

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
CRIMINAL WRIT PETITION NO.1293 OF 2015

1 Dr.Nitin Vasantao Akolkar,
age: major, Occ: Medical Practice;

2 Dr./Mrs.Anjali w/o Nitin Akolkar,
maiden name Anjali d/o Ashokrao
Padekar), age: major, Occ: Medical
Practice:

Both R/o Akolkar Hospital,
Majalgaon, District Beed.

Petitioners

Versus

1 The State of Maharashtra,
through the Principal Secretary,
Home Department, Mantralaya,
Mumbai-32.

2 Police Station Officer,
Majalgaon Police Station,
Majalgaon, District Beed.

3 The Civil Surgeon,
District Civil Hospital,
Beed, District Beed.

Respondents

Mr. R.R.Mantri, advocate holding for Mr.R.R.Sancheti, advocate for
petitioners.

Mr.S.J.Salgare, APP for Respondents.

**CORAM : R.M.BORDE &
K.L.WADANE, JJ.
DATE : 11th April, 2016**

ORAL JUDGMENT (Per R.M.Borde, J.):

1 Heard. Rule. Rule made returnable forthwith and

heard finally by consent of learned Counsel for respective parties.

2 The petitioners, who are registered Medical Practitioners, are praying to quash the criminal proceedings initiated against them in pursuance to lodging of Crime No.82/2015, registered on 23.08.2015 at Police Station Majalgaon (Rural), for the offences punishable under Sections 304 (II) read with Section 34 of the Indian Penal Code.

3 The details with regard to registration of crime and contents of the First Information Report need not be recorded, suffice it to note that one Sharad Damodhar Jarhad lodged First Information Report on 23.08.2015 with Police Station Majalgaon (Rural), alleging that, as a result of negligence on the part of petitioners, who are medical practitioners, death of one Mrs.Seema Mukund Jadhav had caused. It is alleged that deceased Seema was admitted to the hospital operated by the petitioners on 27.02.2015. Deceased was pregnant and was carrying nine months' pregnancy. It is alleged that she had the tendency of acquiring high blood pressure and, therefore, it was a high risk pregnancy. It is alleged in the First Information Report that petitioners did not possess requisite expertise to conduct high risk pregnancy as well as necessary apparatus were not available at the hospital. It is alleged that death of deceased was as a result of negligence on the part of petitioners who are medical practitioners.

4 On receipt of the First Information Report, the matter was referred to the Medical Board headed by Civil Surgeon, Civil Hospital, Beed and on receipt of report from Medical Board,

offence has been registered.

5 Petitioners contend that allegations made in the First Information Report are devoid of substance and that there is no negligence on the part of petitioners.

6 At this stage, it is not necessary to scrutinise the contentions or plausible defence of the accused. On the basis of allegations made in the First Information Report together with opinion of the Medical Board, offence is made out. Hence, without scrutinising merits or demerits of the case, appropriate directions need be issued within the permissible parameters and within the framework of the guidelines issued by the Hon'ble Supreme Court in various judgments.

7 It is contended that, on perusal of the First Information Report as well as material relied upon by the Investigating agency, by any stretch of imagination, provisions of Section 304 (II) of the Indian Penal Code cannot be made applicable. Section 304 provides for:

**304 Punishment for culpable homicide not amounting to murder –
Part I provides:**

Whoever commits culpable homicide not amounting to murder, shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death,

Whereas, Part-II provides for:

causing such bodily injury as is likely to cause death; or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

8 Culpable homicide is defined under Section 299 of the Indian Penal Code, which provides that whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

9 In the instant matter, *intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death*, cannot be attributed to the petitioners. The basic ingredients of *intention of causing death or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death*, are absolutely absent. That there is no allegation that the petitioners have contributed for causing any bodily injury, which is likely to cause death, or with knowledge that they are likely by such act to cause death. It can, thus, be concluded that the charge levelled by the police in respect of offence punishable under Section 304 (II) is not applicable and ingredients of Section 304-A are attracted in the instant matter. The Investigating Officer shall take appropriate steps and file charge sheet on completion of investigation.

10 In view of the directions as above, since the observations are made at the *prima facie* stage, all defences, which can be legally canvassed, are available to the petitioners/accused.

11 Rule is made absolute to the extent specified above.

K.L.WADANE
JUDGE
adb/crwp129315

R.M.BORDE
JUDGE