

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

Criminal Application No.964 of 2010

* Dr. Sadatkhan s/o Yaqubali Khan,
Age 48 years,
Occupation : Medical Practitioner,
R/o Mehar Hospital, Old Jalna,
Taluka & District Jalna. **.. Applicant.**

Versus

- 1) The State of Maharashtra
Through Police Station Kadim Jalna.
- 2) Sitaram s/o Kishanrao Kahane,
Age 45 years, Occupation: Agriculture,
R/o. Pangarkheda,
Taluka Ambad, District Jalna. **.. Respondents.**

Shri. R.T. Nagargoje, Advocate, for applicant.
Shri. R.V. Dasalkar, Additional Public Prosecutor, for
respondent No.1.
Shri. Sudhir K. Chavan, Advocate, for respondent No.2.

**Coram: T.V. NALAWADE &
K.L. WADANE, JJ.**

Date: 20 JUNE 2018

JUDGMENT (Per T.V. Nalawade J.) :

- 1) The application is filed under section 482 of
Code of Criminal Procedure for relief of quashing of F.I.R.
No.34/2010 dated 11-2-2010 registered with Kadim Jalna
Police Station for offence punishable under section 302

read with 34 of Indian Penal Code. Both the sides are heard.

2) Papers of investigation were made available by learned Additional Public Prosecutor.

3) The learned Additional Public prosecutor submitted that in view of interim relief granted by this Court on 28-9-2010 which is in terms of prayer clause (D), staying further investigation, no more material could be collected by police. Whatever material was there prior to 28-9-2010 is produced.

4) The F.I.R. is given by the father of deceased Yogesh. Yogesh was aged about 14 years and he had some breathing problem, nasal problem. Yogesh was taken to Dr. Bhimsing Chavan, who is E.N.T. Specialist, one of the accused, about 21 days prior to the date of the report. After examination Dr. Chavan expressed that there was unwanted growth of bone in the nose and it was necessary to remove that by performing operation.

5) Yogesh was taken to the hospital of Dr. Chavan on 10-2-2010. As per the direction given by Dr. Chavan an amount of Rs.10,000/- was to be deposited in the hospital.

Only the first informant had gone with Yogesh to the hospital and as the doctor had asked him to purchase some medicine he went to the medical shop. When he returned he could not see Yogesh in the ward and it was informed to him that Yogesh was taken to Operation Theatre. It was at about 8.00 p.m. First informant noticed that Dr. Chavan was entering and coming out of hospital repeatedly and it appeared to the first informant that Dr. Chavan was frightened. After some time one unknown doctor came and he informed that there was operation performed on Yogesh and he would regain consciousness after about 5 to 6 hours. Present applicant is the said doctor.

6) After giving some opinion by present applicant, Yogesh was brought out of the operation theatre on a stretcher and Dr. Chavan expressed that Yogesh may regain consciousness after about 6 hours. In the ward when the first informant was sitting by the side of Yogesh, Yogesh regained consciousness after about half hour. After regaining consciousness Yogesh by movement asked his father to remove the strip fixed on his mouth. The first

informant called Dr. Chavan. After examination they noticed that blood had accumulated in the nose and it was removed. After that Yogesh started making movements showing that he was in shock. Then he became unconsciousness and there was some noise coming from his throat. At about 1.30 a.m. of 11-2-2010 the first informant felt that something was wrong. At 2.10 a.m. Dr. Chavan said that some machinery was required for treatment and as the machinery was not there it was necessary to take Yogesh in other hospital. Yogesh was taken to hospital of Dr. Huse but Dr. Huse said that Yogesh was already dead. Report was given by the father of Yogesh on 11-2-2010 itself and the crime came to be registered at 17.50 hours.

7) In the application, the present applicant has admitted that he did visit the hospital of Dr. Chavan but he could not give any reason for the same. Police report shows that present applicant probably had gone there for application of anesthesia. Police formed opinion that there was negligence of both Dr. Chavan and Dr. Khan and due to that Yogesh died. Post mortem was conducted on the

dead body and the post mortem report shows that the death took place due to cardio respiratory failure secondary to shock. At column No.20 there are notings with regard to the effect of the operation. Both the lungs were oedematous and congested. There was petedrial haemorrhages in pericardium and right lung contained frothy fluid.

8) In view of the material already collected, it cannot be said at this stage that there was no negligence at all on the part of the present applicant. There was simply breathing problem as mentioned above. Yogesh, a boy aged about 14 years died apparently due to negligence of the two doctors who were there for performing of the operation. This Court holds that this is not a fit case for quashing the F.I.R. Thorough investigation is necessary and on the basis of the aforesaid material police has formed opinion that there is material to infer negligence. In the result, the application is dismissed. Rule discharged. Interim relief is vacated.

Sd/-
(K.L. WADANE, J.)
rsl

Sd/-
(T.V. NALAWADE, J.)