

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**CRIMINAL WRIT PETITION NO.265 OF 2015**

Dr. Sunil s/o Parasram Tapse,  
Age: 45 years, Occ: Service,  
R/o. C/o Durgalal Sharma,  
Jagdamba Niwas, House No.8-10-317,  
Raghwendra Colony, Bidar (Karnataka). ...Petitioner

versus

1. The State of Maharashtra.
2. Taramati w/o Harischandra Chate,  
Age: 63 years, Occ: Houehold,  
R/o. Sugaon, Tq. Ambajogai,  
Dist. Beed. ...Respondents

.....  
Mr. S.J. Salunke, Advocate for petitioner  
Mrs. M.A. Deshpande, A.P.P. for respondent No.1  
Mr. Vivek Bhavthankar, Advocate for respondent No.2  
.....

**CORAM : N.W. SAMBRE, J.**

**DATE : 20th AUGUST, 2015**

**ORAL JUDGMENT :**

Rule. Rule made returnable forthwith. By consent, heard finally.

2. Non-applicant No. 2 has initiated criminal proceedings against the applicant, who was qualified Doctor and at the relevant time, was working with Department of Forensic Medicine at Rural Hospital, Ambajogai. Non-applicant No. 2 complainant alleged that present applicant, while drawing post mortem report has not

mentioned the injuries which are reflected in the inquest panchnama. As such, according to the non applicant, offence is made out. Based on the evidence that was brought on record by the present non-applicant No. 2, the learned J. M. F. C. was pleased to observe that there is evidence of complainant and witnesses that accused No. 1 to 3 have committed murder of Sambhaji son of complainant and accused No. 4 and 5 have caused disappearance of evidence and as such, found sufficient material to proceed against the present petitioner for an offence punishable under Sections 302, 201 read with Section 34 of the Indian Penal Code.

3. The above referred order passed by learned J. M. F. C. on 16/08/2008 was subjected to challenge in Criminal Revision Application No. 93 of 2008, which came to be dismissed by learned Sessions Judge, Ambajogai on 19/12/2014, wherein Sessions Judge has observed that, present petitioner has not formed any opinion as to cause of death of Sambhaji as viscera was preserved and sent for analysis, the fact remains that, the injuries mentioned on the body of victim which are recited in inquest memo were not mentioned in postmortem report and as such, the petitioner has failed to perform his duty and as such dismissed the revision. Hence present writ petition.

4. Mr. Salunke, learned Counsel for the petitioner would

urge that the petitioner while discharging official duty has narrated the the injuries as were noticed while drawing post mortem report in clause 17. According to him, even if the inquest panchnama reflects certain injuries, the same could find place in column 17 of post mortem report. According to him, there is no criminal intention or *mens-rea* on the part of the applicant to commit any offence much less to shield the original accused. He would urge that duty of drawing post mortem report was duly discharged and proceedings are initiated against him are not sustainable. Learned Counsel for the petitioner would urge that, perusal of the postmortem report reflects that opinion qua cause of death was reserved as viscera was preserved for chemical analysis alongwith organs for histopathological examination.

5. Same is reflected from the communication dated 11/10/2007 provisional postmortem cum death certificate. In view of above, according to present petitioner, present petitioner cannot be proceeded for the offence as alleged, as ingredients are not established.

6. Mr. Bhavthankar, learned Counsel for the complainant would urge that based upon the evidence that was brought before the learned Judicial Magistrate, First Class, Ambajogai has reached

to the conclusion for issuance of process under Section 302, 201 read with Section 34 of Indian Penal Code. According to him, the said order was confirmed in revision based on the appreciation of evidence that was brought on record. According to him, no case for interference is made out in the present writ petition and same is liable to be dismissed.

7. With the assistance of learned Counsel for the parties, I have perused the findings recorded by learned Judicial Magistrate, First Class, Ambajogai, while ordering the issuance of process as against the present petitioner. It is no doubt true that at the relevant time, the applicant was working as Lecturer in Forensic Medicine in S.R.T.R. Medical College, Ambajogai and has drawn post mortem report dated 11/10/2007 which is further signed by Assistant Professor Dr. Vishwajeet Govind Pawar.

8. The perusal of postmortem report and provisional postmortem cum death certificate reflects that, the petitioner has not drawn any opinion as regards cause of death of son of complainant, as same was reserved. The viscera of deceased was preserved for chemical analysis and organs were kept for histopathological examination. In the provisional postmortem cum death certificate, same was reiterated. As such, the petitioner herein has not drawn

any final cause of death of son of non-applicant No. 2.

9. In clause 17 of the said report, present petitioner has specifically mentioned the injuries as were noticed by him on the body of the deceased. Apart from above, if the said injuries which are mentioned in clause-17 of the post mortem report dated 11/10/2007 and compared with inquest panchnama dated 11/10/2007, it is required to be noted that the injuries as were mentioned in inquest panchnama were duly reflected in post mortem report.

10. Apart from above, the perusal of contents of the complaint and evidence that was brought on record hardly any criminal intention could be noticed on the part of present petitioner to commit or be part of other accused persons in the matter of commission of offence in question.

11. In my opinion, learned Revisional Court has failed to consider the above referred aspect i.e. about mentioning of injuries in the inquest panchnama and reflection thereof in clause-17 of the post mortem report. As such, present writ petition succeeds. Rule made absolute in terms of prayer clause (D).

**[ N.W. SAMBRE, J. ]**