept of a higher degree of negligence has frequently been cited as a precedent in criminal negligence cases, wherein courts have determined that gross negligence was manifestly evident from the circumstances of the case.

57. In **S.V. Narayan Rao v. Ratnamala & Anr.**<sup>12</sup>, the Hon'ble Supreme Court held that for an act to constitute criminal negligence, the degree of negligence must be of a much higher order, it must be gross or of a very high degree. The Court emphasized that mere inadvertence or an error of judgment does not amount to criminal negligence.

58. Similarly, in **Dr. Suresh Gupta v. Government of NCT of Delhi**<sup>13</sup>, the

Hon'ble Supreme Court clarified that to sustain a prosecution under Section 304A of the Indian Penal Code, the prosecution must establish a very high degree of negligence on the part of the medical practitioner. The Court observed that criminal liability would only arise if the negligence is so gross that it can be termed as recklessness or complete disregard for human life and safety.

59. It is an admitted position that the applicant was a qualified doctor. There are no specific allegations of any act of omission or commission against the accused persons in the entire plethora of documents relied upon by learned counsel for the parties. The act of giving injections as attributed to the doctor, even if accepted to be true, could be described as an act of negligence as there may have been a lack of due care and precaution prior to giving the injections. But, the Court cannot categorically hold the applicant criminally liable for this act of negligence as he may be his carelessness or want of due attention. As has already been discussed and observed by the Hon'ble Apex Court in the case of **S.V. Narayan Rao** (supra) that an error of judgment in giving five injections consequently, as in the present case, does not amount to criminal negligence.

60. 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.

61. To prosecute the applicant for negligence under criminal law, it must be shown and proved that the accused did something or failed to do something which in the present facts of the case, no medical practitioner in his ordinary senses and prudence would have done or failed to do so. Such an act taken by the alleged accused applicant should be of such a nature that the injury which resulted was most likely evident.

62. It is not the case of the informant that the applicant was not a doctor, qualified to treat his son, who may have agreed to treat. It is also not a case that the injections were given intentionally or deliberately knowing that it would deteriorate the condition of the child. It was quite natural that seeing the serious condition, the best possible treatment was provided to the informant's son.

63. This Court also, considering the argument of counsel for the parties finds that any accused person cannot be proceeded against on the basis of statement made by the accused when there is no material other than statement of the accused and any statement of such alleged accused person, who is named in the first informant report cannot be read against and taken as an admissible piece of evidence. Thus, punishing the applicant on the basis of a statement given before the Investigating Officer would not be proper in the present facts and circumstances of the case.

64. It would also be appropriate to consider Article 20(3) of the Constitution of India, which mandates that no person

accused of any offence shall be compelled to be a witness against himself. The guarantee in Article 20(3) is against testimonial compulsion, but there is no reason to confine it to the oral evidence of a person standing his trial for an offence when called to the witness-stand. The protection afforded to an accused in so far as it is related to the phrase to be a witness is not merely in respect of testimonial compulsion in the Courtroom but may well extend to testimony previously obtained from him. It is available, therefore, to a person against whom a formal accusation relating to the commission of an offence has been levelled, which is the normal course may result in prosecution.

65. Considered in this light, the guarantee under Article 20(3) would be available to persons against whom a first information report has been lodged as an accused therein. It would extend to any compulsory process for the production of evidentiary documents which may be reasonably likely to support prosecution against him.

66. In the case of **Dr. Mohan vs. State of Tamil Nadu and another**<sup>14</sup>, the Apex Court has held that after reading over accusation of instructing a staff nurse to administer an injection over telephone which injection when administered to the patient, apparently reacted, resulting into his death would not constitute an offence under Section 304 Part-I IPC and could be covered by Section 304A IPC.

67. From the arguments presented by counsel for the parties, as well as the submissions made on behalf of the State, it appears that reliance was placed on the medical report. However, the court concerned failed to provide any reasoned

order explaining why the medical report was not considered while taking cognizance of the matter.

68. Neither the medical report issued by the medical board has ever been challenged, nor has the concerned Court addressed the discrepancies between this report and the response provided by the investigating officer to the queries raised by the applicant, who is the named accused in the First Information Report. Since the Magistrate has already proceeded with the matter, while summoning the applicant, it would have been appropriate under such circumstances, to examine the merits of the case. This should have been done after a thorough consideration of the facts and the applicable legal provisions. At most, the Magistrate could have issued summons to the applicant under Section 304 Part A of IPC. Even for that case of very high degree of negligence is not proved.

69. In view of the above discussions as well as the observations made in the case of **Jacob Mathew (supra)**, the Charge Sheet No.593 of 2023 and cognizance/summoning order dated 19.09.2023 as well as the entire proceedings of Case No.7991 of 2023 (State vs. Dr. Neeraj Kumar), arising out of Case Crime No.376 of 2023, under Section 304 IPC, Police Station-Khurja Nagar, District-Bulandshahar are hereby **quashed**.

70. The present application under Section 482 Cr.P.C. is, accordingly, **allowed**. There shall be no order as to costs.

71. A copy of this order be sent to the lower court forthwith.

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**(2025) 5 ILRA 1805**  
**ORIGINAL JURISDICTION**  
**CIVIL SIDE**  
**DATED: LUCKNOW 22.05.2025**

**BEFORE**

**THE HON'BLE PANKAJ BHATIA, J.**

Company Petition No. 6 of 2012

**Zaitek Polyblends Pvt. Ltd. ...Petitioner**  
**Versus**  
**Sri Durga Bansal Fertilizer Ltd.**  
**...Respondent**

**Counsel for the Petitioner:**

Amrendra Nath Tripathi, Rahul S. Sahay, Rajesh Kumar Verma, Shobhit Mohan Shukla, Shraddha Agarwal, Stuti Mittal

**Counsel for the Respondent:**

Shailendra Srivastava, Amal Rastogi, Anurag Verma, Basant Agrawal, Devendra Mohan Shukla, Nalini Jain, Pritish Kumar, Tushar Hirwani

**Civil Law-The Companies Act,1956-Sections 439(1)(b), 433(e) (f) & 434(1)(a) - The Sick Industrial Companies (Special Provisions) Act, 1985-Section 20(1)---**  
**Petition** seeking winding up of the respondent/Co. mainly on the ground that it has failed to pay the admitted amounts of Rs.21,55,52,263/--- The petition lacking a prayer for winding up of a Co. under Section 433(c) of the Act cannot be considered in view of the lack of prayer--- The claim of the petitioner/Co. based upon the 'assignment deed' cannot be a foundation for seeking winding up--  
 - To appreciate a case for winding up of a Co. on the ground that it is just and equitable, it is essential for the Court to form a view that in view of the status of the Co., if the Co. is not wound up, the same would amount to a threat to the commercial world and the existence of the Co. is not desirable for the commercial world. No such material exists to form a view that the Co. if not wound up would be a threat to the commercial world and/or can lead to further defrauding of creditors, more so, when