

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 4307 OF 2007

1. Dr. Devidas Chokoba Aathawale,
Age 51 years, Occu. Civil Surgeon,
R/o. Civil Hospital, Amrawati.
2. Dr. Pravin Ramkrishna Sangwe,
Age 38 years, Occu. Medical Officer,
R/o. Jintur Road, Parbhani.
3. Dr. Laxmikant Narayanrao Deshpande,
Age 53 years, Occu. Medical Officer,
R/o. Vishnu Nagar, Parbhani.

....Petitioners.

Versus

1. State of Maharashtra
Through Police Station Officer
Nanal Peth Police Station,
Parbhani.
2. Siddharth Yadavrao Bharade,
Age 45 years, Occu. Business &
Social Work, R/o. Gautam Nagar,
Parbhani.

....Respondents.

Mr. S.S. Bora, Advocate for applicants.

Mr. R.V. Dasalkar, APP for respondent No. 1/State.

**CORAM : T.V. NALAWADE AND
K.L. WADANE, JJ.**

DATED : JULY 17, 2018.

JUDGMENT : [PER T.V. NALAWADE, J.]

1) The proceeding is filed under section 482 of Criminal Procedure Code for relief of quashing of the order made by the learned Chief Judicial Magistrate (C.J.M.), Parbhani on 21.8.2007 in

M-case No. 8/2007 by which the C.J.M. directed to police to make investigation under section 156 (3) of Criminal Procedure Code. The proceeding is filed by present respondent No. 2 Siddharth Bharde.

2) In the proceeding, allegations are made by respondent No. 2 that his brother Satish was admitted in Civil Hospital, Parbhani on 20.9.2007 at 11.00 a.m. due to some ailment. It is contended that accused Nos. 1 to 3 gave treatment to Satish and it is accused No. 2 who gave specific treatment as per the guidance of accused Nos. 1 and 3. Accused No. 1 was working as Civil Surgeon and accused No. 3 was working as R.M.O.

3) It is the contention of the respondent No. 2 that all the accused were changing their opinions and they were not properly doing diagnosis of the ailment and they were giving wrong treatment to Satish. It is contended that on 20.9.2006 doctors gave treatment for fever, but ultimately they declared that there was no fever. It is contended that on 21.9.2006 they gave treatment for malaria, but then they declared that there was no malaria. It is contended that on 22.9.2006 they gave treatment for jaundice, but they declared that there was no jaundice.

4) It is contention of respondent No. 2 that even when the

condition of Satish was deteriorating, it was not specifically informed by these doctors about the serious condition. It is contended that on 23.9.2006 Satish was admitted in Intensive Care Unit (ICU), but it was informed that the blood pressure of Satish was normal. It is contended that when on 23.9.2006 they noticed that condition of Satish had become serious, he made attempt to contact the doctors, but they kept their mobile phones switched off. It is contended that on 23.9.2006 at 9.00 p.m. Satish died in the hospital. Respondent No. 2 has contended that the death of Satish took place only due to negligence of these three doctors and they did not discharge their duties properly and competently. Satish was under their treatment till 23.9.2006. It is contended that even blood test and urine test were not taken to ascertain the real problem and wrong treatment was given. It is contended that doctors could have advised to shift Satish to other hospital, but such advise was also not given and this amounts to negligence in discharging the duty.

5) It is the case of respondent No. 2 that on 24.9.2006 he made complaint to Police Station Nanalpeth Parbhani after the death, but only A.D. was registered under section 174 of Cr.P.C. It is contended that on 25.9.2006 respondent filed complaint to Deputy Director of Health Services, Aurangabad and after inquiry, accused No. 2 Dr. Pravin Sangve was held responsible for death and he was

transferred to Akola from Parbhani. It is contended that complaint was made even to the Government and action was taken against accused No. 2 by the Government. Request was made to make investigation for the offences punishable under sections 304, 304-A, 34 etc. of IPC.

6) The learned counsel for applicants has produced on record the copy of Government order dated 22.4.2013. It shows that against Dr. Sangve departmental inquiry was held, but ultimately he was exonerated. The learned counsel submitted that in view of such order, the prosecution against Dr. Sangve also cannot be allowed.

7) It is not disputed that the Committee of doctors had given report that there was negligence on the part of Dr. Sangve and after that the action was taken. If further Committee was appointed for the purpose of departmental inquiry, this Court is not expected to consider the reports of other Committees which were appointed for ascertaining the liability in departmental inquiry.

8) The learned counsel for applicants placed reliance on the observations made by this Court and Supreme Court in the cases reported as **AIR 2005 SC 3180 [Jacob Mathew Vs. State of Punjab and Anr.]**, **AIR 2004 SC 4091 [Suresh Gupta Vs. Govt.**

of N.C.T. of Delhi] and AIR 2010 SC 1050 [Kusum Sharma and Ors. Vs. Batra Hospital and Medical Research Centre and Ors.]. On the basis of observations made by the Apex Court, the learned counsel for applicants submitted that not only negligence, but gross negligence needs to be made out for prosecution against the doctors. There cannot be dispute over this proposition.

9) In the aforesaid reported cases, the importance of expert opinion is also discussed. In the present matter, it is not disputed that the first expert committee had found accused No. 2 responsible for the death of Satish. At least for five days Satish was under his treatment. The death certificate shows that viscera was preserved for histopathology. Some ailment is mentioned as a possible cause and the learned counsel for applicants submitted that such ailment can be caused due to intoxication. Whether the ailment can be caused by intoxication or by improper medication, can be ascertained during the trial and it is the job of the Trial Court to appreciate the evidence which can be given before the Trial Court. It is specific case that it was simply fever, proper treatment was not given and even urine and blood samples were not taken. It can be said that the deceased was poor person and his condition deteriorated after his admission in the hospital. It is open to the investigating agency to get satisfied on the basis of record which

investigating agency may be able to collect. When there are specific allegations of aforesaid nature, it cannot be said that there is no case atleast as against accused No. 2, who gave treatment to Satish. In the result, following order :-

ORDER

- (I) Application of applicant No. 2 Dr. Pravind Sangve stands dismissed.
- (II) Application of applicant No. 1 Dr. Devidas Aathawale and applicant No. 3 Dr. Laxmikant Deshpande is allowed. Relief is granted to them in terms of prayer clause "C".
- (III) The circumstance that the stay granted by this Court by order dated 17.1.2008 will have to be considered by the concerned court at the time of taking cognizance of the matter if the chargesheet is filed as against applicant No. 2.

Rule is made absolute in aforesaid terms.

[K.L. WADANE, J.]

[T.V. NALAWADE, J.]

ssc/