

CRIMINAL WRIT PETITION NO.385 OF 2015.

1) The State of Maharashtra & Ors. - RESPONDENTS

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Mr.N.L.Jadhav, Advocate for Petitioner/s
Mrs.A.V.Gondhalekar,APP for State.

**CORAM : R.M.BORDE &
P.R.BORA, JJ.**

DATE : 15th JUNE, 2015.

COURT'S ORDER (PER:- P.R.BORA, J.)

1) The petitioner has filed the present petition, seeking directions against the respondents to re-investigate Crime No.24/2014 registered at Police Station, Amalner, Tq. Patoda, District Beed for the offence punishable under Section 302 of Indian Penal Code.

2) The present petitioner had on 18th May, 2014, filed a complaint at Police Station, Amalner, contending therein that his brother Sominath Vitthal Ghorpade has been murdered by some unknown person/s by smashing his head with the stone. On report of

the present petitioner, an offence was registered vide Crime No.24/2014 for the offence punishable under Section 302 of IPC at the aforesaid police station and investigation was set in motion.

3) In the present petition, it is the case of the petitioner that the investigation has not been properly conducted and intentionally some lapses are kept in the investigation with intent to save the accused from punishment. It is the further contention of the petitioner that though from the report of post mortem examination, it is revealed that stab injuries were noticed on person of deceased Sominath, which can only be caused by a sharp weapon like a knife, the police has not made any attempt to recover the said weapon, i.e. knife used in commission of the offence. It is the further contention of the petitioner that call details in respect of phone calls made by the accused – Malhari Vishwanath Bedre have also not been collected by the Investigating officer, without which the charges levelled against the accused may not be proved and in the circumstances, the petitioner has prayed for re-investigation in the crime and has also sought an

inquiry against Respondent No.4, who has carried out investigation in the aforesaid crime.

4) Mr.N.L.Jadhav, learned Counsel, appearing for the petitioner, submitted that the lapses in the investigation committed by Respondent No.4 in Crime No.24/2014, are apparent on the face of the record. Learned Counsel submitted that the Investigating Officer ought to have exerted for recovery of the knife and also must have collected the call details and other particulars in respect of phone calls made from the Mobile of Malhari Vishwanath Bedre, who has been impleaded as accused in the case. Learned Counsel further submitted that since the Police has not made any attempt on both the aforesaid aspects, the accused are not likely to be punished in the absence of cogent and sufficient evidence against them. In the circumstances, according to learned counsel, this is a fit case, wherein re-investigation is imperative and he, therefore, prayer for allowing the petition by directing the Respondents for re-investigation in Crime No. 24/2014.

5) Shri Pankaj Suryaprakash Udawant, presently

working as Assistant Police Inspector at Amalner Police Station, Amalner, Tq. Patoda, District Beed, has filed an affidavit in the matter and has opposed the contentions raised in the petition as well as the prayers made therein.

6) Learned APP Mrs. Gondhalekar submitted that the investigation has been properly conducted and all possible evidence has been collected by the prosecution agency and based on such evidence, charge sheet has also been filed, pursuant to which, Sessions Case has been registered against the accused therein. Learned APP, therefore, prayed for dismissal of the petition.

7) We have carefully considered the submissions advanced on behalf of the petitioner as well as on behalf of the respondents. From the material on record, it is quite evident that the present petitioner had on 18th May, 2014 filed the complaint against unknown person/s. It was the case of the present petitioner that some unknown person/s had smashed head of deceased Sominath Vitthal Ghorpade by stone and murdered him. It was during the course of

investigation that name of Malhari Vishwanath Bedre surfaced to be the person lastly seen with deceased Sominath and accordingly, said Malhari Bedre came to be arrested and impleaded as accused in the present crime. From the material on record, it is further revealed that the Investigating Officer has recorded the statements of necessary witnesses, out of which, two persons have candidly stated about the deceased lastly seen with accused Malhari Vishwanath Bedre. The record further reveals that the accused Malhari Bedre, while in custody of the police, has given his statement and in pursuance of the said statement, the stone, alleged to have been used for making assault on deceased Sominath, has been recovered and seized.

8) As held by the Hon'ble Apex court in the case of Vinay Tyagi Vs. Irshad Ali - (2013) 5 SCC 762, the power to direct fresh/de novo/reinvestigation is of wide plenitude and, therefore, has to be exercised sparingly. The principle of the rarest of rare cases would squarely apply to such cases. Unless the unfairness of the investigation is such that it pricks the judicial conscience of the court, the court should be

reluctant to interfere in such matters to the extent of quashing an investigation and directing a "fresh investigation. In the present matter, we are not convinced from the points which are raised by the petitioner that any such inference can be drawn that the investigation has been conducted in unfair manner or is tainted with malafide.

9) After having gone through the entire record, it does not appear that any intentional error has been committed by the Investigating Officer in carrying out the investigation of the crime. In the say filed by Respondent No.4, it has been categorically stated that mobile call details are tried to be secured and correspondence in that regard has already been made and the moment they are received, the same will be produced before the learned Sessions Court. From the facts which have come on record, it does not appear to us that the petitioner has made out any case for directing re-investigation in the crime in question. Even otherwise, as held by the Hon'ble Apex court, re-investigation is to be directed in rarest of rare cases, where evidently it appears that the

Investigating Officer has intentionally did not collect necessary evidence, which was possible for him to collect, during the course of investigation. Secondly, in many cases, weapon used in commission of offence is not recovered, however, that does not mean that on that count alone, the accused will be acquitted, if there is other cogent evidence, showing complicity of the accused in the commission of the alleged crime. We thus do not find any merit in the petition so filed. Hence, following order,-

ORDER

The Writ Petition is rejected.

sd/-
(P.R.BORA)
JUDGE

sd/-
(R.M.BORDE)
JUDGE

bdv/

fldr. 12.6.15