IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 476 OF 2019

Dr. Shaikh Rizwana Begum
Age: 39 years, Occu.: Medical Practitioner,
R/o. Ruby Life Care Maternity and
Children Hospital, Plot No.1, Ravindra Nagar,
Champa Chowk to Collector Office Road,
Aurangabad, Dist. Aurangabad. … Applicant

Versus

1. The State of Maharashtra,
Through Police Inspector,
City Chowk Police Station,
Aurangabad, Dist. Aurangabad.

2. Hamid Nanubhai Shaikh
Age: 53 years, Occu.: Service,
Police Head Constable,
City Chowk Police Station,
Aurangabad, Dist. Aurangabad.

3. Sayyed Jamil Sayyed Aminuddin
Age: 36 years, Occu.: Agri.,
R/o. H.No.129, Lane No.3, Near Pakiza Hall,
Ganesh Colony, Aurangabad. … Respondents.

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Advocate for Applicant : Mr. G. R. Syed h/f. Mr. V. D. Salunke
APP for respondent-State : Mr. A. M. Phule
Advocate for Respondent No.3 : Mr. Taher Ali Quadri

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CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.

DATE : 20.12.2022

JUDGMENT (PER ABHAY S. WAGHWASE, J.) :

1. By way of instant proceedings, the applicant, by invoking inherent powers of this Court under Section 482 of Cr.P.C. has prayed as follows :

> [B] This Hon'ble Court be pleased to quash and set aside the FIR No. 150 of 2018 and proceedings of Charge Sheet No. 118/2018 dated 02.10.2018 registered at the instance of city chowk Police Station, Aurangabad for offences punishable under Section 304 of the IPC.

BACKGROUND OF THE CASE

2. Briefly stated, the facts of the case are that, one Nikhat Firdos w/o Sayyed Jamil, who was nine months pregnant, was admitted in the hospital of applicant named and styled as Ruby Life Care Maternity and Children Hospital on 30.06.2017. On 01.07.2017 at around 5.00 p.m., condition of deceased Nikhat became critical and therefore, on the advice of the applicant, Nikhat was shifted to Government Medical College and Hospital, Aurangabad (GMCH) in an ambulance. Doctors posted at GMCH examined Nikhat and declared her as dead. Initially, MLC was registered and subsequently, postmortem was got done. Relatives of deceased Nikhat held present applicant responsible for the death. Therefore, police machinery sought medical advice and opinion from GMCH. On 28.02.2018, same was received from the

committee of medical experts, opining that applicant was not a gynecologist. She has not acquired Maharashtra Medical Council (hereinafter referred to as "MMC") approved qualification and had failed to even take aid of specialist and had rather treated the patient and death having occurred, she was **medically negligent**. Hence, on behalf of the State, Police Head Constable set law in motion on the strength of which, crime bearing no. 150 of 2018 was registered at City Chowk Police Station, Aurangabad for the offence punishable under Section 304 of the Indian Penal Code (IPC)

Investigation was carried out, statements of relatives of deceased lady were recorded and opinion of experts was also made part of investigation papers. Medical papers of hospital of applicant were also seized and made part of investigation papers and after completing investigation, charge-sheet came to be filed.

It is above crime and charge-sheet which are now sought to be quashed and nullified by invoking jurisdiction under Section 482 of Cr.P.C. at the hands of this Court.

SUBMISSIONS OF APPLICANT

3. Canvassing in favour of relief as prayed, learned counsel for the applicant at the threshold appraised us of the qualification and academic acquisition of applicant. It was brought to our notice that, since opening of

hospital, she had done over 2000 successful deliveries at her hospital. At this point, he also pointed out that the hospital owned by the applicant is well equipped, having operation theater and that trained staff has been engaged. It is submitted that at times, even services of consultant gynecologists and anesthetists are sought by engaging them as on-call doctors i.e. as and when required. Turning to the facts of the case in hand, it is pointed out that a lady patient was nine months pregnant and had visited the hospital of the applicant for the first time on 30.06.2017. It is pointed out that previous to coming to the hospital of applicant, said lady patient was taking treatment in another hospital, but still she had not carried her previous medical history. It is strenuously submitted that it was subsequently revealed that lady patient was a known hypertensive and was already having high blood pressure before being brought to the hospital of the applicant. It is pointed out that only after proper discussion with the relatives and making them aware of the state and health condition of the lady patient, she was duly admitted for delivery.

4. Learned counsel pointed out that applicant had also made relatives and the patient aware that if need arises, cesarean operation would be necessary. However, relatives and the patient insisted that delivery should be normal one and not cesarean. It is further pointed out that on 01.07.2017, in the afternoon, condition of the patient suddenly deteriorated and in spite of being administered with hypertensive pills, blood pressure remained on higher side

and therefore, on examining the lady patient, applicant had decided to shift her to higher center i.e. Ghati Hospital and she was shifted there in an ambulance. That, in the light of such condition of the patient, applicant herself had accompanied the patient in the ambulance and also carried the required medical papers. It is pointed out that such conduct of the applicant shows that she had taken necessary steps and efforts to immediately shift her to higher center to save her life and as such, she cannot be said to be negligent.

5. It is further pointed out that in fact, except continuing already prescribed medicines and monitoring physical condition, the applicant herein had not indulged in any medical procedure. Therefore, it was unreasonable and unwarranted on part of the investigating machinery to attribute medical negligence to her, that too on the sheer opinion of expert committee.

6. Learned counsel also invited our attention to the medical papers of Khushi Women's Hospital and Maternity Home where the lady patient was initially undergoing treatment and pointed out that even in said previous hospital, lady patient was running high blood pressure and was accordingly treated. That, in spite of it, relatives of patient had brought her to the hospital of the applicant in such condition.

7. Emphasizing on the sudden deterioration of health condition, learned counsel pointed out that lady patient was diagnosed of G2P1L1AO with PIH For B.P. record 8 (SOS) wherein there is sudden rise in blood pressure due to pregnancy. That, in fact in the previous hospital also, where the lady patient was treated, this condition was diagnosed and said doctor had also advised cesarean operation. This fact was not brought to the notice of present applicant and rather, assigning financial constrains, the relatives as well as the lady patient insisted for normal delivery rather than cesarean. However, because of her above medical condition, things went out of control all of sudden and therefore, applicant herself joined the lady patient in shifting her to the Ghati hospital and as such, it is pointed out that, negligence or carelessness cannot at all be attributed to the applicant.

8. Taking us through the postmortem report, it is pointed out that unfortunately, the lady patient died due to “Cerebro-pulmonary edema due to pregnancy induced hypertension”. Papers to that extent are also annexed to the application. Thus, it is reiterated that the lady patient died due to high blood pressure and no negligence or carelessness could be attributed to the present applicant. Therefore it is submitted that under such circumstances, police authorities ought not to have registered crime against the applicant. It is emphasized that, guidelines laid down in ***Jacob Mathew vs. State of Punjab and Another*** *[(2005) 6 SCC 1]* by the Hon’ble Apex Court are not scrupulously

followed. It is emphasized that even when unfortunate death of lady patient occurred on 01.07.2017, FIR was lodged after inordinate delay and even opinion of expert committee was called for and received after considerable delay.

9. Learned counsel invited our attention to the medical committee report dated 21.02.2018 and submitted that the very report shows that reason for death is shown as hypertension, but without assigning reasons, opinion is issued that applicant ought to have called specialist expert and kept him/her ready during operation. However, it is pointed out that in fact, at the point when lady patient's condition deteriorated, all efforts were made to immediately shift her to higher center to save her life. However, she succumbed to the above medical condition and therefore, when there was in fact no treatment or procedure undertaken by present applicant, it would be absurd and unreasonable to involve her alleging medical negligence.

10. Taking us through various legal pronouncements which are referred hereunder, it is submitted that required ingredients for attracting offence under Section 304 of IPC are not made out form the available material. That, there is non-application of mind by police machinery as well as so called expert committee and at a belated stage complaint has been lodged which is apparently abuse of process of law. Lastly, learned counsel pointed out that

relatives of deceased had already approached consumer court and received huge compensation. Husband of deceased lady had himself tendered affidavit before this Court that he is not desirous of seeking any prosecution against the present applicant and therefore, with this angle also, learned counsel for the applicant submitted that, relief as prayed deserves to be granted.

The rulings relied by learned counsel for applicant are as under :

1. ***Narinder Singh and others v. State of Punjab and another***; (2014) 6 SCC 466.

2. ***Vilas Nimbaji Shinde v. State of Maharashtra and others***; 2015 All M.R. (Cri) 273.

3. ***Yogendra Yadav and Ors. v. The State of Jharkhand and Anr.***; AIR 2014 SC 3055.

4. ***Dimpey Gujral and others v. Union Territory Through Administrator, U.T. Chandigarh and others***; AIR 2013 SC 518.

5. ***State of Haryana and others v. Ch. Bhajan Lal and others*** ; AIR 1992 SC 604

6. ***Jacob Mathew v. State of Punjab and another*** ; (2005) 6 SCC 1.

7. ***Sou Jayshree Ujwal Ingole (Dr.) v. State of Maharashtra and another*** ; AIR 2017 SC 2078.

8. ***Mahadev Prasad Kaushik v. State of U.P. and another*** ; 2009 ALL MR (Cri) 1864 (SC).

9. ***Dr. Nitin Vasantrao Akolkar and another v. The State of Maharashtra and others***; [Criminal Writ Petition No. 1293 of 2015 decided by this Court (Coram : R. M. Borde & K. L. Wadane, JJ.) on 11.04.2016.

10. Judgment of the Supreme Court dated 04.08.2004 in ***Dr. Suresh Gupta v. Govt. of N.C.T. of Delhi and another*** [Appeal (Cri.) 778 of 2004]

SUBMISSIONS ON BEHALF OF STATE

11. While strongly opposing the above application and prayer, learned APP would submit that thorough investigation and inquiry was carried out as well as expert's opinion has been received that present applicant was not qualified or skilled to undertake deliveries of pregnant ladies. That, it was expected of her to engage services of specialists and experts. However, without doing so, she herself ventured and got patients admitted. Investigation reveals that present applicant gave assurance to the patient as well as her relatives that she would perform normal delivery and would avoid cesarean. That, only on such assurance lady patient was admitted. However, due and proper care was not at all taken by the applicant. Medical experts committee was constituted and that after going through the medical papers, the three men committee has reached to the opinion that apart from negligence on the part of the applicant, she was not at all qualified and skilled to undertake such procedure. Only because of the same, the lady patient died and therefore, she is solely responsible and has to face prosecution. Learned APP submits that investigating machinery has gathered all papers which unerringly point out that applicant is solely responsible for the death. It is a full proof case for trial and that prosecution

deserves an opportunity to continue prosecution against the applicant. He lastly submitted that this is not a case which can be compounded by present applicant or relatives of the patient.

12. On behalf of respondent no.2, learned counsel also strenuously opposed the application and relief pointing out that applicant was not qualified and skilled to undertake deliveries. However, she assured normal delivery and therefore, deceased lady patient was admitted. There was no proper monitoring. That in fact, statements revealed that after giving some injection to the lady patient, the present applicant went away to her home. Supervising staff was also not kept ready and in spite of bringing the critical condition of the patient to the notice of the staff, present applicant was not immediately called. Crucial time was spend and therefore there is utter negligence and carelessness on the part of the applicant. She is solely responsible for the death of Nikhat Firdos. Therefore, she has to face legal action.

13. We have heard respective sides for considerable length. We have carefully examined all the documents placed before us i.e., on behalf of the applicant as well the documents which are part of the charge-sheet.

Before adverting to the merits of the case, it would be appropriate to state undisputed facts of the case in hand.

(i) Applicant is a medical practitioner and she is running a hospital by name Ruby Life Care Hospital.

(ii) She has registered herself with Medical Council.

(iii) Deceased Nikhat Firdos, nine months pregnant lady, was admitted in the hospital of the applicant on 30-06-2017 at 10.00 p.m.

(iv) Deceased lady patient was shifted to the Government Medical College and Hospital (GMCH) on 01-07-2017 around 05:50 p.m. and there, she was examined and declared dead.

14. The prime allegation or charge against present applicant is that she was reckless and medically negligent in treating lady patient and is thereby responsible for death of the said lady. Therefore, the gravamen of the charge is "**medical negligence**".

By various pronouncements, **negligence** is interpreted as "a breach of a duty exercised by omission to do something which a reasonable man, guided by those considerations, which ordinarily regulate the conduct of human affairs, would do, or doing something, which a prudent and reasonable man would not do". Thus, the three important constituents of negligence could be summarized as under :

(i) a legal duty to exercise due care owed by defendant to complainant.

(ii) breach of said duty and

(iii) Consequential damage.

15. Courts of law have time and again dealt and decided, by various legal pronouncements, as to what amounts to “medical negligence” and to what extent and when liability can be fixed on a medical practitioner. In the celebrated case of ***Jacob Mathew vs. State of Punjab and Another*** *[(2005) 6 SCC 1]*, the Hon’ble Apex Court has taken into account global perspective of phraseology “medical negligence” and by analyzing series of cases, finally summed up as to what amounts to “medical negligence” and we propose to reproduce paragraph 48 of the above Judgment, which is as under :

> *“**48.** We sum up our conclusions as under:-*
>
> *(1) Negligence is the breach of a duty caused by omission to do something which a reasonable man guided by those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a prudent and reasonable man would not do. The definition of negligence as given in Law of Torts, Ratanlal & Dhirajlal (edited by Justice G.P. Singh), referred to hereinabove, holds good. Negligence becomes actionable on account of injury resulting from the act or omission amounting to negligence attributable to the person sued. The essential components of negligence are three: “duty'", “breach” and “resulting damage”.*
>
> *(2) Negligence in the context of the medical profession necessarily calls for a treatment with a difference. To infer rashness or negligence on the part of a professional, in particular a doctor,*

additional considerations apply. A case of occupational negligence is different from one of professional negligence. A simple lack of care, an error of judgment or an accident, is not proof of negligence on the part of a medical professional. So long as a doctor follows a practice acceptable to the medical profession of that day, he cannot be held liable for negligence merely because a better alternative course or method of treatment was also available or simply because a more skilled doctor would not have chosen to follow or resort to that practice or procedure which the accused followed. (emphasis laid) When it comes to the failure of taking precautions, what has to be seen is whether those precautions were taken which the ordinary experience of men has found to be sufficient; a failure to use special or extraordinary precautions which might have prevented the particular happening cannot be the standard for judging the alleged negligence. So also, the standard of care, while assessing the practice as adopted, is judged in the light of knowledge available at the time of the incident, and not at the date of trial. Similarly, when the charge of negligence arises out of failure to use some particular equipment, the charge would fail if the equipment was not generally available at that particular time (that is, the time of the incident) at which it is suggested it should have been used.

(3) A professional may be held liable for negligence on one of the two findings: either he was not possessed of the requisite skill which he professed to have possessed, or, he did not exercise, with reasonable competence in the given case, the skill which he did possess. The standard to be applied for judging, whether the person charged has been negligent or not, would be that of an ordinary competent person exercising ordinary skill in that profession. It is not possible for every professional to possess the highest level of expertise or skills in that branch which he practices. A highly skilled

professional may be possessed of better qualities, but that cannot be made the basis or the yardstick for judging the performance of the professional proceeded against on indictment of negligence. *(emphasis applied)*

(4) The test for determining medical negligence as laid down in Bolam's case, WLR at p.586 holds good in its applicability in India.

(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 304A 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 304A 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.

(8) Res ipsa loquitur is only a rule of evidence and operates in the domain of civil law specially in cases of torts and helps in determining the onus of proof in actions relating to negligence. It cannot be pressed in service for determining per se the liability for negligence within the domain of criminal law. Res ipsa loquitur has, if at all, a limited application in trial on a charge of criminal negligence."

16. Similarly, in the case of ***Kusum Sharma and Others vs. Batra Hospital and Medical Research Centre and Others*** *[(2010) 3 SCC 480],* the Hon'ble Apex Court in paragraph 89 has held as under :

"89. On scrutiny of the leading cases of medical negligence both in our country and other countries specially the United Kingdom, some basic principles emerge in dealing with the cases of medical negligence. While deciding whether the medical professional is guilty of medical negligence following well-known principles must be kept in view:

I. Negligence is the breach of a duty exercised by omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do.

II. Negligence is an essential ingredient of the offence. The negligence to be established by the prosecution must be culpable or gross and not the negligence merely based upon an error of judgment.

III. The medical professional is expected to bring a reasonable degree of skill and knowledge and must exercise a reasonable degree of care. Neither the very highest nor a very low degree of care and competence judged in the light of the particular circumstances of each case is what the law requires.
IV. A medical practitioner would be liable only where his conduct fell below that of the standards of a reasonably competent practitioner in his field. *(emphasis laid)*

V. In the realm of diagnosis and treatment there is scope for genuine difference of opinion and one professional doctor is clearly not negligent merely because his conclusion differs from that of other professional doctor.

VI. The medical professional is often called upon to adopt a procedure which involves higher element of risk, but which he honestly believes as providing greater chances of success for the patient rather than a procedure involving lesser risk but higher chances of failure. Just because a professional looking to the gravity of illness has taken higher element of risk to redeem the patient out of his/her suffering which did not yield the desired result may not amount to negligence.

VII. Negligence cannot be attributed to a doctor so long as he performs his duties with reasonable skill and competence. Merely because the doctor chooses one course of action in preference to the other one available, he would not be liable if the course of action chosen by him was acceptable to the medical profession.

VIII. It would not be conducive to the efficiency of the medical profession if no doctor could administer medicine without a halter round his neck.

IX. It is our bounden duty and obligation of the civil society to ensure that the medical professionals are not unnecessarily harassed or humiliated so that they can perform their professional duties without fear and apprehension.

X. The medical practitioners at times also have to be saved from such a class of complainants who use criminal process as a tool for pressurising the medical professionals/hospitals, particularly private hospitals or clinics for extracting uncalled for compensation. Such malicious proceedings deserve to be discarded against the medical practitioners.

XI. The medical professionals are entitled to get protection so long as they perform their duties with reasonable skill and competence and in the interest of the patients. The interest and welfare of the patients have to be paramount for the medical professionals."

17. Having discussed the legal position on the point of medical negligence, let us now turn to the merits of the case in hand so as to reach to a conclusion whether it is a fit case at all, for exercise of inherent powers of this Court under Section 482 of Cr.P.C.

At this stage it would also be appropriate to spell out settled legal position regarding scope, object and exercise of inherent powers under Section 482 of Cr.P.C. In catena of judgments, including ***State of Haryana and others v. Ch. Bhajan Lal ;*** *AIR 1992 SC 604*, ***Inder Mohan Goswami and Anr. Vs. State***

of Uttaranchal and Ors. ; *(2007) 12 SCC 1*, ***Priya Vrat Singh Vs. Shyam Singh Sahai*** *; (2009) SCC Suppl. 709* and ***Vineet Kumar v. State of U.P.*** *;* (2017) 13 SCC 369, the Hon'ble Apex Court has time and again reiterated that inherent powers under section 482 of Cr.P.C. can be exercised by the High Court; *firstly,* to give effect to an order under Cr.P.C., *secondly*, to prevent abuse of process of court and *thirdly*, to secure ends of justice.

Keeping in sight the legal requirement on the scope and exercise of power under Section 482 of Cr.P.C. as culled out in the above rulings, we turn to the merits of the case.

18. On examining the papers, it seems that the present applicant has acquired her M.B.B.S. qualification coupled with Diplomate of Gynecology and Obstetrics and some courses in Family Welfare and on the strength of her such qualifications, she opened Ruby Life Care Maternity and Children Hospital. Papers of her educational qualifications are annexed with the application. The Municipal Corporation, Aurangabad also appears to have issued certificate of registration under Section 5 of the Bombay Nursing Homes Registration Act, 1949 in favour of the applicant and her registration number is reflected in the said certificate as 501. Certificate dated 12.10.2017 is valid up to 31.03.2020. She seems to have worked as House Officer from 23.11.2005 to 27.01.2006. Above is the material in support of her skills and qualifications. Admittedly, as

stated above applicant is equipped with registration for running maternity home i.e. on issuance of registration certificate by none other than Municipal Corporation Authority. Resultantly, applicant is capable of admitting patients for delivery.

19. There is no dispute that deceased Nikhat Firdos was a pregnant lady. It is the specific case of applicant that said lady patient visited her hospital for the first time on 30.06.2017 for delivery, but previous to coming to her, the lady patient had already taken treatment with Khushi Women's Hospital and Maternity Home. In support of such contention, admission papers of lady patient maintained and issued by said Khushi Hospital are also finding place in the annexures. On going through the same, it is reflected that the lady patient was admitted on 29.06.2017 at around 12.00 midnight in the Khushi Hospital and admission papers show that discharge was obtained against medical advice on the very next day morning i.e. on 30.06.2017 at 9.00 a.m. After noting the health condition, it seems from the continuation sheet at page 82 that, on 29.06.2017 at 12.00 noon, the patient was made aware about risk of pre-ecelampsia and tablets Labebet (100 mg) were prescribed twice a day. Tablets Nicardia (R) 20g were also prescribed to be taken as twice a day. Therefore, it seems from the said papers that deceased was diagnosed of blood pressure. Papers show that BP was monitored by Khushi Hospital at 2.00 a.m., 3 a.m. and 5 a.m. on 30.06.2017 and the reading is noted as 145 bpm, 140

bpm and 145 bpm respectively. At 8.30 a.m., on monitoring BP, it is noted as 160/100. There is also a remark at 9.00 a.m. of 30.06.2017 that “patient and relatives (mother and sister in law) counseled regarding high risk of eclampcia in this patient”, and that “risk of PPH, in FD, DIC, Need for operated intervention, Need for blood and fetel morbidity explained in detail. Relatives not willing for LSCS at private institute due to financial condition. Hence referred to GMCH for further management at 9.00 a.m. All blood reports, ANC records and USG reports given with patient”.

The above material indicates that lady patient, who was initially treated for hypertension at Khushi Hospital from 29.06.2017, was finally discharged from the said hospital at around 9.00 a.m. on 30.06.2017 with above stated health status.

20. Now let us turn to the medical record of the lady patient after she was brought to the hospital of applicant. Indoor case papers at page 37 would indicate that the lady patient was admitted in the applicant’s hospital on 30.06.2017 at 10.00 p.m. Here also, lady patient was diagnosed of hypertension and her BP on 01.07.2017 at 12.00 p.m. was monitored and was showing 140/80. Her BP on 30.06.2017 at 10.00 p.m. was noted as 130/90, at 11.00 p.m it was noted as 150/100, at 12.00 p.m. 140/80 and the patient was continued on tablets Nicardia and Labebet i.e. medicines which were already

prescribed by Khushi Hospital. The blood pressure monitoring which was done on 01.07.2017 is as under:

Time	B.P.	FHS	Contraction	Plv.	Medicines
4:00 AM	140/90	(+)	-	-	Tab Labebet 100 MG Stat 1_____1_____1
8:00 AM	130/90	(+)	-	-	Tab Labebet 100 Mg Stat
11:00 AM	140/100	(+)	-	-	Tab Nicardia @ 20 mg Stat BD
12:00 PM	140/80	(+)	-	-	Induced with PG at 12:30 PM
1:00 PM	140/80	(+)	(+)	-	
2:00 PM	130/84	(+)	(+)	-	Tab Labebet 100 mg. Stat
3:00 PM	140/84	(+)	(+)(+)	-	Inj Mgsoh 5 gm IM on each alternate futtocks
4:00 PM	140/90	(+)	(+)(+)	3-4 cms Cx-20% effaced	Inj. Drotin IM
8:00 PM	130/90	(+)	(+)(+)		--

Last reading in the indoor case paper is at 5.20 p.m. and it is recorded as 130/80. There is noting at 5.50 p.m. about complaint of breathlessness. Indoor papers show that at 6.00 p.m., call was reported to be given to physician as well as anaesthetist and O2 was started. Some injections also appear to have been administered and after calling ambulance, patient is shown to be shifted to Government Medical Hospital at 6.00 p.m.

21. The above medical papers are not disputed. Therefore, it is emerging that lady patient had history of high blood pressure and since being treated at Khushi Women's Hospital and Maternity Home, she was prescribed hypertension pills and she was there up to 9.00 a.m. of 30.06.2017 and after almost 13 hours after taking discharge from said Khushi Hospital and in spite of being advised to be shifted to GMCH, lady patient seems to have not gone there and rather had come to the hospital of present applicant directly at 10.00 p.m. on 30.06.2017 on her own. Since her admission at applicant's hospital, her hypertension was monitored and medicines prescribed by earlier Doctor were in fact continued.

22. Learned counsel for the applicant would strenuously submit that considering the condition on admission stage itself, the lady patient and her relatives were made aware that the patient would be required to undergo cesarean operation and that normal delivery was not possible. Papers indicate that even in previous hospital, cesarean surgery was advised for delivery and normal delivery was ruled out. It is specific contention in the application that patient and her relatives were insisting for normal delivery and rather they had avoided to go for cesarean operation due to some financial constraints. Such submissions are not traversed or countered before us either by State or by learned counsel representing the husband of the deceased.

23. From the record and on hearing both sides, it is further emerging that around 6.00 p.m., because of complaint of chest pain and breathlessness, the lady patient was shifted in an ambulance to Government Medical Hospital and present applicant herself accompanied the lady patient in the ambulance to the Government Medical Hospital. Papers of Government Medical Hospital are also finding place. Papers show that deceased was shifted in the ambulance at around 6.00 p.m. However, according to the Doctors of Government Medical College and Hospital, Aurangabad run by State on examining the lady patient at said hospital, she was declared “dead” i.e. at 19.35 hours on 01.07.2017 i.e. after almost one and half hour since being shifted from hospital of applicant. Thereafter, postmortem was done and Department of Forensic Medicine and Toxicology, and opinion was reserved for histopathological report. Later on final cause of death was issued as “Cerebro-pulmonary edema due to pregnancy induced hypertension”. Above is the cause of death of lady patient Firdos.

24. From above discussion, in our opinion, it is clearly emerging that lady patient Firdos was merely admitted in the hospital of applicant and except continuing the hypertension pills prescribed by Khushi Hospital, and admitting her in the hospital for the entire night of 30.06.2017 from 10.00 p.m. till being shifted to Government Medical College Hospital, no procedure or medical

intervention was undertaken nor steps were taken for delivery. Only earlier medicines were administered as there was fluctuation or steady rise in blood pressure.

25. Police machinery has recorded statements of parents, brother and husband of deceased. Mother claims that when her daughter's condition deteriorated, she informed the available staff to call doctor immediately who had gone back to her residence on the upper floor. Mother claims that doctor was not immediately called. There is nothing on record to show approximately how much time was spent or consumed for applicant to reach downstairs. Therefore, taking such statement into consideration, direct fault cannot be attributed to applicant, if at all such situation had arisen. Mother herself states that she went up and called doctor and applicant rushed down, examined deceased and advised for shifting her to higher center. Husband and brother seem to have learned about it later as they were not present and were called later on.

26. Postmortem was conducted but there is no finding about any operation or procedure done in the hospital of applicant. There is a singular noting about mark of IV on the dead body. Consequently, there is nothing either in the complaint or the statements of witnesses that any procedure for delivery was undertaken by the present applicant. Though some injections were

administered, postmortem findings do not co-relate death to such medication. Rather, death is attributed to pregnancy related hypertension resulting in “cerebro-pulmonary edema”.

27. From the above discussed legal position on the point of medical negligence, it is held that there has to be “**gross negligence**” imputable to the doctor to gravitate the charge of medical negligence. We have thoroughly examined the medical papers which are part of record. The medical history at Khushi Women’s Hospital and Maternity Home and the hospital of present applicant by name Ruby Life Care Maternity and Children Hospital clearly indicate that deceased Firdos, who was nine months pregnant lady, who before being brought to the applicant’s hospital, already had a history of pre-eclampsia i.e. a condition of very high blood pressure. Admittedly, lady patient as well as her relatives were made aware of the form of delivery that would be required to be undertaken i.e. even by previous hospital, namely, Khushi Women’s Hospital and Maternity Home, as well as it is so stated by the applicant on oath before this Court about patient’s condition and her relatives being made aware that there is danger to the life of foetus as well as mother and that cesarean would be required to be done. However, unfortunately before undertaking such procedure itself, patient seems to have expired solely due to excessively high blood pressure.

28. The sheet anchor of prosecution case seems to be expert's committee report i.e. opinion issued by a team of doctors constituted for examining the exact cause of death and as to whether death was solely due to medical negligence on the part of the applicant. The medical committee opinion in translated form is as under:

> "This Committee after studying the available case papers at length in its meeting held on 06/02/2018 in the Chamber of the Medical Superintendent, Government Medical College and Hospital Aurangabad has come to the conclusion that due to increase of blood pressure on 29th June 2017 at 2.30 hours said patient had been to the Dr. Bushra Semi where after giving primary treatment she had been advised to go for surgery and after observing the serious condition of patient, she had been advised to approach Ghati Hospital on 30th June 2017 for undergoing cesarean But, the deceased lady patient Nikhat Firdos w/o Syed Jamiloddin had approach to Dr. Shaikh Rizwana, MBBS at Ruby Life Care Centre Hospital on 30th June 2017 at 11.00 hours. The Degree of DGO is not MMC Registered of said doctors. Said patient again came to the said doctor at 9.30 p.m. for medical examination and admitted in the hospital. However, during admission period patient sustained fits on 01/07/2017 in the evening at 5.00 p.m. and said doctors advised her to go to the Government Medical College and Hospital Aurangabad. Therefore, said patient is referred to the Government Hospital and C.M.O. of this Hospital after examination declared the patient as dead.
>
> <u>On the basis of the above study and discussion the enquiry committee is submitting its opinion as under.</u>
>
> <u>Opinion :</u>

1. Said patient had sustained Sever pre eclampsia on 29th June 2017.

2. It was necessary to conduct delivery of the patient within 24 hrs. and the expert doctor had referred the patient for cesarean delivery.

3. As doctor Shaikh Rizwana is not a gynaecologist and she (as she was not having MMC approved degree) had admitted said serious patient without consulting any gynaecologist and after becoming critical condition of the patient i.e. eclampsia referred her to the GHATI Hospital but till then the patient had died.

From the submitted documents, it seems that the wrong medical treatment has been given to the deceased namely Nikhat Firdous w/o Sayeed Jamiluddin, age 22 years, R/o. Ganesh Colony, Aurangabad. Also, there is evidence that the concerned doctor Shaikh Rizwana committed gross medical negligence in the treatment and due to this the said patient is died."
(Translation provided by the Deputy Chief Translator of this Court)

On carefully analyzing the above opinion, it is clear that patient was declared to be suffering from severe pre-eclampsia since 29th June 2017 i.e. prior to admission at applicant's hospital. Death is also reported to be due to such condition. Previous to visit and admission of the lady patient in the hospital of applicant, such condition was diagnosed and treatment had already commenced prior to coming to the applicant's hospital. Only in the late afternoon, condition of the lady patient is reported to have gone critical. Therefore, the moot question is 'how present applicant can be branded as careless or negligent?'. It is not a case that applicant is not a medical

practitioner and still she admitted deceased lady for delivery, nor it is a case that applicant was practicing alternative medical practices like ayurveda or homeopathy and still she undertook to perform delivery. When she is allowed to register herself and open maternity home, it can safely be said that applicant was capable of performing deliveries. No rule of law prohibiting person holding M.B.B.S. qualification only to open maternity home is pointed out. Further, each and every delivery does not require an expert to handle it. Rather, depending on situation services of on-call experts are obtained or can be taken.

The expert's committee has also itself admitted that conclusion was reached that condition of the patient was critical since 29.06.2017 i.e. since prior to getting admitted in the hospital of applicant in the night of 30.06.2017. It is also pertinent to note that the said committee has in its report noted history and has clearly attributed death to excessively higher blood pressure to be the primary cause of death. It is worth noting that expert's committee has not sought explanation from relatives as to why in spite of Khushi Hospital directing and hence discharging the lady patient to go to GMCH, why she was not taken there. Instead it appears from papers that lady patient went to her own house form Khushi Hospital and only came to applicant's hospital after 12 to 13 hours and by such time her condition might have deteriorated. This aspect also seems to have been overlooked by the

expert's committee before reaching to conclusion. It is also pertinent to note that applicant herself accompanied lady patient in ambulance at around 6.00 p.m., i.e. to go to GMCH. We came across communication from medical police chowki to P.I. regarding lady patient being admitted in GMCH hospital casualty and CMO examining her and declaring her dead at around 19.35 hours. Papers of applicant's hospital namely Ruby Life Care shows that said maternity home is located over plot no.1, near Pir Gaib Sahab Dargah on Collector Office to Champa Chowk road. Therefore, the hospital is very much in the city and approximately about two to three kms. away from GMCH. Taking such distance between applicant's hospital and GMCH into consideration, it can safely be inferred that the lady patient might have reached by ambulance in fifteen to twenty minutes or so. But in spite of being brought in casualty, examination and declaration that she is dead had taken place at 7.30 p.m. and this is evident from the communication from the police chowki which is part of record. Therefore it can be inferred that golden hours were also lost in Government Hospital and Medical College, Aurangabad. With such material emerging from papers, we are of the opinion that it is unreasonable to shift entire responsibility on applicant. In fact, taking into account the meaning and definition of negligence quoted in the aforesaid paragraphs, charge of medical negligence cannot be imputed or levelled against applicant. As stated above, lady patient was already suffering from pre-eclampsia i.e. excessively high blood pressure. It is common knowledge that blood pressure readings are very

dynamic and they vary in few seconds. In fact, applicant has stated on oath before this Court about making lady patient as well as her relatives aware of her health condition. Further, the very act of applicant deciding to shift lady patient in an ambulance by calling it and herself accompanying the patient itself shows that she has taken abundant care and had acted reasonably as per the need of the hour. Her such conduct is within the principles laid down by the Hon'ble Apex court in the aforesaid discussed case of ***Kusum Sharma*** (supra).

29. It is also worth mentioning that expert's committee has issued report after almost eight months or so after the death and that too, without assigning proper reasons supporting its opinion. Applicant's qualification as special gynecologist may not be there, but she was definitely a registered medical practitioner. Government itself has acknowledged deliveries at the hands of even a midwife, who undertakes such tasks at places where there is no facility for delivery. Above all, charge of negligence would only be attracted if applicant had undertaken the procedure of performing delivery. In fact, this itself has not taken place here.

30. In the above discussed landmark judgment of ***Jacob Mathew*** (supra), the Hon'ble Apex Court has succinctly discussed and observed as to when legal action should be taken against the medical professional for medical

negligence. Here, there is nothing to show that applicant is not a medical practitioner. She has shown that she has acquired M.B.B.S. qualification from Maharashtra University of Health Science, Nashik. The Corporation authorities have also issued registration certificate for running maternity hospital. Her statement on oath by way of contention in the application, that she has performed more than 2000 operations, has also not been refuted or challenged. Therefore, here it is not a case that applicant was not qualified to perform deliveries. It is to be noted that the lady patient and her relatives have themselves come to the hospital of present applicant for delivery and rather at a belated stage after getting discharge from Khushi Women's Hospital and Maternity Home and in spite of being advised to go to GMCH. Her health condition in the hospital of present applicant is also discussed in aforesaid paragraphs. Therefore, it would be unreasonable and unjustified to attribute negligence to present applicant.

31. It is pertinent to note that during pendency of present application, relatives of lady patient have approached consumer court and they have received compensation. Thereafter, very husband of the deceased lady patient seems to have placed affidavit before this Court stating that he is not desirous of continuing prosecution launched against present applicant. Resultantly, apart from weak material on record to attribute negligence to the applicant, there is also a compromise. Applicant has placed on record ruling of Hon'ble

Apex Court in the case of ***Narinder Singh*** (supra). We have gone through the said ruling. In the said case, there was question as to whether offence under Section 307 of IPC could be compounded by exercise of inherent powers under Section 482 of Cr.P.C. So also in the cases of ***Yogendra Yadav*** (supra) and ***Dimpey Gujral*** (supra) relied upon by learned advocate for the applicant, scope and object of Sections 482 as well as 320 of Cr.P.C. are succinctly dealt and proceedings are allowed to be quashed. Here also, husband of the deceased has placed affidavit before this Court expressing his desire to permit quashment of the prosecution launched against present applicant. Therefore on both counts i.e. on merits also and otherwise also, no fruitful purpose would be served by continuing the prosecution against applicant. By allowing compromise, no public policy or moral fabric of the society is likely to be adversely affected.

32. Therefore, in the totality of the above discussed circumstances, continuation of prosecution launched against applicant would ultimately yield no results. Consequently, in the light of guidelines laid by the Hon'ble Apex Court in ***State of Haryana and others v. Ch. Bhajan Lal and others*** (supra), we consider it a fit case to exercise inherent powers under Section 482 of Cr.P.C. Thus we proceed to pass the following order:

ORDER

I. The application is allowed in terms of prayer clause [B].

II. The application is accordingly disposed off.

(ABHAY S. WAGHWASE, J.) (SMT. VIBHA KANKANWADI, J.)

VRE