

ODISHA POLICE
C.I.D. CRIME BRANCH, CUTTACK.

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Investigation of medical negligence/rashness cases

Many times complaints/FIRs are filed against doctors alleging negligence, rashness etc. Such cases need careful and professional investigation. While our investigation should seek the truth and prosecute those against whom prima facie evidence is available, we also have to ensure that no unnecessary harassment is caused by motivated or baseless/exaggerated complaint.

Legal position.

The leading case on the subject remains Jacob Mathew vrs State of Punjab and another in which Supreme Court has very lucidly interpreted the law on the subject. In later judgements Supreme Court has affirmed this judgment. In the Mathews case Supreme Court has summed up the law. **Part of conclusions summed up by Hon'ble Supreme court is reproduced below .**

"2) Negligence in the context of medical profession necessarily calls for a treatment with a difference. To infer rashness or negligence on the part of a professional, in particular a doctor, additional considerations apply. A case of occupational negligence is different from one of professional negligence. A simple lack of care, an error of judgment or an accident, is not proof of negligence on the part of a medical professional. **So long as a doctor follows a practice acceptable to the medical profession of that day, he cannot be held liable for negligence merely because a better alternative course or method of treatment was also available** or simply because a more skilled doctor would not have chosen to follow or resort to that practice or procedure which the accused followed. When it comes to the failure of taking precautions what has to be seen is whether those precautions were taken which the ordinary experience of men has found to be sufficient; a failure to use special or extraordinary precautions which might have prevented the particular happening cannot be the standard for judging the alleged negligence. So also, the standard of care, while assessing the practice as adopted, is judged in the light of knowledge available at the time of the incident, and not at the date of trial. Similarly, when the charge of negligence arises out of failure to use some particular equipment, the charge would fail if the equipment was not generally available at that particular time (that is, the time of the incident) at which it is suggested it should have been used.

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

