

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO.374 OF 2016

Rajesh Nandkumar Shah : Petitioner.
Versus
Dr. L H Hiranandani Hospital
Through its Dean Powai, Mumbai & ors. : Respondents.

Mr. Osman A Chishti i/by Ashok Law Firm for the Petitioner.
Mr. K V Saste, Addl. PP for the Respondent/State.

**CORAM : R. M. SAVANT &
SANDEEP K. SHINDE, JJ.**
DATE : 14th AUGUST 2017

P.C.

1 The above Criminal Writ Petition has been filed seeking the relief of directing the Respondent No.4 to register an FIR against the Respondent No.1 hospital for their negligent act causing death of the deceased i.e. Nandkumar Shah in their hospital on 03/01/2007. The said Nandkumar Shah was the father of the Petitioner. The second relief sought is to direct the Respondent No.1 hospital to pay compensation to the Petitioner for their illegal and negligent act causing the death of his father, Nandkumar Shah. By way of interim relief a direction is sought against the Respondent No.3 to issue death certificate of the deceased i.e. Nandkumar Shah who died in the Respondent No.1 hospital on 03/01/2007.

2 It appears that the Petitioner's father was having difficulty in passing urine as a consequence he was admitted in the Respondent No.1

hospital and was under the treatment of Dr. Prakash Shetty who according to the Petitioner advised minor laser surgery for the cure of the disease. It is the case of the Petitioner that at about 1.00 pm on 03/01/2007 the said Dr.Prakash Shetty called the Petitioner on his mobile and informed him that his father was put on life support system. On reaching the hospital, the Petitioner was informed by the Doctor that on administration of anesthesia to his father his blood pressure drop and he suffered cardiac arrest since the father of the Petitioner was not responding to the treatment of the Doctor, he was put on life support system and ultimately at about 3.00 pm the father of the Petitioner was declared as dead. It is the case of the Petitioner that he was told that in so far as the death of his father is concerned, such things can happen in cases like that of the deceased who was around 70 years old and had long diabetic history. It is further the case of the Petitioner that according to the Doctor since the death was natural, it was suggested that postmortem need not be conducted and it is only if the relatives of the deceased insist upon postmortem, that it could be done. It is further the case of the Petitioner that solely relying on the advice i.e. the Doctors of the Respondent No.1 hospital that the Petitioner did not insist for the postmortem of the deceased. The formalities thereafter were completed for cremation of the father of the Petitioner, in the matter of issuance of the Disposition Form by the Respondent No.1 hospital and on the night of 03/01/2007 the body of the father of the Petitioner was cremated. Thereafter the attempts of the Petitioner to get the

death certificate of his father started. In view of the fact that the form issued by the Respondent No.1 hospital was not signed by any Doctor, the Petitioner had to take a police constable to the hospital to get the Disposition Form signed. It seems that the Respondent No.3 thereafter refused to issue the death certificate of the deceased without Form No.4-A from the Respondent No.1 hospital. It is the case of the Petitioner that the Petitioner approached the Respondent No.1 hospital for issuance of Form No.4-A when he gathered knowledge that the Form No.4-A is a Form issued for cause of death of the patient. It is the case of the Petitioner that the Respondent No.1 hospital refused to issue Form No.4-A as according to the Respondent No.1 hospital it could only be issued after the postmortem of the deceased is carried out and since the body is already cremated, the said Form No.4-A could not be issued. It is the case of the Petitioner that he had addressed a letter to the Respondent No.1 hospital. The Respondent No.1 hospital replied the said letter and submitted an opinion of Doctor M S Kamat, Medico Legal Consultant. He states that the death arising out of mishap of this nature mandates that the body of the patient should be sent for postmortem. It is the case of the Petitioner that he thereafter approached the authorities in respect of his grievances as regards the death of his father, but to no avail. The Petitioner therefore has sought the reliefs which have been adverted to in the earlier part of this Order.

3 As indicated above, the death of the father of the Petitioner has taken place on 03/01/2007 and his body has also been cremated. In so far as the allegations of the Petitioner as regards the negligence on the part of the Respondent No.1 hospital is concerned, the same would require investigation and cannot be accepted on the threshold. It is required to be noted that the Petitioner had prior to the cremation made a statement before the police that he has no grievance as regards the death of his father.

4 Be that as it may, it is not possible for this Court to grant the relief sought vide prayer clause (a) i.e. directing the Respondent No.4 to register the FIR. It is open for the Petitioner to avail of the avenues open in law for the said relief, including approaching the learned Magistrate under Section 156(3) of the Criminal Procedure Code.

5 In so far as the relief in respect of issuance of death certificate to the Petitioner is concerned, it is not possible for this Court in its Criminal Jurisdiction in the instant Writ Petition to grant such a relief. If the Petitioner desires to pursue the said relief, it would be open for the Petitioner to seek appropriate directions against the Municipal Corporation for Greater Mumbai by filing appropriate proceedings. Needless to state that the said grievance of the Petitioner is kept open for being urged in the said proceedings. Undoubtedly, such proceeds would be tried on their own merits and in

accordance with law. With the observations as afore-stated, the above Criminal Writ Petition is disposed of.

[SANDEEP K. SHINDE, J]

[R.M.SAVANT, J]