

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

**CRIMINAL WRIT PETITION NO. 2163 OF 2022**

**Vilas S/o Vitthalrao Patil**

**...Petitioner**

**Versus**

**State of Maharashtra**

**...Respondent**

....

Mr. Gajanan Kadam, Advocate for the Petitioner.

Mr. S. R. Agarkar, for Respondent-State.

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**CORAM : PRAKASH D. NAIK, J.**

**DATE OF RESERVING ORDER : 30<sup>th</sup> SEPTEMBER, 2022**

**DATE OF PRONOUNCEMENT : 28<sup>th</sup> JULY 2023**

**PC :**

1. The Petitioner has assailed order dated 23<sup>rd</sup> March 2022 passed below Exh.61 in Sessions Case No.22 of 2020 passed by learned Judge, Special Court, Ratnagiri rejecting the application for discharge.

2. The Petitioner is prosecuted vide Sessions Case No.22 of 2020 pending before the Special Court at Ratnagiri arising out of C.R. No.72 of 2016 registered with Rajapur Police Station, Ratnagiri for offences punishable under Sections 304 (2), 201 read with 34 of the Indian Penal Code and Section 135 and 138 of Indian Electricity Act, 2003.

3. The case of the prosecution is as under:-

(i) The complainant is the mother of deceased Amol Ayare. He lives in Mumbai and came to his village for Ganpati festival. On 7<sup>th</sup> September 2016, Rajendra Manohar Ayare and Harichandra Raghunath Ayare had visited her house for offering prayed to Ganpati idol. They asked complainant's son to accompany them for fishing. The son of complainant accompanied them. After sometime Rajendra Ayare came to the house of complainant and informed that her son Amol Ayare had sustained electric shock. The complainant informed about it to her husband and both of them started towards the spot of incident. They noticed that, Raghunath Ayare, Harischandra Ayare and Rajendra Ayare were lifting their son Amol. They were carrying him (Amol) to Rural Hospital at Raipatan for treatment. He was taken to Hospital. There were two Doctors. They examined Amol and disclosed that the victim is dead. The dead body was carried to their village. The complainant noticed some marks of electric shock on the person of deceased. Funeral was performed. FIR was registered on 18<sup>th</sup> September 2016. Statements of witnesses were recorded. On completing investigation, charge-sheet was filed.

4. Petitioner preferred an application under Section 227 of Cr.P.C. for discharge before trial Court on 20<sup>th</sup> September 2021. It was rejected by order dated 23<sup>rd</sup> February 2022.

5. Learned Advocate for the Petitioner has submitted as under:-

(i) The petitioner is charged for offence under Section 201 of IPC.

There is no evidence against the Petitioner for causing disappearance of evidence.

(ii) Dead body of the victim was cremated without lodging any report at the police station. Hence, no cause of death is available. Since, the victim was cremated, postmortem cannot be conducted.

(iii) Victim Amol was never brought to the hospital. Petitioner has not examined him. There is no record in the hospital about arrival of the victim and his examination by medical officer.

(iv) There is no eye witness to identify the petitioner as a Medical Officer claiming that he had examined the victim in the hospital.

(v) While considering the question of framing charge, the Court can shift and weigh the evidence for the limited purpose of finding out whether prima facie case against the accused is made out.

(vi) There is no sufficient ground or evidence against the Petitioner for proceedings or framing charge against him.

(vii) The incident took place on 7<sup>th</sup> September 2016. Dead body was cremated. Complaint was lodged subsequently.

(viii) No patient are examined or treated without OPD papers in any

Government Hospital. Case papers of the patient are always with the relatives of the patient. Prosecution failed to bring any documentary evidence to the effect that deceased Amol was brought to the hospital and examined by Petitioner.

6. Learned Advocate for the Petitioner has relied upon the following decisions:-

(i) Dinesh Kumar Kalidas Patel Vs. The State of Gujarat decided by Hon'ble Supreme Court on 12<sup>th</sup> February 2018 in Criminal Appeal Nos. 265-266 of 2018 (Arising out of S.L.P (Criminal) Nos. 1815-1816 of 2016).

(ii) Sukharam Vs. State of Maharashtra decided by Hon'ble Supreme Court on 17<sup>th</sup> August 2007 in Criminal Appeal No. 1203 of 2006.

(iii) Union of India (UOI) Vs. Prafulla Kumar Samal and Ors. decided by Hon'ble Supreme Court on 6<sup>th</sup> November 1978 in Criminal Appeal No.197 of 1977.

(iv) Fabian Helmchen Vs. State of Goa and Ors. decided by this Court at Goa Bench on 2<sup>nd</sup> August 2021 in Criminal Revision Application No.477 of 2021 (F).

(v) Dipakbhai Jagdishchandra Patel Vs. State of Gujarat and Ors. decided by Hon'ble Supreme Court on 24<sup>th</sup> April 2019 in Criminal Appeal No. 714 of 2019 (arising out of SLP (Cri.) No.5415 of 2017).

(vi) Bhupesh Prakashchand Gupta Vs. The State of Maharashtra decided by this Court on 10<sup>th</sup> October 2017 in Criminal Revision Application No. 449 of 2017.

(vii) Arbind Singh Vs. State of Bihar<sup>1</sup>.

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1 1995 Supp (4) SCC 416

7. Learned APP submitted that, prima facie case is made out to proceed against the petitioner. The petitioner is Doctor by profession. He was attached to the Government Hospital where the victim was taken. It is the duty of the medical officer to examine the patient and prepare record and in case of suspicion, conduct postmortem. No record was made available. Hence, petitioner had committed an offence under Section 201 of IPC.

8. Report was lodged by Sunita R. Ayare on 18<sup>th</sup> September 2016. It was alleged that Rajendra M. Ayare and Harischandra Ayare had visited the house of complainant on 7<sup>th</sup> September 2016. They induced the complainant's son to accompany them for fishing. After sometime Rajendra Ayare informed the complainant that victim boy Amol had suffered electric shock. The complainant and her husband went to the spot of incident. Rajendra Ayare informed them that the victim boy Amol became unconscious and he should be taken to Raipatan Government Hospital for treatment. All of them went to Raipatan Hospital. Two doctors examined them. They told them, their case is over. The complainant and her husband informed opinion of Doctor to the people, who are accompanying them. The complainant informed the incident to her relatives and their villagers. The involvement of Rajendra Ayare and Harischandra Ayare was suspected in accidental death of the victim by electric

shock. Offences were registered under Section 304(2), 201 read with 34 of IPC. Spot panchanama was recorded. Electric wire was seized from the spot. During the course of investigation it was revealed that, the accused Nos. 1 and 2 were fishing with the use of electric current. While catching fish, the victim had suffered electric shock.

9. During the course of investigation, statement of Santosh Babaji Tawde was recorded on 3<sup>rd</sup> October 2016. He has stated that on 7<sup>th</sup> September 2016 he received call from Santosh Sayaji Ayare and it was informed that Amol Ayare is ill. He was told to bring his car for taking the victim to hospital. The witness went to the house of the victim. Rajendra Ayare, Harischandra Ayare, Raghunath Ayare and parents of Amol were present near the house of the victim. The victim was unconscious. It was decided to take him to Raipatan Government Hospital. All of them went to the said hospital. Vehicle was parked in front of hospital. Santosh Ayare, Rajendra Ayare, Harischandra Ayare and Raghunath Ayare went to the hospital. They brought doctor Patil near the vehicle. Dr. Patil examined the patient in the car and without disclosing anything returned to the hospital. Santosh Ayare, Rajendra Ayare, Harischandra Ayare and Raghunath Ayare followed doctor Patil to the hospital. After some time, they returned back and informed that case is over. All of them returned to the village. Body of the victim was cremated. The witness

subsequently learnt that, the victim Amol had accompanied with Rajendra Ayare and Harischandra Ayare on 7<sup>th</sup> September 2016 for fishing.

10. Statement of Santosh Sayaji Ayare was recorded on 10<sup>th</sup> October 2016. He has stated that, on 7<sup>th</sup> September 2016 he had informed that victim Amol Ayare is unconscious and is required to be taken to the hospital for treatment. The victim was taken to Raipatan Government Hospital. The person accompanying the victim went to hospital and called doctor. The doctor came near the vehicle and informed them that the victim had suffered shock during decoration of Ganesh idol. Doctor examined the victim and declared that he was died. Doctor then asked them, police case is required to be registered and were postmortem is to be conducted. Raghunath Ayare, who was accompanied informed the doctor that they did not want to register any case and complaint or is not required against any person. Doctor informed them to take body for performing final rites. Thereafter body was taken to the village and cremated.

11. Statement of Raghuram Ayare referred to the fact that the victim was taken to hospital. Two doctors were available at the hospital. They examined the victim and informed them that the victim is no more.

12. The victim has suffered electric shock. He was accompanying the accused Nos. 1 and 2. The main accused were charged for offence under Section 304(2) of IPC. The petitioner is facing charge under Section 201 of IPC. Witnesses have stated that, when they visited Raipatan Government Hospital, two doctors examined the victim and told them that the case is over, which means the victim is no more. It was the duty of the doctor to see that the patient is first taken in the hospital and after examining him take recourse to further majors in case of unnatural death. Postmortem is required to be conducted. Doctors were aware that the victim had died in unusual circumstances. The villagers had told that they did not want to register the case or conduct postmortem report and hence they were advised to take body for final rites. One of the victim has named one of the them as doctor Patil. The contention of the petitioner that merely because the surname of the petitioner is patil, does not mean that he was present at the hospital. It is pertinent to note that, the other witnesses have also referred to the presence of two doctors, who examined the patient (deceased Amol Ayare). Trial is yet to commence. The stage is of framing charge. At this stage, it cannot be said that there is no ground to proceed against the accused. The decision relied upon by the learned counsel for the Petitioner indeed laid down law relating to discharge and framing of

charge. However, considering the facts of this case, it is not possible to exonerate the petitioner at this stage.

**ORDER**

- (i) Criminal Writ Petition is dismissed.
- (ii) Interim relief granted by this Court shall continue for eight weeks.
- (iii) Writ Petition is disposed off.

**(PRAKASH D. NAIK, J.)**