



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL REVISION APPLICATION NO 210 OF 2024

Dr. Pravashankar Sunilkumar Mishra
Aged about 33 Years, Occupation-Medical
Practitioner, R/o Plot No. 302, Laxmi
Heights, Suyog Society, Dhaba, Nagpur.
Tahsil and District Nagpur.

... **APPLICANT**

VERSUS

The State of Maharashtra
Through Police Station Officer, Police
Station, Wadi, Nagpur, Tahsil and District
Nagpur.

... **RESPONDENT**

Mr. S. P Bhandarkar, Advocate a/w Mr. A. C. Khadse, Advocate for Applicant.
Ms. D. I. Charlewar, APP for Respondent/State.

CORAM : SANDIPKUMAR C. MORE, J.
JUDGMENT RESERVED ON : DECEMBER 16, 2024.
JUDGMENT PRONOUNCED ON: DECEMBER 17, 2024.

JUDGMENT

. Heard finally with consent of learned Counsel appearing on
behalf of the rival parties at admission stage.

2. The Applicant/Original Accused No.1 in Sessions Trial No.
184/2024 has challenged the order dated 14/10/2024 passed by the
Additional Sessions Judge, Nagpur (*hereinafter referred to as 'the learned trial*

court below Application (Exhibit-4), whereby request of discharging the Applicant from the charges in the aforesaid Sessions Trial has been rejected.

3. The Applicant has filed application for discharging him from the offence punishable under Section 304 read with section 34 of Indian Penal Code, Section 6 of Bombay Nursing Homes Regulation Act, 1949 and Section 33(1) and 33(2) of the Maharashtra Medical Practitioners Act, 1961. The learned trial court, after considering the material on record, observed that the material undoubtedly indicates that charge under Section 304(II) of Indian Penal Code atleast is attracted in the instant matter against the present Applicant. Hence, this Revision Application.

4. The learned Counsel for Applicant/Accused submitted that there are absolutely no ingredients of Section 304 read with Section 34 of Indian Penal Code involved in this matter. According to him, the Applicant/Accused No.1 is reputed Doctor and the deceased Vikas Mahadeo Meshram was in fact taking treatment of piles from the Applicant/Accused No.1. The Applicant decided to operate the patient Vikas Meshram and had given Anaesthesia to him, but due to certain complications, patient Vikas Meshram died. The cause of death was "*Cerebro Pulmonary edema*", which is no where related to the operation of piles.

5. Thus, the learned Counsel for Applicant submitted that the cause of death of patient Vikas Meshram was not in proximity with the operation to be performed by the Applicant/Accused No.1. He further submitted that the offence under Section 304 of Indian Penal Code cannot be established against the Applicant, but the Applicant can be charged with the offence only under Section 304-A of Indian Penal Code. Thus, he prayed for discharge of the Applicant from the charges levelled against him by setting aside the impugned order.

6. In support of his submissions, the learned Counsel for Applicant relied on the various Judgments as follows :

- Judgment passed by the Hon'ble Apex Court in the case of S. K. Jhunjhunwala V/s Dhanwanti Kaur and Another, (2019) 2 Supreme Court Cases 282;
- Judgment passed by the Hon'ble Apex Court in the case of Postgraduate Institute of Medical Education and Research, Chandigarh V/s Jaspal Singh and Others, (2009) 7 Supreme Court Cases 330;
- Judgment passed by the Hon'ble Apex Court in the case of V. Krishnakumar V/s State of Tamil Nadu and Others, (2015) 9 Supreme Court Cases 388;
- Judgment passed by the Hon'ble Apex Court in the case of Jacob Mathew V/s State of Punjab and Another, (2005) 6 Supreme Court Cases 1;

- Judgment passed by the Hon'ble Apex Court in the case of Nizam's Institute of Medical Sciences V/s Prasanth S. Dhananka and Others, (2009) 6 Supreme Court Cases 1;
- Judgment passed by the Hon'ble Apex Court in the case of Kusum Sharma and Others V/s Batra Hospital and Medical Research Centre and Others (2010) 3 Supreme Court Cases 480;
- Judgment passed by the Hon'ble Apex Court in the case of Suresh Gupta V/s Government of NCT of Delhi and Ors. (2004) 6 SCC 422;
- Judgment passed by the Division Bench of this Court in the case of Dr. Prashant Sopan Ahire V/s State of Maharashtra in Criminal Application No.1737/2023 along with connected Criminal Application, dated 10/9/2024 and;
- Judgment passed by the Hon'ble Apex Court in the case of Dr. Soumya Ghosh @ Soumya Ghosh V/s State, 2013 SCC OnLine Cal. 8392.

7. On the contrary, the learned APP supported the impugned order and submitted that at these juncture only *prima facie* material against the Applicant, who is the main Accused, is to be considered. She pointed out that the learned trial court has also considered the contents of chargesheet and thereafter rejected the application of the Applicant for discharge.

8. It is significant to note that the Applicant is main Accused, who is also charged with the offence under Section 6 of the Bombay Nursing Homes Regulation Act, 1949 and Section 33(1) and 33(2) of Maharashtra Medical Practitioners Act, 1961. On going through the chargesheet, it is clearly evident

that in respect of negligent act of the Applicant, there was an enquiry conducted by the Civil Surgeon Office, Nagpur. Further, it appears that the reputed Doctors, who were holding important posts in their departments, had conducted the said enquiry and after considering the entire material and the allegations they found that aforesaid charge against the Applicant was justified. It has been revealed that the Applicant even though had knowledge of medicine, but his clinic was not having basic facilities as well as medical team comprising of Assistant Surgeon, Anaesthesiologist, Nursing Staff for treatment as well as surgery. It is also revealed that the Applicant was knowing all these facts. Further, it appeared that at the time of surgery, the Applicant himself administered local Anaesthesia without any Anaesthesia Specialist. Moreover, it was also found that the Accused No.2 - Ajay Buddhadeo Vishwas, who assisted the Applicant/Accused No.1, had no valid medical qualification, and that was within the knowledge of the Applicant.

9. As such, as found by the learned trial court, there is definitely *prima facie* material on record, which attracts at least charge under Section 304(II) of Indian Penal Code. Of course, after completion of trial, the position may change or may not, but what is required at this stage is only the *prima facie* material indicating that the Applicant may be tried for the charges levelled against him.

10. It is significant to note that the Court is not supposed to conduct mini trial at the stage of framing charge, and the documents and contentions relied upon by the Applicant cannot be considered in detail. Thus, considering the allegations and the statements of expert Doctors recorded during the investigation and the report of Committee are sufficient for conducting the trial against the Applicant. The Judgments relied upon by the Applicant are required to be considered only after the evidence is adduced and at the time of arguments. Therefore at these juncture, no perversity can be seen under the impugned order, especially, when *prima facie* material is there on record against the Applicant. Thus, the Criminal Revision Application stands dismissed at admission stage.

(SANDIPKUMAR C. MORE, J.)

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