

Dr. S. Balagopal
v.
State of Tamil Nadu & Anr.

(Criminal Appeal No. 1753 of 2026)

06 April 2026

[Pamidighantam Sri Narasimha and Manoj Misra,* JJ.]

Issue for Consideration

Issue arose whether the High Court was right in not quashing the proceedings against the appellant surgeon who performed Orchidectomy-removal of testicle on the one and a half year boy, without obtaining the consent by the father-*de facto* complainant, as alleged.

Headnotes[†]

Code of Criminal Procedure, 1973 – s.482 – Penal Code, 1860 – Appellant-surgeon performed Orchidopexy-surgical procedure, on a one and a half year boy, for which doctors had obtained consent – Appellant also performed Orchidectomy-removal of testicle on the boy – Allegations by the father-*de facto* complainant that no consent was given for Orchidectomy – FIR registered u/ss.312, 325, 426, 120-B, 406, 465, 468, 471 and s.501 (1) & (2) IPC against the doctor – Charge-sheet submitted and the Magistrate took cognizance – Petitions filed u/s.482 Cr.P.C., by the complainant to constitute a Medical Board of three members so that a fair opinion is obtained – Pursuant to the directions, the Medical Board constituted which submitted its report – Petition also filed by the appellant seeking quashing of the proceedings – High Court rejected the same – Correctness:

Held: In the opinion of the Medical Board the procedure adopted was appropriate – Moreover, the operating surgeon is the best judge of which one of the two procedures is to be adopted – As regards any interpolation in the consent form to add the alternative procedure-Orchidectomy, being a question of fact is to be determined in a trial based on evidence led therein and, thus, courts must be loath to examine such issues

* Author

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in a summary proceeding, like the one u/s.482 – However, no absolute bar on High Court's power to consider questions of fact in exercise of jurisdiction u/s.482, particularly when such consideration necessary to prevent the abuse of the process of the court or to secure the ends of justice – No malice attributed to the doctor and no dispute that the consent form was executed for undertaking medical procedure – Medical opinion is to the effect that the procedure adopted by the doctor was one of the alternatives recognized to meet such medical exigency – No doubt, Medical Board's opinion indicates that such procedure should be carried out after obtaining consent, but nothing to indicate that the consent form already obtained was not in order or that no consent was obtained – Perusal of the consent letter indicates that in the column where the nature of proposed surgery is to be mentioned, both types of surgery-Orchidopexy and Orchidectomy are mentioned by putting a slash, which means that the other surgery, namely, Orchidectomy, was one of the options available – No material on record that alternative surgery, Orchidectomy, was entered by a different ink or in a different handwriting, and having regard to the Medical Board's opinion that in such medical situations, Orchidectomy is a normal alternative, continuance of criminal proceeding against the appellant abuse of the process of the court and, thus, to secure the ends of justice, the same is quashed – Impugned judgment and order of the High Court set aside. [Paras 17-21]

Case Law Cited

Jacob Mathew v. State of Punjab [2005] Supp. 2 SCR 307 : (2005) 6 SCC 1 – held inapplicable.

List of Acts

Penal Code, 1860; Code of Criminal Procedure, 1973.

List of Keywords

Quashing the proceedings; Surgeon; Orchidectomy-removal of testicle; Without obtaining consent by the father; Surgeon performed Orchidopexy-surgical procedure that moves an undescended testicle into the scrotum; Doctor obtained consent; Constitute Medical Board; Fair opinion; Medical Board report.

Dr. S. Balagopal v. State of Tamil Nadu & Anr.**Case Arising From**

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 1753 of 2026

From the Judgment and Order dated 25.09.2023 of the High Court of Judicature at Madras in CRLOP No. 23349 of 2016.

Appearances for Parties

Advs. for the Appellant(s):

K. Ravi Anantha Padmanabhan, Sr. Adv., T. R. B. Sivakumar, Deva Vrat Anand.

Advs. for the Respondent(s):

V Krishnamurthy, Sr. A.A.G., D.kumanan, Ms. Deepa S, Sheikh F Kalia, Veshal Tyagi, Chinmay Anand Panigrahi, Ms. Azka Sheikh Kalia.

Respondent-in-person.

Judgment / Order of the Supreme Court**Judgment**

Manoj Misra, J.

1. Leave granted.
2. This appeal arises from a petition¹ filed under Section 482 of the Code of Criminal Procedure, 1973² seeking quashing of the proceedings in C.C. No. 13 of 2008 on the file of Judicial Magistrate No.1, Poonamallee³. By the order impugned dated 25.09.2023, the High Court of Judicature at Madras⁴ rejected the prayer to quash the proceedings and issued a direction to expedite the same.

FACTS

3. The second respondent (R-2) i.e., the *de facto* complainant made a complaint, *inter alia*, alleging that his son, aged one and one-half

¹ CRL. O.P. No. 23349/2016

² Cr.P.C.

³ The learned Magistrate

⁴ The High Court

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years, was admitted in a hospital for a surgical procedure as one of his testicles had not descended into the scrotal sac. According to R-2, doctors had obtained his consent for Orchidopexy (i.e., the surgical procedure that moves an undescended testicle into the scrotum), but there was no consent for Orchidectomy (i.e., removal of testicle). R-2 also alleged that prior to the surgery, the operating surgeon had explained that in 99 percent of such cases there is no need to remove the testicle. Therefore, specific consent for Orchidectomy was neither sought nor given. Yet, Orchidectomy was performed and in the consent form, by interpolation, Orchidectomy was inserted, which amounted to an offence of forgery.

4. Based on the aforesaid allegations, a first information report⁵ was registered at P.S. Ambathur on 08.08.2006 (i.e., FIR No. 1196 of 2006) under Sections 312, 325, 426, 120-B, 406, 465, 468, 471 and section 501 (1) & (2) of the Indian Penal Code, 1860⁶.
5. On the aforesaid FIR, the police, after investigation, submitted a charge-sheet against the appellant (i.e., the operating surgeon) on which the learned Magistrate took cognizance and registered C.C. No. 13 of 2008. Aggrieved therewith, two petitions under Section 482 of Cr.P.C. were filed before the High Court. One was by R-2, *inter alia*, to constitute a Medical Board of three members so that a fair opinion is obtained. The second was by the appellant seeking quashing of the proceedings of C.C. No. 13 of 2008. The High Court *vide* order dated 19.03.2013 disposed of these two petitions in the following terms:

“14. Accordingly, both the criminal original petitions, namely CrI. O.P. No.18043 of 2008 and CrI. O.P. No.7614 of 2008 are disposed of with the following directions:

- a) The prayer for quashing of the criminal proceedings in CC. No.13 of 2008 made by the accused in his petition in CrI. O.P. No.7614 of 2008 shall stand rejected.
- b) Since further investigation has been ordered, all further proceedings in CC. No.13 of 2008 shall stand stayed till the completion of the further investigation and submission

5 FIR

6 IPC

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of the further report subject to a rider that the accused shall cooperate with the Investigating Officer in conducting further investigation.

c) The first part of the prayer made in Crl. O.P. No.18043 of 2008 filed by the de facto complainant viz., for a direction to the Investigating Officer to act impartially is negatived.

d) The second part of the prayer made in Crl. O.P. No.18043 of 2008 praying for constitution of the Medical Board is allowed and the Director of Medical Services, Chennai is directed to constitute a Medical Board consisting of following persons:

i) A Specialist in Paediatric Surgery in Government Services;

ii) An expert in Pathology in Government Services; and

iii) An expert in Oncology in Government Services.

e) The Medical Board should be constituted within one month from the date of receipt of a copy of this order and the Medical Board shall submit the report as early as possible preferably within two months from the date of constitution of the Medical Board. The report shall be submitted to the Investigating Officer, marking a copy to the Registrar Judicial of the Court.

f) The Investigating Officer shall complete the investigation within two months after the receipt of the opinion of the Medical Board and submit further Final report.

g) It shall not be necessary for the accused to make periodical appearance before the learned Judicial Magistrate I, Poonamallee till the submission of further final report.

Consequently, the connected miscellaneous petitions are closed.”

6. Pursuant to the aforesaid directions, a Medical Board was constituted which submitted its report dated 29.07.2010. The same is reproduced below:

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“FACT FINDING INQUIRY REPORT BY THE MEDICAL BOARD CONSTITUTED IN RESPECT OF CRL. O. P No. 18043 of 2008, MP No.2, 4 & 5 of 2008 & CRL. O. P No. 7614 OF 2008 AND MP No.1 of 2008

As per the directions of the Hon’ble High Court of Madras issued in Crl. O P No. 18043 of 2008 M.P.No.2, 4 & 5 of 2008 and Crl. O.P No 7614 of 2008 & M.P. No 1 of 2008, I, the Director of Medical and Rural Health Services, Chennai-6 have constituted a Medical Board comprising the following specialists from Government Stanley Medical College Hospital, Chennai-1 to offer their expert medical opinion for the Left orchidectomy surgery done to one male child namely, (xxxx) (name masked), aged 2 years, son of (yyyy) (name masked).

1. Dr. Mary Lilly, Professor and Head of Department, Department of Pathology, Government Stanley Medical College Hospital, Chennai-1
2. Dr. J. Muthukumaran, Paediatric Surgeon, Government Stanley Medical College Hospital, Chennai 1
3. Dr. Ravel Naveen, Professor and Head of Department, Department of Medical Oncology, Government Stanley Medical College Hospital, Chennai – I

The left Orchidectomy surgery was done to the child by one doctor namely Dr. Balagopal at M/s Sri Ramachandra Medical Centre Hospital, Porur on 24/08/2005. Orchidectomy surgery means removal of testis from the body. Orchidopexy means retaining the testis and placing in the anatomical position in the body. The constituted Medical Board was convened on 01/07/20 13 and opined as follows:

The Professor of Pathology, Government Stanley Medical College Hospital, Chennai-1 has opined as

The Histopathology Report carrying Hospital No.0000339902 of (xxxx) (name masked) 2 years a Male child.

Accession No G.1852/05 under the unit by Dr. Balagopal S. dated 31/08/2005. Histopathology Report copy received shows:

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1. Microscopy describes the tissue received and studied as on soft tissue I X 0.5 cm. No special features/ organ mentioned.

2. Microscopy describes the tissues to be testis and Epididymis with focal fibrotic areas.

The pathological changes observed is 'Focal fibrosis'.

No other pathological character is described.

The change described as focal fibrosis is consistent with pathological changes observed in undescended testis.

The Professor of Medical Oncology, Government Stanley Medical College Hospital, Chennai-1 has opined as

2 years old child had a history of left undescended testis and had undergone left orchidectomy. Pathology report shows no features of malignancy in the undescended testis specimen.

According to the operative findings the left testis was very small, cystic and dysplastic and hence probably a left orchidectomy was done.

Undescended testis is a risk factor for development of malignancy.

The Professor and Head of Department, Department of Pediatric Surgery, Government Stanley Medical College Hospital, Chennai-1 has opined as

In case of undescended Testis generally the affected Testis will be smaller than the normal size (or) it may present as nubbin of tissue as the child grows (or) it may go in form Torsion and gangrene of the testis as a complication.

In case of Nubbin of tissue as it does not serve the purpose (testis shape, sperm production) and more chance of malignant transformation orchidectomy is preferred than doing orchidopexy.

In case of torsion testis and gangrene, orchidectomy is preferred.

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As per the case sheet and operation theatre notes, the left testis seems to be (small, cystic, dysplastic, 0.7cm size) a nubbin of tissue when compared with the testis on the other side. In that situation the nubbin of tissue could have been removed after:

1. Explaining in detail about the problems of retaining the affected testis.
2. Getting consent from the parents for doing orchidectomy to the child.

CONCLUSIVE OPINION

Pathology Speciality report reveals that at the time of histopathological examination there is focal fibrosis present in the sample. (No evidence of malignant changes).

Department of Medical Oncology report reveals that the left testis was very small, cystic and dysplastic and hence probably a left orchidectomy was done.

Undescended testis is a risk factor for development of malignancy.

Department of Pediatric Surgery report reveals that

In case of Nubbin of tissue as it does not serve the purpose (testis shape, sperm production) and more chance of malignant transformation, orchidectomy is preferred than doing orchidopexy.

- a. Explaining in detail about the problems of retaining the affected testis.
- b. Getting consent from the parents for doing orchidectomy to the child.

Hence it is opined that left orchidectomy surgery done to the child (xxxx) (name masked), 2 years old, son of (yyyy) (name masked) is an appropriate surgical procedure as per medical ethics and it should have been done with the consent of parents.

Sd/- Director of Medical and Rural Health Services”

7. On receipt of the aforesaid report, the Investigating Officer wrote a letter to the Director, Directorate of Medical and Rural Health

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Services, Chennai seeking an opinion on the consent form which was obtained before the surgery. In response to the letter of the Investigating Officer, a letter was issued from the office of the Director of Medical and Rural Health Services, Chennai to the Investigating Officer on 24.02.2014, stating as follows:

**“MEDICAL AND RURAL HEALTH SERVICES
DEPARTMENT**

From

Dr. A. Chandranathan, M.D.,
Director of Medical and Rural Health Services,
Chennai - 6.

To

Inspector of Police,
T-15, SRMC Police Station,
Porur, Chennai - 600 116.

Sir,

Ref. No. 32780/ E7/ 3/ 2014, dated 24.02.2014.

Sub: Criminal case in Cr.No.1196/2006 of T 15 SRMC
PS – investigation pending - ascertain clarification
required - in the interest of successful prosecution of the
case -regarding.

Ref:

1. Letter along with the findings of the Tamil Nadu Directorate of Medical and Rural Health Services dated 27.07.2013.
2. The case is T15 SRMC PS Cr. No .1196/ 2006.
3. Your letter date is 18.01.2014.

1. The left Orchidectomy surgery done to the child namely xxxx (name masked), 2 years old boy, Son of yyyy (name masked) is an appropriate Surgery Procedure as per medical ethics and it should have been done with the consent of parents.

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For this above point it is clarified that in the case sheet it is seen that informed consent for surgery in the printed form is attached. This printed consent is a general procedure for all the surgeries / treatment and is being obtained from patients in each and every hospital. In this context, it is mentioned “I understand that a diagnosis of Bilateral undescended testis has been made on me and that surgical operation Bilateral Orchidopexy / Left Orchiectomy has been advised by my doctor”.

In any surgery, the surgeon should have explained “what procedure he is going to do with the patient and its complication / nature of surgery in person, to the relative. In this case the doctor has adopted general procedure of obtaining consent in the printed form in which the ‘Orchiectomy’ is written, medical terms which the parents could not understand.

In this particular surgery, it is ascertained that only after opening; the surgeon have come to a conclusion of removing the unwanted testis and before removing the testis he has obtained the consent in the printed form may be without explaining the nature of surgery in detail to the parents.

(a) He has obtained the consent of the parents of the child specifically to conduct the surgery towards removal of left testis of xxxx (name masked) in printed form.

(b) Yes per used.

(c) The consent is obtained by Dr. Balagopal explaining the consequences of retaining the left testis, which may develop into malignancy or abscess formation (discharge summary).

(d) Prosecution could not be made against the doctor since he has done the procedure as per medical ethics and as he has explained the consequences of retaining the left testis in the body, which may form abscess or turn malignant.

(e) No

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(f) Not Applicable

As per the opinion of the Professor of Pediatric Surgery Dr. Balagopal has obtained the formal consent in the printed form (for all the surgical purpose duly filled in) explaining in detail about the problem of retaining the affected testis. In case of Nubbin of tissue as it does not serve the purpose (testis shape, sperm production) and more chance of malignant transformation.

Hence it is opined that the Left Orchidectomy done to one xxxx (name masked) son of Mr. yyyy (name masked) is an appropriate surgical procedure.

Dr. Balagopal has obtained the consent in the common printed form and explained in detail about the problem of retaining the affected testis to parents, saying the affected testis may transform to malignancy in future.

Yours faithfully,

For Director of Medical and Rural Health Services.”

(Emphasis supplied)

8. After obtaining the report dated 24.02.2014, an additional report was submitted giving details of the opinion of the Medical Board as reproduced above. The charge sheet submitted reads as under:

“CHARGE SHEET

CHARGE SHEET IN T-15 SRMS POLICE STATION

Crime No. 1196/2006
U/S 336, 201, 465, & 471 IPC.

.....

ACCUSED: Dr. Balagopal, Age 38/2007 S/O K. Subramani,
No. 7 Suriya Bharani Colony, Saligramam, Chennai – 600093

The accused noted in the margin is working as Consultant Pediatric Surgeon in SRMC Center at Porur, within the limits of SRMC PS. The hospital authority has authorized the accused to perform all kinds of surgery including

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orchidopexy and orchidectomy. The witness (yyyy) (name masked) is the father of male child (xxxx) (name masked) aged about 1 1/2 years. The witness (yyyy) (name masked) had admitted his child (xxxx) (name masked) on 23.08.2005 at SRMC Hospital for Hernia Operation. The hospital authority had referred the child (xxxx) to the accused for performing Hernia Operation on the child of witness (yyyy) (name masked) about the nature of the operation on which he is going to perform on the child i.e., hernia operation and also obtained consent letter from the witness (yyyy) (name masked) by clearly mentioning that the operation of positioning of testis (bilateral Orchidopexy). The accused has not mentioned anything about the removal of left testicle of the child in the consent letter. Therefore, the witness has also signed in the document believing that the accused would perform only bilateral Orchidopexy.

That on 24.08.2005 at about 3.30 P.M. at SRMC Hospital Operation theatre when the child (xxxx) (name masked) aged about 1 ½ year was admitted in the operation theatre for hernia operation, the accused noted in the margin being the surgeon of SRMC Hospital had acted in a rash and negligent manner at the time of performing the operation on the child and due to rash and negligent act, the accused had removed the left testicle of the child during the hernia operation. Therefore, the accused has committed the offence punishable u/s 336 IPC.

During the course of the same transaction the accused, the surgeon of the same hospital, knowing that he had performed the operation in a rash and negligent manner which is punishable with imprisonment, intentionally caused the disappearance of the evidence of his rash negligent act to escape from the legal punishment, altered the medical documents and consent letter for performing surgery. Thereby the accused has committed the offence punishable u/s 201 IPC.

During the course of the same transaction, the accused noted the margin has created a forged document by

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inserting a letter “left orchidectomy” in the consent letter of the complainant to make other to believe that this witness (yyyy) (name masked) had given consent for the removal of left testicle of his child, and also used the above said forged document as genuine to escape (sic) the legal punishment for the offence of negligent act. Thereby the accused has further committed the offences punishable u/s 465, 471 IPC

Hence the charge.

Sd/-

Inspector of Police
T-15 S.R.M.C. P.S.
Porur, Chennai - 116”

9. Aggrieved by the charge-sheet and the consequential proceedings, which continued even after the additional reports of medical experts, the appellant filed Crl. O.P. No. 23349 of 2016 for quashing the entire proceeding pending as C.C. No. 13 of 2008 on the file of the learned Magistrate.
10. By the impugned order, the High Court dismissed the petition. Hence, this appeal.
11. We have heard learned counsel for the appellant as well as the counsel appearing for the State. We also heard R-2 in person on one date.

SUBMISSIONS ON BEHALF OF THE APPELLANT

12. The learned counsel for the appellant submitted that the medical report submitted by the Medical Board as well as the Final Report submitted by the Investigating Officer does not castigate the appellant for any kind of negligence. Moreover, it is now clear that Orchidectomy was the appropriate procedure. The only point of dispute is whether the *de facto* complainant i.e., father of the child was informed about the surgical procedure to be undertaken and whether there was a proper consent for that surgical procedure. In this regard, what is important is that there was a consent letter signed by R-2 for the surgery. The consent form was in a printed format and the column regarding the nature of surgery advised indicated “Bilateral Orchidopexy/Orchidectomy.” The allegation is

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that Orchidectomy was added by interpolation in the consent form to save the doctor from the allegation of conducting surgery without consent. It is contended that this very consent letter was sent to the Director for his opinion and the Director had opined that there was nothing suspicious about the consent. Besides, there is no forensic report regarding interpolation of 'Orchidectomy' made in the consent letter either by a different ink or in a different handwriting. It is also submitted that a bare perusal of the consent letter/form would indicate that it is in order. In these circumstances, it was argued, the High Court had erred in not quashing the criminal proceeding, particularly when there was a medical report in support of appellant's case.

SUBMISSIONS ON BEHALF OF THE STATE

13. Learned counsel appearing for the State submitted that though there may be no negligence on the part of the doctor in performing Orchidectomy, the doctor ought to have obtained a prior consent for the said surgical procedure. Once the *de facto* complainant alleges that he had not consented to Orchidectomy, it is a matter of trial whether such consent was there or not. In such circumstances, whether there was a valid consent or not, and whether the consent letter has been manipulated or not, can best be determined in a trial. Hence, the order of the High Court calls for no interference.

SUBMISSIONS ON BEHALF OF THE DE-FACTO COMPLAINANT

14. The *de-facto* complainant (R-2), who appeared in person, submitted that during surgery the doctor had asked him on phone whether he should perform Orchidectomy or not. Further, the doctor informed that if Orchidectomy is not performed, possibility of malignancy in future cannot be ruled out. According to R-2, this question of the doctor was answered in the negative and R-2 had specifically stated that he would later consider whether removal of testis is to be undertaken. Despite that, the doctor proceeded with the surgery and removed the testicle without R-2's consent and, to save himself, later, the consent form was manipulated to show that the consent was taken for Orchidectomy. In these circumstances, he prayed that *prima facie* commission of offence is made out and therefore, appeal be dismissed.

Dr. S. Balagopal v. State of Tamil Nadu & Anr.**DISCUSSION**

15. We have accorded due consideration to the rival submissions and have also perused the materials available on record.
16. Before we proceed to address the rival contentions, we must bear in mind that appellant-accused is a surgeon/doctor whose credentials as a surgeon /doctor are not in issue. The criminal law has invariably placed medical professionals on a pedestal different from ordinary mortals. The IPC enacted as far back as in the year 1860 sets out a few vocal examples. Section 88 in the Chapter on General Exceptions provides exemption for acts not intended to cause death, done by consent in good faith for person's benefit. Section 92 provides for exemption for acts done in good faith for the benefit of a person without his consent though the acts cause harm to the person and that person has not consented to suffer such harm. Based on above, and upon a review of various decisions and reports, in **Jacob Mathew v. State of Punjab**⁷ this Court observed:

“48 (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.”

Having observed so, this Court proceeded to hold:

“52. ... 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

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an impartial and unbiased opinion applying the *Bolam*⁸ test to the facts collected in the investigation. ..”

17. In the instant case, the dispute is not regarding negligence on part of the appellant, therefore the law laid down in **Jacob Mathew (supra)** may not *stricto sensu* apply. However, the importance of Medical Review Board’s report cannot be undermined. It highlights the importance of Orchidectomy in cases related to undescended testicle. Though it is alleged by the *de facto* complainant that he had not consented for Orchidectomy, it is clear from the materials on record that prior to the surgery consent form was obtained from the father of the child. Thus, the issue is whether the consent was limited to surgical procedure of Orchidopexy. According to the appellant, the consent form had limited space in the column where the nature of surgery had to be mentioned therefore, Orchidectomy was written by putting a slash just below Orchidopexy in the consent form. What is important is that the consent form was sent by the Investigating Officer to the Director of the Medical and Rural Health Services for his opinion. The Director had not found any fault in the consent form. Rather, the Medical Board opines that Orchidectomy is an alternative procedure which may be undertaken to obviate chances of malignancy in future. Thus, in the opinion of the Medical Board the procedure adopted was appropriate. Moreover, the operating surgeon is the best judge of which one of the two procedures is to be adopted. Therefore, the only issue which requires consideration is whether there was any interpolation in the consent form to add the alternative procedure (i.e., Orchidectomy).
18. Ordinarily, an issue of tampering/ interpolation in a document being a question of fact is to be determined in a trial based on evidence led therein and, therefore, courts must be loath to examine such issues in a summary proceeding, like the one under Section 482 Cr.P.C. However, there can be no absolute bar on High Court’s power to consider questions of fact in exercise of jurisdiction under Section 482

8 Bolam v. Friern Hospital Management Committee, (1957) 1 WLR 582: (1957) 2 All ER 118 (QBD)

“Where you get a situation which involves the use of some special skill or competence, then the test as to whether there has been negligence or not is not test of the man on the top of a Clapham omnibus, because he has not got this special skill. The test is the standard of the ordinary skilled man exercising and professing to have that special skill. A man need not possess the highest expert skill ... It is well established law that it is sufficient if he exercises the ordinary skill of an ordinary competent man exercising that particular art.”

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Cr.P.C., particularly when such consideration is necessary to prevent the abuse of the process of the court or to secure the ends of justice.

19. In the instant case, no malice is attributed to the doctor and there is no dispute that the consent form was executed for undertaking a medical procedure. Further, the medical opinion is to the effect that the procedure adopted by the doctor was one of the alternatives recognized to meet such a medical exigency. No doubt, Medical Board's opinion indicates that such procedure should be carried out after obtaining consent, but there is nothing to indicate that the consent form already obtained was not in order or that no consent was obtained. Besides, the consent letter has been brought on record as Annexure P-2. A perusal thereof would indicate that in the column where the nature of proposed surgery is to be mentioned, both types of surgery i.e., Orchidopexy and Orchiectomy are mentioned by putting a slash (/), which means that the other surgery, namely, Orchidectomy, was one of the options available.
20. Taking a conspectus of all the facts and circumstances as also that there is no material on record that alternative surgery, namely, Orchidectomy, was entered by a different ink or in a different handwriting, and having regard to the Medical Board's opinion that in such medical situations Orchidectomy is a normal alternative, we are of the view that continuance of criminal proceeding against the appellant would be nothing but abuse of the process of the court and, therefore to secure the ends of justice, the same is liable to be quashed.
21. Accordingly, the appeal is allowed. The impugned judgment and order of the High Court is set aside. The proceedings of C.C. No. 13 of 2008 on the file of the learned Magistrate are hereby quashed. There is no order as to costs.

Result of the case: Appeal allowed.