2025:BHC-AUG:23662-DB

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.2506 OF 2021

Durreshhewar Ghulam Jilani
@ Dr. Samreen,
Age 31 yrs., Occ. Doctor,
R/o C/o Mohd. Shoeb,
Mominpura, Parbhani.

… Applicant

… Versus …

1 The State of Maharashtra
Through Police Inspector,
Police Station, Nanalpeth,
Dist. Parbhani.

2 Kavita w/o Manik Zhodpe,
Age 38 yrs., Occ. Household,
R/o Amay Nagar, Near Shalimar
Functional Hall, Parbhani,
Tq. & Dist. Parbhani.

… Respondents

...

Mr. W.A. Shaikh, Advocate for applicant

Mr. S.A. Gaikwad, APP for respondent No.1

Mr. M.B. Sandanshiv, Advocate for respondent No.2

...

WITH

CRIMINAL APPLICATION NO.2642 OF 2021

Rohini d/o Haribhau Shelke,
Age 31 yrs., Occ. Medical Practitioner,
R/o C/o Pandurang Kagde,
Pradnya Niwas, Ajintha Nagar,
Wangi Road, Parbhani.

… Applicant

… Versus …

1 The State of Maharashtra
Through Police Inspector,
Police Station, Nanalpeth,
Dist. Parbhani.

2 Kavita w/o Manik Zhodpe,
Age 38 yrs., Occ. Household,
R/o Amay Nagar, Near Shalimar
Functional Hall, Parbhani,
Tq. & Dist. Parbhani.

… Respondents

...

Mr. S.S. Shinde, Advocate for applicant

Mr. S.A. Gaikwad, APP for respondent No.1

Mr. M.B. Sandanshiv, Advocate for respondent No.2

...

CORAM : SMT. VIBHA KANKANWADI &
SANJAY A. DESHMUKH, JJ.

RESERVED ON : 24th JULY, 2025

PRONOUNCED ON : 04th SEPTEMBER, 2025

ORDER : (PER : SMT. VIBHA KANKANWADI, J.)

1 Both these applications have been filed under Section 482 of the Code of Criminal Procedure, 1973 for quashment of First Information Report vide Crime No.340/2021 dated 09.07.2021 registered with Police Station, Nanalpeth, Dist. Parbhani, for the offence punishable under Section 304-A read with Section 34 of the Indian Penal Code, 1860.

2 Heard learned Advocate Mr. W.A. Shaikh for applicant in Criminal Application No.2506 of 2021, learned Advocate Mr. S.S. Shinde for applicant in Criminal Application No.2642 of 2021 as well as learned APP Mr. S.A. Gaikwad for respondent No.1 and learned Advocate Mr. M.B. Sandanshiv for respondent No.2 in both matters.

3 Applicants in both matters are the Medical Officers serving with Civil Hospital, Parbhani. The informant, who is mother of deceased Kajal Nitin Dhapse has stated that Kajal was married to Nitin on 29.04.2018. She was admitted around 2.00 a.m. on 24.04.2019 in the Delivery Ward of Civil Hospital, Parbhani for delivery. Nurse had examined her and asked her to walk for a while, as the complaint was that she is having stomach pain. Around 9.00 a.m. Kajal was examined by a Doctor and it was told that Kajal is required to undergo C-section operation. She was taken for caesarean

around 11.00 a.m. where the delivery was done. Around 12.00 noon Kajal and child were brought to ward. Everybody was happy. Kajal did not inform that she has some problem. But around 9.00 p.m. she told that there was tingling in her head. When Sister was told about it, the Sister told that the injection is scheduled at 10.00 p.m. Accordingly, the injection was given at 10.00 p.m., however, around 11.00 p.m. Kajal diagnosed with fever and she had stomachache. Again one injection was given by Sister, which has no effect. Her health deteriorated. The Sister called Doctor and again one injection was given. The Doctor who was on duty at night time did not come to check Kajal. Thereafter, Sister applied oxygen and other apparatus. There was no relief to Kajal, therefore, informant went to the place of resting room of Doctor and called Doctor. The Sister there told that no Doctor is present. Around 2.00 to 2.30 a.m. on 25.04.2019 one Doctor came and some apparatus was applied to the mouth of Kajal. Another Doctor had pressed her chest several times. Those Doctors then asked the relatives to go out. Around 3.00 a.m. the Doctors told informant's husband that Kajal has expired. When they asked as to how she has expired, the Doctors told that they do not know. According to the informant the death has occurred due to negligence by the Doctor.

4 Learned Advocates for applicants have stated that statement of

husband of informant, co-wife of informant, who alleged that they were present in the hospital are on the same line. The other witnesses including the husband of Kajal are hearsay. In the present case Civil Surgeon, Civil Hospital, Parbhani had conducted inquiry, however, the results of said Committee, who had conducted the inquiry cannot be taken as the piece of evidence of negligence. Here, the ordinary negligence is not required but medical negligence. If we consider Postmortem Report, then the probable cause of death is, "Cardiopulmonary oedema in a case of post LSCS (Lower Segment Caesarean Section) for day 1 for primi with full term with cephalo pelvic disproportion". Therefore, Hon'ble Supreme Court had given guidelines in **Jacob Mathew vs. State of Punjab and another** [(2005) 6 SCC] as to how criminal medical negligence is to be considered. The Committee's report shows that the Doctors are required to check the patient after operation periodically and take notes on the case paper. However, this has not been done in the present case. The complaints made by relatives of patient were not addressed to. At the most, these findings may give rise to the departmental enquiry against applicants as they are the Government servants.

5 Learned Advocates appearing for applicants rely on the decision in **Rakesh Ranjan Gupta vs. State of U.P. and another** (Three Judge Bench

decision) [(1999) 1 SCC 188], wherein it has been held that if there was delay on the part of Doctor to attend on the patient, that may at the worst be a case of civil negligence and not one of culpable negligence falling under Section 304-A of the Indian Penal Code. They then further submit that in **Dr. Suresh Gupta vs. Govt. of NCT of Delhi and another** [(2004) 6 SCC 422] it has been observed by Hon'ble Supreme Court that -

> "The legal position is almost firmly established that where a patient dies due to the negligent medical treatment of the doctor, the doctor can be made liable in civil law for paying compensation and damages in tort and at the same time, if the degree of negligence is so gross and his act was so reckless as to endanger the life of the patient, he would also be made criminally liable for offence under Section 304-A IPC.
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> 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. Thus, when a patient agrees to go for medical treatment or surgical operation, every careless act of the medical man cannot be termed as 'criminal'. It can be termed 'criminal' only when the medical man exhibits a gross lack of competence or inaction and wanton indifference to his patient's safety and which is found to have arisen from gross ignorance or gross negligence. Where a patient's death results merely from error of judgment or an accident, no criminal liability should be attached to it. Mere inadvertence or some degree of want of adequate care and caution might create civil liability but would not suffice to hold him

> criminally liable. For every mishap or death during medical treatment, the medical man cannot be proceeded against for punishment. Criminal prosecutions of doctors without adequate medical opinion pointing to their guilt would be doing great disservice to the community at large because if the courts were to impose criminal liability on hospitals and doctors for everything that goes wrong, the doctors would be more worried about their own safety than giving all best treatment to their patients. This would lead to shaking the mutual confidence between the doctor and patient. Every mishap or misfortune in the hospital or clinic of a doctor is not a gross act of negligence to try him for an offence of culpable negligence."

Lastly, learned Advocates for applicants submit that both the applicants were Government servants and, therefore, in order to prosecute them the prior sanction under Section 197 of the Code of Criminal Procedure was necessary. Perusal of charge sheet would show that no such sanction has been taken. They rely on the decision by Hon'ble the Single Bench of Madhya Pradesh High Court (Principal Seat at Jabalpur) in **Dr. Smt. Beena Yadu vs. State** [2003 Cri.L.J. 3402], wherein also the petitioner was Medical Officer serving in District Hospital. The facts are almost identical i.e. patient coming for delivery, refused to be attended by petitioner and patient died. Petitioner was said to be on duty as an emergency Medical Officer on call, therefore, she was supposed to be discharging her duty. When the sanction has not been obtained the Magistrate ought not to have taken cognizance in

view of bar created under Section 197 of the Code of Criminal Procedure. Here, also charge sheet came to be filed on 12.01.2022. Though evidence is part heard before trial Court, this Court can still interfere as learned Magistrate took the cognizance in spite of the statutory bar.

6 Per contra, learned APP as well as learned Advocate for informant - respondent No.2 in both matters strongly opposed the applications and submitted that since the matter is part heard before trial Court, this should not be taken as a fit case where the Court should exercise its powers under Section 482 of the Code of Criminal Procedure. The Committee appointed as per **Jacob Mathew**'s case (supra) has given the findings that it was the negligence on the part of accused persons. As regards applicant Durreshhewar Jilani @ Dr. Samreen, her statement was recorded by Committee. She has stated that she went home after 1.00 a.m. and till that time she was checking the new patients, who had come for delivery. As regards applicant Dr. Rohini Shelke, she has done LSCS after all the tests were done, but it was her duty also to see that since she had performed the operation, she should go to the Ward and check present condition of patient. She has never visited the Ward thereafter. Negligence of each and every staff who was present and on duty at that time can be proved and it has been so considered as per the duty assigned to them by the Committee. In fact, after

the said three member Committee had given the report to Civil Hospital, one person Committee of Dr. Faseeha Tasnim, Associate Professor, Gynecology Department was appointed. She has also stated that there was negligence on the part of staff attending Kajal and Doctors on duty. Since the case is part heard, let there be trial.

7 Most important fact in the present matters as per the charge sheet is that it was filed in the Court of Judicial Magistrate First Class, Parbhani on 12.01.2022. On 05.04.2022 the process was issued as against all accused persons. In Ferist there is no order of sanction to prosecute present applicants. It is not in dispute that present applicants are Government servants. They were serving with Civil Hospital i.e. Government Hospital. Even the employee on the basis of contract in the Government office would then temporarily become the Government servant an umbrella of protection given under Section 197 of the Code of Criminal Procedure would be applicable or given to all such Government employees. These Doctors were supposed to be on duty on the relevant date and it is stated that they have not attended the patient in time. The findings of three member Committee as well as single person Committee Dr. Faseeha would certainly show that these two applicants were supposed to be on duty and ought to have attended the patient, but it is then stated that they have neglected. Due to

which the complications worsen. Thereby the Committees are stating that it was the part of their duty to be alert and respond. Therefore, when the act was part of duty or in the discharge of duty, then certainly the previous sanction under Section 197 of the Code of Criminal Procedure was mandatory. We agree to the decision taken by Hon'ble Single Bench of Madhya Pradesh High Court in **Dr. Smt. Beena Yadu** (supra). Further, on this point, though the facts are different, that is, they are in respect of different Government officials but the law applicable in respect of Section 197 of the Code of Criminal Procedure is same.

8 Here, we would like to take note of the legal position that was carved out in **Om Prakash Yadav vs. Niranjan Kumar Upadhyay and Others** [2024 SCC Online SC 3726], which reads thus -

> "The legal position that emerges from the discussion of the aforesaid case laws is that :
>
> (i) There might arise situations where the complaint or the police report may not disclose that the act constituting the offence was done or purported to be done in the discharge of official duty. However, the facts subsequently coming to light may establish the necessity for sanction. Therefore, the question whether sanction is required or not is one that may arise at any stage of the proceeding and it may reveal itself in the course of the progress of the case.

(ii) There may also be certain cases where it may not be possible to effectively decide the question of sanction without giving an opportunity to the defence to establish that what the public servant did, he did in the discharge of official duty. Therefore, it would be open to the accused to place the necessary materials on record during the trial to indicate the nature of his duty and to show that the acts complained of were so interrelated to his duty in order to obtain protection under Section 197 CrPC.

(iii) While deciding the issue of sanction, it is not necessary for the Court to confine itself to the allegations made in the complaint. It can take into account all the material on record available at the time when such a question is raised and falls for the consideration of the Court.

(iv) Courts must avoid the premature staying or quashing of criminal trials at the preliminary stage since such a measure may cause great damage to the evidence that may have to be adduced before the appropriate trial court."

8.1 In **Shriniwas Reddy Kankanala Vs. State of Maharashtra and Another** [2024 (4) Mh.L.J. (Cri.) 510], this Court has considered the Three Judge Bench decision in **B. Shaha and Others Vs. M/s Kochar** [(1979) 4 SCC 177]. Therefore, we should take into consideration it as the law of precedent makes it mandatory to consider the decision of a Three Judge Bench of the Hon'ble Apex Court and in which, it is held thus -

"The words "Any offence alleged to have been committed by him

> while acting or purporting to act in the discharge of his official duty" employed in section 197(1) of the Code, are capable of a narrow as well as wide interpretation. If these words are construed too narrowly, the section will be rendered altogether sterile, for it is no part of an official duty to commit an offence, and never can be. In the wider sense, these words will take under their umbrella every act constituting an offence, committed in the course of the same transaction in which the official duty is performed or purports to be performed. The right approach to the import of these words lies between these two extremes. While it is not every offence committed by a public servant while engaged in the performance of his official duty, which is entitled to the protection of Section 197(1), an act constituting an offence, directly and reasonably connected with his official duty will require sanction for prosecution under the said provision."

8.2 Further, in **G.C. Manjunath and Others Vs. Seetaram** [2025 INSC 439], also, **B. Shaha and Others** (supra) has been referred. We must understand as to why the protection is given to a public servant from prosecution, thereby making the sanction to prosecute under Section 197 of the Code of Criminal Procedure compulsory. It has been observed in **G.C. Manjunath and Others** (supra) in paragraph No.30 that -

> "A careful reading of Section 197 of the Cr.P.C. unequivocally delineates a statutory bar on the Court's jurisdiction to take cognizance of offences alleged against public servants, save without the prior sanction of the appropriate Government. The essential precondition for the applicability of this provision is that the alleged

> offence must have been committed by the public servant while acting in the discharge of, or purported discharge of, their official duties. The protective mantle of Section 197 of the Cr.P.C., however, is not absolute and it does not extend to acts that are manifestly beyond the scope of official duty or wholly unconnected thereto. Acts bereft of any reasonable nexus to official functions fall outside the ambit of this safeguard and do not attract the bar imposed under Section 197 of the Cr.P.C."

8.3 The provision has been made to protect the public servants from malicious prosecution, otherwise it will not be possible to a public servant to discharge his duties without fear or favour. The object and purpose of this section was also considered in **Gurmeet Kaur vs. Devender Gupta** [2024 SCC Online SC 3761] and it has been noted in **G.C. Manjunath and Others** (supra). It has been therefore, stated that -

> "The guiding principle governing the necessity prior sanction stands well crystallized. The pivotal inquiry is whether the impugned act is reasonably connected to the discharge of official duty. If the act is wholly unconnected or manifestly devoid of any nexus to the official functions of the public servant, the requirement of the sanction is obviated. Conversely, where there exists even a reasonable link between act complained of and the official duties of public servant, the protective umbrella of Section 197 of the Cr.P.C. and Section 170 of the Police Act is attracted. In such cases, prior sanction assumes the character of a *sine qua non*, regardless of whether the public servant exceeded scope of authority or acted improperly while discharging his duty."

9 Therefore, whether there is a previous sanction as contemplated under Section 197 of the Code of Criminal Procedure or not should be considered by any Magistrate before taking cognizance of offence. There is a statutory bar for taking cognizance in absence of such sanction. Under such circumstance, when the cognizance itself is illegally taken, it would be an abuse of process of law if present applicants are then asked to face the remaining trial. In ordinary circumstances if the case would have progressed and it is part heard, then we would not have interfered, but, here, when basic fact has been overlooked and cognizance has been taken in spite of statutory bar, we take this to be a fit case for exercise of powers under Section 482 of the Code of Criminal Procedure, which is exceptional in nature.

10 Now, as regards whether action or inaction on the part of applicants was medical negligence or not, need not be gone into. Certainly, we are then guided by the decisions in **Rakesh Ranjan Gupta** (supra), **Jacob Mathew** (supra) and **Dr. Suresh Gupta** (supra). In fact, these points were available to the applicants to be raised at the time of framing of charge, but it appears that no such application for discharge was ever filed. The reason that has been tried to be given is that present applications have been filed in 2021, when charge sheet was not filed, but the charge sheet came to be filed in 2022 and since the applications were pending, no such application for

discharge was filed. We may not fully agree to learned Advocates for applicants in this respect, there is no necessity to file a written application for discharge. But there is a stage as per Section 239 of the Code of Criminal Procedure, which makes provision for, when accused shall be discharged. It provides that -

> "If, upon considering the police report and the documents sent with it under section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing."

Section 240 of the Code of Criminal Procedure provides for framing of charge. If, upon such consideration, examination, if any, and hearing, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, then he shall frame in writing a charge against the accused. That means, for both i.e. Sections 239 and 240 of the Code of Criminal Procedure submissions can be made on behalf of accused orally and it can be demonstrated as to how the charge cannot be framed or accused needs to be discharged, for which offence the charge cannot be framed and whether it can be framed etc. and, therefore, we refrain ourselves now from going into the aspect as to whether it was the criminal negligence of present applicants or not. Even if we take

that there was a criminal negligence; yet the previous sanction has not been obtained as contemplated under Section 197 of the Code of Criminal Procedure. This is sufficient for us to exercise our powers under Section 482 of the Code of Criminal Procedure to protect the party from abuse of process of law. Hence, following order.

ORDER

i) Both Criminal Applications stand allowed.

ii) The proceedings in Summary Criminal Case No.604/2022 pending before learned Judicial Magistrate First Class, Parbhani arising out of First Information Report vide Crime No.340/2021 dated 09.07.2021 registered with Police Station, Nanalpeth, Dist. Parbhani, for the offence punishable under Section 304-A read with Section 34 of the Indian Penal Code, 1860, stands quashed and set aside as against applicant **Durreshhewar Ghulam Jilani** in Criminal Application No.2506 of 2021 and applicant **Rohini d/o Haribhau Shelke** in Criminal Application No.2642 of 2021.

(SANJAY A. DESHMUKH, J.) **(SMT. VIBHA KANKANWADI, J.)**

agd