

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

**CRIMINAL APPLICATION NO.1744 OF 2016**

1. Vijaykumar s/o. Bapurao Katruwar,  
Age- 60 Years, Occu. Business,  
R/o. Godu Galli, Manwat,  
Tq. Manwat, Dist.Parbhani
2. Balkisan s/o.Pannalal Chandak,  
Age: 60 years, Occu: Agril.  
R/o.Manwat, Tq.Manwat,  
Dist:Parbhani.
3. Dr.Ashok s/o. Ballaya Chindurwar,  
Age-62 years, Occu. Service,  
R/o.Rachana Colony, Manwat,  
Tq. Manwat, Dist. Parbhani. **APPLICANTS**  
[Orig.Accused]

**VERSUS**

1. The State of Maharashtra  
Through its P.I. Police Station,  
Manwat, Tq.Manwat, Dist. Parbhani
2. Munja s/o. Bhagwanrao Fund,  
Age: Major, Occu: Agril.,  
R/o. Naralad, Manwat,  
Tq. Manwat, Dist. Parbhani **RESPONDENTS**  
[Respondent No.2  
Orig.complainant]

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Mr.R.R.Chandak, Advocate for the applicants  
Mr.D.R.Kale, APP for Respondent no.1/State  
Mr.R.J.Nirmal, Advocate for respondent no.2.

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**CORAM: S.S.SHINDE &  
K.K.SONAWANE, JJ.**

Reserved on : 20.03.2017  
Pronounced on : 22.03.2017

**JUDGMENT:** (Per S.S.Shinde, J.):

1. This Application is filed for quashing and setting aside the First Information Report bearing Crime No.32/2016 registered with Manwat Police Station, Manwat, District Parbhani, for the offence punishable under Section 304 [A] of the Indian Penal Code to the extent of applicants.

2. The learned counsel appearing for the applicants submits that by Resolution Nos.7 and 8 passed in the meeting dated 24<sup>th</sup> June, 2014, the management of the institution decided to appoint a Security Guard and to affix a channel gate on the entrance of the College, and accordingly, the said Resolution was acted upon. It is submitted that on 13<sup>th</sup>

February, 2016, the final matches of 'Kho-kho' were being conducted in the college premises, so many people/students were present in the College to watch/see the said sports competition. The children, residing in the adjoining area of College, were playing on the ground near the channel gate. The security guard on duty warned those children not to play with the channel gate. He submits that, the security guard went for round as there was huge crowd in the college campus for watching the competition. On 13<sup>th</sup> February, 2016, at 1.30 p.m. unfortunately an unexpected events happened, and two boys namely, Govind and Tanmay, who were playing with the channel gate got injured due to collapse of channel gate. After getting the knowledge of the said incident, the Vice-Principal of the College went to the spot, and immediately admitted those children in the Civil Hospital, Manwat. During treatment,

one child namely Govind died at Civil Hospital, Manwat, and his brother namely Tanmay also died subsequently.

3. It is submitted that applicant nos.1 to 3 have taken every care to provide medical treatment and A.D. No.4/2016, was registered with Manwat Police Station at 3.30 p.m. by the Vice Principal of the College. It is submitted that the parents of the deceased told the applicants that it was an accident and they have no grievance regarding the said incident. However, after 3-4 hours, the political workers belonging to Shiv Sena Party started protest against the institution and compelled the father of deceased to lodge the FIR against the management. It is submitted that, the registration of FIR is an outcome of the public protest and there is no truthfulness in the allegation in the FIR. It is submitted that when the A.D. was registered, there was no question of

registration of FIR, that too, under the pressure of other persons, who are not concerned with an alleged incident. It is submitted that even if the allegations in the FIR are taken into consideration, it can be stated that the allegation would show the incident is outcome of an accident. The ingredients of Section 304 [A] of the IPC are not attracted at all. For establishing the alleged commission of offence punishable under Section 304 [A] of the IPC, there has to be rash and negligent act, which resulted into or which causes death of any person. In the present case, upon reading the allegation in the FIR, it cannot be said that the applicants have committed any rash and negligent act, which is culpable under the penal law so as to attract the offence punishable under Section 304 [A] of the IPC.

4. It is further submitted that the erection of the gate is a skilled work and

the applicants do not possess such skill. The said work has been carried out by the independent agency having knowledge and skill regarding erection of gate. It is submitted that the jurisprudential concept of negligence differs in civil and criminal law. What may be negligence in civil law may not necessarily be negligence in criminal law. For negligence to amount to an offence, the element of *mens rea* must be shown to exist. For an act to amount to criminal negligence, the degree of negligence should be much higher i.e. gross or of a very high degree. Negligence which is neither gross nor of a higher degree may provide a ground for action in civil law but cannot form the basis for prosecution. The word 'gross' has not been used in Section 304-A of the IPC, yet it is settled that in criminal law negligence or recklessness, to be so held, must be of such a high degree as to be 'gross'. The

expression 'rash or negligent act' as occurring in Section 304-A of the IPC has to be read as qualified by the word 'grossly'. In the present case, there was no any such rash or negligent act of the applicants for causing such incident. Therefore, the present FIR deserves to be quashed and set aside.

5. It is further submitted that considering the allegation made in the FIR and the law laid down by the Hon'ble Apex Court in the case of **Rakesh Ranjan Gupta Vs. State of U.P.**<sup>1</sup>, this is a fit case in which powers under Section 482 of the Code of Criminal Procedure ought to be exercised, by this Court. In view of **Panjab National Bank Vs. Surendra Prasad**<sup>2</sup> that judicial process should not be an instrument of oppression or needless harassment. At that stage, the Court would circumspect and judicious in exercise discretion and should take all the relevant

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1 AIR 1999 SC 2115

2 1993 Supp [1] SCC 499

fact and circumstances into consideration before issuing process least it would be an instrument in the hands of the private complainant as vendetta to harass the persons needlessly. Vindication of majesty of justice and maintenance of law and order in the society are the prime objects of criminal justice but it would not be the means to wreak personal vengeance. Considering from any angle, it is clear that respondent has abuse the process of law and laid complaint against the applicants without any prima facie case of harass them from vendatta. In such circumstances, the FIR is liable to be quashed and set aside.

6. In the present case, the chances of an ultimate conviction is bleak and therefore no useful purpose is likely to be served by allowing the criminal prosecution to continue. In such circumstances to prevent the abuse of process of law, it is necessary

that this Court must exercise its extraordinary jurisdiction under Section 482 of the Criminal Procedure Code for quashing the FIR, registered at Police Station, Manwat, District Parbhani. The learned counsel appearing for the applicants placed reliance on the ratio laid in the cases of **Pundlik Tanbaji Nikhare Vs. State of Maharashtra<sup>3</sup>** and **Jacob Mathew Vs. State of Punjab and Anr.<sup>4</sup>**. Therefore, the learned counsel appearing for the applicants submits that the application deserves to be allowed.

7. On the other hand, the learned APP appearing for respondent – State relying upon the investigation papers, and also an allegations in the FIR submits that the statements of the witnesses have been recorded and it is stated by them that applicants are responsible for the death of the two innocent children. It is submitted

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3 2011 ALL MR [Cri.] 2847

4 AIR 2005 SC 3180

that the investigation is in progress, therefore, this Court may not entertain the prayer for quashing the FIR.

8. The learned counsel appearing for the respondent no.2 - informant submits that, his both sons died. An erection of the gate was in the year 2014. As revealed during the investigation that it was responsibility of the applicants to take every care so as to have proper and well-constructed gate so as to avoid every possibility of an untoward incident, which would cause harm to the health of the students or employees working in the College. He invites our attention to the judgment of the Supreme Court in the case of **Mohanan Vs. Prabha G. Nair**<sup>5</sup>, and submits that the Supreme Court has taken a view that quashing the complaint at the threshold especially where the culpability could be established only on proper analysis of the

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5 2004 [3] SCC 391

expert evidence that may be adduced by the complainant, it was not proper on the part of the Magistrate to quash the complaint.

9. We have given careful consideration to the submissions of the learned counsel appearing for the applicants, learned APP appearing for the respondent – State and learned counsel appearing for respondent no.2 – informant. With their able assistance, we have carefully perused the averments and grounds taken in the application, annexures thereto, allegations in the FIR, and the reply filed by respondent no.2, and also the investigation papers. Upon careful perusal of the investigation papers, the witnesses have stated that when the Govind and Tanmay @ Hanuman were near the gate, suddenly, said get collapsed on those children and as a result of it, those children shouted loudly and then the people gathered. If the statement is carefully perused, *prima facie*,

it appears that those boys were came nearby the gate and then said get collapsed. Admittedly, the present applicants are office bearers of the said institution / college. Keeping in view the exposition of law by the Supreme Court in the case of **Mohanan [cited supra]**, we are of the opinion that when the investigation is in progress, it is not desirable to quash the FIR. In case the FIR is quashed, it may not be possible for the Investigating Officer to establish the culpability unless there is further investigation and proper analysis of the expert evidence that may be adduced by the informant.

10. In that view of the matter, we do not wish to elaborate the reasons on merits of the investigation, which is in progress. Hence, application for quashing of FIR stands rejected. We clarify that this order will not preclude the applicants from applying for

discharge in the event of filing of the charge sheet by the Investigating Officer.

11. Criminal Application No.686 of 2017 does not survive, and hence the same stands disposed of accordingly.

**[K.K.SONAWANE]**  
**JUDGE**

**[S.S.SHINDE]**  
**JUDGE**

. After pronouncement of the Judgment, the prayer is made by the learned counsel appearing for the applicants to continue the ad-interim relief, which was in force during the pendency of the application. The prayer is seriously opposed by the learned APP appearing for respondent no.1 – State, and the learned counsel appearing for respondent no.2.

. Since we have rejected the application, there is no question of continuing ad-interim relief any further.

Hence, the prayer to continue ad-interim relief, which was in force during pendency of this application, stands rejected.

**[K.K.SONAWANE]**  
**JUDGE**

**[S.S.SHINDE]**  
**JUDGE**

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