

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 2999 OF 2022

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| 1. | Dr. Rachita Nandakumar Bidwai |] | |
| | Age : 60 Years, Occu. : Medical Practitioner, |] | |
| | R/o. : 12, Doctor's Lane, Ghamodiya Complex, |] | |
| | Nanded. |] | |
| 2. | Dr. Nandakumar Tukarm Bidwai, |] | |
| | Age : 65 Years, Occu. : Medical Practitioner, |] | |
| | R/o. As above. |] | |
| 3. | Dr. Umesh Mohanrao Bhalerao |] | |
| | Age : 59 Years, Occu. : Medical Practitioner, |] | |
| | R/o. Jijamata Hospital, Chikhalwadi, |] | |
| | Gurudwara Road, Nanded. |] | |
| 4. | Dr. Pranjali Pankaj Joshi, |] | |
| | Age : 45 Years, Occu. : Medical Practitioner, |] | |
| | R/o. : 32, Maniknagar, Taroda (Bk.), |] | |
| | Nanded. |] | |
| 5. | Dr. Dipak Anantrao Waghmare, |] | |
| | Age : 64 Years, Occu. : Medical Practitioner, |] | |
| | R/o. : Babanagar, Nanded. |] | |
| 6. | Dr. Rajesh Prabhakarrao Tagadpallewar, |] | |
| | Age : 48 Years, Occu. : Medical Practitioner, |] | |
| | R/o. : Somesh Colony, Behind Kala Mandir, |] | |
| | Nanded. |] | ... Applicants. |

Versus

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|----|----------------------------------|---|-------------------------|
| 1. | State of Maharashtra |] | |
| | Through Police Station Officer, |] | |
| | Vazirabad Police Station, |] | |
| | Nanded. |] | |
| 2. | Suhas Ashok Dhole, |] | |
| | Age : 35 Years, Occu. : Service, |] | |
| | R/o. Kendriya Vidyalaya, |] | |
| | Vidyapith Road, Armament Colony, |] | |
| | Ganesh Khind, Pune. |] | ... Respondents. |

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Advocate for Applicant : Mr. S. S. Bora
APP for Respondent – State : Mr. R. V. Dasalkar
. . .

**CORAM : SMT. VIBHA KANKANWADI AND
RAJESH S. PATIL, JJ.**

DATED : 26th SEPTEMBER, 2022.

ORDER :

1. Present applicants have approached this Court by invoking the inherent powers under section 482 of the Code of Criminal Procedure (for short, '*Cr.PC.*') for quashing the FIR dated 28th January 2018, bearing C.R. No. 24 of 2018, registered with Vazirabad Police Station, Nanded for the offence punishable under section 304-A read with section 34 of Indian Penal Code.

2. All the applicants are the medical practitioners. Applicant No.1 runs Nursing Home by name 'Bidwai Nursing Home' and the other applicants are attached to the said hospital. Respondent No.2 had approached Judicial Magistrate First Class, Nanded by filing Other Misc. Criminal Application No.310 of 2017 under section 156(3) of Cr.PC.. The learned Judicial Magistrate First Class, Nanded had passed order on 30th October 2017 directing Vazirabad Police Station to investigate the said matter. Thereafter, C.R. No.24 of 2018 came to be registered. In the said FIR it is alleged by respondent No.2 that he was married to one Vijaya and was having five year old daughter from the wedlock. His wife Vijaya was carrying second pregnancy and was under treatment of accused Rachita Bidwai. Deceased

Vijaya was admitted to Bidwai Nursing Home at about 7.10 p.m. on 26th July 2016. It is alleged that accused Rachita unnecessarily advised cesarean operation for the delivery of the child. She gave birth to a daughter after undergoing said operation. The said daughter was handed over to the complainant and it was informed to the complainant that his wife would be shifted to room. After some time, all the applicants rushed to the operation room and upon inquiry it was told to the complainant that there is heavy bleeding and therefore complainant was asked to bring blood from the blood bank. Accordingly, complainant brought the blood, but in the meantime his wife was shifted to Lotus Hospital and was kept on ventilator. Vijaya succumbed to death at about 7.20 a.m. on 28th July 2016. According to the complainant/respondent No.2, the death of his wife is due to the negligence on the part of the doctors/applicants.

3. Learned advocate for the applicants has vehemently submitted that when the learned Judicial Magistrate First Class had passed the order under section 156(3) of Cr.PC., he had not followed the mandate in the decision of ***Jacob Mathew Vs. State of Punjab & Anr.*** reported in ***AIR 2005 SC 3180***. Thereafter also when the investigation was handed over to Vazirabad Police Station, Nanded the police had then appointed the experts committee in view of the directions in ***Jacob Mathew (Supra)*** and in the said inquiry the Committee has given a negative report. In other words, the committee which consisted of six doctors had come to the conclusion that proper treatment was

given to deceased Vijaya and there was no scope for any negligence by any doctor. Thereafter, it is stated that now respondent No.2 has filed the protest petition bearing other Misc. Criminal Application No.633 of 2019 and it is still pending. When the proper procedure was undertaken in the beginning itself there ought not to have been any investigation or inquiry. Even if it is taken that inquiry has been made, it is in negative. Under such circumstance, the FIR that has been lodged against the applicants needs to be quashed and set aside.

4. Learned APP objected to the application. It was submitted that since the matter is coming for the first time he is not armed with the documents. However, when the protest petition has been filed by respondent No.2, it should be decided by the concerned Court as per the procedure. Therefore, question of quashing of the FIR will not arise.

5. It is not even necessary to issue notice to respondent No.2.

6. At the outset, it is to be noted that the FIR came to be lodged as a result of order passed below Exhibit-1 in Other Misc. Criminal Application No. 310 of 2017 by the learned 3rd Judicial Magistrate First Class, Nanded on 30th October 2017. That order was never challenged by the applicants. Thereafter, on the basis of that order the FIR was registered with Vazirabad Police Station, vide C.R. No.24 of 2018 on 28th January 2018. The applicants never prayed for quashing of the said FIR till today. Now, after the inquiry, the police have

given 'C' summary to the learned Magistrate and now it is for the Magistrate to take further steps.

7. Even we can consider the ratio laid down in ***Abhinandan Jha Vs. Dinesh Mishra*** reported in ***1968 Cri. LJ 97 (SC)***, wherein it was held that the Magistrate had no jurisdiction to direct the police to submit the charge-sheet. It was open to the Magistrate to agree or disagree with the police report. If he agreed with a report that there was no case made out for issuing process to the accused, he might accept the report and close the proceedings.

8. It appears that as per the procedure, when the notice was issued to the complainant, i.e. respondent No.2 he has filed protest petition and it is still pending since 2019.

9. Important point to be noted is that the applicants appear to have approached the learned Chief Judicial Magistrate for permission of renewal of passport which came to be allowed twice. From also it can be seen that they have submitted to the jurisdiction of the learned Chief Judicial Magistrate also. However, they had not at any point of time earlier the present petition approached this Court for the quashment of the FIR. Therefore, definitely the application suffers from delay and when the protest petition is still pending, it has to be considered by the learned Magistrate on its own merits. On these grounds the application stands rejected.

(RAJESH S. PATIL, J.)

(SMT. VIBHA KANKANWADI, J.)