

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

CRIMINAL APPLICATION NO.2485 OF 2004

Dr. Satish Ramnarayan Mundada ..Applicant
Age. 40 years, Occ. Medical Practice,
R/o. Nutan Colony, Now Jyoti Nagar,
Aurangabad.

Versus

The State of Maharashtra ..Non-applicant
Through Police Station,
M.I.D.C. Waluj.

Mr.R.R. Mantri, Advocate for the applicant.
Mr.A.R. Kale, A.P.P. for the respondent/State.

CORAM : Z.A. HAQ, J.
DATED : 01.12.2016

ORAL JUDGMENT :-

. Heard. The applicant has challenged the order passed by the Sessions Court by which the Revision Application filed by the State of Maharashtra is allowed, the order passed by the Magistrate recalling the summons issued against the applicant is set aside and the Magistrate is directed to proceed with the Trial against the applicant along with other accused.

02. On the report by brother of deceased, police conducted investigation and filed charge-sheet against Dr.Jainendra Indarchand Challani for offence under section 304-A of the Indian Penal Code. According to the prosecution, deceased Dilip Patil died because of negligence on the part of accused—Dr. Jainendra Indarchand Challani, while giving him treatment. The Investigating Officer had submitted a report under section 169 of the Criminal Procedure Code as far as the present applicant is concerned. The learned Magistrate had rejected the report and directed the Police to investigate the matter further. The present applicant had challenged the order passed by the learned Magistrate by filing Criminal Revision No.107 of 1999, which was allowed by the Sessions Court and name of the present applicant was deleted from the charge-sheet.

03. The learned Magistrate proceeded with the Trial and recorded the evidence. After the evidence came to be recorded, the prosecution filed application (Exh.61) for an order under section 319 of the Criminal Procedure Code to implead the present applicant as accused, as according to the prosecution the evidence showed that the present applicant is also liable for prosecution. The Magistrate passed an order on 16.08.2001 and directed issuance of

summons to the present applicant.

. The present applicant appeared before the Magistrate, furnished bail and filed application (Exh.78) praying that the order passed by the Magistrate on 16.08.2001 be recalled. This course was adopted by the present applicant as per the practice prevailing at that time.

. The Magistrate considered the application filed by the present applicant and passed an order on 06.07.2002 concluding that the evidence on record was not sufficient to exercise jurisdiction under section 319 of the Criminal Procedure Code and to issue summons to the present applicant. The Magistrate directed that the name of the present applicant be deleted from the charge-sheet.

. The above order was challenged by the State of Maharashtra in Revision which is allowed by the Sessions Court by the impugned judgment. The applicant being aggrieved by the order of the Sessions Court has filed this Criminal Application.

04. With the assistance of the learned Advocate for the applicant and the learned A.P.P. I have gone through

the impugned judgment and the evidence of Arun Babulal Patil (brother of the deceased) and evidence of Parashram Ghuge (I.O.)

. The learned Sessions Judge has set aside the order passed by the Magistrate mainly on the ground that the Magistrate could not have re-assessed the same evidence and could not have recalled the order passed by him earlier directing issuance of summons, however, as recorded earlier, at the relevant time as per the practice, the accused were filing applications praying for recall of the order of issuance of summons and such applications were considered.

05. In view of the facts of the present case, I felt it appropriate to examine the evidence on record. The Investigating Officer has stated in his cross-examination on behalf of the accused Dr.Challani that during investigation it was found that Dr.Satish Mundada (present applicant) is not responsible for the death of deceased Dilip Patil.

. The only evidence on record against the applicant is that of Arun Patil (brother of deceased) to the effect that Dr. Mundada (present applicant) has given six injections to Dilip Patil and after conducting

operation, the injury was not stitched. It is the case of the prosecution that deceased Dilip Patil was taken to the Medical Hospital after giving discharge from the hospital of the present applicant and deceased Dilip Patil was examined and treated at Medical Hospital, where he expired. The prosecution has not examined the Doctor who attended deceased Dilip Patil at Medical Hospital. Any other medical expert has not been examined by the prosecution to substantiate that the present applicant has acted with gross negligence while treating deceased Dilip Patil. In-fact, the prosecution had earlier showed the present applicant as one of the witnesses.

. I find that the evidence on record is not sufficient against the applicant and the learned Magistrate could not have exercised jurisdiction under section 319 of the Criminal Procedure Code and could not have issued summons to the applicant for prosecution for offence punishable under section 304-A of the Indian Penal Code.

06. The learned Sessions Judge has not considered the matter in the right perspective and failure on his part to advert to the relevant point vitiates the impugned judgment passed by him.

. Hence, the following order :-

(i) The judgment passed by the learned IVth Adhoc Asstt. Sessions Judge, Aurangabad, in Criminal Revision No.166 of 2002 on 10.09.2004 is set aside.

(ii) The order passed by the learned J.M.F.C., Aurangabad below Exh.78 in S.C.C. No.654 of 1995 on 06.07.2002 is restored.

(iii) Rule made absolute in the above terms. In the circumstances, parties to bear their own costs.

[Z.A. HAQ, J.]