



Judgment

apl764.23

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

CRIMINAL APPLICATION (APL) NO.764 OF 2023

Dr.Dwarkadas s/o Narayandas Rathi,
aged about 69 years, occupation: medical
practitioner, r/o Sarafa Line, Telhara, taluka
Telhara, district Akola. **Applicant.**

:: V E R S U S ::

1. State of Maharashtra,
through Ministry of Home Affairs,
Mantralaya, Mumbai-32.

2. State of Maharashtra,
through Police Station Officer, Talhara,
Taluka Telhara, District Akola.

3. Rubi Dilip Malekar,
aged about 38 years,
occupation: business,
r/o Civil Line, Washim, District Washim. **Non-applicants.**

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Shri Mandar Deshpande, Counsel for the applicant.
Shri A.M.Kadukar , APP for the NA Nos.1 and 2/State.
Shri Anup Dhore, Counsel for NA No.3.

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CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 22/01/2026

PRONOUNCED ON : 06/02/2026

JUDGMENT

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1. Heard learned counsel Shri Mandar Deshpande for the applicant, learned APP Shri A.M.Kadukar for the State, and learned counsel Shri Anup Dhore for the non-applicant No.3.

Admit. Heard finally by consent.

2. By this application, the applicant seeks quashing of the FIR in connection with Crime No.161/2023 registered under Sections 304-A and 201 of the IPC and consequent proceeding arising out of the same bearing SCC No.649/2023.

3. In the present case, informant Ganesh Dinkar Kayande serving as PSI of Police Station Telhara, District Akola alleges “medical negligence” on the part of the applicant, who is doctor by profession, who has allegedly given an “injection” in Spinal Cord of Dilip Malekar (the deceased) who unfortunately succumbed to the injection. As per recital of the FIR, initially, a Murg was filed and an enquiry was conducted. The investigating officer prepared spot panchanama, inquest panchanama, and referred the dead

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body of the deceased for postmortem. The investigating agency has recorded statements of witnesses who were employed at “Gomati Clinic” and also forwarded samples for chemical analysis. After receipt of the CA Report, opinion was given that cause of death of the deceased was, “due to shock due to pulmonary edema due to trauma to thoracic spinal cord and coronary artery disease with acute tubular necrosis of the kidneys”. As per the investigation papers, the deceased had been to the clinic of the applicant where he was injected and, thereafter, he never regained consciousness and subsequently succumbed to death on 16.5.2022. During investigation, it further revealed that the cause of death of the deceased was because of “pulmonary edema”. It could be the reaction due to trauma to the thoracic spinal cord due to “an unknown injection:. Despite treatment papers were demanded, the applicant has not provided the same. The Department of Forensic Medicine and Toxicology, Akola by letter dated 3.11.2022 also intimated cause of death of the

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deceased. The Advisory Committee has accepted the said cause of death and, thereafter, FIR came to be lodged against the applicant.

Learned counsel for the applicant further submitted that the applicant had been to Pune for his personal work and he came to Shegaon by Maharashtra Express and reached Telhara at 12:30 pm on 16.5.2022. The applicant came to his clinic at 2:15 pm and was attending patients. While he was attending his other patients, he received a call by his sweeper informing him that a patient, whose name was not known to him, was sitting on a bench. In consultation with the wife of the applicant, who is also a medical professional, the said patient was allowed to take rest on bed kept adjoining the waiting area. At about 2:45 pm, after taking lunch, the applicant was examining his patients. He heard a noise of crowd from patients who were waiting in the waiting area and it revealed that the person who was taking rest in the nearby adjoining area of the waiting room had fallen down

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and, therefore, the applicant immediately rushed to him and examined him and found that he was already dead. Thereafter, he informed the police. It was found that the said person had succumbed to death. After doing necessary formalities, the dead body of the deceased was sent for postmortem.

It is submitted by learned counsel for the applicant that as far as the deceased is concerned, he was not at all treated by the applicant. When he came to the hospital, he was asked for rest as he was complaining some unrest and, subsequently, he was found falling on the ground. He also invited my attention towards the CA Report, which shows that general and specific chemical testing do not reveal any poison in Exhibits-1 and 2. Exhibit-1 is skin in a small plastic jar labelled "skin" and Exhibit-2 is skin in a small plastic jar labelled "skin" of the deceased. The requisition issued to the Forensic Science Laboratory dated 18.9.2022 shows that the said skin pieces were forwarded obtained from the injection

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site for detection of unknown drug poison. The report of the Associate Professor of the Department of the Medicine and Toxicology shows that the said cause of death is “due to shock due to pulmonary edema due to trauma to thoracic spinal cord and coronary artery disease with acute tubular necrosis of the kidneys”. He further submitted that statements of relevant witnesses recorded during the investigation also nowhere reveal that any treatment was given to the deceased in the hospital of the applicant. Thus, as far as “negligence” is concerned, there is absolutely no material to connect the applicant with the alleged.

He has invited my attention towards statements of Pawan Ratan Giri, who was serving in the hospital of the applicant, and Shubham Santosh Samble, who was also working, who met the applicant for job on that day and was present in the hospital on 16.5.2022. Thus, he submitted that as far as the “negligence” at the hands of the applicant is concerned, there is absolutely no material to show that the

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said injection was administered by the applicant. He submitted that to make out a case under Section 304 of the IPC, the complainant cannot merely allege that the applicant was negligent, but must allege facts constituting a case of “gross negligence” or an act which was rash on the part of the doctor so as to cause the death of the patient under their care. It was further submitted that it is not the case in the complaint that the applicant was not qualified medical practitioner or he lacked basic skill to treat patients.

It is further submitted that in fact, the said patient was treated in the clinic of the applicant, is not substantiated by any material. On the contrary, the statements of the staff of the hospital specifically show that the deceased had been to the clinic of the applicant, but before he was examined, he fell on the ground and succumbed to death and, therefore, the contention of the State that the death of the deceased was caused due to “negligence” on the part of the applicant itself

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is not established. In view of that, the application deserves to be allowed.

4. *Per contra*, learned APP for the State strongly opposed the said contentions and submitted that the wife of the deceased disclosed that the treatment was given to the applicant and, therefore, the deceased succumbed to death. She further stated that due to the wrong treatment at the hands of the applicant, the death of the deceased was caused, which is sufficient to attract “negligence”. The investigation papers further show that despite treatment papers were demanded from the applicant, which were not provided by the applicant and, therefore, an adverse inference can be drawn against the applicant.

5. Learned counsel for the non-applicant No.3 also endorsed the said contentions and submitted that admittedly, the death of the deceased is caused in the clinic of the applicant. The statements of the employees of the clinic of

the applicant also disclose presence of the deceased in the said hospital. The cause of death, as per the CA Report and the expert's opinion, is due to trauma to thoracic spinal cord due to an unknown injection. This fact is itself sufficient to show "negligence" of the applicant in the alleged offence.

6. I have perused the complaint and the entire investigation papers and statements of various witnesses recorded during the investigation.

7. Before I proceed with rival contentions and facts, it is to be ascertained whether a *prima facie* case is made out against the applicant to proceed with the trial for an offence Section 304 of the IPC.

8. Learned counsel for the applicant has placed reliance on following decisions:

**1. Jacob Mathew vs. State of Punjab and anr,
reported in (2005)6 SCC 1;**

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2. Dr.Ashok and anr vs. State of Maharashtra, thr.Police Station Officer and anr, reported in 2020 SCC OnLine Bom 296;

3. Martin F.D'souza vs. Mohd.Ishfaq, reported in (2009)3 SCC 1, and

9. Criminal Application No.190/2012 decided on 8.9.2023.

10. One of classic English cases which has dealt with question as to what constitutes “guilt of medical negligence” and the standard of “reasonableness” is required to be considered, wherein “Bolam Test” was laid down in the case of **Bolam vs. Friern Hospital Management Committee, reported in (1957) 1 WLR 582** was considered. By referring the said English decision, the Three-Judge Bench of the Hon’ble Apex Court observed in paragraph No.12, as under:

“The term 'negligence' is used for the purpose of fastening the defendant with liability under the Civil Law and, at times, under the Criminal Law. It is contended on behalf of the respondents that in both the jurisdictions, negligence is negligence,

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and jurisprudentially no distinction can be drawn between negligence under civil law and negligence under criminal law”.

The Hon’ble Apex Court further referred the case in the case of **Andrews v. Director of Public Prosecutions**, reported (1937) A.C. 576 and in the case of **Riddell vs. Reid**, reported in (1942)2 ALL ER 161, wherein it is observed that, “a higher degree of negligence has always been demanded in order to establish a criminal offence than is sufficient to create civil liability.”

While summoning up, the Hon’ble Apex Court observed, as under:

“48. We sum up our conclusions as under:

(1) Negligence is the breach of a duty caused by omission to do something which a reasonable man guided by those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a prudent and reasonable man would not do. The definition

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of negligence as given in Law of Torts, **Ratanlal & Dhirajlal** (edited by Justice G.P. Singh), referred to hereinabove, holds good. Negligence becomes actionable on account of injury resulting from the act or omission amounting to negligence attributable to the person sued. The essential components of negligence are three: “duty”, “breach” and “resulting damage”.

(2) Negligence in the context of the medical profession necessarily calls for a treatment with a difference. To infer rashness or negligence on the part of a professional, in particular a doctor, additional considerations apply. A case of occupational negligence is different from one of professional negligence. A simple lack of care, an error of judgment or an accident, is not proof of negligence on the part of a medical professional. So long as a doctor follows a practice acceptable to the medical profession of that day, he cannot be held liable for negligence merely because a better alternative course or method of treatment was also available or simply because a more skilled doctor would not have chosen to follow or

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resort to that practice or procedure which the accused followed. When it comes to the failure of taking precautions, what has to be seen is whether those precautions were taken which the ordinary experience of men has found to be sufficient; a failure to use special or extraordinary precautions which might have prevented the particular happening cannot be the standard for judging the alleged negligence. So also, the standard of care, while assessing the practice as adopted, is judged in the light of knowledge available at the time of the incident, and not at the date of trial. Similarly, when the charge of negligence arises out of failure to use some particular equipment, the charge would fail if the equipment was not generally available at that particular time (that is, the time of the incident) at which it is suggested it should have been used.

(3) A professional may be held liable for negligence on one of the two findings: either he was not possessed of the requisite skill which he professed to have possessed, or, he did not exercise, with reasonable competence in the

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given case, the skill which he did possess. The standard to be applied for judging, whether the person charged has been negligent or not, would be that of an ordinary competent person exercising ordinary skill in that profession. It is not possible for every professional to possess the highest level of expertise or skills in that branch which he practices. A highly skilled professional may be possessed of better qualities, but that cannot be made the basis or the yardstick for judging the performance of the professional proceeded against on indictment of negligence.

(4) The test for determining medical negligence as laid down in Bolam case, WLR at p. 586 holds good in its applicability in India. (5) The jurisprudential concept of negligence differs in civil and criminal law. What may be negligence in civil law may not necessarily be negligence in criminal law. For negligence to amount to an offence, the element of mens rea must be shown to exist. For an act to amount to criminal negligence, the degree of negligence should be much higher i.e. gross or of a very high degree.

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Negligence which is neither gross nor of a higher degree may provide a ground for action in civil law but cannot form the basis for prosecution.

(6) The word “gross” has not been used in Section 304-A IPC, yet it is settled that in criminal law negligence or recklessness, to be so held, must be of such a high degree as to be “gross”. The expression “rash or negligent act” as occurring in Section 304-A IPC has to be read as qualified by the word “grossly”.

(7) To prosecute a medical professional for negligence under criminal law it must be shown that the accused did something or failed to do something which in the given facts and circumstances no medical professional in his ordinary senses and prudence would have done or failed to do. The hazard taken by the accused doctor should be of such a nature that the injury which resulted was most likely imminent.

(8) Res ipsa loquitur is only a rule of evidence and operates in the domain of civil law, specially

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in cases of torts and helps in determining the onus of proof in actions relating to negligence. It cannot be pressed in service for determining per se the liability for negligence within the domain of criminal law. *Res ipsa loquitur* has, if at all, a limited application in trial on a charge of criminal negligence.”

Thus, the “Bolam Test” was considered by the Hon’ble Apex Court and guidelines are issued by observing that the said guidelines are to be observed while prosecuting medical professionals. It is held in the said judgment as under:

“50. As we have noticed hereinabove that the cases of doctors (surgeons and physicians) being subjected to criminal prosecution are on an increase. Sometimes such prosecutions are filed by private complainants and sometimes by police on an FIR being lodged and cognizance taken. The investigating officer and the private complainant cannot always be supposed to have knowledge of medical science so as to determine whether the act of the accused medical

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professional amounts to rash or negligent act within the domain of criminal law under Section 304-A of IPC. The criminal process once initiated subjects the medical professional to serious embarrassment and sometimes harassment. He has to seek bail to escape arrest, which may or may not be granted to him. At the end he may be exonerated by acquittal or discharge but the loss which he has suffered in his reputation cannot be compensated by any standards.

51. We may not be understood as holding that doctors can never be prosecuted for an offence of which rashness or negligence is an essential ingredient. All that we are doing is to emphasize the need for care and caution in the interest of society; for, the service which the medical profession renders to human beings is probably the noblest of all, and hence there is a need for protecting doctors from frivolous or unjust prosecutions. Many a complainant prefers recourse to criminal process as a tool for pressurizing the medical professional for extracting uncalled for or unjust compensation.

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Such malicious proceedings have to be guarded against.

52. 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

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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.

11. Thus, in the case of **Jacob Mathew vs. State of Punjab and anr** *supra* the Hon'ble Apex Court has alarmed about the tendency of unhappy family members, perhaps irked by untimely death of their near relative, filing complaints of gross medical negligence against the medical professionals hastily, making reckless allegations. The Hon'ble Apex Court has issued directions which are referred above and also analyzed the concept of "gross medical negligence" and

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explained, “what it takes to bring the case within the parameters of Section 304-A of the IPC”.

The Hon’ble Apex Court, as to “gross negligence,” further held that, “negligence in the context of medical profession necessarily falls for treatment with difference and it said that to infer rashness and negligence on the part of a professional, in particular, a doctor, additional considerations apply. It is further held that the case of occupational negligence is different from one of professional negligence, in the sense that a simple lack of care, an error of judgment or an accident, is not a proof of negligence so long as the doctor follows a practice acceptable to medical profession of the day and till then, a doctor cannot be held liable for negligence merely because a better alternate course or method of treatment was also available. It also held that just because a more skilled doctor would have chosen a particular course of treatment and the doctor accused has not done so, it would not amount to any professional medical negligence so as to

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attract the provisions of Section 304-A of the IPC. While judging the alleged negligence, standard of common man has to be applied, observed the Hon'ble Apex Court.

12. Thus, basic principle relating to “medical negligence” known as “Bolam Rule,” which was laid down in the case of **Bolam vs. Friern Hospital Management Committee** *supra*, is as follows:

“.....where you get a situation which involves the use of some special skill or competence, then the test whether there has been negligence or not is not the test of the man on the top of a Clapham omnibus, because he has not got this special skill. The test is the standard of the ordinary skilled man exercising the professing to have that special skill. A man need not possess the highest expert skill at the risk of being found negligent. It is well established law that it is sufficient if he exercises the ordinary skills of an ordinary competent man exercising that particular art”.

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13. The “Bolam Test” has been approved by the Hon’ble Apex Court in catena of decisions.

14. The degree of skill and care required by a medical practitioner is so stated in Halsbury's Laws of England, which is as under:

"The practitioner must bring to his task a reasonable degree of skill and knowledge, and must exercise a reasonable degree of care. Neither the very highest nor a very low degree of care and competence, judged in the light of the particular circumstances of each case, is what the law requires, and a person is not liable in negligence because someone else of greater skill and knowledge would have prescribed different treatment or operated in a different way; nor is he guilty of negligence if he has acted in accordance with a practice accepted as proper by a responsible body of medical men skilled in that particular art, even though a body of adverse opinion also existed among medical men”.

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15. Deviation from normal practice is not necessarily evidence of negligence. Thus, to establish liability on that basis it must be shown (1) that there is a usual and normal practice; (2) that the defendant has not adopted it; and (3) that the course in fact adopted is one no professional man of ordinary skill would have taken had he been acting with ordinary care.

16. Thus, to hold a medical practitioner liable, the above circumstances are to be brought on record. A medical practitioner is not to be held liable simply because things went wrong from mischance or misadventure or through an error of judgment in choosing one reasonable course of treatment in preference of another. A medical practitioner would be liable only where his conduct fell below that of the standards of a reasonably competent practitioner in his field. For instance, he would be liable if he leaves a surgical gauze inside the patient after an operation vide **Achutrao Haribhau Khodwa and ors vs. State of Maharashtra and ors**, reported in

AIR 1996 SC 2377 or operates on the wrong part of the body, and he would be also criminally liable if he operates on someone for removing an organ for illegitimate trade.

17. Recently, in the case of **Neeraj Sud and anr vs. Jaswinder Singh (Minor) and anr**, reported in **2024 SCC OnLine SC 3069** also the Hon'ble Apex Court observed that, "it is well recognized that actionable negligence in context of medical profession involves three constituents (i) duty to exercise due care; (ii) breach of duty and (iii) consequential damage. However, a simple lack of care, an error of judgment or an accident is not sufficient proof of negligence on part of the medical professional so long as the doctor follows the acceptable practice of the medical profession in discharge of his duties. He cannot be held liable for negligence merely because a better alternative treatment or course of treatment was available or that more skilled doctors were there who could have administered better treatment".

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It has further been observed that, “a medical professional may be held liable for negligence only when he is not possessed with the requisite qualification or skill or when he fails to exercise reasonable skill which he possesses in giving the treatment”.

18. Keeping in mind the principles laid down in **Bolam vs. Friern Hospital Management Committee** *supra* as well as by the Hon’ble Apex Court in cases of **Jacob Mathew vs. State of Punjab and anr**, and **Neeraj Sud and anr vs. Jaswinder Singh (Minor) and anr** *supra*, I will proceed to evaluate the allegations made in the complaint and material collected during the investigation and whether the case has been made out to proceed with the trial/prosecution under Sections 304-A and 201 of the IPC.

19. There is no dispute that the deceased died “due to trauma to thoracic spinal cord due to unknown injection”. There is no dispute that the complainant does not allege any

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lack of qualification on the part of the applicant or that there was any lack of skill shown by him. As per the allegations, the applicant has given an “unknown injection” and due to reaction of the said injection, the death of the deceased is caused. It is to be seen, whether this allegation is substantiated by any material. Admittedly, the investigation papers show that the deceased had been to the clinic of the applicant. The statements of two employees working in the clinic of the applicant show that on 16.5.2022, one employee Pawan Ratan Giri had been to the clinic of the applicant to attend his duty at about 2:00 pm. At that time, the wife of the applicant was instructing some of patients regarding some exercises and one patient was sleeping in another room. Therefore, he enquired with another employee Shubham who joined duty on that day itself and said Shubham disclosed him that he came from Washim who is sleeping in the said room. Therefore, he went near the said person and the said person disclosed him that he is having pain in chest and hands. He

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immediately disclosed to the wife of the applicant who is also medical practitioner and the wife of the applicant asked him, “let him rest for some time”. At about 3:00 pm, he again met said Shubham and Shubham disclosed the applicant that the patient who came from Washim is not breathing. Immediately, the applicant and his wife came in the said room and examined him, but he was succumbed to death. Thereafter, the applicant has given one chit to him and send him to the police station. Accordingly, he has handed over the said chit at the police station.

20. Another statement of Shubham discloses that on 16.5.2022, i.e. on the day of the incident, he joined duty in the clinic of the applicant. On that day, the applicant came from Pune at about 11:00 am to 12:00 pm. As there was no patient, when the applicant came, the applicant went to his home and again came at 2:00 pm. His statement further shows that the applicant has checked the patient who came from Washim and asked him to take rest and, therefore, he

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was taking rest. After some time, he disclosed that he is having pain in his chest and in hand and after some time, he fell from the bed and succumbed to death.

21. Thus, the evidence regarding the injection was given by the applicant is not substantiated by any statements recorded during the investigation.

22. As far as the statement of the wife of the deceased is concerned, she was not present along with the deceased at the relevant time. Her statement only discloses that she received a phone call from the deceased who disclosed that he reached in “Gomati Clinic”, owned by the applicant and also disclosed her that the doctor has given injection to him.

23. Thus, none of statements discloses that the treatment was given by the applicant to the deceased in the said hospital. The statements recorded by the investigating agency are not sufficient to establish that the deceased was treated in

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the hospital of the applicant and it was the applicant who has given the said injection.

24. As far as the expert's evidence is concerned, admittedly, the postmortem report shows that no opinion was given as to the death and the opinion was reserved. During the investigation, with the help of medical officer, the skin piece from injection site for detection of unknown drug poison and skin from opposite site as control were collected and forwarded for analysis. The CA Report shows that no poison is detected on examination of the said skin piece. The opinion of Associate Professor of the Department of the Medicine and Toxicology discloses that the death of the deceased is "due to trauma to thoracic spinal cord due to unknown injection".

25. Regarding the alleged incident, the enquiry was also conducted by the panel of the doctors and panel of doctors disclosed that the death of the deceased is "due to shock due

to pulmonary edema due to trauma to thoracic spinal cord due to unknown injection". The other significant conditions noted by Committee is, "coronary artery disease with acute tubular necrosis of the kidneys."

26. The report of the Committee is reproduced for further reference, as under:

"चौकशी समिती अहवाल
दिनांक:-२४.०३.२०२३

विषय:- डॉ.डी.एन. राठी बिरुद्ध दिलीप लक्ष्मणराव माळेकर मृत्यू झाल्याबद्दल चौकशी करणे बाबत
संदर्भ:- १) पोलीस स्टेशन तेल्हारा यांचे पत्र जा. कं. १२४४/२२ दि.०५/११/२०२२.
२) जा.क्र.शावेम अ/चौकशी/दिलीप माळेकर/७७२८/२२ दि. १६.१२.२०२२.

उपरोक्त संदर्भाकित विषयान्वये, संदर्भ क्र.१ नुसार पोलीस स्टेशन तेल्हारा यांचे पत्र दिनांक ०५/११/२०२२ व संदर्भ क्र.२ नुसार संबंधीत प्रकरणी चौकशी समिती गठीत करण्यात आली. सदर प्रकरणी चौकशी समितीची सभा दि.२१.०२.२०२३ रोजी वैद्यकीय अधिक्षक कार्यालयात घेण्यात आली. उपलब्ध दस्तावेजाचे अबलोकन केले असता खालील मुचे लक्षात येतात.

१) सदर व्यक्ती दिलीप लक्ष्मणराव माळेकर बम वर्ष ४० हे दिनांक १६.०५.२०२२ रोजी सकाळी १० वा. गोमती मिलनीक व रोग निदान केंद्र, डॉ. डि.एन राठी सराफा लाईन, तेल्हारा जिल्हा अकोला येथे आल्याचे सदर दस्तावेजावरून लक्षात येते.

२) सदर व्यक्ती दुपारी १२.०० ते २.०० वा. चे दरम्यान डॉ डि.एन राठी यांच्या कॅबीनमध्ये डॉ. डि.एन राठी यांच्या पत्नी यांच्या सांगण्याप्रमाणे पाठविण्यात आले. असे श्री. शुभम संतोष चाफे यांच्या लेखी जबाबात नमूद आहे.

३) सदर व्यक्ती दुपारी २.३० वा वेटींग रुममध्ये सोफ्यावर झोपलेले होते असे श्री पवन रतर गिरी यांचे जबाबात नमूद आहे.

४) सदर व्यक्ती यांना दुपारी २.०० वा. ते २.३० वा. त्यांना शरिरात गर्मास होते आहे, छाती व हात दुघात आहे. असे श्री. चाफे यांच्या जबाबानुसार त्यांनी डॉ. डि.एन राठी यांना सदर रुग्णाविषयी सांगितले व डॉ. तपासणी करून आराम करण्यास सांगितले असे नमूद आहे.

५) दुपारी ३.०० वा. दरम्यान सदर रुग्ण पलंगावरून खाली पडले आहेत असे श्री. शुभम चाफे यांनी डॉक्टरांना सांगितले डॉ. डि.एन राठी यांनी रुग्णाला तपासल्यानंतर रुग्ण दगावला आहे असे सांगितले,

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६) श्री. शुभम चाफे यांना डॉ. डि.एन राठी यांनी पोलीस स्टेशनला चिड्डी फॅबून पाठविले आणि पोड्यावेळात पोलीस रुग्णालयात दाखल झाले.

७) सदर रुग्णाचे डॉ. डि.एन राठी यांच्या रुग्णालयामध्ये पंचनामा होवून मृतदेह शवविच्छेदनास पाठविला.

८) सदर रुग्णाचे दिनांक १७.०५.२०२२ रोजी न्यायवैद्यकशास्त्र विभाग शासकीय वैद्यकीय महाविद्यालय अकोला येथे शवविच्छेदन करण्यात आले आणि मृत्यूचे कारण Opinion Reserved असे देण्यात आले.

९) सदर रुग्णाचे शवविच्छेदन करतांना न्यायवैद्यकशास्त्र विभाग शासकीय वैद्यकीय महाविद्यालय अकोला येथून रासायनिक नमुने दिनांक २३.०५.२०२२ रोजी रासायनिक प्रयोगशाळा अमरावती येथे पाठविण्यात आले.

10) RFSL Amaravati मेधील १०.१०.२०२२ रोजी निर्गमित अहवालामध्ये "General and Specific chemical testing does not reveal any poisoning exhibit No (01) and (02) असा आहे.

११) न्यायवैद्यकशास्त्र विभाग शासकीय वैद्यकीय महाविद्यालय अकोला यांचे पत्र क्र.७३५/दिनांक: ०३.११.२०२२ प्रमाणे रुग्णाचे मृत्यूचे त्वरण खालील प्रमाणे

IMMEDIATE CAUSE -SHOCK WITH PULMONARY EDEMA
 ANTECEDENT CAUSE -DUE TO TRAUMA TO THORACIC SPINAL
 CORD DUE TO UNKNOWN INJECTION

OTHER SIGNIFICANT CONDITIONS ' -CORONARY ARTERY DISEASE WITH
 ACUTE TUBULAR NECROSIS OF KIDNEYS"

27. Thus, the report on which the reliance has been placed for registration of the offences also nowhere discloses that it was the applicant who has injected the deceased. It only shows that the death of the deceased is caused "due to the unknown injection". The Committee has also placed reliance on the statement of Shubham, whose statement is only to the extent that the applicant has examined the deceased and asked him to take rest. However, it nowhere

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discloses that he is having any knowledge that any injection was injected by the applicant. Thus, neither the report nor the statements of the witnesses indicates any “negligence” on the part of the applicant. Therefore, in view of the guidelines issued by the Hon’ble Apex Court, registering offence under Section 304-A of the IPC alleging the crime of “gross negligence” is ruled out. The police ignored the said legal position and registered the crime, which is a grave in nature. The investigating agency also ignored the fact that essential requirements of this offence is of causing death with intention or knowledge and both these requirements are absent. It is not anybody’s case that the applicant did some acts with an intention to cause death or such bodily injury as is likely to cause death or with knowledge that the applicant’s act is likely to cause death. Even, The Expert Committee’s Report does not extend any helping hand to substantiate the allegations of “negligence” to prove the same.

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28. As held in various judgments referred above, it shows that a fine balance between upholding and preserving the faith that citizens have on the medical profession and on the treatment of doctors and the evidence is required prima facie to establish “gross negligence” to attract the offence under Section 304-A of the IPC.

29. Thus, in view of the settled principles, a medical practitioner is not to be held liable simply because things went wrong from mischance or misadventure or through an error of judgment in choosing one reasonable course of treatment in preference of another. A medical practitioner would be liable only where his conduct fell below that of the standards of a reasonably competent practitioner in his field. The standard of care has to be judged in the light of knowledge available at the time of the incident and not at the time of the trial. There is a difference between “simple negligence” and “gross negligence,” which is explained by the Hon’ble Apex Court in the case of **Jacob Mathew vs. State of**

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Punjab and anr *supra*. It must be remembered that sometimes despite their best efforts, the treatment for doctor fails and sometimes despite efforts of a surgeon, patient dies. However, that does not mean that the doctor/surgeon must be held to be guilty of “medical negligence”, unless there is some strong evidence to suggest that he has not taken due care and caution by treating the patients.

30. On the facts of the present particular case, I am of opinion that the evidence collected during the investigation is not sufficient to hold the applicant guilty for “medical negligence”.

31. In this view of the matter, the application deserves to be allowed as per order below:

ORDER

(1) The Criminal Application is **allowed**.

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(2) The FIR in connection with Crime No.161/2023 registered under Sections 304-A and 201 of the IPC and consequent proceeding arising out of the same bearing SCC No.649/2023 are hereby quashed and set aside to the extent of applicant Dr.Dwarkadas s/o Narayandas Rathi.

Application stands **disposed of**.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!