



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPLICATION (APL) NO. 1139 OF 2024

1. **Dr. Raj Gajbhiye,**
aged around 59, Occ.-Doctor, Professor
and Head of Dept. Surgeon, Govt. Medical
College and Hospital, Nagpur.
2. **Dr. Bhupesh Tirpude,**
aged around 47 years Occ.- Doctor,
R/o. 302, C-Wing, Magestic Height, Shivaji Nagar,
Hill Road, Nagpur-440010.
3. **Dr. Hemant Bhanarkar,**
aged around 43 years, Occ. Doctor, Asst. Professor,
Department of Surgery, Govt. Medical College
and Hospital, Nagpur.
4. **Dr. Vikrant Akulwar,**
aged around 42 years, Annapurna,
Occ. Doctor, R/o. 64-Hindusthan Colony,
Wardha Road, Nagpur-440015.
5. **Dr. Gayatri Deshpande,**
aged around 42 years Occ. Doctor, Asstt. Professor,
Department of Surgery, Govt. Medical College
and Hospital, Nagpur.
6. **Dr. Girish Kodape,**
aged around 38 years, Occ. Doctor,
Senior Resident, Govt. Medical College and Hospital, Nagpur.
7. **Dr. Vidhey Tirpude,**
aged around 38 years, Occ.- Doctor, Senior Resident,
Govt. Medical College and Hospital, Nagpur.
8. **Dr. Ganesh Kharkate,**
aged around 38 years, Occ. Doctor,
R/o. Plot No.2, Ramkrishna Nagar,
Telephone Nagar Square, Umred Road,
Dighori, Nagpur-440024.

.... APPLICANTS.

// VERSUS //

1. **The State of Maharashtra,**
through Police Station Officer,
Police Station Ajni, Nagpur.

2. **Kewalram S/o Pandurang Patole,**
Age 60 Yrs., Occu.: Retired, R/o. Plot No.97,
Vitthal Nagar No.1, Janki Nagar Road, Nagpur, 440034.

.... NON-APPLICANTS.

Mr. Sunil V. Manohar Senior Advocate a/b Mr. A.S. Manohar, Advocate for Applicants

Mr. A.B. Badar, A.P.P. for non-applicant No1/State.

Mr. Piyush Rewatkar, Advocate for the non-applicant No.2

CORAM : ANIL S. KILOR AND PRAVIN S. PATIL, JJ.

DATE OF RESERVING THE JUDGMENT : 25/04/2025

DATE OF PRONOUNCING THE JUDGMENT : 13/08/2025

JUDGMENT : (Per : Anil S. Kilor, J.)

1. Heard.

2. **RULE.** Rule made returnable forthwith. Heard by consent of the learned counsel for the parties.

3. The applicants, who are Doctors by profession, are seeking to quash and set aside the impugned order dated 29.04.2024 passed by the learned Addl. Chief Judicial Magistrate

(Addl.CJM), Nagpur in Misc. Criminal Application No.1726 of 2024 filed by the non-applicant No.2 under Section 190 read with Section 156 (3) of the CrPC and further to quash and set aside the First Information Report No.281 of 2024, registered with Police Station, Ajni, Nagpur, for the offences punishable under Sections 304A, 201 and 202 read with Section 34 of the Indian Penal Code.

4. On 30.06.2020, the non-applicant No.2 lodged a complaint alleging medical negligence against the applicants and others during the surgery of his wife, Pushpa Patole at the Government Medical College and Hospital, Nagpur (GMCH), resulting in her death.

5. On 03.07.2020, the police sought the opinion of the GMCH Superintendent by constituting a committee to ascertain the cause of death and fix responsibility.

6. The committee submitted its report on 24.08.2020, concluding that there was no negligence on the part of the doctors.

7. Dissatisfied with this report, the non-applicant No.2/complainant filed another complaint on 27.07.2021 before the Chief Secretary, Government of Maharashtra, and the Ministry of Medical Education, seeking a review.

8. Consequently, the Director of Medical Education and Research (DMER), Maharashtra, constituted a second committee, which, in its report dated 13.10.2021, again exonerated the doctors. The committee noted that the patient was suffering from *multinodular goiter* and that all necessary procedures, consent, and preparations were duly undertaken before the surgery. A further report dated 07.12.2021 by DMER reaffirmed this finding. On 25.03.2022, DMER forwarded the report dated 13.10.2021 to the concerned police station.

9. Despite these findings, the complainant filed another complaint on 15.04.2022, followed by further complaints to the Police Commissioner, Nagpur, on 17.08.2022 and 11.11.2022.

10. In the year 2024, the non-applicant filed a private complaint under Sections 190 and 156(3) CrPC before the learned Chief Judicial Magistrate, Nagpur (Misc. Criminal Application No.1726/2024). On 29.04.2024, the learned Addl.CJM, Nagpur directed registration of FIR under Sections 304-A, 201, 202, and 34 of the IPC against the applicants and others.

11. Pursuant to this order, FIR bearing Crime No.281/2024 came

to be registered with the non-applicant No.1-police station. Aggrieved by the said order, the applicants have approached this Court for quashing the FIR and all consequential proceedings.

12. We have heard the learned counsel for the respective parties.

13. Mr. Manohar, learned Senior Advocate for the applicants submits that, in view of the fact that two expert medical committees have thoroughly examined the complaint of the non-applicant No.2 and have exonerated the applicants from the allegations of negligence, the impugned order dated 29.04.2024 passed by the learned Addl. CJM, without assigning any reasons, reflects non-application of mind. It is further contended that it is a well-settled principle of law that the learned Addl. CJM is required to apply his/her mind, and such application must be evident from the order itself. For this purpose, he has placed reliance upon the judgments of this Court in the cases of *UPS Madan Vs. State of Maharashtra and anr.* reported in **2019 (4) Bom.C.R. (Cri.) 438** and *Sayed Anwar Ahmed and anr. Vs. The State of Maharashtra and anr.* reported in **2017 SCC OnLine Bom 3972**.

14. On the other hand, the learned APP strongly opposed the

application and submits that even though there are reports of the expert committees, the learned Addl.CJM on satisfying that *prima facie* case is made out, exercised his powers under Section 156(3) of the CrPC and rightly passed the impugned order for registering the offence. He therefore, submits that as a *prima facie* case is made out against the applicants, this Court may not interfere in the present matter.

15. The learned counsel for non-applicant No.2 reiterated the submissions of the learned APP and contended that there is sufficient material on record to establish negligence and that the applicants are guilty for the same. It is therefore, submitted that no error has been committed by the learned Addl.CJM in taking cognizance of the same under Section 156 of the CrPC. For this purpose he has placed reliance upon the judgment of this Court in the case of *Arun P. Gidh Vs. Chadraparakash Singh and others*, reported in **2024 SCC OnLine Bom 1028**.

16. In light of the rival submissions of the parties, we have perused the record.

17. It is evident from the record that after the non-applicant No.2

filed a complaint alleging medical negligence during the surgery of his wife at GMCH, Nagpur, which allegedly resulted in her death, the GMCH constituted a committee to ascertain the cause of death and fix the responsibility. The said committee, in clear terms, exonerated the applicants from all allegations of negligence.

18. The non-applicant No.2, being dissatisfied, approached to the Chief Secretary and the Ministry of Medical Education for seeking review and accordingly, the second committee was formed by the Director of Medical Education and Research. The said committee also exonerated the applicants vide its report dated 13.10.2021. There is a specific observation in the report that the condition of the patient was *multinodular goiter* and all due procedures, consent and preparations were properly carried out before the surgery.

19. In the present case, the learned Addl. CJM has merely recorded the submissions of the complainant alleging negligence on the basis of the report; however, no prima facie conclusion has been recorded that the death was caused due to such negligence.

20. On the other hand, in absence of post mortem report, the committee has expressed inability to correlate the cause of death to

the negligence act.

21. The Hon'ble Supreme Court of India, in the case of *UPS Madan* (supra), has held thus:

“9. It is in this backdrop; the State of Maharashtra has amended and inserted the proviso to section 156(3) of the Code. By the same amendment, Section 190 of the Code of Criminal Procedure was also parallelly amended by inserting identical proviso restraining the Magistrate from taking cognizance from any offence alleged to have been committed by a person who is or was a public servant, while acting or purporting to act in discharge of official duty except with previous sanction under Section 197 of the Code of Criminal Procedure or under any law for the time being in force. By the said amendment, a restraint has been imposed in directing an investigation by the Magistrate by virtue of the proviso initiated in Section 156(3) and in the power of the Magistrate taking cognizance by the proviso inserted in Section 190. By virtue of the said amendment, no complaint can be filed against public of-fences without a valid sanction from the competent authority.”

22. This Court, in the case of *Sayed Anwar Ahmed* (supra), has held thus:

“18. As far as power under Sub-Section (3) of Section 156 of the CrPC is concerned, there are various decisions of the Apex Court and this Court. In the case of Anil Kumar. v. M.K. Aiyappa, the Apex Court considered the scope of powers under Sub-Section (3) of Section 156. What is material is paragraph 11 of the said decision which reads thus:

*“11. The scope of Section 156(3) Cr. P.C. came up for consideration before this Court in several cases. This Court in Maksud Saiyed Case examined the requirement of the application of mind by the Magistrate before exercising jurisdiction under Section 156(3) and held that where jurisdiction is exercised on a complaint filed in terms of Section 156(3) or Section 200 CrPC, the Magistrate is required to apply his mind, in such a case, the Special Judge/Magistrate cannot refer the matter under Section 156(3) against a public servant without a valid sanction order. **The application of mind by the Magistrate should be reflected in the***

order. The mere statement that he has gone through the complaint, documents and heard the complainant, as such, as reflected in the order, will not be sufficient. After going through the complaint, documents and hearing the complainant, what weighed with the Magistrate to order investigation under Section 156(3) CrPC, should be reflected in the order, though a detailed expression of his views is neither required nor warranted. We have already extracted the order passed by the learned Special Judge which, in our view, has stated no reasons for ordering investigation.”

23. Thus, it is evident that from the above referred discussion that it is an imperative that the learned Magistrate shall apply his mind and that should be reflected in the order, though a detailed expression of his views is neither required nor warranted. Furthermore, previous sanction is necessary in case of public servant.

24. In the circumstances, having reached to the conclusion that the impugned order does not disclose the application of mind on merit of the case as well as requirement of the previous sanction under Section 197 of the CrPC, we pass the following order :

- i) The Criminal Application is **partly allowed**.
- ii) The impugned order dated 29.04.2024 passed by the learned Addl. Chief Judicial Magistrate, Nagpur in Misc. Criminal Application No.1726 of 2024 and the

First Information Report No.281 of 2024, registered with Police Station, Ajni, Nagpur, for the offences punishable under Sections 304A, 201 and 202 read with Section 34 of the Indian Penal Code, are hereby quashed and set aside and the matter is remitted back to the learned Addl. Chief Judicial Magistrate, Nagpur to take a decision afresh.

Rule accordingly. No order as to costs.

(PRAVIN S. PATIL, J)

(ANIL S. KILOR, J)

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