

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

**CRIMINAL WRIT PETITION NO.62 OF 2022**

SANJIVANI W/O. PRAKASH PUNEKAR  
VERSUS  
THE STATE OF MAHARASHTRA AND OTHERS

...  
Advocate for Petitioner : Mr. Murge Estling S.  
APP for Respondents: Mr. R.V. Dasalkar  
...

**CORAM       :   MANGESH S. PATIL &  
                          ABHAY S. WAGHWASE, JJ.**

**DATE           :   06.04.2023**

**PER COURT :**

The petitioner is the mother of the deceased and is seeking registration of crime and investigation into her death which according to her was caused due to medical negligence. She is praying for compensation as well.

2.           The learned advocate for the petitioner, on instructions, submits that the petitioner would not pray for compensation and is interested in registration of crime and its investigation.

3.           The learned advocate for the petitioner would take us through the papers. He would submit that the petitioner's daughter was taken to the hospital of the medical practitioner Dr. Kutwal. He assured that she was well and in spite of the insistence of the petitioner he flatly denied any need to shift her daughter to a higher center. However, abruptly she was shifted to the ICU in his hospital where some treatment was provided but he was

unable to recover the patient. He managed to shift her to Ashwini Hospital, Solapur. It is alleged that the doctor from that hospital had told the petitioner and her husband that the condition of the daughter had worsened because of overdoes of medication. Unfortunately, the daughter succumbed on 08.02.2020.

4. The learned advocate submits that immediately on 11.03.2020 a communication was made to the Civil Surgeon as also the Superintendent of Police putting up all the grievances still their request fail on the deaf ears. No steps were taken immediately to undertake necessary preliminary inquiry. The police ought to have conducted inquiry but even that was not done. A three member committee constituted by the Civil Surgeon conducted a preliminary inquiry hurriedly. It is after a long persuasion that the matter was considered by a committee of six members as per the Government Resolution dated 26.03.2010. The learned advocate would submit that the petitioner is left with no option but to solicit the direction since it is a clear case of medical negligence.

5. The learned APP submits that though initially some preliminary inquiry was conducted by a three member committee according to the earlier policy, after realizing the error a six member committee as is contemplated in the Government Resolution dated 26.03.2010 was constituted. Even the petitioner and her husband were given an opportunity to put up their grievance before the committee and after examining the papers from the hospital of Dr. Kutwal and from Ashwini Hospital, Solapur

and also hearing the doctor from latter, the six member committee has reached a conclusion that there was no medical indulgence. In view of such a finding of the expert committee, no offence can be registered as is being claimed by the petitioner. He would also point out that in fact, the concerned Police Inspector of Tuljapur Police Station had taken the initiative in getting the committee constituted and putting up the papers before it and soliciting its opinion.

6. Indeed, we have all the sympathy with the petitioner who happens to be the mother of the deceased who was a girl aged 18 year and the only child of her parents.

7. However, we are guided by the rule of law laid down in the matter of **Lalita Kumari Vs. Govt. of U.P. and Ors.; AIR 2014 Supreme Court 187**. Besides so far as the matter of medical negligence are concerned, the judgment **Jacob Mathew Vs. State of Punjab and Anr.; 2005 CrL.L.J. 3710** forms the basis for the State Government to device a policy for undertaking a preliminary inquiry into the matters wherever there are allegations regarding medical negligence.

8. Though erroneously, initially the matter was considered by a three member committee constituted by the Civil Surgeon which submitted its report on 15.05.2020 stating that the deceased had died due to *Pulmonary edema*.

9. The matter has been reconsidered by a six member committee which has reached an emphatic conclusion holding that there was no

medical negligence. Pertinently, not only the petitioner and her husband but even the Dr. Feroz Sayyed from Ashwini Hospital, Solapur had appeared before the Committee and after hearing all of them the objective decision was taken.

10. Since it is a matter of alleged medical negligence, unless we have something concrete which would belie the opinion of the expert committee comprising of six members, merely on the basis of perception being entertained by the petitioner we cannot reach to a conclusion that there is some material to set the criminal law in motion.

11. The Writ Petition is dismissed.

(ABHAY S. WAGHWASE, J.)

(MANGESH S. PATIL, J.)