

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

Criminal Writ Petition No. 144 of 2015

Sambhaji s/o Madhavrao Inglewad. .. **Petitioner.**

Versus

The State of Maharashtra
And Others.

.. **Respondents.**

Shri. Santosh B. Gastgar, Advocate, for petitioner.
Shri. K.M. Suryawanshi, Additional Public Prosecutor, for
respondent Nos1,2,3,5 and 6.

**CORAM: T.V. NALAWADE &
Smt. I.K. JAIN, JJ.**

DATE : 25th MARCH 2015

ORDER:

1) The petition is filed to direct respondent No.1 to hand over investigation of Crime No.119/2014 to other competent officer who is not below the rank of the Superintendent of Police and who is from the district other than Nanded. At present the investigation is with the competent special investigating officer appointed under the provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act 1989 as crime is registered for offence punishable under section

3(2)(v) etc. of this Act also. The crime was initially registered for offence punishable under section 302, 147, 149 of the Indian Penal Code. But the investigating officer has formed opinion that section 302 IPC cannot be used. Similar opinion is formed with regard to provisions of Section 3(2)(v) of the Act, 1989 cannot be used. Both the sides are heard.

2) The crime was registered on 15-10-2014 on the basis of report given by Sambhaji Inglewad in Police Station Bhokar, District Nanded. There is political rivalry between family of the complainant and the accused persons. The wife of the complainant is the Village Sarpanch. In the elections the panel of Kishor Kadam was defeated. It is contended that at the relevant time the group of the complainant side was in power in the Village Panchayat and due to that the accused were angry with them.

3) It appears that out of political disputes some proceedings were filed which include application given by Kishor Kadam to the Caste Scrutiny Committee against the wife of the complainant who was the Village Sarpanch

and it was to the effect that she did not belong to reserved caste from which she was elected. The caste scrutiny committee invalidated her caste claim.

4) The incident in question took place on 15-10-2014 after 5.15 p.m. The complainant has made allegation that it was a day of polling for the State Legislative Assembly and he was present near the shop of one Sainath Pandarwad which was beyond the limits prescribed by the Election Commission for keeping the election booth safe. He has contended that the accused persons entered the Booth and after some time they came to the aforesaid shop and they started giving abuses to him by taking the name of his caste. He has contended that they started assaulting him by using metal punch also. He has contended that when he collapsed, his father Madhavrao intervened but the accused persons assaulted Madhavrao and due to the assault, Madhavrao died on the spot. Attempt was made to save life of Madhavrao by taking him to Rural Hospital Bhokar but the medical officer declared that Madhavrao was already dead. Report was given on the same day.

5) Post mortem was done on the dead body but the doctor who conducted the post mortem could not give definite opinion about the cause of death. No surface wound was seen on the dead body. Blood was oozing from the nostrils. The organs were referred to expert for histopathology and the expert gave opinion that the death took place due to myocardial infarction with pulmonary delema with emphysema.

6) Thus, there is medical opinion that the death did not take place due to so called assault made on the deceased. In view of these circumstances, the investigating officer had filed application before the Judicial Magistrate First Class for seeking permission to delete section 302, Indian Penal Code and section 3(2)(v) of the Act, 1989.

7) It appears that the learned Judicial Magistrate had refused such permission but subsequently the investigating officer took decision that he will not file charge sheet for these offences. It appears that there is grievance of the complainant against the present investigating officer due to his approach and so aforesaid prayer is made.

8) The material relied upon by the petitioner shows that blood had come from the nostrils of the deceased. This circumstance is considered by the expert. The other material circumstances are also mentioned. In view of these circumstances, this Court holds that it is not possible to interfere in the investigation. There is statutory power to the investigating agency given under sections 41, 154, 170 and 173 of the Code of Criminal Procedure. In the present case changing the investigating officer will be showing that this Court is not trusting the investigating agency even when there is material of aforesaid nature. It can be said on the basis of record that the other side has also grievance that investigating agency was unnecessarily harassing them.

9) In the result, the petition stands dismissed.

Sd/-
(Smt. I.K. JAIN, J.)

Sd/-
(T.V. NALAWADE, J.)

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