

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

CRIMINAL WRIT PETITION NO.404 OF 2021

Harshad S/o. Pramod Topre,
(Husband of Gayatri Harshad Topre)
Aged about 35 years, Occ.:- Service,
R/o. : Plot No.9, Chaiteshwar Nagar,
Wathoda Layout, Near Savita Bichayat
Centre, Kharbi, Nagpur - 440 034.

....PETITIONER

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1. Medical Council of India, Aiwan-E-Galib Marg, Kotla Road Opposite to Mata Sundari College for Women, Near I.T.O. New Delhi – 110002, India.
2. Government Medical College & Hospital, Nagpur, Through its President/Dean, Hanuman Nagar, Ajni Rd., Medical Chowk, Ajni, Nagpur, Maharashtra 440003.
3. Regional Forensic Science Laboratory, State of Maharashtra, Dhantoli, Nagpur – 440012.
4. Nagpur Municipal Corporation, Mahanagar Palika Marg, Civil Lines, Nagpur, Maharashtra – 440 001.
5. Nandanwan Police Station, E 34, Nandanwan Colony, Near Nandanvan, Nagpur, 440 009.
6. Sakkardhara Police Station, Sakkardara Square, Opposite Indian Oil Petrol Pump, Sakkardara, Nagpur.

7. Dhantoli Police Station, Police Station Road, Congress Nagar, Dhantoli, Opposite Hotel Green City, Nagpur, Maharashtra, 440 012.
8. Abhi-Yog Hospital & Research Centre, 481, Nehru Nagar, Sakkardara Police Chowki Road, Tiranga Chowk, Nagpur 440 009.
9. Health City Children's Hospital, 2nd & 3rd Floor, Vijay Bhavan, Lokmat Building Square, Dhantoli, Nagpur - 440 012.
10. Seven Star Hospital, 324, 1, Great Nag Rd., Jagnade Square, Nandanvan, Nagpur, Maharashtra 440009.
11. Dr. Abhilasha Deshmukh MBBS, DGO, Obstetrician & Gynaecologist Laparoscopic and Infertility Specialist, Reg. No. 2003/03/1034, Plot No.481, Sakkardara, Police Station Rd., Tiranga Square, Nagpur, Maharashtra 440009.
12. Dr. Yogesh Deshmukh, M.B.B.S., M.S. (Orthopaedics), Plot No.481, Sakkardara, Police Station Rd., Tiranga Square, Nagpur, Maharashtra 440009.
13. Dr. Satkar/Kamlakar Pawar (Anaesthetics), C/o. Abhi-Yog Hospital & Research Centre, 481, Nehru Nagar, Sakkardara Police Chowki Road, Tiranga Chowk, Nagpur 440 009.
14. Dr. Ashish Aakuj, M.B.B.S. DCH, FCPS, Akhuj Health City Children Hospital, 1st Floor, Rajkamal Complex, Central Park Rd., Panchsheel Square, Dhantoli, Nagpur, Maharashtra 440012.

15. Dr. Harshal Ingole, Pediatrician,
M.B.B.S. DCP, Plot No.196,
Nandanvan Rd., Shiv Nagar, Old
Nandanvan, Nagpur, Maharashtra
440009, Health City Children
Hospital.

16. Dr. Ashish Kubde (Gynic), Seven
Star Hospital Great Nag Rd., Jagnade,
Square, Nandanvan, Nagpur,
Maharashtra 440009.

.... **RESPONDENTS.**

Ms. Sejal Lakhani h/f. Shri S. P. Bhandarkar, Advocate for the petitioner.
Shri S.S. Doifode, A.P.P for the respondent Nos.2, 5 to 7/State.

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

DATE : 23.06.2021.

ORAL JUDGMENT : [PER: AMIT B. BORKAR, J.]

1. By this writ petition under Article 226 and 227 of the Constitution of India, the petitioner who is husband of deceased and father of deceased child is seeking a direction to initiate an independent enquiry by CBI, CID or any specialized Government Investigation Agency in relation to death of his wife and child against the hospitals and doctors who were looking after deceased. The petitioner has also sought permission to constitute committee of expert doctors to provide expert opinion in relation to discrepancies and irregularities committed by the respondent Hospitals. The petitioner has further sought registration of the First Information Report against the respondents nos. 8 to 16 for gross negligence.

2. The case of the petitioner in short is as under :-

The wife of the petitioner was pregnant and her medical condition was supervised by the respondent No.8 – Abhi-Yog Hospital where respondent No.11 – Dr. Abhilasha was attending her. It is alleged that on 07.07.2020, the respondent No.11 - Dr. Abhilasha directed wife of the petitioner to report in the hospital at 8.00 p.m. for performing caesarian section. It is alleged that on 07.07.2020 prognosis of the wife of petitioner was prepared as “Healthy Mother and Baby”. The last checkup was done at 11.30 p.m. on 07.07.2020 and till then the wife of the petitioner was normal. It is alleged that around 3.00 am. on 08.07.2020, labour pain commenced and wife of the petitioner was in excruciating pain but no assistance was provided by the staff of respondent No.8 – Abhi-Yog Hospital and respondent No.11- Dr. Abhilasha was absent. It is alleged that around 6.00 a.m., respondent No.11 – Dr. Abhilasha arrived in the hospital and told the relatives of the petitioner that there will be normal delivery. It is alleged that when the petitioner went to bring hot water from the house, the condition of his wife deteriorated, and she turned blue as normal delivery was unsuccessful. It is alleged that at around 7.30 a.m. the child was delivered through caesarian procedure and the petitioner was permitted to see the mother and the baby. The respondent No.15 – Dr. Harshal Ingole told the petitioner, he was blessed with a male

child but he disclosed that the baby did not cry and that his condition is critical. It is alleged that the respondent No.8 – Abhi-Yog Hospital decided to shift baby to respondent No.9 – Health City Hospital and around 9.00 a.m. respondent No.14- Dr. Ashish Aakuj told the petitioner that the condition of the child is critical and had only 1% chance of survival. It is alleged that the petitioner was told that the condition of his wife was critical and she had only 50% chance of survival. It is alleged that on 10.30 p.m. on 08.07.2020 the petitioner received a call from respondent No.9 – Health City Hospital that his child could not survive. It is alleged that in the death summary report of the child, the sex of child was mentioned as female when the child was male. It is alleged that on 09.07.2020 the wife of the petitioner died at respondent No.10- Seven Star Hospital. It is alleged that in the Postmortem report of wife of the petitioner, it was noted that there were blood clots in her uterus alongwith decidual remnants. It is alleged that certificate issued by the Government of Maharashtra showed gender of the child of petitioner as male. It is stated that the petitioner on 15.07.2020 filed a police complaint against the respondent No. 8 – Abhi-Yog Hospital with the respondent No.6 – Police Station. It is stated that the petitioner on 18.07.2020 filed another police complaint against the respondent No.9- Health City Hospital with the respondent No.7 – Police Station. It is stated that final Postmortem report showed

cause of death as “Postpartum Haemorrhage associated with Disseminated Intravascular Coagulation” It is alleged that Disseminated Intravascular Coagulation is a condition in which small blood clots develop throughout the bloodstream, blocking small blood vessels. It is stated that the petitioner received communication from respondent No.6 stating that there was no substance in the allegations of negligence made by the petitioner. The petitioner has therefore filed present petition seeking the reliefs as stated above.

3. We have heard Ms. Sejal Lakhani, learned Advocate for the petitioner and Shri S.S. Doifode, learned Additional Public Prosecutor.

4. It is submitted on behalf of the petitioner that there is gross negligence committed by the respondent Nos.8 to 16. It is submitted that the allegations in the complaint disclosed cognizable offence and therefore, it was duty on the part of the respondent Nos.6 and 7 to register offences against the respondent Nos.8 to 16. It is submitted that the enquiry report of Expert Committee submitted to the respondent No.6 – Police Station is not correct. Learned Advocate for the petitioner invited our attention to the chart referred in the petition to show that the report of enquiry

committee is incorrect. It is therefore, submitted that the petitioner is entitled to the reliefs claimed in the petition.

5. The learned Additional Public Prosecutor submitted that the Assistant Police Inspector of respondent No.6 – Police Station after receipt of the complaint from petitioner, called upon Civil Surgeon of the Government Hospital to constitute a committee of experts and accordingly, committee of those experts was constituted. He invited our attention to the report which is at page 155 of the petition. He submitted that the committee of experts as per the judgment of Hon'ble Supreme Court in the case of ***Jacob Mathew Vs. State of Punjab And Another*** reported in (2005) 6 SCC 1 sought opinion of experts committee before registration of the First Information Report. He submitted that the committee of experts unanimously stated that the respondent Nos.8 to 16 have taken due care and caution while performing caesarian section of the wife of the petitioner. He submitted that the committee of experts found no negligence on the part of respondent Nos.8 to 16 and therefore, there is no need to grant relief in favour of the petitioner.

6. We have carefully considered the allegations in the complaints filed by the petitioner with the respondent Nos.6 and 7 – Police Station dated 15.07.2020 and 18.07.2020. On careful

consideration of the said complaints, it appears that the petitioner has alleged that the respondent No.11 - Dr. Abhilasha was not present in the night when the wife of the petitioner was having pain. It is further alleged that in the certificate issued by the Hospital, the child of the petitioner was shown as female when as a matter of fact the child was male. It is therefore alleged in the said complaints that the respondent Nos.8, 11 and 15 have failed to perform their duties and have committed gross negligence due to which the petitioner lost his wife and new born child. We have scrutinized complaint dated 18.07.2020 filed with the respondent No.7- Police Station. The petitioner has made similar allegations which are made in complaint dated 15.07.2020.

7. At this stage, it would be necessary to note relevant observations of Hon'ble Supreme Court in the case of **Jacob Mathew**. The Hon'ble Supreme Court in paragraph Nos. 48 (5), (6) and (7) has held as under :

“48. We sum up our conclusions as under :

(5) The jurisprudential concept of negligence differs in civil and criminal law. What may be negligence in civil law may not necessarily be negligence in criminal law. For negligence to amount to an offence, the element of mens rea must be shown to exist. For an act to amount to criminal negligence, the degree of negligence should be much higher i.e. gross or of a very high degree. Negligence which is neither gross nor of a higher degree may provide a ground for action in civil law but cannot form the basis for prosecution.

(6) The word “gross” has not been used in Section 304-A 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 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.”

8. The Hon’ble Supreme Court in paragraph Nos. 50, 51 and 52 has held as under :

“50. As we have noticed hereinabove that the cases of doctors (surgeons and physicians) being subjected to criminal prosecution are on an increase. Sometimes such prosecutions are filed by private complainants and sometimes by the police on an FIR being lodged and cognizance taken. The investigating officer and the private complainant cannot always be supposed to have knowledge of medical science so as to determine whether the act of the accused medical professional amounts to a rash or negligent act within the domain of criminal law under Section 304-A of IPC. The criminal process once initiated subjects the medical professional to serious embarrassment and sometimes harassment. He has to seek bail to escape arrest, which may or may not be granted to him. At the end he may be exonerated by acquittal or discharge but the loss which he has suffered in his reputation cannot be compensated by any standards.

51. We may not be understood as holding that doctors can never be prosecuted for an offence of

which rashness or negligence is an essential ingredient. All that we are doing is to emphasise the need for care and caution in the interest of society; for, the service which the medical profession renders to human beings is probably the noblest of all, and hence there is a need for protecting doctors from frivolous or unjust prosecutions. Many a complainant prefers recourse to criminal process as a tool for pressurising the medical professional for extracting uncalled for or unjust compensation. Such malicious proceedings have to be guarded against.

52. Statutory rules or executive instructions incorporating certain guidelines need to be framed and issued by the Government of India and/or the State Governments in consultation with the Medical Council of India. So long as it is not done, we propose to lay down certain guidelines for the future which should govern the prosecution of doctors for offences of which criminal rashness or criminal negligence is an ingredient. A private complaint may not be entertained unless the complainant has produced prima facie evidence before the Court in the form of a credible opinion given by another competent doctor to support the charge of rashness or negligence on the part of the accused doctor. The investigating officer should, before proceeding against the doctor accused of rash or negligent act or omission, obtain an independent and competent medical opinion preferably from a doctor in government service, qualified in that branch of medical practice who can normally be expected to give an impartial and unbiased opinion applying Bolam test to the facts collected in the investigation. A doctor accused of rashness or negligence, may not be arrested in a routine manner (simply because a charge has been levelled against him). Unless his arrest is necessary for furthering the investigation or for collecting evidence or unless the investigation officer feels satisfied that the doctor proceeded against would not make himself available to face the prosecution unless arrested, the arrest may be withheld.”

9. It appears that in pursuance of the observations of the Hon'ble Supreme Court, the Assistant Police Inspector of respondent No.6 – Police Station had called upon Civil Surgeon, Government Hospital, Nagpur to constitute a committee of experts to look into the allegations of negligence made by the petitioner. The expert committee of six members in its detailed report has categorically opined that they have not found any negligence in the treatment provided by the respondent – Hospitals while carrying out medical treatment on the wife of the petitioner. It is further stated by the committee of experts that on the basis of documents available with them, they found all the facilities available with the respondent No.8 – Abhi-Yog Hospital for the purpose of carrying out emergency and elective caesarian section. The Committee also found that the injection Bupivaccaine 0.5% (heavy) 2cc has been administered properly. The Committee opined that the expert pediatrician found proper medicines were administered to new born child and he could not find negligence in the treatment. On careful scrutiny of the committee of experts constituted by Civil Surgeon, we are of the opinion that the respondent Nos.6 and 7 were justified in not registering the First Information Report against respondent Nos.8 to 16.

10. The Hon'ble Supreme Court in the case of **Jacob Mathew** (cited supra) has observed that though the doctors are not

immune from legal proceedings in the event of their negligence in discharging their professional duties, in the interest of the society, it is necessary to protect doctors from frivolous and unjust prosecution. It is further observed that a private complaint may not be entertained unless the complainant has produced *prima facie* evidence before the Court in the form of a credible opinion given by another competent doctor to support the charge of rashness or negligence on the part of the accused doctor. It is observed that the Investigating Officer should, before proceeding against the doctor accused of rash or negligent act or omission, obtain an independent and competent medical opinion preferably from a doctor in Government service, qualified in that branch of medical practice who can normally be expected to give an impartial and unbiased opinion applying the Bolam test to the facts collected in the investigation.

11. In the facts and circumstances of the present case, the petitioner has failed to demonstrate that the opinion of the committee of experts constituted by the Civil Surgeon, Nagpur suffers from any illegality or in any manner not according to law. In absence of concrete material to discard opinion of experts in the field, the prayer sought in the petition cannot be granted.

12. We are satisfied that the opinion of body of experts relied upon by the investigating agency is legal and proper.

13. There is no merit in the petition. The petition is dismissed.

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