

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR**

CRIMINAL APPLICATION (APL) NO.164 OF 2018

1. Dr. Mohammed Amin Afzal
s/o Mohammed Yasin,
Aged - 35 years, Occpn. Doctor.
2. Dr. Sayyed Tausin w/o Mohd.
Amin Afzal,
Aged - 33 years,
Occpn. Doctor,

Both R/o Mominpura, Balapur,
Tq. Balapur, Distt. Akola.

... **APPLICANTS**

// VERSUS //

1. State of Maharashtra,
Through Police Station Officer,
Police Station, Balapur,
Distt. Akola.
2. Dr. Digambar Bulbule,
Medical Officer,
Public Health Centre,
Balapur, Tq. Balapur,
Distt. Akola.

... **RESPONDENTS**

Shri S. V. Sirpurkar, Advocate for applicants.

Shri S. D. Sirpurkar, Additional Public Prosecutor for Non-
applicant No.1 - State.

CORAM: Z.A. HAQ & AMIT B. BORKAR, JJ.
DATED : 12/01/2021.

ORAL JUDGMENT : (PER AMIT B. BORKAR, J.)

1. Heard.
2. Rule. Rule is made returnable forthwith.

3. This is an application filed under Section 482 of the Code of Criminal Procedure challenging First Information Report No.54/2018 dated 5.2.2018 registered with the non-applicant no.1 – Police Station, for offences punishable under Section 304-A of the Indian Penal Code read with Sections 3 and 6 of the Bombay Nursing Home Registration Act read with Section 33 of the Maharashtra Practitioners Act, 1961.

4. The First Information Report came to be registered against the applicants with the accusation that the applicants without permission from the Competent Authority carried out pregnancy of the Victim and due to negligence of the applicants, the victim died. It is alleged that the applicants were directed not to admit patient but, still the applicants carried out pregnancy of the Victim. The non-applicant no.2, therefore, filed complaint with the non-applicant no.1. The impugned F.I.R. was, therefore, registered at the instance of the non-applicant no.2.

5. The applicants have, therefore, approached this Court by way of the present application and this Court on 19.4.2018 issued notice to the non-applicant no.2. This Court, by

way of an interim relief, directed that Charge-sheet should not be filed against the applicants.

6. The non-applicant no.1 filed reply and stated that the Committee headed by the Collector, the Civil Surgeon and other Officers conducted inspection and verification of the hospital of the applicants and found deficiencies in the hospital of the applicants. Therefore, the applicants were restrained from admitting patients. It is submitted that in spite of the said order, the applicants admitted patients i.e. Victim - Shaba Firdoz on 6.8.2017 and after the delivery, she suffered continuous bleeding and due to lack of proper facility and equipment, the life of the Victim could not be saved.

7. The applicants filed their rejoinder and stated that the applicants were granted permission to run hospital on 21.8.2017. It is also stated that the applicants have not operated deceased Victim in their hospital, as their hospital remains closed on Sunday. It is further stated that their license came to be cancelled vide letter dated 25.10.2017, which was not cancelled due to alleged negligence. It is further stated that as per the Government Resolution dated 26.3.2020, the First Information

Report cannot be filed without getting permission from the said Committee.

8. We have carefully considered the contents of the First Information Report and reply filed by the non-applicant no.1. The offence registered against the applicants is under Section 304-A of Indian Penal Code. From the contents of the First Information Report, there are no specific allegation regarding alleged gross negligence committed by the applicants. The allegation in the First Information Report is to the effect that the death of the deceased was caused due to lack of facilities in the hospital. The Supreme Court in the case of ***Jacob Mathew Vs. State of Punjab*** reported in (2005) 6 SCC 1. In paragraph no.48 (6) and (7) has held as under:

“(6) The word 'gross' has not been used in Section 304-A of IPC, yet it is settled that in criminal law negligence or recklessness, to be so held, must be of such a high degree as to be 'gross'. The expression 'rash or negligent act' as occurring in Section 304-A of the IPC has to be read as qualified by the word 'grossly'.

(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”.

9. There are no allegations of gross negligence in the First Information Report and also there is no allegation that no medical professional in his ordinary senses and prudence would have done or failed to do the acts allegedly not done by the applicants.

10. The next offence alleged against the applicants is under Section 33 of the Maharashtra Medical Practitioners Act, 1961 (for short “Act of 1961”). We have considered Section 33 of the Act of 1961. The applicants have produced alongwith the application copies of their Registration Certificate with the Maharashtra Council of Indian Medicine. Therefore, the ingredients of Section 33 of the Act of 1961 are not fulfilled.

11. Another offence alleged in the First Information Report is non-compliance of Section 3 of the Maharashtra Nursing Home Registration Act. The non-compliance of Section 3 of the said Act is made punishable under Section 6 of the said Act. The applicants in their rejoinder have produced on record permission

granted by the District Civil Surgeon, Akola, subject to the conditions stated in the said order. Therefore, the ingredients of Section 6 of the said Act are not fulfilled.

12. Taking overall view of the matter, we are satisfied that the continuation of proceedings against the applicants would amount to abuse of process of the Court. We are satisfied that ingredients of the offences alleged against the applicants are not fulfilled. Hence, the First Information Report registered against the applicants deserves to be quashed and set aside.

13. We, therefore, pass the following order:

First Information Report No.54/2018 dated 5.2.2018 registered with the non-applicant no.1 - Police Station for offences punishable under Section 304-A of the Indian Penal Code read with Sections 3 and 6 of the Bombay Nursing Home Registration Act read with Section 33 of the Maharashtra Medical Practitioners Act, 1961, is quashed and set aside.

Rule is made absolute in the aforesaid terms.

JUDGE

JUDGE