



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
CRIMINAL APPLICATION NO.1737 OF 2023

Dr. Prashant Sopan Ahire,
Age: 35 years, Occu: Medical Practitioner,
R/o. At Post Savada, Sali Bagh,
Tq. Raver, Dist. Jalgaon. ..Applicant

Versus

1. The State of Maharashtra,
Through its Police Inspector,
Nimbhora Police Station,
Tq. Raver, District Jalgaon. ..Respondent

AND

CRIMINAL APPLICATION NO.888 OF 2024

Sachin @ Digambar Arun Patil,
Age: 32 years, Occu: Household
R/oA At Post Village- Vivare Kh.
Taluka Raver, Dist. Jalgaon. ..Applicant

Versus

1. Dr. Prashant Sopan Ahire,
Age: 35 years, Occu: Medical Practitioner,
R/o. At Post Savada, Sali Bagh,
Tq. Raver, Dist. Jalgaon.

2. The State of Maharashtra,
Through its Police Inspector,
Nimbhora Police Station,
Tq. Raver, District Jalgaon. ..Respondent

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Mr. V. B. Patil, Advocate for the Applicant in (Appln/1737/2023).
Mr. J. V. Patil, Advocate for Applicant in (Appln/888/2024).
Mr. A. M. Phule, APP for Respondent-State.

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CORAM : SMT. VIBHA KANKANWADI AND
S. G. CHAPALGAONKAR, JJ.
DATED : 10th SEPTEMBER, 2024.

JUDGMENT (Per S. G. Chapalgaonkar, J.):-

1. The applicant approached this Court under Section 482 of the Criminal Procedure Code praying to quash the FIR in Crime No.182/2022 dated 30.09.2022 registered with Nimbhora Police

Station, Dist. Jalgaon for offence punishable under Sections 304-A of the Indian Penal Code as well as consequential criminal proceeding in SCC No.146/2023 pending before Judicial Magistrate First Class at Raver.

2. Mr. Kashinath Shravan Kolambe, Police Sub Inspector, Nimbhora Police Station lodged report informing that one Mr. Sachin Arun Patil had filed compliant to Police Station alleging that his wife Gayatri Sachin Patil was treated by applicant i.e. Dr. Prashant Sopan Ahire, who runs Samarth Clinic at village Vivare (Bk.). The Gayatri was under his medical supervision during the period from 13.05.2021 to 16.05.2021. However, the health condition of Gayatri deteriorated, hence, she was referred to Gajanan Hospital of Dr. Sunil Choudhari at Savada. On his advice, she was admitted at Dr. Rajesh Dabi's Hospital at Jalgaon. Since, there was no improvement in health condition of Gayatri, she was further referred to Om Clinic Hospital, Jalgaon. Lastly, she was brought back Gajanan Hospital at Savada. However, on 31.05.2021, Gayatri lost her life. It is alleged that because of wrong treatment and overdose of medicine during the preliminary treatment by the applicant, Gayatri lost her life.

3. In pursuance of aforesaid complaint, papers related to the medical treatment advanced to Gayatri were collected from respective hospitals and opinion was solicited from Civil Hospital/Government Medical College, Jalgaon vide communication dated 13.06.2021. The Committee constituted at Medical College submitted its report dated 15.09.2022 to Police Station, which states that the applicant had prescribed irrational combination of medicines. The report further states that applicant

being qualified in stream of Ayurvedic medicine, he was not competent to prescribe modern medicines.

4. It is, therefore, alleged that applicant treated Gayatri in negligent manner by prescribing modern medicines with irrational combination, hence, responsible for her death. Consequently, Crime No.182/2022 came to be registered against applicant for offence punishable under Section 304-A of the Indian Penal Code. On completion of investigation, charge-sheet no.3/2023 dated 05.02.2023 has been filed against the applicant, which has been culminated into S.C.C. No.146/2023, pending before Judicial Magistrate First Class at Raver.

5. Mr. V. B. Patil, learned Advocate appearing for the applicant submits that applicant is registered medical practitioner and entitled to prescribe modern scientific medicines to the extent of training that is received by him in that stream. He submits that Medical Education and Drugs Department has clarified that medical practitioner enrolled and holding qualification specified in Part A, B and A-1 of the Scheduled Appended to the Act is eligible to practice modern system of medicine with Allopathy medicines to the extent of training received. Although applicant holds a degree in Ayurvedic Medical Science, he is qualified to practice in foreign scientific medicines in pursuance of his training and registration. He would submit that applicant had treated Gayatri during the period from 13.05.2021 to 16.05.2021 and provided best possible medical assistance during Covid period. Thereafter, Gayatri suffered brain hemorrhage for which she was treated at three different hospitals before her death on 01.06.2021. The postmortem is not conducted. The cause of death is not known. However, from the treatment papers, it can be gathered that cause

of death is attributable to brain hemorrhage and unsuccessful surgery, which has nothing to do with medicines prescribed and treatment advanced by applicant. He would submit that applicant has been falsely implicated in case of medical negligence in absence of evidence to establish rash and negligent act on the part of applicant and consequential death of Gayatri. He would submit that career of the applicant would be ruined, if prosecution is continued against him.

6. Per contra Mr. J. V. Patil, learned Advocate appearing for the intervenor i.e. husband of deceased Gayatri and Mr. Phule, learned APP appearing for respondent-State vehemently opposed the prayers in the application. They would submit that applicant being medical practitioner in Ayurvedic stream of medical science, he was not competent to prescribe modern medicines and practice in Allopathy. The report of Expert Committee clearly stipulates that applicant prescribed medicines of irrational combination that was responsible for deteriorating health of Gayatri. Consequently, there is triable material against applicant. As such, they urge to reject application.

7. We have considered submissions advanced by the learned Advocates appearing for respective parties. We have perused FIR and material in the charge-sheet. Admittedly, deceased Gayatri was treated by applicant during the period from 13.05.2021 to 16.05.2021. Since she had weakness in right hand, applicant prescribed certain medicines and advanced preliminary treatment. The certain medicines were injected through Intravenous (IV). The blood samples were collected. On the basis of report of Pathology Laboratory, further medicines were prescribed suspecting her to be patient of Typhoid. Since there was no improvement in health

condition of Gayatri, Dr. M. M. Deshmukh was consulted. He noticed that condition of patient was critical, therefore, she was admitted to hospital of Dr. Sunil Choudhari on 16.05.2021. On 17.05.2021 doctor expressed possibility of paralytic attack and referred Gayatri to Dr. Rajesh Dabi's Hospital at Jalgaon. On 18.05.2021, the report of CT Scan was called. The blockage of blood supply to the brain was noticed and surgery was conducted by Dr. Swapnil Patil at Om Critical Hospital. Till 21.05.2021, she was admitted at Om Critical Hospital and then again brought back to Dr. Rajesh Dabi's Hospital. There, some improvement in health of Gayatri was noticed. However, after two days again her health was deteriorated and brain hemorrhage was noticed. Second surgery was conducted to control hemorrhage, but there was no improvement in health of Gayatri. On 31.05.2021, doctor advised to stop medical treatment, for want of response and on 01.06.2021 ultimately Gayatri lost her life.

8. Apparently, role of applicant is limited to the extent of medical treatment advanced to her during the period from 13.05.2021 to 16.05.2021. Although there is no postmortem report on record, medical treatment papers clearly indicates that Gayatri had suffered brain hemorrhage. Initially, she lost movement of her hand and leg. Therefore, she was operated twice. However, could not be recovered from the ailments. From 16.05.2021 till 31.05.2021 Gayatri was medically treated by three doctors for brain hemorrhage, which appears to be ultimate cause of death. The allegation against the applicant is that during medical treatment from 13.05.2021 to 16.05.2021, Gayatri was prescribed irrational combination of medicines. The Committee of four doctors was constituted at Medical College and Hospital, Jalgaon. The report of the Committee indicates that Committee examined prescription

dated 13.05.2021 issued by applicant, which contains irrational combination of medicines, hence, it is a case of negligence. Further applicant being B.A.M.S. Degree holder, he was not competent to prescribe modern medicines. The report nowhere suggests that prescription of irrational combination of medicines was responsible for brain hemorrhage and consequential death of Gayatri. In that view of the matter, whether prosecution of applicant for offence punishable under Section 304-A of the Indian Penal Code can be sustained is the question posed before us.

9. At this stage reference can be made to Section 304-A of the Indian Penal Code that reads as under:

“304A. Causing death by negligence.—

Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”

10. The aforesaid penal provision requires two ingredients to make out offence. Firstly, there must be rash and negligent act on the part of the accused and secondly, such rash and negligent act must be the cause of death. Apparently, mere negligence would not constitute any offence, unless such negligent act on the part of the accused is found to be proximate cause for death. On perusal of the contents of FIR and material in the charge-sheet, we could not find any proximity between death of Gayatri and medical treatment advanced by applicant. Accepting contents of report of Expert Committee as it is, what is discerned is that combination of medicines prescribed by applicant was irrational. However, the Committee report nowhere specify consequence of such irrational combination of medicines. On the basis of contents of report, it is not possible to arrive at conclusion that brain hemorrhage, which appears to be ultimate reason of death of Gayatri was directly

resulted or oriented from irrational combination of medicines administered to her. In fact, in absence of postmortem report, when Gayatri was treated at different hospitals for about two weeks before her death, the definite conclusion regarding cause of death cannot be drawn. There is no causal connection between medical treatment advanced by applicant and cause of death of Gayatri. Apparently, ingredients of Section 304-A of the Indian Penal Code would not attract against applicant in facts of the case.

11. The law on the point of medical negligence and criminal liability on doctor or surgeon has been well settled by now.

12. In case of *Dr. Suresh gupta Vs. Government of N.C.T of Delhi and Another*¹, it is observed that “for fixing criminal liability on a doctor or surgeon, the standard of negligence required to be proved should be so high as can be described as "gross negligence" or recklessness". It is not merely lack of necessary care, attention and skill. The doctor cannot be held criminally responsible for patient's death unless his negligence or incompetence showed such disregard for life and safety of his patient as to amount to a crime against the State”. Similarly, in case of *Malay Kumar Ganguly Vs. Sukumar Mukherjee and Others*², it is observed that “Charge of professional negligence on a medical person is a serious one as it affects his professional status and reputation and as such the burden of proof would be more onerous. A doctor cannot be held negligent only because something has gone wrong. He also cannot be held liable for mischance or misadventure or for an error of judgment in making a choice when two options are available. The mistake in diagnosis is not necessarily a negligent diagnosis”. It is further observed that “Death is the ultimate result of all serious ailments and the doctors

¹ AIR 2004 SC 4091.

² AIR 2010 SC 1162.

are there to save the victims from such ailments. Experience and expertise of a doctor are utilised for the recovery. But it is not expected that in case of all ailments the doctor can give guarantee of cure”.

13. In case of ***Jacob Mathew Vs. State of State of Punjab and another***³ in reference to various decisions on criminal negligence, particularly, decision of Privy Council in ***John Oni Akerele v. The King***⁴ (a case of administration of injection of Sobita and because of overdose of medicine patient died), their Lordships have summed up the principles governing the criminal negligence.

“(i) That a doctor is not criminally responsible for a patient's death unless his negligence or incompetence went beyond a mere matter of compensation between subjects and showed such disregard for life and safety of others as to amount to a crime against the State.;

(ii) That the degree of negligence required is that it should be gross, and that neither a jury nor a court can transform negligence of a lesser degree into gross negligence merely by giving it that appellation. There is a difference in kind between the negligence which gives a right to compensation and the negligence which is a crime.

(iii) It is impossible to define culpable or criminal negligence, and it is not possible to make the distinction between actionable negligence and criminal negligence intelligible, except by means of illustrations drawn from actual judicial opinion.”

14. Similarly, in case of ***Kurban Hussein Mohamedalli Rangawalla v. State of Maharashtra***⁵ while dealing with Section 304-A of IPC, the referring statement of law by Sir Lawrence Jenkins in ***Emperor v. Omkar Rampratap***⁶ following

³ (2005) 6 SCC 1.

⁴ AIR 1943 PC 72.

⁵ (1965) 2 SCR 622.

⁶ 4 Bom LR 679.

observations are made as to imposition of criminal liability under Section 304-A of IPC:

“it is necessary that the death should have been the direct result of a rash and negligent act of the accused, and that act must be the proximate and efficient cause without the intervention of another's negligence. It must be the causa causans; it is not enough that it may have been the causa sine qua non.”

15. Keeping in mind authoritative judicial pronouncements in the subject matter, on appreciation of facts in the present case, we are of the considered opinion that in absence of the material indicating direct nexus between the cause of death and medical treatment advanced by the applicant, no case can be made out to prosecute him for the offence punishable under section 304-A of the IPC. It may be possible that owing to negligence attributed against the applicant to Gayatri, some case for actionable negligence in civil law is made out, however, in absence of proximity between cause of death and negligent act which is *sine qua non* for prosecution against medical practitioner, criminal prosecution under Section 304-A of the Indian Penal Code cannot be sustained. We have observed in present case that primary treatment of Gayatri was under medical supervision of the applicant during the period from 13.05.2021 to 16.05.2021. Thereafter, she was treated by Dr. Sunil Choudhari at Gajanan Hospital, Dr. Rajesh Dabi's Hospital and Dr. Swapnil Patil at Om Critical Hospital. Ultimately, she took last breathe on 01.06.2021. The treatment papers clearly demonstrate that it was a case of Brain Hemorrhage. There is nothing on record to depict that brain Hemorrhage was attributable to alleged prescription of medicines of irrational combination by the applicant.

16. We are not oblivious of the fact that the criminal prosecutions against medical practitioners are on an increased

rate, they require to be protected from frivolous and unjust prosecution, particularly when that has been used for pressurizing them for extracting uncalled or unjust compensation. The Supreme Court of India in case of *Jacob Mathew* (supra) has emphasized on need to guard such proceedings.

17. In the result, we are inclined to exercise our powers under Section 482 of the Criminal Procedure Code in the facts of the present case and proceed to allow the application. Hence, following order:

ORDER

- a. Criminal Application is allowed in terms of prayer Clause (B).

- b. Criminal Application is disposed of.

- c. In view of disposal of Criminal Application No.1737 of 2023, present Criminal Application No.888/2024 does not survive and stands disposed of.

(S. G. CHAPALGAONKAR)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE