HC-KAR

NC: 2026:KHC:64497
CRL.P No. 7946 of 2019

CNR: KAHC010478912019

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF NOVEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE RAVI V HOSMANI

CRIMINAL PETITION NO. 7946 OF 2019

BETWEEN:

1 . SHEKAR EYE HOSPITAL
C/O SHEKAR EYE HOSPITAL
(A UNIT OF VARASIDDI HOSPITALS)
NO.633, 100 FT RING ROAD,
J P NAGAR, 3RD PHASE,
BANGALORE - 560 078.
REP BY ITS PROPRIETOR,
DR. RAJASHEKAR Y L

2 . DR.RAJASHEKAR Y L
C/O SHEKAR EYE HOSPITAL,
(A UNIT OF VARASIDDHI HOSPITALS)
NO.633, 100 FT RING ROAD,
J P NAGAR, 3RD PHASE,
BANGALORE - 560 078.

Digitally signed by ANUSHA V
Location: High Court of Karnataka

3 . DR. ARCHANA SINGH,
SHEKAR EYE HOSPITAL
C/O. SHEKAR EYE HOSPITAL,
(A UNIT OF VARASIDDHI HOSPITALS)
NO.633, 100 FT RING ROAD,
J P NAGAR, 3RD PHASE,
BANGALORE - 560 078.

4 . DR.SHAILESH G M
SHEKAR EYE HOSPITAL
C/O. SHEKAR EYE HOSPITAL,
(A UNIT OF VARASIDDHI HOSPITALS)
NO.633, 100 FT RING ROAD,
J P NAGAR, 3RD PHASE,
BANGALORE - 560 078.

CNR: KAHC010478912019

…PETITIONERS

[BY SRI UDAYA HOLLA, SR. COUNSEL FOR
SRI VIVEK HOLLA, ADVOCATE]

AND:

1 . STATE OF KARNATAKA
REPRESENTED BY SHO,
JAYAPRAKASH NAGAR POLICE
STATION,
NO.36, 21ST MAIN, 7TH CROSS,
2ND PHASE, JP NAGAR,
BANGALORE - 560 078.

2 . SADIYA MOHAMMED
W/O FAIZAN AHMED,
D/O MOHAMMED KHALEEL PASHA,
AGED ABOUT 26 YEARS,
R/A NO.104/5, 5TH CROSS,
TANK ROAD, NR MOHALLA,
MYSORE - 570 007.

…RESPONDENTS

[BY SMT.SOWMYA R., HCGP FOR R1;
R2 - SERVED & UNREPRESENTED]

THIS CRIMINAL PETITION IS FILED U/S.482 CR.P.C PRAYING TO SET ASIDE THE ORDER DATED 10.07.2019 PASSED BY THE XLIV ADDL.C.M.M., BENGALURU IN P.C.R.NO.8460/2019 VIDE ANNEXURE-B AND QUASH THE PRIVATE COMPLAINT IN PCR NO.8460/2019 FIELD BY THE 2ND RESPONDENT VIDE ANNEXURE-A AND QUASH THE FIR IN CR.NO.141/2019 DATED 06.08.2019 LODGED BY THE 1ST RESPONDENT - JAYAPRAKASH NAGAR POLICE STATION FOR THE OFFENCE P/U/S 338 OF IPC (ANNEXURE-C).

THIS PETITION IS HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 03.09.2026, THIS DAY, THE COURT, PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE RAVI V HOSMANI

CAV ORDER

Challenging order dated 10.07.2019 passed by XLIV ACMM, Bengaluru in PCR no.8460/2019 for registration of FIR in Crime no.141/2019 by Jayaprakash Nagar Police Station, Bengaluru, for offences punishable under Section 338 of Indian Penal Code, 1860 (**IPC**), this petition is filed.

2. Sri Udaya Holla, learned Senior Counsel appearing for Sri Vivek Holla, advocate for petitioners submitted that petitioners were accused no.1 to 4 (**petitioners**) in PCR no.8460/2019 filed by respondent no.2 (**complainant**) stating that she was residing with family at Mysuru and got married on 05.10.2017. She stated that she was suffering from short-sightedness and was using spectacles. And that on 01.08.2017, she visited Sneha Eye Hospital at Mysuru for routine check-up when she discussed about her left eyelashes rubbing inside eye. On examination, Doctor advised her to visit Shekar Eye

Hospital, JP Nagar, Bengaluru (**accused no.1**). Accordingly, on 13.08.2017, she went to said hospital and consulted Dr.Rajshekar (**accused no.2**). She further stated that after examining her, accused no.2 told her that it was not a serious issue and could be addressed later. He however suggested her about Implantable Contact Lens (**ICL**) to enable her dispense with spectacles and referred her to Dr.Udayashree - Retina Specialist and Dr.Shailesh - Glaucoma Specialist (**accused no.4**) of same hospital. It was alleged that neither accused no.2 nor Dr.Archana Singh (**accused no.3**) and accused no.4 explained to her about consequences of ICL and risks associated with said procedure.

3. And that on 15.08.2017, Specular Microscopy of both eyes of complainant was completed and on 16.08.2017, accused no.3 took measurements of her eyes and accused no.2 informed her about ICL implantation on left eye on 23.08.2017 and right eye on 26.08.2017. Accordingly, on 16.08.2017 complainant paid advance amount of Rs.50,000/- and remaining Rs.15,000/- on 23.08.2017. She further stated that on 23.08.2017 accused no.2 performed ICL implantation on her

left eye on 23.08.2017 in presence of accused no.3. Even though she complained about discomfort in left eye to accused no.2, she was assured that it would subside after few days and on 24.08.2017, bandage was removed from left eye. And that she complained to accused no.2 and 3 about discomfort in her left eye even when she visited Hospital again on 26.08.2017, but accused no.2 assured her that it would be alright and instructed her to pay Rs.65,000/- for her right eye ICL implantation. She alleged that despite her continued complaints about discomfort, accused no.2 and 3 performed ICL implantation on her right eye by convincing her that everything would be all right. Further, after removal of bandage on right eye on 27.08.2017, she complained to accused no.2 about discomfort in both eyes but was snubbed describing it as psychological problem. On 02.09.2017, she complained to accused no.3 about diminishing vision in both eyes. She was counselled and asked to visit Hospital.

4. And on 03.09.2017, she met accused no.2 and 3 at Hospital and after some investigation, informed her that some residual refractive error was left out after ICL implantation,

which accused no.2 promised to rectify by Epi-LASIK Surgery, which required one month for healing and prescribed BRIMOLOL eye drops to prevent Intraocular Pressure (**IOP**) in eyes. She further stated that after 5 days, when complainant visited accused no.1, accused no.2 examined her and informed that IOP remained elevated and advised her to undergo YAG Laser Peripheral Iridotomy (**YAG-PI**) and which was eventually performed by accused no.4 on 10.11.2017, but without any improvement.

5. When she visited accused and complained about diminishing vision, accused no.2 advised her to undergo Epi-LASIK Surgery, which was performed by accused no.3 on 01.12.2017. But despite above procedures, her vision continued to deteriorate. Therefore, she complained to accused no.2 to 4 who assured her that healing required additional three months. On 03.02.2018, she travelled to Oman to visit her husband, where she required assistance of flight attendants and that she struggled to move about at her husband's house due to poor vision. On 04.02.2018, complainant's mother informed accused no.1 about deterioration of vision and about

complainant sent back to India by her husband on 10.02.2018 her loss of vision. And despite assurances by accused no.2 to 4 on 14.02.2018 when she consulted them her problems increased.

6. Therefore, she consulted Dr.Mahesh - Eye Specialist at Mysuru, who advised her to visit Dr.Prabhu at Sushruta Eye Hospital, Mysuru. On 17.02.2018, she visited Sushruta Eye Hospital, where Dr.Pallavi diagnosed post-ICL secondary glaucoma and sent her back to accused no.1 on finding that accused no.2 had not given complete medical records. Accordingly, she went back to accused no.1 on 27.02.2018, where accused no.2 to 4 altered her medication and accused no.2 advised her to consult psychiatrist. On 10.03.2018, she visited psychiatrist at JSS Hospital, Mysuru, who examined her and cleared her of any psychological issues and referred her to Ophthalmologist in same Hospital, who explicitly opined that loss of vision was caused due to negligent ICL implantation at accused no.1. Complainant further stated that for second opinion, she consulted Dr.Prabhu at Sushruta Eye Hospital on same day, who confirmed post-ICL secondary glaucoma

diagnosis and advised her to go to Narayana Nethralaya or Prabha Eye Clinic at Bengaluru, since her IOP was high.

7. She stated that in March, 2018 she visited Narayana Nethralaya. There, Dr.Satidevi advised her to get all reports from accused no.1. Despite making complainant wait till late evening, she was given only filled test report and not entire medical records. On returning to Narayana Nethralaya, Dr.Satidevi, advised her that increased IOP and consequent loss of vision were associated with ICL implantation and that implanted lenses required early removal. She alleged that by then, accused no.1 had called Doctors at Narayana Nethralaya and informed to send her back. Therefore, Dr.Satidevi changed stance and sent her back to accused no.1, where accused no.2 and 3 once again performed ICL explantation on 14.03.2018. Even thereafter her vision did not improve, and she developed corneal bullae with difficulty in opening her eyes and when she informed accused no.2 about it, he asked to come after one week. On 22.03.2018, accused no.4 examined her and advised continuing same eye drops.

8. On 26.03.2018, she got checked her IOP at Sushruta Hospital, Mysuru and later visited Nethradhama on 06.04.2018, where Dr.Monica advised her to go to accused no.1 and undergo Trabeculectomy Surgery, but accused no.4 refused to perform same when she approached accused no.1 on 07.04.2018. Therefore on 08.04.2018, she consulted Dr.Satidevi of Narayana Nethralaya and underwent several tests later met Dr.Sunitha of Retina Institute, who advised her to visit Prabha Eye Clinic. Accordingly, on 10.04.2018, complainant visited Prabha Eye Clinic, where Dr.Gowrimurthy addressed a letter to Dr.Satidevi, Narayan Nethralaya to perform surgery. On 12.04.2018, when she visited Narayana Nethralaya, Dr.Satidevi refused to perform surgery. Therefore, she went to Prabha Eye Clinic and on 13.04.2018, Trabeculectomy Surgery was performed on her right eye and on 18.04.2018, on her left eye. She alleged that accused no.2 subsequently had called complainant and her family members to Hospital and explicitly admitted responsibility for loss of vision in both her eyes and offered Rs.50,000/- as compensation, which they refused. On 10.04.2019, she was

examined at Krishna Rajendra Hospital, MMC, Mysuru and issued disability certificate about 100% blindness in both eyes. Thereafter, on 22.04.2019, when complainant visited Minto Eye Hospital, Bengaluru, Ophthalmologist examined her and issued disability certificate indicating 100% blindness.

9. Complainant alleged that permanent loss of vision in both eyes was entirely due to negligence of accused no.1 to 4, who failed to conduct adequate pre-operative examinations, assess IOP and optic nerve condition, explain risks associated with ICL implantation, provide appropriate post-operative care, respond adequately to her repeated complaints and take timely measures to control increased IOP and prevent further deterioration of vision. She alleged that doctors failed to exercise skill and reasonable care and therefore their acts and omissions resulted in irreversible blindness, rendering her unable to work or attend to her daily activities independently. She stated that she had incurred expenses of around Rs.8 Lakhs for treatment and travelling expenses and that loss of vision adversely affected her employment prospects and marital life.

10. She alleged that despite issuing a legal notice dated 14.02.2019 and a rejoinder notice dated 26.04.2019, accused failed to reply. Therefore, she on 25.04.2019, she filed a complaint before Karnataka Medical Council (**KMC**) as well as complaint with jurisdictional police on 26.04.2019. She alleged that police did not registered her case. Therefore on 02.05.2019, she filed complaint with Deputy Commissioner of Police, Bengaluru, but even after repeated visits, no action was taken. Hence, left with no other option, she filed private complaint against accused for offence punishable under Section 338 of IPC and seeking reference of matter to jurisdictional police under Section 156 (3) of Code of Criminal Procedure, 1973 (**CrPC**) for investigation and submission of report.

11. It was stated that on 10.07.2019, learned Magistrate perused complaint and documents and passed impugned order directing SHO, Jayaprakash Nagar Police Station, Bengaluru to conduct investigation and submit report. Accordingly, FIR in Crime no.141/2019 was registered by Jayaprakash Nagar Police Station against accused for offences

punishable under Section 338 of IPC, on 06.08.2019. Aggrieved by said order, this petition was filed.

12. It was firstly submitted, there was inordinate and unexplained delay in filing complaint. It was submitted though complainant underwent ICL implantation procedures from 23.08.2017, complaint was filed only on 03.07.2019 i.e., after lapse of nearly 2 years, indicating afterthought and *malafide* intention to harass accused.

13. Further, complainant visited more than 5 hospitals about issues with her vision and underwent several tests, procedures and treatments, instead of following up treatment by accused no.1 on prescribed dates. It was further submitted that complainant had previously filed a complaint before KMC and thereafter filed this complaint indicating *malafide* intention to harass petitioners.

14. It was submitted, Hon'ble Supreme Court in **Jacob Mathew v. State of Punjab & Anr.**, reported in **(2005) 6 SCC 1**, held that a private complaint cannot be entertained unless complainant has produced *prima facie* evidence in form

of credible opinion given by another competent doctor to support charge of rashness or negligence on part of accused doctors. It was submitted learned Magistrate erred in ignoring non-compliance with said requirement at time of directing investigation by Jayaprakash Nagar Police Station.

15. It was submitted, even police had not obtained report from expert opinion before registering FIR against accused. It was submitted that under similar circumstances Hon'ble Supreme Court in **Martin F. D'Souza v. Mohd. Ishfaq**, reported in **(2009) 3 SCC 1**, held that Consumer Forum or concerned Criminal Court should first refer matter to a competent doctor or committee of doctors specialized in relevant field and only in case, such doctor or committee report about prima facie case of medical negligence, to issue notice to doctor concerned. It was submitted, Apex Court cautioned against Courts substituting their views over that of specialists and observed that police officers and should not harass doctors unless facts fell within parameters of **Jacob Mathew**'s case (*supra*) by cautioning that non-compliance would subject errant police personnel to legal action.

16. It was submitted this Court in **Dr.Shyamala Bai & Ors. v. State of Karnataka & Anr.** [**2023:KHC:22438**] relied on **Jacob Mathew** and **Martin F. D'Souza**'s cases (*supra*) and held, when expert opinion indicated no negligence of accused, this Court upheld contention of abuse of process and quashed criminal proceedings. And since in present case, KMC had held no negligence on part of accused and dismissed complaint dated 27.04.2019, filing of private complaint would be abuse of process.

17. It was submitted, Hon'ble Supreme Court in **ASV Narayan Rao v. Ratnamala & Anr.**, reported in **(2013) 10 SCC 741** referring to ***Jacob Mathew's*** case (*supra*) and held that for an act to amount to criminal negligence, degree of negligence should be much higher i.e. 'gross' or of very high degree and differs from negligence in civil law. It emphasized that criminal complaints against doctors should not be entertained in routine manner without independent opinion from competent medical specialist. It was submitted that in its order dated 03.05.02025, KMC found no material about

Criminal Medical Negligence by petitioner. Consequently, impugned proceedings would not sustain.

18. Smt.Sowmya R., learned HCGP for respondent no.1 - State, opposed petition. It was submitted that due to negligence of accused, complainant had lost vision in both her eyes. It was submitted since proceedings were still in initial stage and only FIR registered expert opinion could be obtained, therefore sought for opportunity to proceed with investigation. It was submitted, there was no clarification in **Jacob Mathew**'s case (*supra*), when expert opinion was to be obtained, whether prior to registration of FIR or thereafter. It was submitted even High Court of Punjab and Haryana in **Hardeep Singh Aulakh v. State of Punjab & Anr.**, reported in **2018 SCC OnLine P&H 5506**, had held when matter was still at stage of investigation, Investigating Officer could take expert opinion and comply with directions in **Jacob Mathew** and **ASV Narayan Rao**'s cases (*supra*). Therefore, challenge of proceedings at this stage was premature and prayed for dismissal.

19. Respondent no.2 served and unrepresented.

20. Heard learned counsel, perused impugned order and material on record.

21. This petition is by accused challenging order directing registration of FIR, conduct investigation and filing of report on a private complaint filed alleging criminal medical negligence against medical professionals.

22. Main grounds of challenge are delay of two years in filing complaint indicating complaint suffered from afterthought, failure of complainant to follow-up with treatment, filing of private complaint after filing complaint before KMC, indicative of malafide intention to harass petitioners, non-compliance with requirement of obtaining prior expert opinion, held necessary in **Jacob Mathew, Martin F D'Souza** and **ASV Narayan Rao**'s cases (*supra*) and lastly, dismissal of complaint by KMC, expert body, by opinion that there was no case of medical negligence was established relying on **Dr.Shyamala Bai**'s case (*supra*).

23. At outset, it is seen that accused are challenging order directing investigation and filing of report by police, on ground of violation of procedural protection as laid down in **Jacob Mathew, Martin F D'Souza** and **ASV Narayan Rao**'s cases (*supra*), there is no dispute about procedural protection afforded to Medical Professionals from harassment by filing criminal complaints or about fact that subject matter of private complaint herein is criminal medical negligence.

24. On first contention, it is seen that safeguards in criminal prosecution of medical professionals were evolved by Hon'ble Supreme Court in **Jacob Mathew**'s case (*supra*) to ensure that medical professionals are not subjected to harassment by criminal prosecution in routine manner. Protection was contemplated at two stages. Firstly, it was held that no complaint alleging criminal negligence against medical practitioner ought to be entertained unless complainant produces *prima facie* evidence in form of credible opinion of a competent doctor supporting allegation of rashness or negligence and secondly, even Investigating Officer would require to obtain independent medical opinion preferably from

doctor in Government service before proceeding against medical professional on such allegations. With clarification in **ASV Narayan Rao**'s cases (*supra*) that for criminal medical negligence, degree of negligence was much higher i.e. gross or of very high degree.

25. Though, present case distinguishes on facts in **Jacob Mathew**'s case (*supra*) to extent that complaint therein was filed with Police, whereas it is a private complaint herein, wherein direction is issued for investigation and filing of report, safeguards laid down in **Jacob Mathew**'s case (*supra*) would nevertheless apply.

26. But, private complaint is indisputably not accompanied with opinion of independent and competent medical professional about rashness or negligence and even Investigating Officer has failed to obtain opinion from Government Doctor. Merely on ground that direction for investigation is issued by Magistrate, cannot be ground for dispensing with prescribed safeguards. In this regard, learned HCGP relied on observation of High Court of Punjab and

Haryana in para-8 of decision in **Hardeep Singh Aulakh**'s case (*supra*), to contend that compliance with procedural protection as per **Jacob Mathew** and **ASV Narayanan Rao**'s cases (*supra*) could be done prior to filing of charge sheet or arrest of medical professional. But finding of Court is as follows:

> ***"8.*** *The above observations of Hon'ble Apex Court have not been disputed. In this case the matter is still at the stage of investigation. The investigating officer before filing of challan can always take opinion of expert and comply with directions in case of Jacob Mathew (supra) and A.S.V. Narayanan Rao (supra).*
>
> ***9.*** *The question, which arises for consideration in this petition, is as to whether there is any merit in submission of learned counsel for the petitioner that recording of instant FIR against petitioner is misuse of process of law? The answer to this can only be in negative. The police while recording FIR has considered expert opinion of doctors of PGI, Chandigarh. While proceeding further, the investigating officer may take further steps to comply with directions issued by the Director General of Police to comply with observations of Hon'ble Apex Court in case of Jacob Mathew (supra) and to collect other expert opinion as required before reaching the conclusion that offence of negligence is made out against the petitioner. It is not disputed that cannula remained inserted in finger of infant for a period of about one week. On finding swelling and blackening of arm, he was referred to Cosmo Hospital, Mohali, where complainant could not afford expenses of the hospital and rushed to PGI, Chandigarh. Fortunately, the child responded to treatment there but the finger of his right hand had to be amputated. Complainant has*

> *all the reasons particularly in view of opinion of medical expert of PGI, Chandigarh to report the matter to police and get the FIR registered, which cannot be termed as misuse of process of law."*

27. It is seen that decision therein pivoted on fact that Police had considered expert opinion of Medical Expert from PGI, Chandigarh at stage of registration of FIR and thus there was compliance with procedural protection. In fact, it rejected quashing petition by relying on very same expert opinion which indicated negligence.

28. At same time, it has to be further clarified that 'independent expert opinion' need not necessarily be understood as requiring complete assessment by expert. Though in Para 9 and 13 of private complaint, there is assertion about Opthalmologist of JSS Hospital opining that loss of vision was due to negligence of accused no.1 in carrying out ICL implantation on complainant, no such report was appended to complaint. Therefore, failure of procedural protection would be evident. Apart from above, it is seen that said opinion was referred to by KMC at time of arriving at conclusion about

failure to establish medical negligence and rejecting complaint filed by present complainant.

29. Next contention about complaint being belated and therefore suffering from afterthought to harass accused. But, as held by Hon'ble Supreme Court in case of **Skoda Auto Volkswagen (India) (P) Ltd. v. State of U.P.**, reported in **(2021) 5 SCC 795,** reiterated in **Punit Beriwala v. State (NCT of Delhi)** reported in **2025 SCC OnLine SC 983**, that except where it was unexplained and deliberate, mere delay in lodging complaint would not justify quashing of FIR. In instant case, complainant has rather exhaustively narrated treatment events almost upto date of filing complaint and which prima facie appears sufficient. And when accused allege failure of complainant to follow-up treatment prescribed by accused and complainant has explained how she completed treatment procedures suggested by accused, contention based on delay would not be justified. In any case, since complaint is for offence under Section 338 of IPC, it would suffice if complaint were filed within three years of alleged incident as per Section 468 (2) (c) of CrPC.

30. And lastly about untenability of complaint after dismissal of complaint by KMC, there is no dispute about dismissal of complaint filed by present complainant, by KMC on 03.05.2025 rejecting allegation of medical negligence against accused after examining virtually very same allegations. Incidentally, proceedings before KMC involved calling for explanation from accused doctors, receiving evidence by way of affidavits, permitting cross-examination of parties and considering documentary evidence and as per Sections 16 and 17 of Karnataka Medical Registration Act, 1961 (**KMR Act**), KMC is vested with powers of Civil Court while holding inquiries and proceedings would be judicial proceedings though for purposes of Sections 193 and 228 of IPC. However, in view of conclusion about violation of procedural protection in terms of **Jacob Mathew**'s case (*supra*), petition would succeed.

31. Hon'ble Supreme Court in **Anukul Singh v. State of U.P.**, reported in **2025 SCC OnLine SC 2060**, has held that in a quashing petition filed invoking jurisdiction under Section 482 of CrPC, this Court would exercise jurisdiction only under

three circumstances, firstly, where it is necessary to give effect to any order under CrPC; secondly, to prevent abuse of process of any Court and thirdly, to secure ends of justice. In view of findings hereinabove, instant case would qualify for quashing of proceedings for prevention of abuse of process.

32. Consequently, petition ***succeeds***, order dated 10.07.2019 passed by XLIV ACMM, Bengaluru in PCR no.8460/2019 and all further proceeding including registration of FIR in Crime no.141/2019 by Jayaprakash Nagar Police Station, Bengaluru for offence punishable under Section 338 of IPC are **quashed**.

Sd/-
(RAVI V HOSMANI)
JUDGE

YKL,AV,GRD
List No.: 1 Sl No.: 1