

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

CRIMINAL WRIT PETITION NO. 668 OF 2017

Shubhangi wd/o Ashok Thorbole

....Petitioner.

Versus

The State of Maharashtra and Ors.

....Respondents.

Mr. A.T. Jadhavar, Advocate for petitioner.

Mr. K.D. Mundhe, APP for respondents No. 1 to 4.

**CORAM : T.V. NALAWADE AND
M.G. SEWLIKAR, JJ.**

DATED : 22/10/2020.

ORDER :

1. The petition is filed for direction to transfer the inquiry of A.D. No. 31/15 to C.I.D. On the date of petition the inquiry was being done by Kallam Police Station. Heard both the sides.

2. Ashok Thorbole, the deceased was the husband of petitioner. It is her contention that he was suffering from piles and so, he was taken to Bajaj Hospital, Aurangaba on 12.5.2015. It is contended that the doctors there advised surgery and the surgery was to take place on 16.5.2015. It is contended that at about 9.45 a.m. Ashok was taken to operation theater and at about 11.30 a.m. the petitioner and other relatives of Ashok were informed that operation was over. It is contended that when Ashok was brought out of the operation theater, he was not in conscious state and then Ashok started vomiting. It is contended that when there was

vomiting for continuous 15 minutes, Ashok was taken to O.T. by respondent No. 5 and after some time, respondent No. 5 declared that Ashok was dead.

3. It is contended that brother of Ashok, Rajendra made complaint to police and he suspected some negligence and mischief on the part of doctors. It is contended that due to the complaint inquiry was made under section 174 of Cr.P.C. and the record like inquest panchanama was prepared. It is contended that though P.M. was conducted and opinion was given that the death took place due to heart attack, the viscera was preserved for chemical analysis. It is contended that Ashok must have died due to negligence of respondent No. 5 Dr. A.M. Dhamdhare. It is contended that when initially his inquiry was with respondent No. 3 police station, the inquiry was transferred to respondent No. 4 police station and both these police stations did not make sincere and honest inquiry. It is contended that the incident makes out the case under section 304-A of I.P.C. and police ought to have taken steps to register the crime.

4. The petitioner herself has produced the record of admission and treatment. The record contains inquest report, P.M. report. The C.A. report was also shown in respect of viscera by APP to this Court. The doctor, who conducted the P.M. examination, gave opinion that the death took place due to heart failure. No poison was detected in viscera. There is nothing doubtful about operation and

use of anesthesia. The patient was conscious when he was brought outside of the operation theater.

5. The committee was appointed to make inquiry in to the allegation of negligence as per the direction given by the Apex Court in the case of **Martin F. Disoza vs. Mohad Ispak reported in AIR 2009 page No. 2049**. This committee also did not give opinion against the doctors. The age of the deceased was around 42 years. It can be said that there is nothing with the petitioner to show that there was any negligence on the part of doctor. The contention of the petitioner that they ought to have examined the deceased properly before performing operation on him cannot be accepted as it is as the record shows that proper inquiry was made and necessary steps were taken before taking decision of operation. It was not that serious case. It was the case of piles and only some portion of the rectum was to be addressed during operation. As there is opinion of expert committee and there is the record of aforesaid nature, this Court holds that the relief claimed cannot be given. It needs to be presumed that the things which are required to be inquired into under section 174 of Cr.P.C. are done. In the result, the petition stands dismissed.

[M.G. SEWLIKAR, J.]

[T.V. NALAWADE, J.]

ssc/