



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

CRIMINAL WRIT PETITION NO. 216 OF 2023

Nagorao S/o Shivajirao Chavan,
age: 55 years, Occ: Government Service
as Civil Surgeon At Yeotmal,
Taluka and District Yeotmal.

**...PETITIONER
(Original accused)**

VERSUS

The State of Maharashtra,
through the Incharge,
Police Station Officer,
Shivajinagar Police Station,
Beed, Taluka and Dist. Beed.

...RESPONDENT

....

Mr. Rajendra Deshmukh Senior Advocate a/w Mr. R. G. Dodiya i/b
Mr. Devang Deshmukh, Advocate for the Petitioner
Ms. A. S. Deshmukh, APP for the Respondent-State

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CORAM : Y. G. KHOBRAGADE, J.

**RESERVED ON : 16.01.2025
PRONOUNCED ON : 28.01.2025**

JUDGMENT :-

1. Rule. Rule made returnable forthwith. Heard the matter finally with consent of both the sides at the stage of admission.

2. The Petitioner has invoked jurisdiction of this Court under Article 227 of the Constitution of India and takes exception to the judgment and order dated 07.01.2023 passed by the

learned Additional Sessions Judge, Beed in Criminal Revision Application No. 106 of 2022, thereby affirmed the order of rejection of discharge of Petitioner for offence under Section 304-A of Indian Penal Code passed by the learned Judicial Magistrate First Class, Beed on 21.12.2022 below Exh. 15 in SCC No.958 of 2018.

3. The facts giving rise to the present Petition are that, the present Petitioner is a Medical Officer by profession. The Petitioner is charge-sheeted for the offence punishable under Section 304-A of the Indian Penal Code, 1860 (*for brevity hereinafter to be referred as "IPC"*) in Crime No. 256 of 2017 registered with Shivajinagar Police Station, Beed on 27.07.2017, on the basis of Report lodged by the informant namely Mr. Rafiyoddin Ajimoddin Shaikh, P.S.I attached with Shivajinagar Police Station. The Informant alleged that, Smt. Vaishali Vijay Bansode, the daughter of Smt. Kanta Sopanrao Mhaske, was pregnant and she was admitted in Samant Hospital, Beed due to stomach pain. At the relevant time, the Petitioner/accused was attached with Government Civil Hospital Beed being a Civil Surgeon and was consultant for delivery in "Samant Hospital". The Petitioner / accused medically advised that, Smt. Vaishali Vijay Bansode is serious and she has to undergo cesarean.

4. Therefore, Smt. Kanta Mhaske, the mother of victim / patient told the Petitioner/accused that, her daughter Vaishali (Victim) was taking treatment from Dr. Shirpurkar and she wanted to take her daughter to the said Doctor, but at that time the Petitioner / accused told her not to waste time and it is necessary to conduct cesarean immediately. Since, the petitioner terrified her, therefore, the mother of the victim was compelled to admit her pregnant daughter in Samant Hospital. Thereafter, the Petitioner accused performed cesarean on the victim at 8:00 a.m., without obtaining consent of mother of patient or relatives on any required forms. After conducting cesarean, the Victim gave birth to twin male child. Thereafter, the Petitioner / accused informed the mother of victim that, her daughter (Patient) will be alright within a short time and he left the hospital without informing physical condition of the patient. However, at about 10.30 am., the patient was facing breathing problem and heavy bleeding from the operated place, due to which the patient was feel discomfort. Therefore, the patient's mother contacted the Petitioner / accused and informed the condition of the patient, but the Petitioner / accused informed her that, he is busy in meeting in the Government Hospital, hence, he is unable to attend

the patient. At about 01.30 p.m., the accused visited at Samant Hospital but the patient (Vaishali) was shifted to the Government Hospital, where she declared dead. Therefore, Smt. Kanta mother of victim filed a complaint, on the basis of which, the Collector Beed appointed the Medical Expert Committee by issuing a letter to the Deputy Director Health, Latur.

5. Pursuant to said letter, the Deputy Director Health Services appointed an Inquiry Committee. After due Inquiry, the Medical Expert Committee submitted its Report under letter dated 03.07.2017 holding that, due to medical negligence on part of the present Petitioner / accused death of Vaishali caused. After receipt of Medical Expert Committee's report, a Crime No. 526 of 2017 was registered against the present Petitioner / accused for the offence punishable under Section 304-A of IPC.

6. The Investigating Officer referred the dead body of patient (Smt. Vaishali) for autopsy on 28.09.2016. After Postmortem was conducted, the Medical Officer opined that death of deceased caused due to "Disseminated Intravascular coagulation with Multi organ dysfunction syndrome." The Investigating Officer recorded

statements of the witnesses and after collecting sufficient material, charge-sheet came to be filed against the present Petitioner for the offence punishable u/s 304-A of IPC. The said charge sheet came to be registered as summary Criminal Case No. 958 of 2018.

7. On 10.02.2020, the Petitioner accused filed Exh. 15, Application under Section 239 of the Code of Criminal Procedure, 1973 and thereby prayed for discharging him in Crime No. 526 of 2017 (SCC No. 958 of 2018) on Ground Nos. A to J as described in said Application.

8. On 21.12.2022, the learned Judicial Magistrate First Class, Beed passed the order and thereby turned down the prayer of the present Petitioner / accused for discharging him.

9. Being aggrieved by the said order, the Petitioner / accused filed Criminal Revision Application No. 106 of 2022 before the learned Sessions Judge, Beed. On 07.01.2023, the learned Additional Sessions Judge, Beed passed the impugned order holding that, the Petitioner / accused produced all the medical treatment papers of the Government Hospital, but failed to produce medical papers pertaining to Samant Hospital. Merely obtaining consent of the relatives of the

victim (Vaishali), the Petitioner / accused could not absolve from his responsibility to take care of his patient, and no license granted to the Medical Practitioner to commit negligence while treating patient. The Petitioner produced two contradictory reports of the Medical Expert Committee in respect of the Medical negligence on part of the Petitioner / accused. The learned Revisional Court further held that the report of the Medical Expert dated 01.07.2017, issued by the Experts Committee formed by the Deputy Director Health Services, Latur, duly established as per the Government Resolution dated 26.03.2010, the Petitioner / accused is found negligent while treating the deceased (Vaishali).

10. Further, another report dated 20.04.2018 filed by the Committee of Superintendent, Swami Ramanand Tirth Rural Government Medical College (for brevity "SRTRGMC"), Ambejogai is not called by the Investigation Agency and the said report is not a part and parcel of the charge-sheet. So also, the material available on record are sufficient to frame the charges against the accused, hence, the learned Revisional Court rejected the Revision.

11. The Petitioner / accused challenged the order dated 07.01.2023, passed by the learned Additional Sessions Judge, Beed in

Criminal Revision Application No. 106 of 2022 on the ground Nos.

(VIII) to (XIV), which read as under.

*VIII. That, the learned trial court has committed great error in not appreciating properly the reported judgments cited for and on behalf of the petitioner and thereby causing great prejudice, as in the case of **Jacob Mathew Vs. State of Punjab reported in 2005 AIR SC 3180**, wherein the ratio is being laid down, which substantiates the case of the petitioner. In fact, various other cases have been referred to in the above said Jacob Mathew's case and the petitioner craves leave to rely upon the above said citations/reported judgments.*

IX. That both the learned Courts below seem to have lost sight of the subsequent inquiry report by Special Committee thereby arriving at an incorrect conclusion, which has put the petitioner at the receiving end.

X. That, perusal of the case papers of the deceased Vaishali, which were filed before the learned trial court do indicate that there was no negligence, moreover, no gross negligence on the part of the petitioner, and therefore, the continuation of criminal prosecution would be an abuse of process of law.

XI. That, the learned both the courts below ought to have taken into account the subsequent report of the Committee of the Medical Superintendent and its Members of the S.R.T.R. Medical College, Ambajogai, which was very much constituted as per the norms of the Government.

XII. That, there is no sufficient evidence to frame the charge against the petitioner.

XIII. That, both the learned courts below ought to have held that the report submitted by the Deputy Director of Health Services, Latur, dated 01.07.2017 has no legal base and in fact, the report submitted by the Medical Superintendent of S.R.T.R. College, Ambajogai should have been considered and relied upon,

being the correct report as per the Government Resolution, dated 31.01.2014.

XIV That, in paragraph 23 of the impugned judgment and order, passed by the learned Revisional Court, incorrect observations and conclusions are being drawn in relation to the Government Resolution, dated 31.01.2014 and which has caused great prejudice to the petitioner, as the learned Revisional Court seems to have not at all considered the issuance of subsequent Government Resolution in its true letters and spirit.

12. The learned counsel for the Petitioner placed reliance on the following cases:-

(i) Jacob Mathew Vs. State of Punjab and Another, AIR 2005 Supreme Court 3180;

(ii) Martin F. D'Souza Vs. Mohd. Ishfaq, AIR 2009 Supreme Court 2049;

(iii) Neeraj Sud and Another Vs. Jaswinder Singh (Minor) and Another, 2024 SCC Online SC 3069.

13. Per contra, the learned APP supported the findings of both the Courts below and canvassed that the Petitioner has not denied that he was working as a Civil Surgeon with Government Civil Hospital, Beed. The Petitioner accused has also not disputed the fact that, on 27.09.2016, the patient pregnant lady (Vaishali) was admitted in Samant Hospital and the accused was consultant for the delivery. The Petitioner / accused has also admitted that, he

performed cesarean on the patient Vaishali. The complainant Smt. Kantabai Mhaske specifically alleged in her complaint that, on 27.09.2016, her married daughter, hospitalized in Samant Hospital, Beed with history of stomach pain due to pregnancy. The Petitioner accused terrified her to perform cesarean immediately as the patient is serious. When the complainant told the present Petitioner about taking medical treatment of her daughter with Dr. Shirpurkar and she wanted to take her daughter for medical treatment to Dr. Shirpurkar. But at that time, the accused told her not to waste time and it is necessary to perform cesarean immediately and put under fear. Therefore, the patient Vaishali was hospitalized in Samant Hospital on advice of the present Petitioner / accused. Further, the Petitioner / accused performed cesarean at about 08.00 a.m. After cesarean patient gave birth to twin male child. Thereafter, the Petitioner accused informed the mother of victim Vaishali that her daughter (Patient) will recover in a short time and left the Hospital without informing physical condition of the patient. However, at about 10.30 a.m., the patient was facing breathing problem, hence, the mother of patient and his relatives contacted petitioner / accused on phone and informed him about the patient's discomfort. Further there was lot of

bleeding from the place of cesarean section, but the Petitioner / accused informed her that, he is busy in the meeting in the Government hospital therefore he is not able to attend the patient. At about 01.30 p.m., the accused visited at Samant Hospital and shifted the patient (Vaishali) at the Government Hospital where she was declared as dead.

14. The learned APP further canvassed that the Medical Expert Committee constituted by the State Government as per the directions issued by the Supreme Court in the case of ***Jacob Mathew***, cited supra, and the Medical Expert Committee consisting Assistant Director, Medical Superintendent has recorded the statements of witnesses and also on examination of the Medical treatment papers / reports as well as Postmortem report held that the present Petitioner / accused has committed medical negligence and he is responsible for death of patient Smt. Vaishali Bansode. Therefore, both the courts below have considered the various case laws cited therein and concurrently held that there are sufficient evidence and material to frame the charge against the Petitioner / accused. Therefore prayed for dismissal of the Petition.

15. Needless to say that, the learned Senior Counsel for the Petitioner relied on the case of *(1) Jacob Mathew, (2) Martin F D'Souza and (3) Neeraj Sud*, cited supra, however, on perusal of the impugned judgment and order dated 07.01.2023, it appears that the learned Additional Sessions Judge has well considered the ratios laid down in the cited cases. The Petitioner has not denied that, at the relevant time he was not working as Civil Surgeon with Government Hospital, Beed. It has come on record that, Petitioner was also working being consultant with Samant Hospital, Beed at the time of admission of patient (Vaishali). It is not in dispute that patient (Vaishali) was admitted in Samant Hospital on 27.09.2016 with stomach pain due to advanced pregnancy. The present Petitioner / accused gave advise to admit the patient in Samant Hospital and he performed cesarean on the patient. After cesarean victim gave birth to two male child.

16. The material placed along with charge sheet shows that the Petitioner / accused performed cesarean on the victim at about 08.08 to 08.09 a.m. The present Petitioner informed the relatives of the patient about delivery of two twin male child and he left to the

general ward. Thereafter, at about 10.30 a.m., when the patient was facing breathing problem and the mother of patient and her relatives contacted the petitioner on phone about discomfort of the patient and heavy bleeding from the place of cesarean, but the Petitioner / accused replied that he is busy in meeting in the Government hospital and unable to attend the patient. The material placed on record shows that, at about 01.30 p.m., the accused visited at Samant Hospital and the patient (Vaishali) was shifted at the Government Hospital, Beed where she was declared dead.

17. In view of above facts and circumstances it *prima facie* appears that, the present Petitioner medically treated and operated the patient deceased Vaishali in Samant hospital, but due to excessive bleeding, patient was facing breathing problem and was become serious, hence, she was shifted to Civil Hospital, Beed where she was declared dead.

18. On face of record, it further appears that, as per the Government Resolution dated 26.03.2010 and 31.01.2014, the State Government has issued directions and formed the Medical Expert Committee as per the judgment and order passed by the Hon'ble Supreme Court in the case of **Jacob Mathew** cited (supra). From the

Medical Expert Committee's Report dated 03.07.2017 which is part and parcel of the charge-sheet, it appears that the Medical Expert Committee after considering all medical papers, diagnosis paper of the deceased, postmortem report as well as considering the oral submissions of the witnesses i.e. Dr. P. R. Lodh, Medical Officer, Sub District Hospital, Kej, Dr. Shankar Kashid, Medical Officer, Beed and the Petitioner opined that due to medical negligence of the present Petitioner, death of patient Vaishali caused.

19. The learned counsel for the Petitioner invited my attention to the Medical Expert's Report dated 20.04.2018, issued by the Committee consisting of Dr. S. V. Birajdar, Dr. R. V. Kachare, Dr. S. S. Chavan, Dr. Sanjay Bansode. However, said report is not a part and parcel of the charge-sheet and the Petitioner has not clarified under what circumstances, the said report has been obtained.

20. Needless to say that, the material brought on record shows that, the Investigating Officer had submitted proposal for medical opinion and the Deputy Director of Medical Health Services appointed a committee of the experts in the medical field. Accordingly, the Medical Expert Committee submitted its' Report and

opined that death of patient caused due to medical negligence on the part of the accused. However, the Deputy Director appointed another Expert Committee of the Medical Officer from District Beed, where the accused was working as District Civil Surgeon at the relevant time. The Report of second Medical Expert Committee is contrary to the first Medical Expert Committee's Report dated 03.07.2017. On considering first Medical Expert Committee's Report dated 03.07.2017, it appears that, the Petitioner / accused committed medical negligence whereas another report i.e. report dated 20.04.2018 is contrary to the first report. However, the another medical Expert Committee's report (dated 20.04.2018) is not a part and parcel of the charge-sheet, therefore, the said report cannot be considered while framing the charge.

21. Section 239 of Code of Criminal Procedure, 1973 provides as under;

“If, upon considering the police report and the documents sent with it under Section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing.”

22. In the case of *Century Spinning & Manufacturing Co. Vs. State AIR 1972 SC 545*, it has been held that if there is no ground for presuming that the accused has committed an offence, the charge must be considered as groundless, which is same thing as saying that there is no ground for framing the charges, this necessarily depends on the facts and circumstances of each case and the Magistrate is entitled and indeed as a duty to consider the entire material referred to in Section 239 of the Code of Criminal Procedure.

23. However, in case-in-hand, the present Petitioner is facing the summons trial and the provisions of Section 239 of the Code of Criminal Procedure, 1973 is applicable to only to the warrant case.

24. Further, as per the provisions of Section 239 of Code of Criminal Procedure, 1973, if the learned Magistrate considers that the charges leveled against the accused are groundless, in that event, the accused may be discharged. However, in case-in-hand, as discussed above it appears that material available on record is sufficient to frame the charge against the Petitioner. The charge cannot said to be

groundless, hence, the accused is not entitled for discharge u/s 239 of the Code of Criminal Procedure, 1973.

25. Needless to say that, in case-in-hand, there is strong suspicion about committing medical negligence on part of the Petitioner because on 27.09.2016, the deceased Vaishali was admitted in Samant hospital for delivery due to stomach pain as she was pregnant and the present Petitioner conducted delivery by performing cesarean section, thereafter, the Petitioner stitched the same, however, due to excessive bleeding from the cesarean place, physical health of the patient get worsened and she was shifted to the Civil Hospital, Beed where she was declared died. The Petitioner has not claimed that he has not performed medical surgery being the consultant. Therefore, the material evidence collected by the Investigating Officer produced along with charge sheet is sufficient to frame the charge against the accused for the offence punishable under Section 304 A of the Indian Penal Code. Therefore, I do not find any substance in the present Petition. Hence, Criminal Writ Petition is dismissed. Rule is discharged.

[Y. G. KHOBRAGADE, J.]