

## HIGH COURT OF CHHATTISGARH, BILASPUR

### Order Sheet

#### CRMP No. 1224 of 2024

1. Dr. Rajib Lochan Bhanja, S/o Radhakrushna Bhanja, aged about 50 years, R/o Quarter No.7, Appollo Hospital, Bilaspur, Tehsil and District Bilaspur, CG.
2. Dr. Sunil Kumar Kedia, S/o Shri Gopal Prasad Kedia aged about 56 years, R/o Rajkishor Nagar, Bilaspur, Tehsil and District Bilaspur (CG)
3. Dr. Devendra Singh, S/o Late Inderjeet Singh, aged about 60 years, R/o A-36, Vijayapuram, Seepat Road, Bilaspur, Tehsil and District Bilaspur, CG.
4. Manoj Kumar Rai, S/o Shri Vibhuti Rai, aged about 51 years, R/o D-15, Vijayapuram, Seepat Road, Bilaspur, Tehsil and District Bilaspur, CG (Petitioners name, father name correctly mentioned)

**- Petitioners**

#### ***Versus***

1. State of Chhattisgarh, through the Station House Officer, Police Station - Sarkanda, District Bilaspur, CG.
2. Paramjeet Singh Chabra, R/o Adarsh Colony, Dayal band, PS Kotwali, Bilaspur, District Bilaspur, CG.

**- Respondents**

(Cause title is taken from CIS)

13/05/2024	<p>Mr. Sunil Otwani and Mr. Shobhit Koshta, learned counsel for the petitioners.</p> <p>Dr. Saurabh Kumar Pande, learned Dy. Advocate General for the State.</p> <p>Heard.</p> <p>Learned counsel for the petitioners submits that the petitioners are doctor by profession and have filed this petition for quashment of the FIR bearing Crime No.1342/2023, the charge</p>

sheet for the offence under Sections 304A, 201 read with 34 of IPC filed before the concerned jurisdictional Magistrate and the consequential criminal proceeding pending before the learned Chief Judicial Magistrate, Bilaspur. He submits that on 25.12.2016 one Goldi was admitted in Apollo Hospital with critical condition, he was on ventilator and passed away on 26.12.2016 due to multiple organ failure. His autopsy was done on 27.12.2016 and viscera was preserved for chemical examination which was sent in the year 2019. However, the report of the chemical examination does not indicate any residual of sulphur. It is next submitted that a writ petition was filed in the year 2019 by respondent No.2 herein stating that procedure under Section 174 of CrPC regarding inquest was not followed in proper perspective, therefore, a Board was constituted in CIMS, Bilaspur which opined that prima facie there seems to be nothing against the petitioners but since CIMS do not have the facility of cardiologist the matter was referred to the State Medical Board in the year 2023. The State Medical Board, which consists of five medical experts including cardiologist, opined that there is no negligence on the part of the petitioners. However, in order to overrule the said report, one report was sought from the medico-legal expert working in the police department who pointed out certain deficiencies such as dying declaration was not recorded,

procedure under Section 39 of CrPC has not been followed; MLC intimation was given with a delay, rice tube was not preserved etc. In the entire report given by the medical expert, nowhere the cause and effect theory has been explained.

Learned counsel for the petitioners would further submit that time and again it has been opined by the Hon'ble Supreme Court that such matter should be referred to the medical board and in case, there is dearth of such board, the matter should be referred to the person competent in the field. All the medical experts have given opinion in favour of the petitioners that no negligence was committed on their part. However, on the basis of subsequent report which shows negligence of the petitioners, the aforesaid offence has been registered against them.

Reliance has been placed on the decisions of the Hon'ble Supreme Court in the matters of ***Bolam v Friern Hospital Management Committee, [1957] 1 WLR 582***; ***Rakesh Ranjan Gupta Vs. State of UP, AIR 1999 SC 2115*** and ***Jacob Mathew v State of Punjab, (2005) 6 SCC 1***.

On the other hand, Dr. Saurabh Kumar Pande, learned Dy. Advocate General appearing for the State strongly opposes the contention of the petitioner and submits that the present offence

was registered against the petitioners as per order of this Court passed in WPCR No.832/2022 and after due investigation, charge sheet has been filed before the competent Court against the petitioners. He submits that the report of Annexure P/2 is not given by the State Medical Board but by the Cardiology Department of Medical College, Raipur.

Issue notice to the respondent No.2 on payment of process fee as per rules.

Learned counsel for the State as well as respondent No.2 are allowed four weeks' time to file Return and thereafter, two weeks' time is allowed to the petitioners to file rejoinder, if so desire.

List the matter thereafter. Meanwhile, considering the facts and circumstances of the case and the material placed on record, it is directed that further proceedings in Criminal Case No.2035/2024 pending before learned Chief Judicial Magistrate, Bilaspur against the petitioners shall remain stayed till the next date of hearing.

Sd/

(Rajani Dubey)

**Vacation Judge**

Sd/

(Ramesh Sinha)

**Chief Justice**