

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

CRIMINAL WRIT PETITION NO.1474 OF 2018

**RAMPRASAD S/O. DIGAMBAR THORAT
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

Advocate for the Petitioner : Mr. P. N. Ghadge
APP for Respondent/State : Mr. S.J. Salgare

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**CORAM : C. V. BHADANG &
BHARAT P. DESHPANDE, JJ.**

DATE : 8 JUNE 2022.

P. C.

By this petition under Article 226 of the Constitution of India, the Petitioner, who is the father of minor Rohit Thorat, is seeking following substantive reliefs :

(i) By writ of mandamus or any other appropriate writ order or direction in the like nature, may kindly issued direction against the respondent No.1 to 4 to decide the application dated 31.05.2017 and take action as per the provision of law.

(ii) By writ of mandamus or any other appropriate writ

order or direction in the like nature, the respondent No.2 and 3 may kindly be directed to register the FIR against the doctors at Exh. F as per the provisions of law.

(iii) By writ of mandamus or any other appropriate writ order or direction in the like nature, the respondent No.4 be directed to conduct the postmortem of the deceased Rohit.

2. It so happened that on 11.04.2017, minor Rohit purchased a cold drink from grocery shop of one Santosh Sanap at Village Wadhav and after consumption of the same, Rohit complained of vomiting and loose motion. As it was suspected that there was food poisoning on account of consumption of the said cold drink, Rohit was initially taken to Gajanan Hospital at Risod and thereafter at Multi Speciality Hospital at Mehkar. He was thereafter shifted to MGM Hospital and finally to the Government Hospital (better known as Ghati Hospital) at Aurangabad, where he was admitted at about on 16.04.2017.

3. According to the Petitioner, although the doctors, who were treating Rohit, were informed about the possibility of food poisoning, proper treatment was not administered to Rohit and there was medical negligence in treatment and management of Rohit, as a result of which,

Rohit expired on 20.04.2017. The dead body was handed over to the Petitioner and the same was buried on the same day at 08:30 pm.

4. The Petitioner addressed a communication dated 31.05.2017 to the Police Inspector, Police Station Begumpura, Aurangabad City for initiating action against Santosh Sanap, the owner of grocery shop, as also for taking action against the concerned Medical Officers for the negligence in the treatment of Rohit. As no action was taken, the Petitioner has approached this Court for the aforesaid reliefs.

5. We have heard the learned Counsel for the Petitioner and the learned APP. With the assistance of the learned Counsel for the parties, we have gone through the record.

6. It is submitted by the learned Counsel for the Petitioner that in spite of the fact that the concerned Medical Officers were informed about the possibility of food poisoning, no proper treatment was administered to Rohit. He submitted that the death of Rohit, is outcome of the gross medical negligence of the concerned Medical

Officers in treatment of his son Rohit. The learned Counsel for the purpose has referred to certain medical papers which are produced on record. The learned Counsel also made a request for a direction to exhume the dead body of Rohit for conduction of postmortem report, in order to ascertain the cause of death, which in the submission of the learned Counsel, is necessary to decide on the issue of medical negligence.

7. The learned APP referring to the affidavit-in-reply, has pointed out that the matter was referred to a Medical Board and the members of the Medical Board as per the report dated 7.03.2018 (at Page No. 77 of the compilation) has found that there was no negligence in the treatment of Rohit. In other words, the Medical Board has found that appropriate treatment was administered to Rohit and in spite of the same, he expired on 20.04.2017. The learned APP has placed reliance on the decision of the Supreme Court in **Jacob Mathew Vs. State of Punjab and Another, (2005)6 SCC 1**. Learned APP also pointed out that the Petitioner has already approached the District Consumer Forum, seeking compensation on the ground of deficiency in service.

8. We have given our anxious consideration to the rival circumstances and the submissions made and we do not find that any case for entertaining the petition, is made out. As noticed earlier, the issue about the alleged negligence in the treatment of Rohit was referred to the Medical Board duly constituted. The Medical Board comprised of the Experts in the field of pediatric surgery, forensic medicine and was headed by the Medical Superintendent of the Government Hospital at Aurangabad. A perusal of the report dated 07.03.2017 shows that Rohit was admitted to the Government Hospital on 17.04.2017 at 12:33 am. and was put on antibiotics. On 17.04.2017, his condition deteriorated and was treated in Intensive Care Unit (ICU). However, in spite of all efforts unfortunately Rohit expired on 20.04.2017 at 12:45 pm.

9. The Hon'ble Supreme Court in the case of Jacob Mathew (supra), has held that the liability for medical negligence in such cases is attracted when the death is shown to have been a direct result of a rash and negligent act of the concerned Medical Officers. That act must be the proximate and efficient cause without the intervention of another's

negligence. It has been held that the act must be the *causa causans* and it is not enough that it is *causa sine qua non*. The Hon'ble Supreme Court has summed up the conclusions in Paragraph No.48 of the judgment. Although negligence is the breach of a duty, negligence in the context of medical profession has been held necessarily to call for a treatment with a difference. The Hon'ble Supreme Court in Paragraph No.48(2) of the judgment held that to infer rashness or negligence on the part of a professional, in particular a doctor, additional considerations apply.

10. Applying the principles to the facts of the present case, we find that the Medical Board, which comprises of the Experts in the field after considering the treatment administered to deceased Rohit, have come to the conclusion that there was no negligence. In the absence of any other circumstances or material, it is not possible to come to a different conclusion than what is reached by the Experts in the field.

11. Even so far as the prayer for exhuming the body for the purposes of postmortem examination is concerned, we find that the body was

buried more than five years back and it would be futile to grant any such prayer for exhuming the dead body or the remnants thereof for the purposes of postmortem examination at this distance time. The possibility of the dead body being exhumed or being subjected to postmortem examination, in order to ascertain the cause of death, is extremely remote.

12. We find that the Petitioner has already approached the District Consumer Forum for relief of compensation. Thus, it is not possible to entertain the petition as framed and filed for the reliefs as prayed for. In the result, we decline to entertain the petition, which is accordingly dismissed with no order as to costs. We however, make it clear that the observations herein are for the limited purpose of deciding the prayers made in the petition in particular to register an FIR against the concerned Medical Officers. Thus, the District Consumer Forum may independently decide the petition for compensation on its own merits and in accordance with law.

BHARAT P. DESHPANDE, J.

C. V. BHADANG, J.