

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.414 OF 2017**

Dr. A. G. Ansari	Applicant
versus	
The Police Inspector, Bhosari Police Station, Pune	
and ors.	Respondents

Mr. Ashok B. Tajane, advocate for the applicant.
Ms. Sangeeta D. Shinde, APP for the State.
Mr. Sushil Nimbkar, advocate for the respondent No.3.

**CORAM : RANJIT MORE &
SMT.BHARATI H. DANGRE, JJ.**

DATE : 16th OCTOBER, 2018.

P. C. :

Heard learned counsel and learned APP appearing for the respective parties.

2. The application is filed for quashing and setting aside the FIR bearing CR No.476 of 2016 registered with Bhosari Police Station, Pune against the applicant and others. The FIR is registered at the instance of the respondent No.3/complainant - Maula Sattar Sayyad. The FIR shows that the complainant's wife was admitted in Life Care Hospital on 4th May, 2016 at the instance of the present applicant for removal of small lump from her breast. The FIR further shows that the complainant's wife was operated in the night at 11.30 pm on the same day and in the morning of the next day, she expired. The complainant

has alleged negligence on the part of the applicant and other doctors who operated his wife.

3. The FIR is registered after investigating officer obtained opinion of the expert team from Sasoon Hospital. We have gone through the report of the expert team. The report shows that the complainant's wife was not treated properly and the doctors were negligent in treating her.

4. Mr. Tajane, learned counsel for the applicant, submitted that the applicant was not the doctor who operated the complainant's wife. The submission cannot be accepted at this stage inasmuch as it was the applicant who referred the complainant's wife to Life Care Hospital for operation. Even the Expert Committee opined that the operation was not at all necessary. Be that as it may, the applicant is the registered owner of the Life Care Hospital.

Mr. Tajane tried to point out that the applicant had transferred the Life Care Hospital to other doctors. The submission cannot be accepted in the light of the documents annexed by the applicant to his application in the form of leave and license agreement dated 12th July, 2016. This document shows that Life Care hospital entered into partnership with Vignaharta Group. The fact still remains that Life Care Hospital is registered in the name of the applicant only.

Mr. Tajane lastly pointed out the decision of the Apex Court in **Jacob Mathew and State of Punjab and anr. reported in (2005) 6 SCC 1** to contend that the applicant cannot said to be negligent and he could not have been made accused in the said FIR. We cannot accept this submission in the light of clause (7) of paragraph 48 of the said judgment which reads as follows :-

“(7) To prosecute a medical professional for negligence under criminal law it must be shown that the accused did something or failed to do something which in the given facts and circumstances no medical professional in his ordinary senses and prudence would have done or failed to do. The hazard taken by the accused doctor should be of such a nature that the injury which resulted was most likely imminent.”

5. In the light of allegations made in the FIR coupled with expert opinion, we are of the view that the applicant falls in clause (7) referred hereinabove. We are, therefore, not inclined to entertain this application. The criminal application is, accordingly, dismissed.

6. The observations made hereinabove are prima facie in nature and only made for the purpose of disposal of this application.

[SMT.BHARATI H. DANGRE, J.]

[RANJIT MORE, J.]