

**ORDER BELOW EXH.1 IN Cr. M. A. No.920/2021**

(Passed on 7<sup>th</sup> October 2021)

1. By this order, I shall decide an application requesting to direct police investigation under section 156(3) of the Cr. P. C upon registration of the FIR against the non-applicants on the basis of allegations made by the applicant against them which pertain to offences punishable under sections 304-A, 420, 465, 471, 120-B, 201 r.w. 34.

**2. A brief highlight of the applicant's allegation is as follows:-**

a) Deceased Ashwini Patil – Thavai was his wife. They had two daughters namely Sanu and Gnyanda. Sanu is 4 and a half years old, Gnyanda is 8 months only. In the month of April 2021, Ashwini missed her regular periods. Therefore, she consulted non-applicant No.2 Krutika Ramesh Patel. She advised her to undergo sonography. The results of sonography revealed that, she was pregnant. As Gnyanda was born out of cesarean just 8 months ago, non-applicant No.2 advised her to abort his child. For the same, non-applicant No.2 asked her to consume a-kare tablets and follow-up with her in 4 to 5 days with sonography report. On 30/04/2021, she went to non-applicant No.2 with the sonography reports. Non-applicant No.2 told her, that her abortion was incomplete and they need to clean her uterus. Ashwini was skeptical about undergoing any surgery during the time of pandemic. However, non-applicant No.2 assured her that, the operation will take merely 10 to 15 minutes and she will be discharged the same day by the afternoon if she comes in the morning. Non-applicant No.2 further assured to her that, her hospital is equipped with ventilator, oxygen and blood in sufficient

quantity. Non-applicant No.2 conducted her antigen test for COVID-19. It came negative.

b) Accordingly, Ashwini went to her hospital at 07:00 A.M. in the morning on 01/05/2021. She was taken in to the operation theater at 08:15 A.M. and attended by non-applicant No.2 and non-applicant No.3 namely Dr. Dharmesh Mehta. She came out at 08:30 A.M. The applicant inquired about her health with non-applicant No.2 who told him that, his wife was in good health. While, Ashwini was unconscious, non-applicant No.3 left the hospital. He came back at 08:40 A.M. by the time her health had become critical. The applicant and his friends present at the hospital were inquiring about her health, however, they were not getting any satisfactory answer. Afterwards, non-applicant No.2 told witness Mr. Vishal Mundkar that, her pulse has dropped due to excess bleeding. At 10:00 A.M. non-applicant No.1 namely Dr. Ramesh Patel and non-applicant No.3 told them that, they need a ventilator bed for her. Thereafter, she was taken to Gandhi hospital in a normal ambulance.

c) She was admitted in I.C.U. ward Gandhi hospital at 11:00 A.M. The applicant inquired about her health with Dr. Sandipkumar who told him that, she is brain dead and critical. At 11:45 A.M. non-applicant No.4 Dr. Pramod Gandhi told her father that, she is dead. Thereafter, Mr. Vishal Mundkar told the doctors present in the I.C.U. ward to complete their paper work and handover the body for postmortem. Surprisingly, soon after this demand, the doctors of the I.C.U. ward told her brother that, she was tested positive for COVID-19 and thus, her body can not be handed over to them. However, the applicant confronted the doctors with the Antigen test report of the deceased Ashwini taken at Patel hospital dated 30/04/2021 and Gandhi hospital dated 01/05/2021

itself. But, the applicant and his friends were shown a RT-PCR report dated 02/05/2021 issued by non-applicant No.6/1 Dr. Mansee Thakur and non-applicant No.6/2 Dr. Jayant Sargar. After this the applicant got one Antigen test and two RT-PCR test of Ashwini done on 02/05/2021. All these reports came negative.

d) The management of Gandhi hospital were time and again told about the negative reports of the deceased Ashwini. However, they were not ready to release the dead body. It was only after the efforts taken by members of Panvel advocates bar association that, her body was released for postmortem. Even after that, her last rites was perform in an abrupt manner at about 10:00 P.M. According to the applicant, it is not possible that, some one would become COVID-19 negative in the matter of two days. Further, the non-applicants have not followed the guidelines issued by ICMR for COVID-19 patients. The actions of the non-applicants suggest some sort of medical negligence on their part. He has wrote to Panvel City police station, Superintendent of police at Raigad, Commissioner of police at Navi Mumbai-CBD Belapur and to other concern office for lodging an FIR against the non-applicants.

3. Citing these foregrounds, the applicant has prayed for directions under section 156 (3) of the Cr. P. C to the Senior Police Officer of Panvel City Police Station to register the F.I.R against non-applicants under sections 304-A, 420, 465, 471, 120-B, 201 r.w. 34 of the I. P. C and investigate.

4. I have given my thoughtful consideration to the contentions of the applicant and have gone through the documents on record. I have also heard the learned advocate for the complainant in length.

5. First and foremost, the alleged offences are cognizable in nature. The application is supported by an affidavit of the applicant. The applicant has tried a registering the F.I.R. at Panvel City police station. He has forwarded a copy of the F.I.R. to the Police Commissioner at Navi Mumbai at CBD Belapur. He has also written to the Superintendent of Police at Raigad and Senior Inspector of Panvel City police station. Therefore, he has made the necessary compliance of section 154(3) r/w 36 of the Cr.P.C. Therefore, the legal requirement for initiating action u.s. 156(3) of the Cr.P.C. satisfied.
  
6. Now coming to the merits of the present application, it could be seen that, a woman has lodged her life over a minor operation of abortion. As the operation was conducted in the high tide of the ongoing pandemic, therefore, the concern doctors ought to have scrupulously follow the guidelines of the ICMR regarding testing of the patients before conducting any operation. From the allegations set-forth in the present application, it could be seen that, there are about 6 reports for COVID-19, out of which one is positive and the others are negative. Shockingly, the sample for these tests were taken in a short span of 3 days. Therefore, the present case appears to be case-study material to find out how a person can come negative for COVID-19 in just one day. The allegations that, the Gandhi hospital was not releasing the dead body on the guise of the deceased being tested positive for COVID-19 and then eventually allowing postmortem to be conducted raises further suspicion. Therefore, whether these tests were really conducted or it was used as an excuse to not allow the applicant and his family to know the real cause of death is to be investigated which can be done only by the police machinery. Further, if this allegation has any truth to it

then the next thing to discern is why this route was adopted by the non-applicants. Was it to hide any medical negligence that resulted in the death of the deceased Ashwini? These things can be brought before the Court which can only be done after a thorough investigation by the police machinery. Therefore, this Court is convinced that, the present application deserves directions under section 156(3) of the Cr.P.C. for registering an offence under section 304-A, 465, 471, 201, 120-B r/w 34 of the I.P.C. Offence under section 420 of the I.P.C. is not attracted as it involves cheating in relation to any property which is not the case here. Order as follows.

### **Order**

1. The application disclosed the cognizable offences under the Indian Penal Code and hence, allowed.
2. The Officer-in-charge of Panvel City police station is directed as per section 156(3) of the Cr.P.C. to register the first information report against the non-applicants for offence p.u.s. 304-A, 465, 471, 120-B, 201 r/w 34 of the I.P.C. and investigate in accordance with law.
3. Certified copy of the complaint along with this order and the documents filed by the complainant be sent to the said officer.
4. This proceeding is now disposed of as the matter would again come up before the Court in the form of final

report under the provisions of the Code of Criminal Procedure.

5. On receipt of the final report, the papers of this proceeding be tagged with that report.

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PANVEL.  
OCT 7, 2021

(Alok A. Pandey)  
JMFC, Panvel. (Court No.3)

**CERTIFICATE**

I affirm that the contents of this P.D.F. file order are same word to word, as per the original Order.

Name of the Stenographer : Ramesh Marutirao Lohekar,  
Court name : Court of Civil Judge J.D. and Judicial  
Magistrate F.C.,

Kinwat.

Date : 06.08.2016.

Order signed by the Presiding Officer on : 06.08.2016.

Order uploaded on 06.08.2016.

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