

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

CRIMINAL WRIT PETITION No. 901 OF 2015

Smt. Ranjana wd/o Gulab Gaikwad,
Age 35 Yrs., Occu. Labor,
R/o. At Present Mali Pimpalgaon,
Tq. & Dist. Ahmednagar

PETITIONER

VERSUS

- 1] The State of Maharashtra,
Through Its Secretary,
Home Department,
Mumbai.
- 2] The Police Officer,
Newasa Police Station,
Newasa, Dist. Ahmednagar
- 3] The Superintendent of Police,
S.P.office, Ahmednagar
[Copy of the Res.No.1 to 4 through
P.P.High Court,Bench at Aurangabad]

RESPONDENTS

...
Mr. A.M.Gholap, Advocate for the Petitioner
Mr. A.V.Deshmukh, APP for the Respondent/State
...

**CORAM : S.S. SHINDE &
A.M.BADAR, JJ.**
Date of Order : 27.08.2015

ORDER: [Per S.S.Shinde, J.]

- 1] This Criminal Writ Petition is filed seeking
direction to the Respondent No.1 – State to hold necessary
investigation through any other investigation agency, and

to take necessary steps in order to remove hurdles in completing the investigation in Crime No. I-288/2014 registered with Newasa Police Station in the matter of death of the petitioner's husband reported vide A.D.No. 48/2013, and also seeking direction to arrange for the just and fair compensation to the family of the deceased Gulab consisting of wife, minor son, and two minor daughters.

The brief facts as disclosed in the memo of the Petition for filing Writ Petition, in brief, are as under:

2] It is the case of the petitioner that, in the year 2013, family of the petitioner was doing labour work in the agricultural field of one Mr.Wakle at Mali Chinchora, Taluka Newasa, District Ahmednagar for earning their livelihood. On 18.06.2013, there was quarrel took place in between petitioner's husband [Gulab] and Bhausahab Mohan Shende, Nanda Bhausahab Shende, Ganesh Bhausahab Shende, Ramesh Bhausahab Shende, Raju Laxman Shende, Nitin Kashinath Shende, Pravin Kashinath Shende, Laxman Murlidhar Shende over the issue of spreading Murum [minor mineral] in the fields, due to which threat of causing death was administered to petitioner's husband by the above stated persons.

3] It is the further case of the petitioner that, on 21.06.2013, petitioner's husband Gulab [deceased] proceeded to the aforesaid fields by Tractor at about 9.00 a.m. for doing his labour work. After some time, petitioner's mother-in-law [Tarabai], who happens to be the maternal Aunt of Gulab [deceased] went to the aforesaid fields and found that, though the Tractor was standing there near the well but Gulab was not traceable. At that relevant time, Tarabai had seen Bhausahab Shende, Nanda Shende, Ganesh Shende, and Ramesh Shende passing closer to the Tractor and well. Therefore, she looked for him around and then looked into the well and found that, the body of the Gulab was laying at the bottom of the well. Then she cried for help and called the owner of fields Mr.Wakle. Then the incident was reported to the Police by Mr.Wakle, upon receipt of which, Police of Newasa Police Station registered A.D.No.48/2013 on 21.06.2013 and carried the Spot Inspection, Spot Panchanama, Inquest Panchanama and had also sent the body of Gulab for post-mortem and got the post-mortem notes on 21.06.2013 itself.

4] In view of the quarrel which had taken place

few days back, the state of the body of deceased and the P.M. notes, it is certain that the deceased Gulab had not died natural death, but as on today also, petitioner believes that, her husband has died homicidal death, and it is not a suicidal death nor he died due to injuries sustained accidentally on 21.06.2013. The petitioner today also believes that, her husband, who has died homicidal death, which is a murder committed by Bhausahab Mohan Shende, Nanda Bhausahab Shende, Ganesh Bhausahab Shende, Ramesh Bhausahab Shende, Raju Laxman Shende, Nitin Kashinath Shende, Pravin Kashinath Shende, Laxman Murlidhar Shende, Satish Ramdas Shende by conspiring together.

5] It is the further case of the petitioner that, petitioner is an illiterate, and thus, she is unable to write and read. In the aforesaid premises, the Police of Newasa Police Station made no effort to nab down the culprits, despite oral information given by the petitioner about murder, on the contrary, they acted in objectionable manner to hide the offenders. They have not investigated the cause of injuries on the body of deceased Gulab, and whenever the petitioner made grievance about nabbing

down the culprits, they tried to impress the petitioner by saying that, it is a accidental death and they have completed the investigation and submitted their report dated 27.07.2013 and now nothing can be done. The petitioner now believes that, the Police were knowing the cause of injuries sustained by the deceased Gulab was homicidal, however, they allowed to disappear the evidence and/or to decay. Even they dared to stereographic type statements of the witnesses and to sum up the case as if the death of Gulab is accidental.

6] In the aforesaid premises, the petitioner learnt that, the Sub Divisional Officer, Nagar Division, Ahmednagar upon receipt of the report dated 27.07.2013 issued by the Newasa Police Station and also upon receipt of the report of the Sub Divisional Police Officer, Shevgaon dated 20.10.2013, issued a proclamation dated 15.01.2014 and invited objections in respect of making of the declaration of accidental death of deceased [Gulab]. The petitioner was served with the above stated proclamation along with covering letter, and vide her objection dated 28.01.2014, she objected for proposed deceleration. On 03.04.2014, the Police of Newasa Police Station had been to

the house of the petitioner and inquired about the version of the petitioner about cause of injuries sustained by the deceased Gulab, and then the petitioner narrated her version, which was reduced by the Police of Newasa Police Station with some deletion as compared to her objection dated 28.01.2014.

7] It is the further case of the petitioner that, the Police of Newasa Police Station have also recorded statements of Hirabai, Tarabai from the side of the petitioner and have also recorded the statements of the persons on whom the petitioner has made allegations. Thereafter, till 23.06.2014, the Police have not registered the offence under Section 302 of IP Code against the persons named in the objection dated 28.01.2014, despite receipt of the information about commission of cognizable crime punishable under Section 302 of IP Code in respect of cause of death of deceased husband of petitioner i.e. Gulab. Therefore, on 23.06.2014, the petitioner issued a representation to the respondent No.1 which was served but the respondent had not taken any prompt steps to interrogate the offenders.

8] Therefore, on 17.07.2014, the petitioner presented Criminal Writ Petition No.817/2014. The High Court took cognizance, and vide order dated 05.11.2014 directed the Superintendent of Police to remain present on 21.11.2014. It is only in the above circumstance, the respondent No.2 on 13.11.2014 registered the Crime No.I-288/2014 for the offence under Section 302, 201 r/w. 34 of IP Code against 9 persons in respect of the homicidal death of the husband of the petitioner.

9] The learned counsel appearing for the petitioner made following submissions:

The respondent - Police Authority firstly delayed lodging the FIR, and thus allowed to disappear the evidence and/or to decay of its own and also facilitated the accused persons to disappear the evidence and thus applied Section 201 of the IP Code. It is further submitted that, the petitioner believes that, the Police of Newasa Police Station were knowing the availability of the evidence against the accused, and therefore, applied Section 201 against the persons named in the FIR at Exhibit-F. It is further

submitted that, the Police have not disclosed which specific evidence is made to disappear so as to facilitate discharge and / or acquittal of the accused for the said offence. In other word, the Police have attempted to create line of defence in their favour in view of the delayed registration of the offence, otherwise it makes no sense in applying Section 201 of IP Code. As is transpiring from the above referred material, the A.D. bearing No.48/2013 was registered on 21.08.2013 and Crime No.I-288/2014 was registered on 13.11.2014 i.e. almost after delay of 1 year and 02 months, and thus the Police deliberately allowed to disappear the evidence and thus the cause of injuries sustained by the deceased remained a mystery and the offenders are now moving in the society as they secured the bail, however, the Police have still not filed the charge sheet.

10] It is submitted that, there was no eye witness within the knowledge of the petitioner about cause of death of the deceased Gulab. However, the mother-in-law of the petitioner has stated that, she has seen the accused passing through the spot of incident just before the discovery of the body of the deceased Gulab. Thus, the

case was of circumstantial nature and now it is transpiring that, the Police have deliberately failed to complete the chain of incidence which will lead to irresistible conclusion that, the accused have committed the offence alleged against them. In order to achieve the object of screening the accused, the Police have given admission before the trial Court to the effect that there is no evidence with them against the accused. Such admission is contained in an application filed by the Police before the trial Court at Newasa dated 02.03.2015, which has resulted in rejection and it was inevitable in the circumstances. The petitioner believes that, application filed by Respondent No.2, copy of which is annexed herein above, is also an farce according to the petitioner. Even the order dtd.30.03.2015, rejecting the same, is not challenged by the respondent No.2.

11] It is further submitted that, since inception the Police were not interested in registering the FIR, despite receipt of the information about commission of cognizable offence by accused persons which has attracted under section 302 of the IP Code. The Police have registered the Crime No.288/2014 only to avoid the inconvenient position before the High Court and also to secure the acquittal

and/or even discharge of the accused. It is further submitted that, there is complete failure in completing the duty cast on the respondent to investigate the cause of injuries sustained by the deceased husband of the petitioner. There is complete failure to hold proper investigation in order to find clues and to collect disappeared evidence and to record the statement, accordingly, the Investigation Officer failed to complete the investigation. The Police have not taken effective steps though they have applied Section 201 of the IP Code against the accused. The Police have, at first instance, deliberately not collected the evidence; *secondly*, they allowed to disappear the evidence and to decay and without any concrete material with them, applied Section 201 of IP Code to secure the acquittal.

12] The petitioner, therefore, believes that, by creating and by keeping loop holes in investigation, the Police of Newasa Police Station have failed to discharge their duty to investigate the commission of cognizable offence reported to them by the petitioner. This conduct of Newasa Police Station results into failure of Respondent No.1 / State to administer the justice to its citizens like

petitioner. It is a blot on the welfare State like respondent No.1. Therefore, the respondent No.1 on its own ought to have handed over the investigation of Crime No.288/2014 registered with Newasa Police Station to its any other independent investigation agency as the circumstances warrants the same, however, the respondent No.1 has so far failed to take remedial steps. The prosecution has applied Section 201 of the IP Code, which also means without substantiating that, the evidence sufficient to prove the charge under Section 302 of IP Code, is not with the prosecution. All the above acts of the prosecution, leading the petitioner to believe that, no justice will be done at the hands of respondent to the family of the deceased Gulab.

13] It is further submitted that, due to homicidal death of Gulab, the family of Gulab has lost their shelter, source of income, social security, love and affection i.e. almost everything. Thus, the petitioner and other family members of the deceased Gulab, which were dependent on the deceased Gulab, are entitled for compensation from the offenders and it is due to the laxity shown by the respondent, they are kept away from the justice and made to suffer irreparably, and therefore, in the above

circumstances, it is the duty and responsibility of the respondent State to remove the irreparable loss caused to the family of the deceased Gulab. It is the duty of the State to find the cause of injuries sustained by the deceased Gulab, however, the State has failed to discharge its duty as they have not made proper investigation, and therefore, the State is required to be saddled with cost for faulty investigation and laxity shown to the accused, which facilitated the evidence to disappear or to decay, and it further resulted in dead lock situation in investigation.

14] The learned APP appearing for the Respondent – State relying upon the averments in the affidavit-in-reply and investigation papers submits that, the investigation has been properly done. The statements of various persons have been recorded. Even the accused persons are interrogated, and the Investigating Officer did apply for conducting narco test of the accused persons. Therefore, he submits that, the Petition may be rejected.

15] We have heard the learned counsel appearing for the Petitioner, and the learned APP appearing for the

Respondent-State. With their able assistance, perused the pleadings in the Petition and annexure thereto, affidavit-in-reply filed by the Investigating Officer, and the investigation papers made available for our perusal.

16] Upon careful perusal of the investigation papers, it appears that, the crime was registered, and the statements of as many as 13 witnesses have been recorded. It further appears that, even the accused persons have been interrogated. The medical evidence collected by the Investigation Officer, *prima facie*, discloses that, the death is accidental. It further appears that, the Investigating Officer has applied for conducting narco analysis test of all 9 accused. The said application was heard by the concerned Court, and the same is rejected. It is needless to observe that, the Investigating Officer may take appropriate steps so as to take exception to the order passed by this Court, rejecting the application for narco analysis test.

17] Upon perusal of the investigation papers, we are of the opinion that, the investigation is being done

properly in accordance with law. Investigation is the exclusive domain of Investigation Officer as long as said investigation is in accordance with law. As already observed, we find that, the investigation is being conducted in proper manner, and also the same is in accordance with law, and therefore, we do not see any reason to interfere in the said investigation or to accept the prayer of the petitioner to transfer the investigation to some other agency.

18] So far prayer of the petitioner to arrange for just and fair compensation to the family of the deceased Gulab consisting of wife, minor son and two minor daughters are concerned, the said prayer can be pressed into service at appropriate time, if occasion arises in future, and this Court has not expressed any opinion on merits about the said prayer. Though, we are not inclined to entertain this Petition, the Investigating Officer is not precluded from carrying further investigation, if it is necessary, and the petitioner is also not precluded from approaching the Investigation Officer or the Superior Authority for redressal of her grievance.

19] In the light of the discussion in the foregoing paragraphs, Writ Petition stands rejected.

Sd/-
[A.M.BADAR, J.]

Sd/-
[S.S. SHINDE, J.]

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