

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1069 OF 2022

Dr. Ravindra Laxman Bhosale
Age : 44 years, Occ : Medical Practitioner,
R/o Bhosale Hospital, Sukkur Chowk,
New Tilak Road, Ahmednagar.

..APPLICANT

-VERSUS-

1. The State of Maharashtra
Through Police Station Officer,
Bhingar Camp Police Station,
Ahmednagar
2. Ganesh Bhagwan Nagargoje
Age : 47 years, Occ : Service,
R/o Radha Mohan Colony,
Lekha Nagar, Savedi,
Ahmednagar.

..RESPONDENTS

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Advocate for Applicant : Mr.Satyajit S. Bora
APP for the Respondent/State : Mr.R.V. Dasalkar

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**CORAM : R.G. AVACHAT AND
SANJAY A. DESHMUKH, JJ.**

DATED : 21st JUNE, 2023.

JUDGMENT (PER Sanjay A. Deshmukh, J.) :-

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the learned advocates for the parties.
2. This is an application filed under section 482 of the Criminal Procedure Code, 1973 for quashing of criminal proceedings registered as SCC No.5292 of 2021 pending in the Court of Judicial

Magistrate, First Class, Ahmednagar in pursuance of the FIR bearing Crime No.207 of 2021 registered with Bhingar Camp Police Station, Ahmednagar for an offence punishable under section 304-A of the Indian Penal Code, 1860 (for short, "IPC"). Report was lodged by the Police Head Constable – Ganesh Nagargoje of Police Station Savedi, Ahmednagar.

3. The learned advocate for the applicant pointed out that one Yogesh Suresh Pawar died in the hospital of applicant during the treatment of pulmonary edema atheriseleis with fatty liver on 07.01.2019. The A.D. was registered and investigation was conducted. After postmortem of the dead body, as per the opinion of Dr.P.L. Saigaonkar Medical Officer dated 01.06.2021, the cause of death is death due to pulmonary edema atheriseleis with fatty liver was not there. There was sever acute septicemic shock due to acute pancreatitis & Urinary Tract infection. He further opined that it was case of medical negligence in monitoring this case found from the treatment records.

4. The learned advocate for the applicant further submitted that Dr. Saigaonkar was not authorized to give such opinion. He is relying upon the judgment in the case of **Jacob Mathew Vs. State of Punjab and others** reported in **AIR 2005 SC 3180** in which it is held

that non-availability of Oxygen Cylinder or empty cylinder in a hospital is no ground to proceed against the doctor. The report is not lodged by the relatives of person dead in the hospital. The hospital is at the most liable as per civil law. For compensation, the prosecution against such accused is not sustainable. It is lastly prayed to quash the FIR and charge-sheet.

5. The learned APP for the respondent/State pointed out affidavit of API of Bhingar Camp Police Station, Ahmednagar that there was clear cut negligence on the part of the applicant. The opinion of expert is sufficient to proceed against the applicant. He submitted to reject the application

6. It is well established that expert's opinion has to be obtained from the Committee of the Expert doctors/Board constituted in the Government/Civil Hospital. The Civil Surgeon, Ahmednagar communicated by its letter dated 02.07.2021 that the Committee constituted for the opinion has opined that there is no negligence on the part of applicant. An opinion given by Dr. Saigaonkar is based on the documents and he was not authorized to give such opinion. Therefore, his opinion cannot be accepted. Thus, there is no prima facie case constituting an offence punishable under section 304-A of the Indian Penal Code against the applicant. There is no point in

conducting case against the applicant. Application, therefore, deserves to be allowed. The argument of the learned APP is not acceptable in this regard. The application deserves to be allowed. Hence, the following order :-

ORDER

- a. The application is allowed. The charge-sheet in SCC No.5292 of 2021 pending in the Court of Judicial Magistrate, First Class, Ahmednagar in pursuance of the FIR bearing Crime No.207 of 2021 registered with Bhingar Camp Police Station, Ahmednagar for the offence punishable under section 304-A of the Indian Penal Code is quashed and set aside.
- b. Rule made absolute in the above terms.

(SANJAY A. DESHMUKH, J.)

(R.G. AVACHAT, J.)

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