IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

PRESENT:

THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE

CRR 2327 of 2018

Dr. Ravi Ganesh Bharadwaj & Anr.
Vs.
Ranjit Sarkar

For the petitioners	:	Mr. Milon Mukherjee Mr. Biswajit Manna
For the opposite party in person	:	Mr. Ranjit Sarkar
Heard on	:	31.07.2025
Judgment on	:	17.09.2025

Dr. Ajoy Kumar Mukherjee, J.

1. The petitioners herein have challenged the proceeding being complaint case no.2 of 2017 under section 304A of the Indian Penal Code, pending before learned judicial Magistrate 4th Court, Barrackpore, and have prayed for quashment of the same.

2. The aforesaid complaint case no. 2 of 2017 was initiated on the basis of the petition of complaint filed by opposite party herein *interalia* alleging commission of offence of causing death by negligence. The allegations

levelled in the said complaint are *interalia* to the effect that on 10.07.2014 at about 4 p.m., the victim who was the son of the complainant /opposite party slipped and fell down on the stair case of his residence, as a result of which he developed severe pain in his abdomen and lower back. Considering the intensity of pain, he was admitted in the emergency department of ILS hospital (accused no.1) at about 6:28 p.m., when victims condition was stable. It is alleged that inspite of victims complain of abdominal tenderness and low back pain, the attending physician did not recommend any investigation of the abdomen. In the X-ray plate nothing remarkable was noticed except mild anterior wedging of D11 and D12 vertebral bodies but the attending doctors ignored the likelihood of damage and the impact to the adjoining upper abdominal organs of the fracture site like kidney renal vain, renal arteries, Adrenal gland etc. On the same day at about 7.p.m. the petitioner no.1 herein advised only CT scan and MRI of Dorso Lumbers Spine to examine only the bodily injury in the vertebral column but completely ignored the patient's complain regarding pain in the abdomen. It is further alleged that there is absolutely no record of any medical management of any kind, not even a record of the 'vital signs' such as blood pressure, pulse, respiration rate etc. of the patient between the time of admission at 7 p.m., on 10.07.2014 and 8.30 a.m. on 11.07.2014. The condition of the patient went bad to worse towards all through the night, as he developed severe abdominal pain but the patient was not examined or treated by any doctor or nurse for the next nine hours and the next examination of the victim Indrajit was conducted only at 6.25 P.M. on 11.07.2014. It is alleged that due to the gross rash and negligent act of the

doctors, victim succumbed to death on 12.08.2014 at 7:05 p.m. Thereafter the petitioners issued a vague and unlawful death certificate issued by the petitioner no.4, who was not the attending physician involved with the treatment of the victim. However, in the said death certificate it has been claimed that the manner of death is natural which according to the complainant is self-contradictory because neither *"adrenal homorrage"* nor "*pulmonary embolism"* nor "*fracture of D12 vertebra"* could be considered as natural death of patient.

3. Learned Magistrate upon receipt of the complaint was pleased to take cognizance upon the offence on 03.01.2017 and thereafter the complainant was examined under section 200 of the Cr.P.C. and upon perusal of the complaint, learned Magistrate was pleased to find out a prima facie case against the present petitioners under section 304A of the Indian Penal Code and accordingly issued process against the petitioners

4. Being aggrieved by the instant proceeding, Mr. Milon Mukherjee learned Senior counsel appearing on behalf of the petitioners submits that no medical professional shall be arraigned as an accused on the basis of a complaint by a private individual having no knowledge about medical science, so as to determine whether the act of the accused/medical professional amounts to rash and negligence act within the meaning of section 304A of IPC. The Trial magistrate ought to have conducted a preliminary enquiry before issuance of process. A mere deviation from normal professional practice is not necessarily evidence of negligence. In the instant case the petition of complaint does not speak of any act which can be termed as negligence.

5. Mr. Mukherjee strenuously argued that "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 simply lack of care, an error of judgment or an accident is not proof of negligence on the part of a medical professional. In the instant case the allegations as made in the petition of complaint, if considered may at best be about error of judgment of the petitioners but for such reasons the petitioners cannot be held liable for commission of an offence punishable under section 304A of the IPC

6. Referring the judgment of the supreme Court in ***Jacob Mathew Vs. State of Punjab & anr.***, reported in **(2005) 6 SCC 1,** Mr. Mukherjee argued that a medical 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 a reasonable competence in the given case, the skill which he did possess. In such circumstances prior to issuance of process it was incumbent upon the learned magistrate to call for a report from a medical Board to ascertain whether an ordinary competent person exercising ordinary skill in the medical profession would have acted as alleged by the opposite party no. 2. However, the concerned magistrate without calling for a report from any Medical Board had straightaway issued process against the petitioners and thereby committed serious error in law for which the proceeding impugned herein is liable to be quashed.

7. In this context he further argued that the jurisdictional concept of negligence differs in civil and criminal law, and therefore, what may be negligence in civil law may not necessarily be negligence in criminal law. For negligence to amount as an offence *mens rea* (guilty mind) must be shown to exist for an act to bring it within the ambit of criminal negligence. Therefore, for an act to amount to criminal negligence, the degree of negligence should be much higher than that of an act which can be termed as negligence in civil law. In the instant case the petitioners acted in exercise of their skill in their profession as an ordinary competent medical professional have exercised.

8. He further argued that 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 officer in his ordinary sense and prudence would have done or failed to do. Accordingly the petitioners have prayed for quashing the impugned proceeding. Mr. Mukherjee in support of his argument relied upon the following judgments:-

(i) **1957 WLR (QB) 582, *Bolam Vs. Friern Hospital Management Committee.***

(ii) **(2005) 6 SCC1**, ***Jacob Mathew Vs. State of Punjab & Anr.***

(iii) **(2009) 3 SCC 1, *Martin F D' Souza Vs. Md. Ishfaque*.**

(iv) **(2010) 3 SCC 480, *Kusum Sharma & Ors. Vs. Batra Hospital & Medical Research Centre.***

(v) **(2013) 10 SCC 741, *A.S.V. Narayanan Rao Vs. Ratnamala.***

(vi) **(2017) 14 SCC 571,** ***Dr. Jayshree Ujwal Ingole Vs. State of Maharashtra.***

9. Mr. Ranjit Sarkar appeared in person being opposite party herein contended that the complaint of the opposite party was admitted before trial court on credible medical opinion report by doctor Ajay Gupta, forensic professor cum Head of the Department of P.G. Hospital Kolkata for more than 15 years. The imminent death of the victim was for huge hemorrhagic shock of three litter blood loss for rash, reckless, careless pushing of three anti-coagulant injections by petitioners/Doctor. They are also to be charged for collective conspiracy of suppression of fact under section 120B IPC.

10. Referring the case of ***Hardeep Singh Vs. State of Punjab*****,** Mr. Sarkar submits that at the time of issuance of the process, the magistrate is only required to test whether the materials brought on record reasonably connect the accused persons with the offence alleged or not and nothing more is required to be enquired into. He also contended that while dealing with an application under section 482 of the Cr.P.C., High Court should not make a roving enquiry into the pros and cons of the matter and weigh evidence as if it is conducting a trial.

11. Mr. Sarkar further contended that this High Court while dealt with CRR 2327 of 2018 and in response to the short comings mentioned in the subsequent CRR 359 of 2023, held that there was a grave failure of justice and the Apex Court in SLP (Cr) 205 of 2025 has expressed consensus in respect of the procedure adopted by learned Magistrate, while admitting the petition of complaint. Learned magistrate examined the complainant under section 200 Cr.P.C. based on expert forensic opinion report and had formed

opinion that prima facie sufficient grounds existed and accordingly he issued process upon the accused persons/petitioners herein. In the complaint case, dismissal if any has to be invariably decided on its merit, as the complainants evidence is substantive, robust and criminal medical negligence of the petitioners being thoroughly revealed and exposed through documentary evidence. Relying upon the judgment of **Mrs. BL infrastructure Ltd. Vs. Rajwant Singh ors.** reported in **(2023) 4 SCC 326** Mr. Sarkar argued that complainants presence is not necessary before the court in all times.

12. Mr. Sarkar further argued that the petitioner consciously and deliberately suppressed the fact of credible medical opinion report of Dr. A.K. Gupta based on which he made the affirmation before the judicial Magistrate for admission of complaint case. When the doctors pushed three anti coagulant injections most rashly, recklessly and carelessly with grievous criminal negligence, causing imminent death to the patient, the argument made on behalf of petitioners that the magistrate did not conduct any preliminary inquiry nor arranged to obtain medical report from medical Board or to examine the aspect of *mens rea* are all become insignificant and irrelevant. The petitioners approached this court with unclean hands and therefore, their prayer for quashing Application must be summarily dismissed. Mr. Sarkar in support of his contention has relied upon the following judgements.

(i) Hardeep Singh Vs. State of Punjab

(ii) 2025 SCC Online SC 208, J.M. Laboratories Vs. State of Andhra Pradesh

(iii) (2023) 4 SCC 326, BLS Infrastructure Ltd. Vs. Rajwant Singh & Ors.

(iv) 2024 8 SCR 332 James Kunjwal Vs. State of Uttarkhand

13. I have considered submissions made on behalf of both the parties.

14. Before going to further details let me reproduce the order impugned by which the trial court had issued process against the present petitioners.

> *"04-03-2017*
> *Record is fixed today for further SA*
> *The complainant is present.*
> *The complainant, Ranjit Sarkar has been examined on dock U/S 200 of CR.P.C. on 04/03/2017*
> *On perusal of the above prima facie it appears to this Court that, there are sufficient grounds for proceeding against the accused persons for the commission of offence punishable U/S 304A of IPC.*
> *Hence, issue process upon the accused persons U/S 204(1) for the commission of offence punishable under section 304A of IPC*
> *Complainant has filed some documents with firistee.*
> *Complainant to put in requisites.*
> *To 27/04/2017 for S/R and Appearance."*

15. From the petition of complaint it appears that the complainant has cited himself and Dr. Ajay Kumar Gupta and Dr. Kunal Saha as witness of the case and he has also annexed the BHT issued by the Hospital, Medical opinion of Dr. Ajay Kumar Gupta, enquiry report of directorate of Health Service Govt. of West Bengal, Medical literatures. From the order impugned dated 04.03.2017, it is not clear whether the concerned magistrate had at all perused the medical opinion of Dr. Ajay Gupta or not as the order itself speaks that on perusal of above (may be complaint and the initial deposition given by opposite party herein), he found prima facie case and sufficient grounds for proceeding against the accused persons for commission of offence punishable under section 304 A of IPC. In the last part of the order he just recorded that complainant has filed some documents with firistee.

He had not mentioned at all as to what are those documents and whether before coming to a conclusion that there are sufficient ground to proceed, he had considered all those documents or not.

16. Now from the initial deposition of Mr. Sarkar relying upon which the magistrate found that there are sufficient grounds for proceeding, it appears that Mr. Sarkar alleged in the initial deposition that immediate CT Scan was required to be done but for the rash and negligence of the petitioner No.2, the CT Scan was not done. Moreover, at 10 a.m. on 11th July injection CLEXANE, a blood thinner was pushed and thereafter his blood pressure went down to systolic 70, diastolic not found, his stomach was swollen and he was feeling drowsy and sweating, oxygen saturation became very low and he was sent to ICU from General Bed. In fact victim died for additional excessive bleeding due to pushing of injection CLEXANE at 10 a.m. in the morning. He further stated in his initial deposition that the victim was suffering from adrenal gland injury and haemorrhage, located in abdominal section but till Indrajit's death, no treatment for the same was done and blood clotted in the pulmonary arteries. He was not required to push injection CLEXANE rashly and negligently but due to pushing such injection the victim ultimately died on 12th July, at 7. p.m. within 49 hrs of admission in ILS Hospital and in the last paragraph he stated that his son died due to rash and negligence act of the accused doctors.

17. The concerned magistrate, being not a medical expert, is not supposed to gather from complaint and/or the initial deposition of the complainant that pushing CLEXANE in a rash and negligent manner whether ultimately caused death of the victim or not and/or whether no medical professional in

his ordinary sense and prudence would not have pushed such injections to the victim. It appears from the said deposition of Mr. Sarkar that learned Magistrate even did not put any question to the deponent exercising his power, to satisfy himself that there are prima facie materials for proceeding against the accused. Even in the initial deposition no specific allegation has been levelled against accused No.1, though process has also been issued against that Hospital.

18. While dealing with the term *"negligence"* in the context of the medical profession, Hon'ble Supreme Court in ***Jacob Mathew Vs. State of Punjab & anr.*** reported in **(2005) 6 SCC 1** held in para 48 as follows:-

> ***Conclusions summed up***
>
> ***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 : (1957) 2 All ER 118 (QBD)] , WLR at p. 586 [[**Ed.**: Also at All ER p. 121 D-F and set out in para 19, p. 19 herein.]] 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.

19. Hon'ble Apex Court in the said judgment namely **Jacob Mathew** (supra) also laid down certain guidelines for governing the prosecution of the doctors for offences of which criminal rashness or criminal negligence is an ingredient. The relevant portion of paragraph 52 may be reproduced below.

".....A private complaint may not be entertained unless the complainant has produced prima facie evidence before the court in the form of a credible opinion given by another competent doctor to support the charge of rashness or negligence on the part of the accused doctor. The investigating officer should, before proceeding against the doctor accused of rash or negligent act or omission, obtain an independent and competent medical opinion preferably from a doctor in government service, qualified in that branch of medical practice who can normally be expected to give an impartial and unbiased opinion applying the Bolam [(1957) 1 WLR 582 : (1957) 2 All ER

> *118 (QBD)] test to the facts collected in the investigation. A doctor accused of rashness or negligence, may not be arrested in a routine manner (simply because a charge has been levelled against him). Unless his arrest is necessary for furthering the investigation or for collecting evidence or unless the investigating officer feels satisfied that the doctor proceeded against would not make himself available to face the prosecution unless arrested, the arrest may be withheld."*

20. As I have stated above that complainant has filed this complaint along with the report of a doctor who is a forensic expert, and therefore it is also not clear whether the said medical officer is in government service and also qualified in the branch of medical practice, who can normally be expected to give an impartial and unbiased opinion applying the Bolam test [Bolam Vs. Hospital Management Committee 1957 1WLR 582;(1957) 2 Allahabad AR 118 QBD] to the facts that narrated in the complaint in terms of the guidelines laid in the ***Jacob Mathew case*** (supra).

21. Since the order issuing process dated 04.03.2017 as quoted above is cryptic and not at all reflected the grounds for Court's satisfaction for issuing process, it can hardly be said that the order issuing process was justified. Section 204 of the Cr.P.C. made it clear that after taking cognizance of the complaint and examining the complainant and his witnesses, if any, Magistrate can satisfy himself that there are sufficient grounds to proceed with the complaint, then only he can issue process by way of summoning under section 204 of the Code. Therefore, the necessary condition for issuance of process under section 204 is the satisfaction of the Magistrate either by the examination of the complainant and the witnesses or by the enquiry contemplated under section 202, that there are sufficient grounds for proceeding with the complaint.

22. There is another aspect of the matter. It further appears from the address of the petitioners/accused persons as given in the cause title in the

instant Application that principal accused no. 2& 3 are not residing within the jurisdiction of concerned Magistrate, and their residential address given in this Application is not in dispute. Here also section 202 mandates, where the accused is residing at a place beyond the area in which the magistrate exercises his jurisdiction , it is mandatory on the part of the magistrate to conduct an enquiry or investigation before issuing the process. The use of the expression "shall" prima facie makes the inquiry or the investigation as the case may be by the Magistrate mandatory. Supreme Court in ***Abhijit Pawar Vs. Hemant Madhukar Nimbalkar and another,*** reported in **(2017) 3 SCC 528** held that though the use of the word shall in all circumstances is not decisive but the use of the expression "shall" in the background and the purpose for which the amendment has been brought, the enquiry or investigation under section 202 is mandatory before summons are issued against the accused, living beyond territorial jurisdiction of the Magistrate. It was further held that for the said reasons amended provision under section 202 casts an obligation on the magistrate to apply his mind carefully and satisfy himself that the allegations in the complaint, when considered along with the statement recorded or the enquiry conducted thereon would prima facia constitute the offence for which the complaint is filed.

23. There is no quarrel with the proposition of law that no speaking order is required to be passed at the stage when the Magistrate decides to issue process under section 204 of Cr.P.C. on the basis of a prima facie case against the accused persons but at the same time Magistrate is not supposed to act as a post office in taking cognizance of each and every

complaint, filed before him and issue process as a matter of course. It is very much expected that the order issuing summon, must bear an indication the factors which led him satisfied that the allegation in the complaint has actually constituted the offence of rash and negligence against the accused persons, in order to proceed under section 204 of Cr.P.C. by issuing process for appearance. It is well settled that the application of mind is best demonstrated by disclosure of mind on satisfaction and if there is no such indication in the order issuing process, it cannot be said that Magistrate applied his mind and thereby came to a satisfaction that there are grounds to proceed against the accused persons. While saying so I am not unmindful to the fact that no specific mode or manner of inquiry is provided under section 202 of the Code but when I peruse the summoning order, I find that it is so cryptic that it does not reflect that he had at all made any attempt to make any such enquiry.

24. Rule 89 of Calcutta High Court Criminal (Subordinate Courts) Rules, 1985 also specifically stated that examination of the complainant is not a mere formality and the Magistrate is required to examine the complainant intelligently to ascertain the truth Rule 89(3) of the said Rule of 1985 states as follows:

> *(3) The examination of the complainant and his witnesses shall not be taken to be a mere formality and they shall be examined intelligently and in such manner as to enable the Magistrate to determine whether there is prima facie sufficient ground for proceeding.*

25. In this context, I may also profitably refer section 165 of the Evidence Act which gives the judge power to put question or order production of any document for his satisfaction. Section 165 of the Evidence Act reads as follow:-

165. Judge's power to put questions or order production.

The judge may, in order to discover or to obtain proper proof of relevant facts, ask any question he pleases, in any form, at any time, of any witness, or of the parties, about anx fact relevant or irrelevant ; and may order the production of any document or thing ; and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor, without the leave of the Court, to cross-examine any witness upon any answer given in reply to any question:Provided that the judgment must be based upon facts declared by this Act to be relevant and duly proved :Provided also that this section shall not authorise any Judge to compel any witness to answer any question or to produce any document which such witness would be entitled to refuse to answer or produce under sections 121 to 131, both inclusive, if the question were asked or documents were called for by the adverse party; nor shall the Judge ask any question which it would be improper for any other person to ask under section 148 or 149; nor shall he dispense with primary evidence of any document , except in the cases hereinbefore excepted.

26. Therefore it is clear that the power to issue summoning order is the matter of grave importance and the magistrate can only allow criminal law to set in motion after satisfying himself that there are grounds for proceeding. Similarly the Magistrate's power under section 202 of Cr.P.C. is also there to postpone the issue of process pursuant to a private complaint and also provides an important avenue for filtering out of frivolous complaint, which must be duly exercised. A four judges Bench of the Supreme Court in ***Chandra Deo Singh Vs. Prokash Chandra Bose*** reported in **AIR 1963 1430,** held in para 7 as follows:-

".....No doubt, one of the objects behind the provisions of Section 202 CrPC is to enable the Magistrate to scrutinise carefully the allegations made in the complaint with a view to prevent a person named therein as accused from being called upon to face an obviously frivolous complaint. But there is also another object behind this provision and it is to find out what material there is to support the allegations made in the complaint. It is the bounden duty of the Magistrate while making an enquiry to elicit all facts not merely with a view to protect the interests of an absent accused person, but also with a view to bring to book a person or persons against whom grave allegations are made. Whether the complaint is frivolous or not has, at that stage, necessarily to be determined on the basis of the material placed before him by the complainant....."

27. Therefore, it is the pious duty of the Magistrate, on receipt of a private complaint that he must first scrutinize the complaint to examine, if the allegations made in the private complaint *interalia* smack of an instance of

frivolous litigation and secondly he is to examine and elicit the material that supports the case of the complainant as held in ***Krishna Lal Chawla and Ors. Vs. State of U.P. and another***., reported in **(2021) 5 SCC 435**.

28. In the instant case, the main allegation against the petitioners *interalia* is that the petitioners caused imminent death of the son of the opposite party by pushing three anti-coagulant injection and by not doing CT Scan in time and by pushing injection CLEXANE, (blood thinner injection) at 10 a.m. in the morning of 11th July. In this connection it may be mentioned that Magistrate being not a medical expert was required to make an enquiry to come to a conclusion whether given facts and circumstances of the case amounts to medical negligence or not to attract section 304 A of the IPC.

29. Having considered the settled positon of law as stated above, I am of the view that the learned Magistrate should have conducted an exhaustive enquiry in order to ascertain the complicity of each of the present petitioners including petitioner No.1 as very purpose of issuance of process under section 204 is to ascertain under section 200 and/or section 202 of the Code, the complicity of all the petitioners and also for the reason that some of them, are residing outside the territorial jurisdiction of the court.

30. Hence, I remit the matter to the Magistrate for passing fresh order uninfluenced by any observation made herein. The order impugned dated 04.03.2017 and all subsequent orders are hereby set aside. Learned Magistrate is directed to form a Medical Board of experts in the concerned faculties comprising of at least three medical officers of which one must be qualified in Orthopaedic Science and who are employed in government

service and who can normally be expected to give impartial and unbiased opinion and thereafter he will send all medical documents including complaint and the documents annexed with the petition of complaint and other medical documents, if any relied by the complainant, so that Board can form a definite opinion in the guideline given in paragraph 52 of the judgment passed in **Jacob Mathew** (supra). The opposite party herein shall be at liberty to produce all the medical papers he want to rely before the court below within a period of eight weeks from the date of the order and on receipt of such documents, the magistrate concerned will seek such opinion from the concerned Board and after obtaining opinion from the Medical Board and after considering complaint along with annexure, initial deposition and opinion of Medical Board he will proceed for the next step in accordance with law.

31. CRR 2327 of 2018 stands disposed of.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(DR. AJOY KUMAR MUKHERJEE, J.)