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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO. 3423 OF 2021

Maharudra P. Kisanrao Shinde ...Petitioner

Versus

The State of Maharashtra & Ors ...Respondents

- Mr. Shreeram Shirsat a/w Mr. Amandeep Singh for Petitioner.
- Ms. S.D. Shinde, APP, for the Respondent – State.

**CORAM : PRASANNA B. VARALE &
S. M. MODAK, JJ.**

DATE : MARCH 09, 2022.

PER COURT :

1. The present Petition is filed in this Court seeking directions to Respondent No. 2 to register the complaint. The Petitioner is the father of one Swapnil Shinde who has completed his course in medicine i.e., MBBS in a private institute and met with an unfortunate death. It is submitted that son of Petitioner after completing his MBBS course was prosecuting his post graduate MD Gynecology, second year and on 17.08.2021 proceeded to attend his duties. It was informed to the Petitioner that son of Petitioner is admitted in ICU. On receipt of information, wife of the Petitioner

reached to hospital and found that her son Swapnil was in unconscious condition and treatment was going on. As the son was in unconscious condition, wife of the Petitioner was unable to establish any communication with son and in the late hours it was informed that son of the Petitioner expired. When an inquiry was made by the parents evasive replies were given. It was informed to the parents that the son of Petitioner suffered heart failure. The Petitioner carried a doubt that there was some foul play in the death of his son and it was the grievance of the Petitioner that his son was a bright student and though he was promptly replying the queries put by the senior doctors whereas the other senior students were unable to reply their queries and these senior students carried a grudge against the son of Petitioner, and deceased was subjected to ragging.

2. It is submitted that the son of Petitioner made certain complaints to senior doctors but no heed was paid. As the Petitioner was carrying a suspicion that death of the son was not a natural and certain doctors attached to private college are responsible for his death, he lodged a report to Senior Police

Inspector of Adgaon Police Station, Nasik. It seems that the Petitioner wrote letters to various authorities such as, Office of Chief Minister, Office of Prime Minister, etc. It is also the grievance of the Petitioner that when the Petitioner approached the senior doctors making inquiry on the backdrop of death of his son, senior doctors gave evasive replies. It is also the grievance of the Petitioner that neither the mother of the Petitioner nor Petitioner himself were permitted to establish communication with their son. The treatment given to son of Petitioner and details of such treatment was not made known to the Petitioner and his wife. It is also the grievance of the Petitioner that the behaviour and the acts of those senior doctors attached to the institute were suspicious. It is also submitted by the Petitioner that the Petitioner found a note in the handwriting of the son of the Petitioner as well as there was CCTV footage available but the investigating agency in spite of lodging a report is not conducting proper and fair investigation. Thus, on these submissions, the Petitioner had approached this Court.

3. We have heard learned Counsel appearing for respective parties at length. The Petitioner himself was also present in this Court at the time of hearing.

4. On hearing the Counsel at length as well as on perusal of material placed on record and other material in the form of photographs placed on record, we could observe that the son of Petitioner completed his studies from the said private institute and obtained degree of MBBC and thereafter, he was admitted in PG course. The documents placed on record also shows that for sometime the attendance of son of Petitioner in the course was not satisfactory and he was cautioned for his inadequate presence in the course. The documents placed on record further show that on 21.02.2021 the Petitioner's son was subjected to clinical and radiological examination. The findings recorded by the doctor Hirwe, Consulting Sonologist & Radiologist in the certificate dated 21.02.2021 reads thus:

Partial compression fracture of D4 to D8 vertebral bodies are seen which shows reduced height. There is no any retropulsion/displacement of fracture fragment in noted. Vertebrae otherwise show normal signed pattern.

Intervertebral disc normal height, contours

and signal intensity. No disc protrusion is noted.

5. It seems that the son of Petitioner was examined by another private doctor namely, Dr. Pravin Deshmukh and the said certificate is placed on record at Exhibit 'C' and the same reads thus:

This is to certify that Mr. Swapnil Maharudra Shinde Age 25 years resident of Beed is suffering from compression fracture T4-T8 with post disc bulge at L5-S1 for which he is advised complete bedrest for 60 days.

This certificate is issued on request for academic purpose only.

6. The perusal of ordersheet shows that on 11th October, 2021, learned APP sought time to take instructions so as to file reply and reply on behalf of Respondent – State is filed through Mr. S.N. Shinde, API, Adgaon Police Station, Nashik. It would be necessary for us to refer certain factual aspects reflected in reply:

i. Son of Petitioner Dr. Swapnil Shinde died at about 22.28 hours on 17.08.2021 at Dr. Vasantrao Pawar Medical College Hospital in ICU ward.

ii. Information of incident was immediately received by Adgaon Police Station on very day i.e., 17.08.2021 at about 10.17 am.

Immediately the police visited the hospital and MLC No. 1173/2021 was registered. It is stated in the reply that opinion was taken from medical officer whether the patient can give any statement and the medical officer verified and stated that the patient is not in a condition to talk as he was on ventilator.

At this stage, it can be said that this statement is supported by the statement made by the Petitioner himself in the report that on receipt of information of admission of the son when the wife of Petitioner attended the hospital she found that his son was in unconscious condition.

7. Considering this statement, it cannot be accepted that the Petitioner or his wife were purposely denied an opportunity of communication. At the cost of repetition, it can safely be said that the son of Petitioner was not in a condition to talk to anybody including his parents.

8. It is further stated in the reply that information of accidental death of Dr. Swapnil was received by Adgaon Police Station, Nashik through

telephone of one Dr. Sanjay Manekar, attached to Adgaon Medical College Hospital, Nashik at about 23.45 hours on 17.08.2021 and the same was entered vide entry No. 01 at Station Diary on 18.08.2021 at about 00.31 hours under Section 174 of Cr.P.C vide Accidental Death Register No. 100/2021. It is further stated in the reply that Dr. Sanjay Manekar given information of the said accidental death on telephone that Dr. Swapnil was found unconscious in washroom adjacent to the operation theater of Adgaon Medical College Hospital on 17.08.2021 and therefore he was shifted to ICU ward and kept on ventilator, thereafter, Dr. Jitendra Khodilkar at about 22.28 hours declared him dead vide MLC No. 1173/2021. In paragraph 9 and 10 of reply discloses the detail of necessary steps taken by the police authorities. The police authorities during the course of inquiry recorded the statement of as many as 10 witnesses.

9. It is further stated in paragraph 14 to 17 & 23 to 27 of the reply as under:

14. I say that during the enquiry, it is revealed that Dr. Anup Bharati, Psychiatrist in Dr. Vasantrao Pawar Medical

College, examined Dr. Swapnil M. Shinde, deceased, at the time of his admission gave treatment to him and also advised to consult as and when required and found that the deceased was suffering from anxiety and depression, therefore necessary documents from Adgaon Medical College Hospital Administration are taken on record.

15. I say that during the course of enquiry, the statements of Dr. Priyanka Reddy, Dr. Pooja Shirgave, Dr. Manasi Mitkari, Dr. Marium Deshmukh, Dr. Gaurav, Dr. Geet and friends of Dr. Swapnil i.e. Dr. Atul Pawar, Dr. Prashant Jadhav, Dr. Mahendra, Dr. Abhijit and also Dr. Ghuge Head of Anti Ragging Committee, Dr. Ajit Patil Guide, Dr. Bharati Psychiatrist were recorded as they were students of same Medical College.

16. I say that Viscera reserved by Medical Officer of Civil Hospital Nashik after Post Mortem examination, is sent to Forensic Laboratory, Dindori Road, MERI, Nashik.

17. I say that Viscera Verification Report from Forensic Lab Dindori Road MERI, Nashik and also from Histopathology Govt. Medical College Aurangabad are awaited.

23. I say that the then Enquiry Officer wrote a letter bearing O.W. No.4364/2021 dated 20.08.2021 addressed to the Dean of Medical College, Nashik inter alia requesting therein to provide detail information of deceased in the said Medial College.

24. I say that the then Enquiry Officer issued summons bearing O.W. No. 4365/2021 dated 20.08.2021 u/s. 160 of Cr.P.C. upon the Dean of Medical College, Nashik inter alia calling upon the witnesses to be present before the inquiry officer.

25. I say that the then Enquiry Officer wrote a letter bearing O.W. No. 4364/2021 dated 20.08.2021 addressed to the Dean of Medial College, Nashik requesting to provide Report of (1) Anti Ragging Committee Record, (2) medial record of treatment given to Dr. Anup Bharati, Psychiatric on the deceased Dr. Swapnil Shinde and (3) other important documents pertaining to the deceased Dr. Swapnil Shinde and collected above information.

26. I say that further enquiry has been made with Dr. Mrunal Patil - Dean Dr. Vasantrao Pawar Medical College. She further stated that the College has

received E-mail for enquiry of death of Dr. Swapnil through Anti Ragging Committee and to file detail report to College. She further stated that another Email alongwith Letter vide O.W. No. / Ma.Aa. Vi.Vi. / S.W. / Anti Ragging / 748 / 2021 dtd. 18/8/2021 was received to College that Enquiry Committee of Dr. Shailesh Mohite, Dean Kuper Hospital, Mumbai, Vijay Kalyankar Govt. Medical College Aurangabad and Dr. A.O. Dahad Principal Medial College Chandvad has been formed to make enquiry at University Level.

27. I say that she has further stated that the Enquiry Committee has personally visited Adgaon Medical College and have taken statements of the Doctors, Nurses, and other employees of Hospital regarding death of Dr. Swapnil. She has further stated that College have also made local enquiry and sent its report to Maharashtra Arogya Vdnyan Vidyapith Mhasrul vide Letter O.W. No. 2479 dt. 25/08/2021.

10. It will not be out of place to state here that though the Petitioner makes a grievance of improper inquiry of delay in inquiry by the police officials the reply clearly reveals that in spite of communication

being forwarded to the Petitioner to record statement of Petitioner, he refused to attend the police officials on a ground that his wife is ailing.

We are unable to find any unreasonable delay in the process of inquiry, on the contrary, the above referred statements clearly reveals that the police officials took necessary steps as early as possible and opportunity was also given to the Petitioner to submit his say by recording his statement but for the reasons best known to the Petitioner, the Petitioner failed to show any proper response to the investigating agency and ultimately at last on 29.11.2021 the statement of Petitioner and his wife were recorded and in the statement they only reiterated for investigation in depth.

11. It is also surprising to note that though the Petitioner raises various grievance against the Respondent – State and particularly the police authorities when the police authorities sought for necessary material namely, original letter written by deceased as well as mobile phone taking recourse the provisions of Cr.P.C to issue notice to the Petitioner,

the Petitioner till date had not handed over those important material to the police authorities.

12. It is also interesting to note that in rejoinder affidavit dated 20th December, 2021 the Petitioner only reiterated his grievance but failed to give any satisfactory explanation as to why the Petitioner failed to show positive response to the investigating agency by cooperating the investigating agency in recording the statement immediately and also failed to handover the important material in the form of letter and mobile phone till date. The Petitioner is only harping upon the collection of CCTV footage but Petitioner is not ready to provide material to the police authorities which is in his own possession.

13. Considering all these facts, we are not inclined to entertain the Petition. The Petition is accordingly dismissed. We further make it clear that the Petitioner can certainly avail the other efficacious remedy as available to him under the provisions of law.

(S. M. MODAK, J.)

(PRASANNA B. VARALE, J.)