

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

CRIMINAL APPLICATION (APL) NO. 487 OF 2021

Dr. Rahul Shyamrao Thaware,
Aged about 36 years, Occ. Doctor,
R/o. Plot No.86, Wathoda Layout,
Shrikrishna Nagar, Hanuman Nagar,
Nagpur – 440009.

.....**APPLICANT**

... **VERSUS** ...

1. The State of Maharashtra,
Through Police Station Wadi,
Wadi, Nagpur.
2. Shri Praveen S/o. Ramdas Mahant,
Aged about 37 years, Occ. - Nil,
R/o. Sneha Nagar, Mouda, Wadi,
Nagpur.

.....**NON-APPLICANTS**

Shri Shashibhushan Wahane, Advocate for the Applicant.
Shri S. M. Ghodeswar, Additional Public Prosecutor for the
Non-applicant No.1.
Shri T. S. Kene, Advocate for the Non-applicant No.2.

**CORAM : V. M. DESHPANDE AND
AMIT B. BORKAR, JJ.**

DATE : 26.08.2021.

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

1. Heard.
2. Rule. Rule is made returnable forthwith.
3. By this application under Section 482 of the Code of Criminal Procedure, the applicant is challenging registration of the First Information Report No.127/2021 dated 12.04.2021 registered with the non-applicant No.1 - Police Station for the

offence punishable under Section 304 read with Section 34 of the Indian Penal Code.

4. The First Information Report came to be registered against the applicant with the accusations that due to fire broke out in the hospital owned by the applicant on 09.04.2021, four individuals lost their life. It is alleged that the applicant breached fire safety. According to the report, the Hospital of which the applicant is the director did not take proper care and did not make proper arrangement and it is because of the negligence of the Hospital, fire was caused, resulting into death of patients.

5. The applicant has therefore, challenged registration of the First Information Report by way of filing the present application. This Court on 22.04.2021 issued notice to the non-applicants. The non-applicant No.1 has filed reply stating that after the investigation carried out by the Investigating Agency, the cause of death of the patient is suffocation following inhalation of smoke. It is stated that Investigating Agency has carried out the investigation and it is due to clear lapse and negligence on the part of the Hospital – Authority in not equipping the sufficient electrical devices as per requirement of electric load in the Hospital premises, the fire broke out. It is stated that the fire broke out mainly due to negligence of the applicant.

6. The non-applicant No.2 has also filed his reply stating that from the investigation and the allegations in the First Information Report, the ingredients of the offence under Section 304 of the Indian Penal Code are made out.

7. We have carefully considered the allegations in the First Information Report along with the reply filed by the respondents. We have carefully scrutinised the provisions of Section 304 and Section 304-A of the Indian Penal Code. In our opinion there is distinction between Section 304 and 304-A of the Indian Penal Code. Section 304-A of the Indian Penal Code deals with homicidal death by rash or negligent act. Section 304 of the Indian Penal Code applies to the cases where the death has been caused without intention or knowledge. Section 304 applies to cases where the death is caused by doing a rash or negligent act, which does not amount to culpable homicide not amounting to murder within the meaning of Section 299 or culpable homicide amounting to murder under Section 300 of the Indian Penal Code. In other words, Section 304-A excludes all the ingredients of Section 299 as also Section 300. In our opinion, if there is intention or knowledge as “motivating force” of the act complained of, Section 304-A will have to make room for graver and more serious charges of culpable homicide not amounting to murder. Per contra, the words “not amounting to culpable

homicide” in Section 304-A, are significant and clearly convey that Section seeks to embrace those cases where there is neither intention to cause death nor that the act done will in all probability result into death. In our opinion, Section 304-A will apply to such acts, which are rash or negligent and are directly cause of death of another person.

8. Having considered the allegations in the First Information Report along with replies filed by both the non-applicants, we are of the opinion that the Investigating Agency was not justified in prosecuting the applicant for offence under Section 304 of the Indian Penal Code. In our opinion, the allegations and the reply filed by the non-applicant No.1, *prima facie*, make the applicant liable for the investigation for offence under Section 304-A of the Indian Penal Code. We are therefore, of the opinion that taking into consideration the allegations against the applicant and the reply filed by the non-applicant No.1, the applicant needs to be investigated for offence under Section 304-A of the Indian Penal Code and not under Section 304 of the Indian Penal Code.

9. For the above reasons, we pass following order :

i. The non-applicant No.1 shall carry out the investigation against the applicant for offence under Section 304-A of the

Indian Penal Code according to law against the applicant for First Information Report No.127/2021 dated 12.04.2021 registered with the non-applicant No.1 - Police Station and shall not carry out investigation for offence under Section 304 of the Indian Penal Code.

10. The application is disposed of in the above terms.

11. Rule is made absolute in the above terms. Pending application(s), if any, stand(s) disposed of.

JUDGE

JUDGE