

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

CRIMINAL WRIT PETITION NO.335 OF 2002

Nasir Shaikh Amir,
Age 32 years, Occu. Labour,
R/o Galwade road, Amalner,
Taluka Amalner,
District Jalgaon

..Petitioner
(Orig.Complainant)

Versus

1. The State of Maharashtra,

2. Dr.Vandana w/o Narendra Sonawane,
Age 38 years, Occu. Medical
Practitioner, R/o Akshay Hospital,
Dhule Road, Amalner,
Taluka Amalner, Dist. Jalgaon

..Respondents

Mr R.M. Deshmukh, Advocate for petitioner
Mr S.R. Palnitkar, Advocate for respondent No.1
Mr S.B. Bhapkar, Advocate for respondent No.2

CORAM : N.W. SAMBRE, J.

DATE : 10th September 2015

ORAL JUDGMENT

1. Heard Mr Deshmukh, learned Counsel for the petitioner, learned Assistant Public Prosecutor for respondent No.1-State and Mr Bhapkar, learned Counsel for respondent No.2.

2. The present petitioner claiming to be resident of Amalner, District Jalgaon filed complaint for an offence punishable under Section 304-A of the Indian Penal Code under Section 156 of the Code of Criminal Procedure before the Judicial Magistrate, First Class, Amalner, bearing Criminal Case No.139/2000 against the respondent No.2 Dr.Vandana Sonawane on 17th June 2000. In the said

complaint, it was alleged that the daughter of the petitioner was suffering from fever and respondent No.2 has examined her on 17th March 2000 and as the condition of his daughter deteriorated on 29th June 2000, he went to respondent No.2 at about 2.40 am, when respondent No.2 had refused to examine and administer medicine, which has resulted into death of his daughter.

3. In support of complaint, petitioner has recorded verification and has examined witness by name Govind at Exh.5.

4. Learned Judicial Magistrate, First Class, Amalner, upon considering the contents of the complaint, evidence on record, was pleased to dismiss the same by order dated 9th October 2000 by observing that the case under Section 304-A of the Indian Penal Code was not attracted and there is no material on record to order issuance of process against the respondent No.2 herein, for an offence punishable under Section 304-A of the Indian Penal Code, as such ordered dismissal which was affirmed at the behest of petitioner in revision by the Additional Sessions Judge, Amalner vide order dated 5th April 2002, as such present petition.

5. While canvassing the case for interference and for ordering issuance of process, according to Mr Deshmukh, perusal of the contents of the complaint, the verification in support thereof and the evidence of witness Govind establish that case for cognizable offence was made out. According to him, both the Courts below have lost

sight of the same. In addition to above, he has tried to rely upon the judgments of Apex Court in the matter of **Dr. Laxman Balkrishna Joshi v. Dr. Trimbak Bapu Godbole and anr.**, reported in **AIR 1969 SC 128**, **Poonam Verma v. Ashwin Patel and ors**, reported in **AIR 1996 SC 2111** and **Malay Kumar Ganguly Vs.Dr. Sukumar Mukherjee & Ors.**, reported in **2009 ALL SCR 2039** so as to canvass that the conduct of the accused-respondent No.2 herein amounts to causing death by negligence. According to him, the same issue is covered by the above referred judgments.

6. Learned Assistant Public Prosecutor has supported the judgments delivered by both the Courts below on the ground that the requirement of demonstrating commission of offence under Section 304-A of the Indian Penal Code was not at all established from the reading of complaint and verification. Learned Assistant Public Prosecutor submits that the present writ petition is liable to be dismissed.

7. Learned Counsel for the respondent No.2 Mr Bhapkar, while strenuously opposing the claim of the petitioner would urge that under the writ jurisdiction, the scope for interfering with the orders of both the Courts below is very limited. According to him, there is no jurisdictional error and the findings recorded by both the Courts below are just and proper.

8. He would further urge that the fact about examination of the daughter of the complainant on 17th June 2000 demonstrates that it was not the intention of present respondent No.2 to follow any unethical medical practice of refusing to examine the patient. He would urge that nothing is brought on record so as to establish that on the fateful night, when the daughter of the petitioner died i.e. on 29th June 2000, the respondent No.2 had any knowledge of her deteriorating health condition. He would further urge that the fact that after 17th June 2000, the conduct of the petitioner of not providing medical aid to his daughter till 29th June 2000 though she was down with fever demonstrates complete irresponsible and non-parental attitude of the petitioner and as such, sought dismissal of the petition.

9. Upon perusal of the complaint, it reflects that the complainant has claimed that he had first approached respondent No.2 and respondent No.2 who was living on the first floor, has refused to examine his daughter Afrinbee. He claims that the watchman of the house of respondent No.2 was asked to give call to said doctor.

10. According to respondent No.2, he had been to various doctors, viz. Oswal, Shah, Chavan, however, they have refused to examine his daughter and while coming back to respondent No.2, his daughter expired. It is required to be noted here that the petitioner has neither added those doctors as accused nor examined them in support.

11. Apart from above, from the evidence, prima facie, it appears that the petitioner has failed to demonstrate that respondent No.2 has caused death of his daughter because of her negligence. In absence of any material on record about knowledge of the serious condition of health of daughter of the petitioner, in my opinion, both the Courts below were right in rejecting the prayer of the petitioner. The judgments relied upon by learned Counsel for the petitioner that deals with the responsibility of doctor and particularly in the matter of Malay Kumar Vs. Dr. Sukumar, the Court has dealt with the aspect of 'negligence', 'proof of negligence' required under Section 304-A. It is required to be noted that the breach of duty at the behest of respondent No.2 as grossly negligence, was not at all established, at least there is no such prima facie evidence on record to reach to such conclusion.

12. In my opinion, case laws cited supra will be of hardly any assistance to the present petitioner. As such, the present petition fails, stands dismissed. Rule discharged.

(N.W. SAMBRE, J.)

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