

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

CRIMINAL APPLICATION (APL) NO.427 OF 2018

Dr. Deepika Ashish Sanghwi
Aged about 35 yrs. Occ. Doctor.
R/o Sanghwi Hospital,
Shashtri Nagar, Akola.
Tq. & Dist. Akola.

.. **APPLICANT**

// VERSUS //

State of Maharashtra,
Through Police Station Officer,
Police Station, Balapur,
Distt. Akola.

... **RESPONDENT**

Shri A.S.Mardikar, Senior Advocate assisted by Shri Ved R.
Deshpande, Advocate for applicant.
Shri N.S.Rao, Additional Public Prosecutor for the Non-applicant.

CORAM: Z.A. HAQ & AMIT B. BORKAR, JJ.
DATED : 22/01/2021.

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.158/2018 registered with the non-applicant – Police Station, for offence punishable under Section 304-A of the Indian Penal Code.

4. The First Information Report came to be registered against the applicant with the allegation that the victim was admitted in the hospital of the applicant for delivery of her child. It is alleged that while performing cesarean operation upon the victim, due to negligent act of the applicant, the victim died. The applicant, therefore, challenged registration of the First Information Report before this Court by filing the present application. This court on 25.4.2018 issued notice to the non-applicant. The non-applicant had filed reply and contested the application. It is stated in the reply that it was due to rash and negligent act of the applicant, the victim died. There is sufficient material on the record to prove the complicity of the accused in the crime registered against the applicant. It is also stated that duly constituted Committee has made enquiry and submitted its report on 19.6.2018, where it is stated that the cause of death mentioned in the post-mortem report appears to be correct. Therefore, it is prayed that the present Criminal Application deserves to be dismissed.

5. We have carefully considered the contents of the First Information Report and reply filed by the non-applicant. 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 applicant. The allegation in the First Information Report is to the effect that the death of the victim had occurred due to cesarean operation performed by the applicant during which vein near uterus of the victim was cut resulting into death of the victim 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”.

6. There are no allegations of gross negligence in the First Information Report. 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.

7. 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.

8. Rule is made absolute in terms of prayer clause (1). Prayer Clause (1) reads as under:

“1. Quash and set aside First Information Report No.158/2018 registered with P.S.O.P.S. Civil Lines, Akola for offence punishable under Section 304-A of the Indian Penal Code”

Criminal Application stands disposed.

JUDGE

JUDGE