



Judgment

347 revn233.23

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

CRIMINAL REVISION APPLICATION NO.233 OF 2023

Jyoti w/o Chandrashekar Bharaskare,
aged about 48 years, Occupation:
Service, R/o Gram Sevak Colony, Khat
Road, Bhandara, Tah. and Dist.
Bhandara. **Applicant.**

:: VERSUS ::

The State of Maharashtra, through
Police Station Officer, Police Station
Bhandara, Tah. and Dist. Bhandara. **Non-applicant.**

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Shri N.Raut, Counsel for the Applicant.
Shri C.A.Lokhande, Additional Public Prosecutor for the
Non-applicant/State.

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CORAM : URMILA JOSHI-PHALKE, J.
CLOSED ON : 13/01/2025
PRONOUNCED ON : 27/01/2025

JUDGMENT

1. Heard finally by consent of learned counsel Shri
N.Raut for the applicant and learned Additional Public

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Prosecutor Shri C.A.Lokhande for the non-applicant/State.

2. The present revision is filed by the applicant accused in connection with Crime No.52/2021 registered at Police Station Bhandara, tahsil and district Bhandara under Section 304-II read with 34 of the Indian Penal Code against rejection of discharge application vide Exh.19 filed under Section 227 of the Code of Criminal Procedure.

3. The applicant is original accused No.3 and she was Sister Incharge in ward of Special Neonatal Care Unit (SNCU) at District General Hospital, Bhandara. On 9.1.2021, at about 1:30 am, in the ward of SNCU, fire broke inside the SNCU outside of a burn ward on first floor of the said hospital. In the said incident, ten infants succumbed to death, six infants died due to suffocation,

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two infants died due to shock and burn, one infant died due to shock and inhalation of the smoke, and one died due to burn. Seven infants in the ward were saved. Enquiry was conducted and it revealed that there was sparking due to electrical circuit in control panel of Radiant Warmer in Cadral No.8. It is further alleged that the unwanted articles were kept in passage of emergency door and, therefore, the infants could not be saved as there was obstruction to open the emergency door. Due to the negligence of the applicant and other accused, the alleged incident has occurred. Initially, a Marg was registered and during investigation, two co-accused were arrested and offence was registered against them vide Crime No.52/2021. During the investigation, involvement of the applicant is also revealed.

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4. After completion of the investigation, chargesheet was filed. The applicant had filed the application for discharge before learned Additional Sessions Judge, Bhandara under Section 227 of the Code for discharge contending that the entire investigation papers nowhere reveal that in what manner she contributed to the said incident. In fact, the name of the applicant is not mentioned in the First Information Report. She was also not present at the relevant time when the alleged incident has taken place. There was no such emergency door. The spot panchanama nowhere shows availability of the emergency door at the spot of the incident. The entire investigation papers are silent as far as role of the applicant is concerned. Thus, no *prima facie* case is made out even for framing of the charge. The said application was rejected by learned Sessions Judge.

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Hence, this revision.

5. Learned counsel for the applicant submitted that from the entire investigation papers, role of the applicant nowhere reveals. There is no dispute that she was Incharge Sister of that ward. However, at the relevant time of the incident, she was not present and no vicarious liability can be attributed to her. None of statements of witnesses also discloses any role played by the applicant. Thus, there is no sufficient material to frame the charge against the applicant. The observation of learned Sessions Judge while rejecting the application is contrary to record. He submitted that the observation of learned Sessions Judge, that material relied upon by the prosecution on the basis of which it cannot be said that the applicant has not committed any criminal offence, is also contrary to the record. In fact, presence

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of the applicant, at the time of incident, admittedly, was not there. Merely because she was Incharge sister and due to the untoward incident, she is made an accused.

6. Learned Additional Public Prosecutor for the State strongly opposed the application and submitted that the investigation papers show that she was Incharge of the Nurse Staff and it was her duty to check all equipments in the said Ward and whether the said equipments are in proper condition or not. The investigation papers show that when smoke came out in the SNCU Ward, the people rushed to rescue infants in the said ward, but they were unable to enter due to the smoke. It further reveals from the investigation papers that she has not checked all equipments on 8.1.2021 before leaving hospital. Thus, There was negligence on her part. By considering

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the same, the application is rightly rejected by learned Sessions Judge.

7. Before entering into merits of the case, it is necessary to see what are considerations for considering the application for discharge.

8. It is a settled principle of law that at the stage of considering an application for discharge, the court must proceed on the assumption that the material which has been brought on record by the prosecution is true and evaluate the material in order to determine whether the facts emerging from the material, taken on its face value, disclose the existence of the ingredients necessary of the offence alleged.

9. The Hon'ble Apex Court in the case of **State of Gujarat vs. Dilipsinh Kishorsinh Rao, reported in MANU/SC/1113 2023**, adverting to the earlier propositions of

law in its earlier decisions in the cases of **State of Tamil Nadu vs. N.Suresh Rajan and ors**, reported in (2014) 11 SCC 709 and **The State of Maharashtra vs. Som Nath Thapa**, reported in (1996) 4 SCC 659 and **The State of MP Vs. Mohan Lal Soni**, reported in (2000) 6 SCC 338, has held as under:

“10. It is settled principle of law that at the stage of considering an application for discharge the court must proceed on an assumption that the material which has been brought on record by the prosecution is true and evaluate said material in order to determine whether the facts emerging from the material taken on its face value, disclose the existence of the ingredients necessary of the offence alleged. This Court in **State of Tamil Nadu vs. N.Suresh Rajan and ors**, (2014) 11 SCC 709 adverting to the earlier propositions of law laid down on this subject has held:

"29. We have bestowed our consideration to the rival submissions and the submissions made by Mr. Ranjit Kumar commend us. True it is that at the time of consideration of the applications for discharge, the court cannot act as a mouthpiece of the prosecution or act as a post office and may sift evidence in order to find out whether or not the allegations made are groundless so as to pass an order of discharge. It is trite that at the stage of consideration of an application for discharge, the court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate the said materials and documents with a view to find out whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the

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materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage."

10. Thus, the defence of the accused is not to be looked into at this stage when the application is filed for discharge.

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11. What is to be seen is that, whether there is a sufficient material to frame the charge. Even, strong suspicion is sufficient to frame the charge.

12. The materials placed before the court disclose grave suspicion even in the case of framing of charge is justified.

13. Thus, what the court has to do is, to sift the evidence and to ascertain whether material is sufficient to frame the charge. The said matter is not to be seen with an aspect that whether it would be sufficient to warrant conviction.

14. With the above principle, if the material collected during investigation is perused, it shows that during the investigation it revealed that the applicant was Incharge Sister of the SNCU Ward. On the day of the incident, the fire broke in the said Ward. The CCTV Footage shows

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that on 9.1.2021, during night hours, there was sparking in the said Ward and the fire was spread and ten infants succumbed to death. It further revealed that the co-accused has not switched off main switch of the Warmer and, therefore, fire was broken. As far as the applicant is concerned, she was negligent and not verified equipments and their condition to ascertain whether the same are in proper condition or not. Due to this unfortunate fire incident, ten new born babies succumbed to death and, therefore, the Government has constituted a Committee and directed to submit report on fact finding. The said fact finding report discloses that the applicant was Incharge Sister and was entrusted with job of overall supervision and monitoring of the SNCU. It further reveals from the report that the equipments have paramount importance being life saving machines and their reliable performance is very

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important. The hospital is having SNCU facility where new born babies are being treated for various ailments and using various types of medico electronic equipments such as radiant warmers and phototherapy units etc.. All the above equipments are handled by nursing staff and doctors. In case of any problem or defect in the equipments, the same is informed to the service provider who is responsible to repair and maintain all these machines from time to time. All these machines were under maintenance contract. The analysis report shows that periodical maintenance of the said equipments was not carried out. The applicant having duty of overall supervision has not carried her duty. The statement of Dr.Pramod Khandate described the role of the applicant and he stated that she has not carried out her duty with utmost diligence. The duty chart also shows that she was responsible for the overall maintenance of the said

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equipments. The statements on record including statement of Ajit Kurjekar shows that there was emergency door near SNCU Ward which was not kept hindrance free and, therefore, persons who rushed towards the spot, immediately after the incident, could not save the infants.

15. Thus, being Incharge of the said ward, it was the duty of the applicant to keep emergency door free which she has not taken care of and, therefore, death of infants caused as nobody can reach in time to save the infants.

16. Thus, applying the principles narrowed down by the Hon'ble Apex Court and after sifting and weighing the evidence on record, there is a sufficient material against the applicant to attract the offence against her.

17. In this view of the matter, the order passed by learned Additional Sessions Judge, Bhandara rejecting

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the application for discharge is legal and proper one. As such, being the present revision is devoid of merits, the same deserves to be rejected and it is **rejected**.

The Criminal Revision Application stands **disposed**
of.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!