

KAUK020002022023



ORDERS ON 'B' SUMMARY REPORT

The first informant who is the complainant herein has given a complaint before the jurisdictional Police alleging medical negligence by the accused and the hospital staff and based on the said complaint FIR was registered bearing Crime No.51/2020 for the offence under Section 304(A) of I.P.C. After the investigation the investigation officer has submitted 'B' report in this case.

2. Consequently notice was issued to the complainant and the complainant has put in appearance through his counsel and filed protest petition to the 'B' report.

3. Heard counsel for the complainant on the 'B' report.

4. On perusal of the contention taken in the 'B' report it discloses that the complaint was given by the first informant who is husband of deceased Geeta Banavali alleging that his wife Geeta Banavali was admitted to the District hospital, Karwar for tubectomy operation. He has alleged that on 31-08-2020 at 08-20 P.M. a girl

child was born by normal delivery and according to the advice of the doctor, she was treated at government hospital, Karwar and since they had decided to under go family planing his wife intended to under go Tubectomy Surgery, his wife was admitted on 03-09-2020 and was taken to the operation theater at about 11-30 a.m., however subsequently at about 02-00 P.M. the accused intimated that the surgery has been conducted, however the chances of her surviving is less and later at 03-30 P.M. his wife died in the hospital. It is alleged that the his wife was hale and healthy and due to the negligence of the doctor at the time of conducting surgery she died and hence gave a complaint against the accused and the medical staff. Based on the said complaint FIR was registered and investigation was carried out and after completion of investigation the police have submitted 'B' report on the following grounds:

5. It is submitted that the postmortem report of Geetha Banavali was obtained and as per the report of the postmortem it is mentioned that the death has taken place due to respiratory failure as a result of pulmonary alveolar haemorrhage and later the investigation officer has requested the forensic opinion at Victoria, Bouring and Lady Curzan Hospital, Bengaluru, Medical University and Research Center to give a

medical opinion as to the cause of death and on 05-07-2022 they have received report stating that the death is due to "respiratory failure as a result of pulmonary alveolar haemorrhage, the cause for the same cannot be determined". The Deputy Commissioner, Karwar, has also formed a medical board and called the Chief Executive Officer, Jilla Panchayat, Uttara Kannada to form a board consisting of four officers and to give opinion about the cause for the death. However no complaint or report has been received from the medical board. In addition to the said grounds the investigation officer has filed 'B' report relying on the guidelines and observations made by the Hon'ble Apex Court in Dr. B.C.Jain V/s Moulana Saleem on 28-02-2017 and since there is no report obtained from the medical board and since there is necessity to comply with the said guidelines, the investigation officer has submitted 'B' report.

6. On perusal of the 'B' report and the grounds urged in the 'B' report, it discloses that there is already medical board formed under the direction of the Deputy Commissioner, Karwar, however no report or complaint has been received till date. In addition on perusal of the observation made in the judgment in Dr. B.C.Jain V/s Moulana Saleem, it is observed as follows:

VI. "If a complaint case been preferred under Section 200 Cr.P.C. there shall be no order under Section 156(3) Cr.P.C. unless the complaint is accompanied by the report of the Medical Board adverted to in guideline I with prime facie finding of Gross Negligence on the part of the Doctor. However, if the complaint is not accompanied with a report of Medical Board, the Court may ask the Police to enquire into the case under Section 202 Cr.P.C. The police, if so directed by the Court, shall approach the Dean of the Medical Collage, for the constitution of Medical Board and thereafter place the report of the Medical Board before the Court concerned.

VII. If the opinion of the Medical Board is one of Gross Negligence on the part of the Doctor. The Court concerned shall direct the police to seek sanction under Section 197 Cr.P.C from the State Governments The State Government shall, within thirty days from the date of such request for sanction, either grant or refuse the same, Which the police shall Conway to the Court concerned. Thereafter, the Court concerned shall either dismiss the complaint case against the Doctor by

exercising jurisdiction under Section 203 Cr.P.C. or issue process under Section 204 Cr.P.C. and try the case in accordance in law".

7. Perused the said observations. There is a necessity to obtain the medical report and to obtain sanction to take cognizance of the alleged offence. In view of the guidelines and observation made in the aforesaid judgment, I proceed to pass the following

ORDER

The 'B' report filed by the investigation officer is rejected.

Refer the matter to the P.I., KTPS to enquire into the case under Section 202 of CR.P.C. and to approach the Dean of the Medial College for constitution Medical Board and to obtained the report of the Medical Board and place the same before the Court.

Call on

**Chief Judicial Magistrate,
Karwar.**