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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Date of Decision: December 2, 2025***

\+ **W.P.(CRL) 3976/2025 & CRL.M.A. 35803/2025, CRL.M.A. 35804/2025**

VENKATESHWAR HOSPITAL AND ANR

.....Petitioners

Through: Ms. Petal Chandhok & Ms. Garima Raisinghani, Advs. along with P-2.

versus

STATE OF NCT DELHI AND ANR .....Respondents

Through: Mr. Yasir Rauf Ansari, ASC (Crl.) for the State along with Mr. Alok Sharma, Adv.
SI Gaurav, PS Dwarka North.
Mr. Pardeep Dahiya, Adv. for R-2 along with R-2 through V.C.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

AMIT MAHAJAN, J. *(Oral)*

1. The present petition has been field under under Article 226 of the Constitution of India read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ('**BNSS**') by the petitioners, seeking quashing of FIR No. 455/2022 dated 14.07.2022, registered at Police Station Dwarka North, for the offences under Sections 336/337/34 of the Indian Penal Code, 1860 ('**IPC**') and all the consequential proceedings emanating therefrom.

2. The Petitioner no. 1/Venkateshwar Hospital, is a multispecialty hospital located at Sector 18A, Dwarka, New Delhi and the Petitioner no. 2/Dr. Dipti K. Yadav has been engaged as Senior Consultant (Obstetrician and Gynaecologist) with Petitioner no. 1 and is currently the Associate Director in the Obstetrician and Gynaecologist Department. The Respondent no. 2/Complainant was a patient taking treatment for her pregnancy at Petitioner no. 1 and was under supervision of Petitioner no. 2.

3. Succinctly stated, the subject FIR was registered pursuant to a complaint of the Respondent No. 2, alleging medical negligence on part of the Petitioner No. 2/Dr. Dipti K. Yadav and the Petitioner no. 1/Hospital. It has been alleged that while conducting a Lower Segment C-Section surgery of the Respondent No. 2, a foreign object/abdominal cotton mop was left inside the abdominal cavity of the Respondent No. 2, which resulted in severe infection and pus collection in the area. She had to undergo another major surgery, after the C-Section surgery, due to the medical negligence of the Petitioners herein.

4. The present petition is filed on the ground that the matter is amicably settled between the parties with the intervention of Mediation Centre, Dwarka Courts, New Delhi out of their own free will, without any force, coercion or misrepresentation *vide* Settlement Agreement dated 06.08.2025.

5. It has been pointed out that the record/Petition incorrectly mentions *"Section 338 of the IPC",* however, the same has already been compounded and the present petition seeks

compounding of the remaining offences under sections i.e. 336/337 and 34 of the IPC.

6. The Petitioner No. 2 is present in the Court and the Respondent No. 2 has appeared through video conferencing. They have been duly identified by the Investigating Officer.

7. On being asked, the complainant/ Respondent No. 2 states that all the disputes have since been settled, without any coercion, pressure or undue influence and she is also satisfied with the compensation amount of Rs. 14,00,000/-, received by her. She states that the continuation of the proceedings would amount to further harassment of the parties and she does not wish to pursue any proceedings arising out of the present FIR and has no objection if the same is quashed.

8. The same is also duly supported by her Affidavit of no objection and the copy of payment receipt reflecting the settlement amount already stands paid to her.

9. Offences under Section 337 of the IPC are compoundable, whereas the offences under Section 336 of the IPC are non-compoundable.

10. It is well settled that the High Court while exercising its powers under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ('**BNSS**') [*erstwhile* Section 482 of the Code of Criminal Procedure, 1973] can quash proceedings in which offence is non-compoundable on the ground that there is a compromise between the accused and the complainant. The Hon'ble Apex Court has laid down parameters and guidelines for High Court while accepting settlement and quashing the

proceedings. In the case of ***Narinder Singh & Ors. v. State of Punjab & Anr.*** **: (2014) 6 SCC 466**, the Hon'ble Supreme Court had observed as under :-

> ***"29.*** *In view of the aforesaid discussion, we sum up and lay down the following principles by which the High Court would be guided in giving adequate treatment to the settlement between the parties and exercising its power under Section 482 of the Code while accepting the settlement and quashing the proceedings or refusing to accept the settlement with direction to continue with the criminal proceedings:*
> ***29.1.*** *Power conferred under Section 482 of the Code is to be distinguished from the power which lies in the Court to compound the offences under Section 320 of the Code. No doubt, under Section 482 of the Code, the High Court has inherent power to quash the criminal proceedings even in those cases which are not compoundable, where the parties have settled the matter between themselves. However, this power is to be exercised sparingly and with caution.*
>
> ***29.2. When the parties have reached the settlement and on that basis petition for quashing the criminal proceedings is filed, the guiding factor in such cases would be to secure:***
> ***(i) ends of justice, or***
> ***(ii) to prevent abuse of the process of any court.***
>
> ***While exercising the power the High Court is to form an opinion on either of the aforesaid two objectives.***
>
> ***29.3. Such a power is not to be exercised in those prosecutions which involve heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society. Similarly, for the offences alleged to have been committed under special statute like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender.***
>
> ***29.4.*** *On the other hand, those criminal cases having overwhelmingly and predominantly civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes should be quashed when the parties have resolved their*

entire disputes among themselves.

29.5. *While exercising its powers, the High Court is to examine as to whether the possibility of conviction is remote and bleak and continuation of criminal cases would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal cases."*

(emphasis supplied)

11. Similarly, in the case of ***Parbatbhai Aahir & Ors. v. State of Gujarat & Anr.*** **: (2017) 9 SCC 641**, the Hon'ble Supreme Court had observed as under :-

"16. *The broad principles which emerge from the precedents on the subject, may be summarised in the following propositions:*

16.1. *Section 482 preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court.*

16.2. *The invocation of the jurisdiction of the High Court to quash a first information report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of Section 320 of the Code of Criminal Procedure, 1973. The power to quash under Section 482 is attracted even if the offence is non-compoundable.*

16.3. *In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power.*

16.4. *While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised (i) to secure the ends of justice, or (ii) to prevent an abuse of the process of any court.*

16.5. *The decision as to whether a complaint or first information report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated.*

16.6. *In the exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence.* ***Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences.***

16.7. *As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They stand on a distinct footing insofar as the exercise of the inherent power to quash is concerned.*

16.8. *Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute.*

16.9. *In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and*

16.10. *There is yet an exception to the principle set out in propositions 16.8. and 16.9. above. Economic offences involving the financial and economic well-being of the State have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance."*

(emphasis supplied)

12. In the present case, though serious allegations have been levelled against the Petitioners, however, the record indicates that the parties had duly appeared before the learned Disciplinary Committee of the Delhi Medical Council which had passed the detailed order dated 27.04.2022 with the following observations:

> *"**xxx xxx xxx***
>
> ***2)** It is observed that the abdominal mop removed during the surgery (laparotomy) at Indraprastha Apollo Hospital, in all likelihood was the one which had been left during the LSCS procedure performed on the complainant on 12th January, 2021 at Venkateshwar Hospital; even though, as per records and of surgical safety check-list of the said Hospital, count was done at the start and at the end of surgery (LSCS) which was correct as per the record. The fact that a mop was retrieved during laparotomy done at Indraprastha Apollo Hospital **suggests that there was some error in counting of mops during the primary surgery .***
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> ***3)*** It is further observed that ***proper management protocol has been followed in the post-operative period. Timely, surgical referral was done. Since paralytic ileus is the common cause of abdominal distension, hence, x- ray abdomen was advised. Surgical advice was followed properly and the complainant started improving.***
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> ***4)** We are further unable to reconcile the fact as to why, inspite of being advised CT scan, the same was not done at Venkateshwar Hospital, as the same would in all likelihood in this case confirmed the presence of mop and initiation of early remedial surgery.*
>
> ***xxx xxx xxx***
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> *In light of the observations made hereinabove, it is the decision of the Disciplinary Committee that Dr. Dipti K . Yadav did not exercise due diligence which is expected from an ordinary prudent doctor, in the treatment of the complainant Smt. Tamanna. The Disciplinary Committee, therefore, recommends that the name of Dr. Dipti K. Yadav (Dr. Dipti Kumari, Delhi Medical Council Registration No. 17457) be removed from State Medical Register of Delhi Medical Council for a period of 30 days. **The Disciplinary Committee, however, observes that the acts or omissions on***

> ***the part of Dr. Dipti K. Yadav in the management of the complainant were not reckless or patently wanton to invite criminal liability.*** *It is also directed that a copy of this Order be sent to Delhi Nursing Council for taking appropriate* ***disciplinary action against Nursing Staff Nurse, Ms . Menika Singh for her omission during the LSCS procedure done at Venkateshwar Hospital, as she was the scrub nurse who was responsible for taking proper count of all the surgical equipments used during the surgery (LSCS) including the mops****. The Disciplinary Committee further directs that a copy of this Order be sent to the Directorate General of Health Services, Govt , of NCT of Delhi with a request that the aforementioned guidelines be circulated to all the hospitals functioning under its jurisdiction."*
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> (emphasis supplied)

13. The above mentioned order of the learned Disciplinary Committee was taken up for consideration by the learned Delhi Medical Council, which passed a detailed order bearing number DMC/DC/F.14/Comp.3277/2/2022/305583, dated 10.05.2022, and while confirming the above order, the line *"The counting of mop is a shared responsibility of a surgeon and staff nurse.*" was directed to be added in Point (2) of the observations of the learned Disciplinary Committee.

14. It is no more *res-integra* that a complaint alleging criminal medical negligence by doctors should not ordinarily set the criminal law in motion, unless the opinion of the Medical Council is sought. The Hon'ble Apex Court in ***Jacob Mathew v. State of Punjab*****, (2005) 6 SCC 1**, while laying down guidelines for prosecution of doctors in the cases of criminal medical negligence, had observed as under: -

> "**52**. *Statutory rules or executive instructions incorporating certain guidelines need to be framed and issued by the Government of India and/or the State Governments in consultation with the Medical*

> *Council of India. So long as it is not done, we propose to lay down certain guidelines for the future which should govern the prosecution of doctors for offences of which criminal rashness or criminal negligence is an ingredient.* ***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.* "

15. Further, in the case of ***Suresh Gupta vs. Govt. of N.C.T. of Delhi and Ors.,*** **(2004) 6 SCC 422,** Dr. Suresh Gupta, who was a Plastic Surgeon by profession, made a wrong incision while performing a minor procedure on the nasal cavity of the patient, due to which the blood entered his respiratory canal and thereby, causing the death of the patient. Consequently, criminal proceedings under Section 304A of the IPC, for causing death by negligence, were launched against Dr. Gupta. However, the Apex Court, while relying on the post-mortem report and the opinion of the three medical experts of the Special Medical Board,

observed that the negligence in *'not putting a cuffed endo-tracheal tube of proper size in the nasal cavity, in a manner so as to prevent asphyxiation.*' was not sufficient to impose criminal liability on the doctor. It was observed that: -

> *"20. For fixing criminal liability on a doctor or surgeon the standard of negligence required to be proved should be so high as can be described as* ***"gross negligence" or recklessness". It is not merely lack of necessary care, attention and skill.*** *The decision of the House of Lords in* ***R.*** v. *Adomako (Supra) relied upon on behalf of the doctor elucidates the said legal position and contains following observations: -*
>
> > *"Thus a doctor cannot be held criminally responsible for patient's death unless his negligence or incompetence showed such disregard for life and safety of his patient as to amount to a crime against the State."*
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> *21. Thus, when a patient agrees to go for medical treatment or surgical operation,* ***every careless act of the medical man cannot be termed as 'criminal'****. It can be termed 'criminal' only when the medical men exhibits a* ***gross lack of competence or inaction and wanton indifference to his patient's safety and which is found to have arisen from gross ignorance or gross negligence****.* ***Where a patient's death results merely from error of judgment or an accident, no criminal liability should be attached to it.*** *Mere inadvertence or some degree of want of adequate care and caution might create civil liability but would not suffice to hold him criminally liable.*
>
> *22. This approach of the courts in the matter of fixing criminal liability on the doctors, in the course of medical treatment given by them to their patients, is necessary so that the hazards of medical men in medical profession being exposed to civil liability, may not unreasonably extend to criminal liability and expose them to risk of landing themselves in prison for alleged criminal negligence."*

16. Keeping the above settled principles in mind the facts of the present case may be delved into.

17. Pertinently, the Medical Opinion had been obtained in the present case and it stands recorded in the order of the learned Disciplinary Committee that proper management protocol was followed in the post-operative period and timely, surgical referral was done by the Petitioners. Further, the surgical advice was followed properly and even the condition of the complainant had started improving. However, since, an abdominal mop was retrieved from the abdominal cavity of the complainant, the same suggests that there was *some error* in counting of mops during the primary surgery, which was the combined duty of the operating surgeon as well as the Nurse. Hence, it was concluded that though the Petitioner No. 2 did not exercise due diligence which is expected from an ordinary prudent doctor, but the acts or omissions were not reckless or patently wanton to invite criminal liability.

18. These observations have also been confirmed *vide* the subsequent order dated 10.05.2022 of the learned Delhi Medical Board.

19. Evidently, no such "*gross lack of competence or recklessness*" has been detected on part of the Petitioners. Even otherwise, the complainant has stated that she does not wish to pursue any proceedings arising out of the present FIR and she is satisfied with the compensation amount received by her.

20. This Court is fully cognizant of the discomfort suffered by the patient due to the inadvertent retention of a foreign object in

her abdomen, which is unquestionably a matter of profound concern and merits unequivocal censure, as medical professionals are entrusted with the exacting duty of care. Nevertheless, the record, specifically the medical opinion obtained, reveals that the incident was unintentional and due oversight, bereft of the necessary *mens rea* and such degree of rashness to attract the rigours of a criminal trial.

21. At the best the facts could have delineated a civil liability, however, considering that the name of the Petitioner No. 2 was removed from State Medical Register of Delhi Medical Council for a period of 30 days, disciplinary action being directed to be taken against the nurse who incorrectly counted the no. of mops, the matter has been amicably settled between the parties and the compensation amount of Rs. 14,00,00/- has already been received by the Complainant, continuance of the proceedings will only cause undue harassment to all the parties and will be an abuse of the process of the Court.

22. Considering the totality of circumstances, I am of the opinion that this is a fit case to exercise the discretionary jurisdiction under Section 528 of the BNSS.

23. However, keeping in mind the fact that the State machinery has been put to motion and the chargesheet was filed, ends of justice would be served if the Petitioners are put to cost.

24. In view of the above, FIR No.455/2022 and all consequential proceedings arising therefrom are quashed, subject to payment of total cost of ₹25,000/- by Petitioners, to be deposited with the Delhi Police Martyrs' Fund, within a period of

four weeks from date.

25. Let the proof of deposit of cost be submitted to the concerned SHO.

26. The present petition is allowed in the aforesaid terms. Pending application also stands disposed of.

AMIT MAHAJAN, J

DECEMBER 2, 2025
"SK"