



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1239 OF 2025

Dr. Nandkishor Vitthalrao More
Age : 43 Years, Occu : Service,
R/o. C/o. Vitthalrao More,
Gadi Road, Sambhaji Chouk,
Manjegaon, Tq. & Dist. Beed.

...PETITIONER

Versus

1. The State of Maharashtra,
Through Police Inspector,
Majalgaon Police Station (City),
Tal. Majalgaon, Dist. Beed.
2. Sou. Godavari Sanjay Aaglawe,
Age : 33 Years, Occu : Labour,
R/o. Kesapuri, Tal. Majalgaon,
Dist. Beed.

...RESPONDENTS

Mr. Jadhav Arvind Gangadhar, Advocate for the Petitioner.
Mr. P. M. Kulkarni, APP for Respondent – State.

CORAM : ABHAY J. MANTRI, J.
DATE : DECEMBER 12, 2025

ORAL JUDGMENT :

1. Heard. **Rule.** Rule is made returnable forthwith and heard learned counsel for the petitioner and the learned APP for respondent No.1. None appears for respondent No.2, though served.
2. By this petition, the petitioner is challenging the order dated 02nd April 2025, passed by the learned Judicial Magistrate First Class,

Majalgaon, in Criminal Miscellaneous Petition No.416 of 2019, whereby the process was issued against the petitioner under Section 336 of the Indian Penal Code. The petitioner has preferred this petition.

3. The learned counsel for the petitioner vehemently contended that the learned JMFC, without considering the guidelines laid down by the Hon'ble Apex Court in *Jacob Mathew Vs. State of Punjab and Anr., reported in AIR 2005 SC 3180*, has passed the order. He has, drawn my attention to paragraph No.53 of the said judgment and submitted that, in view of the guidelines, a private complaint may not be entertained unless the complainant has produced prima facie evidence before the Court in the form of a credible opinion given by another competent doctor to support the charge of rashness or negligence on the part of the accused doctor. In the present case, no such credible opinion of another competent doctor has been produced on record, and without considering the same, the learned JMFC has passed the order.

4. The learned counsel for the petitioner further submitted that the complainant has not produced any material justifying the issuance of a summons under Section 336 of the IPC. However, the learned Magistrate, without recording reasons and without considering the guidelines laid down in *Jacob Mathew* (supra), has passed the order. He therefore urged that the said order be set aside.

5. On the other hand, the learned APP submitted that the order passed by the learned Magistrate is just and proper and no interference is required in it.

6. Having gone through the impugned order and record, considering the rival contention of the parties, I would like to reproduce paragraph No.53 of the said judgment in **Jacob Mathew** (supra) as under:

“53. *Statutory Rules or Executive Instructions incorporating certain guidelines need to be framed and issued by the Government of India and/or the State Governments, in consultation with the Medical Council of India. So long as it is not done, we propose to lay down certain guidelines for the future which should govern the prosecution of doctors for offences of which criminal rashness or criminal negligence is an ingredient. A private complaint may not be entertained unless the complainant has produced prima facie evidence before the Court in the form of a credible opinion given by another competent doctor to support the charge of rashness or negligence on the part of the accused doctor. The investigating officer should, before proceeding against the doctor accused of rash or negligent act or omission, obtain an independent and competent medical opinion, preferably from a doctor in government service qualified in that branch of medical practice who can normally be expected to give an impartial and unbiased opinion applying Bolam’s test to the facts collected in the investigation. A doctor accused of rashness or negligence may not be arrested in a routine manner (simply because a charge has been levelled against him). Unless his arrest is necessary for furthering the investigation or for collecting evidence, or unless the investigation officer feels satisfied that the doctor proceeded against would not make himself available to face the prosecution unless arrested, the arrest may be withheld.”*

7. A bare perusal of the above-quoted paragraph, it appears that the Hon'ble Apex Court has categorically given the guidelines and laid down that a private complaint may not be entertained unless the complainant has produced prima facie evidence before the Court in the form of a credible opinion given by another competent doctor to support the charge of rashness or negligence. Similarly, I would like to reproduce Section 336 of IPC as under :

“336. Act endangering life or personal safety of others.—

Whoever does any act so rashly or negligently as to endanger human life or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred and fifty rupees, or with both.”

8. A bare perusal of Section 336 of IPC shows that the offence is attracted only when an act is done by any person so rashly or negligently as to endanger human life or the personal safety of others.

9. On perusal of the complaint, it appears that respondent No.2 has not produced any credible opinion given by another competent doctor or competent medical opinion, preferably from a doctor in government service, to support the charge of rashness or negligence on the part of the petitioner. Therefore, in view of the guidelines laid down by the Hon'ble Apex Court, the order passed by the learned Magistrate is liable to be quashed and set aside.

10. Apart from that, it does not appear from the complaint or verification statement that the act done by the petitioner could be said to have been committed so rashly or negligently as to endanger human life or the personal safety of others. Therefore, in my view, without considering the mandate of Section 336 of the IPC, the learned Magistrate has issued the order of summons against the petitioner. Hence, the order passed by the learned Magistrate is contrary to the mandate in section 336 and the above-cited judgment and, therefore, cannot be sustained in the eyes of the law.

11. As a result, the petition is allowed. The order passed by the learned Magistrate is hereby quashed and set aside. The matter is remanded to the learned Magistrate for fresh consideration in accordance with the guidelines laid down by the Hon'ble Apex Court in the above judgment.

12. Rule is made absolute in the above terms. No order as to costs.

(ABHAY J. MANTRI, J.)