

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

CRIMINAL APPLICATION (APL) NO.993 OF 2018

Dr. Roshan S/o. Manoharlal Bhiwapurkar,
Aged about : 43 years,
Occ.: Medical Practitioner.
R/o. Near Flyover, Dighori Chowk,
Taj Bagh, Umred Road, Sakardara,
Nagpur, Maharashtra 440034.

....APPLICANT

// VERSUS //

1. State of Maharashtra,
Through Police Station Officer,
Sakardara Police Station,
Nagpur City, Nagpur.
2. Shri Nitin S/o. Late Ashok Dadwe,
Aged Major, Occ.: Not Known,
R/o. Plot No. F-1, Gurudev Nagar,
Hudkeshwar, Nagpur.

.... NON-APPLICANTS

Shri W. T. Mathew, Advocate for the applicant.
Shri T. A. Mirza, A.P.P. for the non-applicant No.1/State.
Shri C. M. Samarth, Advocate for the non-applicant No.2.

**CORAM : Z. A. HAQ AND
AMIT B. BORKAR, JJ.**

DATE : 10.02.2021.

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

1. Heard Shri W. T. Mathew, learned Advocate for the applicant, Shri T. A. Mirza, learned A.P.P. for the non-applicant No.1/State and Shri C. M. Samarth, learned Advocate for the non-applicant No.2.

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 bearing No.136/2013 alongwith charge-sheet No.144/2014 registered with the Non-applicant No.1 – Police Station for the 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 accusations that the victim suffered head injury in an accident. It is further alleged that when the victim was admitted in the hospital of applicant, there were no facilities available in the hospital and only first-aid was provided to the victim by the applicant, but there was no improvement in the condition of the victim and therefore, the applicant advised the relatives of the victim to get C.T. Scan done from another C.T. Scan Center and thereafter, the victim was admitted in the Lata Mangeshkar Hospital for further treatment. The victim was thereafter, declared as dead. The applicant has therefore, filed the present application challenging registration of the First Information Report.

5. This Court on 11.06.2019 issued notice to the non-applicants. During pendency of the application, on 29.12.2014, the charge-sheet No.144/2014 was filed in the Court of the Judicial Magistrate, Corporation Court, Nagpur.

6. The non-applicant No.1 has filed reply on 01.01.2021 and it is stated that when the victim was admitted in the hospital of applicant, proper medical treatment was not provided. It is further stated that there was delay in conducting C.T. scan of the victim. It is further stated that the victim was in dire need of immediate medical treatment as well as diagnosis which includes C.T. scan of his brain. The applicant was aware of the said fact that the C.T. scan machine at his hospital was not working. That caused unnecessary delay in the treatment of the victim. It is stated that inaction on the part of the applicant to refer victim to C. T. scan immediately amounts to gross negligence.

7. The non-applicant No.2 has also filed reply and it is stated that the issues raised by the applicant can be adjudicated at the time of trial and the prosecution need not be quashed at its threshold.

8. We have carefully considered the contents of the First Information Report. The First Information Report contains

allegations against the applicant only to the extent that the hospital of the applicant was not having proper facilities and it is the applicant who is responsible for the death of the victim. The charge-sheet which has been filed on record by the applicant contains report of Enquiry Committee consisting of five Medical Professionals. The said committee was constituted in view of letter of request by the Police Sub-Inspector, Sakardara, Nagpur. The report of Committee of five Medical Professionals had given their opinion stating that the victim was provided with emergency treatment and due care was taken. In answer to a question as to whether the delay in surgical intervention was due to negligence of concerned doctor, the Committee had opined that there is discrepancy between the statement of the concerned doctor and relatives about essential investigations and request for discharge. On the answer to the question as to whether both surgical intervention of the chest and brain was done by the doctor immediately, could the patient be cured, was answered by the Committee stating that the prognosis of the victim cannot be predicted.

9. Having considered the allegations in the First Information Report and the report of Committee of the Experts, which have categorically opined that the applicant has provided

emergency treatment and had given due care to the victim, we are of the considered view that registration of the First Information Report on the basis of the information provided by the relatives of the victim, could not have been registered against the applicant. We are, therefore, satisfied that the continuation of the proceedings against the applicant would amount to abuse of process of Court.

10. We therefore, pass the following order.

The First Information Report bearing No.136/2013 alongwith Charge-Sheet No.144/2014 registered with the Non-applicant No.1 – Police Station against the applicant for the offence punishable under Section 304-A of the Indian Penal Code is quashed and set aside.

Rule is made absolute in the above terms.

JUDGE

JUDGE

RGurnule