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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.4630 OF 2013

Shri. Prakash Shankar Shinde,
Age 54 years, Occ. Labour,
RF/o. Girija Shankar Tiwari Chawl No. 1,
Room No. 9, T.J. Road, Shiwadi,
Mumbai 400 015.

..Petitioner.

V/s.

1. State of Maharashtra,
through the Secretary of Home
Department, Mantralaya,
Mumbai
2. The Inspector General of Police,
Maharashtra State, Mumbai.
3. The Superintendent of Police,
Pune District, Having office at
Pune Police Headquarter, Pune.
4. The Superintendent of C.I.D.
Having office at Shivajinagar,
Pune, Dist. Pune.
5. The Senior Police Inspector of
Lonawala City Police Station,
Loawala, Dist. Pune.
6. The Police Sub Insepctor (I.O.)
of C.R. No. 85 of 2013 of
Lonawala City Police Station,
Lonawala, Dist. Pune.
7. Manoranjan Rajkishor Prasad,
Age 51 years, Occ. Service,
R/o. N.T.P.C. Super Power Thermal Power
Project, Bad, B.H.E.L. (Bhel),
Room No. 22, Bhel Nest, Tahslaband,
Dist. Patna, State Bihar.

...Respondents

Mr. R.V. Bansode for the petitioner.
Mr. K.V. Saste, A.P.P. For the State.

**CORAM : RANJIT MORE AND
V.L.ACHLIYA, JJ.
DATED : 10th DECEMBER, 2015**

P.C. (Per V.L. Achliya,J.) :-

This petition is filed under Article 226 of the Constitution of India seeking transfer of investigation of C.R. No.85 of 2013 registered with Lonavala City Police Station District Pune to CBI or CID for the reasons mentioned in detail in the petition. The petitioner has also prayed for issuance of direction as against the respondent nos. 1 to 6 to add sections 302 and 120B of Indian Penal Code in the investigation of CR No. 85 of 2013.

2. We have heard the learned counsel for the petitioner and the learned A.P.P. representing respondent nos.1 to 6. We have also perused the case diary in respect of the investigation conducted in the matter by police officials from Lonavala police Station. We have also perused the affidavit filed on 27th July, 2015 by Inayatullah N. Kazi, Police Sub Inspector attached to Lonavala City Police Station pursuant to the order dated 20.08.2014 passed by this Court (Coram V.M. Kanade and P.D. Kode, JJ).

3. On due consideration of the submissions advanced in the light of the record and proceedings and more particularly the papers of the investigation produced for our perusal, we are of the considered opinion that this is a case of gross failure on the part of

the investigating officer to conduct the fair and proper investigation in the subject crime. It is apparent from the face of the record that the son of the petitioner namely Prashant (hereinafter referred to as "deceased") was proceeding in Indigo Car bearing registration No. MH 04 ES 5080 as driver on 30.6.2013 from Sahara City Lonavala and proceedings towards Mumbai along with one passenger Manoranjan Rajkishore Prasad, officer working in Bharat Heavy Electricals Limited (BHEL). Around 6.30 a.m. while the deceased was driving the said Indigo car and passing in front of Air Force Station and proceeding from Sahara to Loavala one black colour car came behind and gave dash on the rear side of Indigo car driven by the deceased. After the dash the deceased taken his car to the side of the road and came out of the vehicle. At the relevant time the said passenger Manoranjan Prasad was very much present at the spot and he was sitting in the car. Since the driver of the car has not come back, the said passenger came out of the Indigo car and at that time he saw one black colour car proceeding towards Lonavala. One person standing by the side of the road told him that the driver of his car was run over by black colour car and stuck up in front side of that black car which was proceeding towards Lonavala. He saw the black colour car proceeding towards Lonavala and body of driver was dragged by that car. He informed the accident to the agency from where he had hired said car.

4. The deceased was found lying totally in naked and injured

condition by one Kuldeep Dinesh Yadav, a tourist passing by the road. The deceased was found to be lying on the roadside in front of INS Shivaji, the Establishment of Military. He was in a position to speak. The injured has disclosed his name as Prashant Prakash Shinde, resident of Shivdi, Mumbai and further requested to inform his father. Accordingly he dialed the number given by the injured and informed his father about the incident. He also got injured shifted in the INS Shivaji, Kasturi Hospital, Lonavala. It is apparent from the papers of the investigation that the police officials from Lonavala police station visited INS Shivaji and then shifted the injured Prashant to Hospital in Lonavala. Thereafter, injured was shifted to Mumbai where he was declared dead. The witness Kuldeep has stated in his statement that he saw the injured at around 7.00 a.m. He has further stated that as the injured was in naked condition, he removed his T shirt and put it over the private part of the injured and also covered the entire body of the injured with the scarf (Odhani) of his wife.

5. Thus it is apparent from the papers of the investigation that the deceased was very much alive when he was shifted to INS Shivaji Hospital at Lonavala and latter on shifted to another Hospital in Lonavala. No attempt has been made by the police to record the statement of the deceased. As per the post mortem report, number of injuries were found on the body of the deceased which include crush injury over the leg of size 20 x 20 cm exposing

muscles and bones, crush injury lateral left thigh 4 x 2 cm exposing muscles. Besides this autopsy Surgeon has noticed fracture of Femur and tibia, fibula. Abrasion on right occipital region of size 3x3 cm and abrasion on left parietal region of size 4 x 4 cm. There was fracture of ribs no. 3rd, 4th, 5th, 6th and 7th of right was noticed during the post mortem. The cause of death was found to be due to haemorrhage and shock due to multiple injuries. The report as to cause of death was available with the police on 30th June, 2015 i.e. the date on which the incident was occurred. However, no FIR registered by the police personnel. They have simply registered the case of accidental death.

6. It transpires from the record that on 25th July, 2013, FIR was registered. Prior to that one police Naik Kardile was conducting the inquiry into the matter to ascertain the cause of death death of deceased. Considerable time has been lost in conducting the inquiry by registering the death of the deceased as an accidental death though it was clear cutcase of homicidal death. It is important to note that the statement of passenger in the car i.e. Manoranjan was recorded on 23rd July, 2013. The statement of another person Kuldip Yadav who has first time found the injured on the road in naked condition was recorded on 28th July, 2013.

7. On perusal of the case papers, it reveals that one mobile

was found inside the Indigo car. No proper inquiry was conducted in respect of the mobile found in the car. No attempt has been made to make enquiry with the officials of Sahara City Ambi Valley from where the deceased Prashant proceeded with the passenger. No enquiry was made with the Officers of the Sahara City Ambi Valley of the persons stayed in the night on 30.6.2013 as well as cars entered and left the Sahara Ambi Valley on 30.6.2013 and more particularly the black colour car. No immediate attempts were made to procure the CC TV footage from Sahara City Ambi Valley of the vehicles entered into the premises as well as vehicles entered and exited from the premises from entrance and exit gates of Sahara City. Similarly, no sincere efforts were made within time to seize the entry register recording the entry and exit of the vehicles from Sahara City Ambi Valley. So also no enquiry was made during the course of entire investigation with the officers and the persons working in Sahara City Ambi Valley about the black colour car. The role of the passenger who was travelling in the vehicle and whose statement recorded on 23rd July, 2013 appears to be suspicious as it is difficult to believe when the incident was occurred in the day light i.e. around 6.30 to 7.00 a.m., and he was sitting on the rear seat of the Indigo car still he had seen nothing. The conduct of the passenger not to report the incident to police is the another suspicious circumstance. The explanation put forth by the person whose mobile found in the Indigo car is also not beyond suspicion.

There is no explanation as such as to why statement of the injured was not recorded though he was very much alive and in position to speak.

8. Perusal of the case papers reveal that after the transfer of Shri. Deshmukh, PSI who was conducting the investigation, practically no further investigation has been conducted from the month of September, 2015 onwards. Mr. Inayatulla Kazi, PSI Lonavala who has taken over the investigation after the transfer of PSI Deshmukh has simply filed "A" summary report in the month of February, 2014. The record reveals that he has not carried forward the investigation to take it to its logical end.

9. It is very surprising to note that according to the prosecution after the vehicle driven by the deceased was given dash from the rear side, the deceased came out of the car and parked his car by the side of the road so as to stop the vehicle who gave dash to his car. Thereafter the black colour car which gave dash to car of deceased, over run the deceased driver and dragged him to long distance. The incident occurred at around 6.30 am on 30.6.2013. One Kuldeep Yadav who first time noticed the deceased lying in the injured condition near INS Shivaji Gate found the deceased driver in injured condition at around 7.00 a.m. He saw the deceased lying in injured condition on the road in

completely naked condition. He removed his T shirt and put over the private part of the injured and also covered his body with the help of scarf (Odhani) of his wife. This raises a strong suspicion as to entire investigation conducted. If the deceased was over run by the car and dragged by the car then how all the cloths of the deceased including the under garments found to be removed from body of deceased driver. In this context, it is very interesting to note the explanation offered by the PSI Inayatullah, the Investigating Officer in his affidavit. In paragraph 19 he has mentioned as under :

“19. I say that after going through the inquest panchanama, it revealed that there are scratches on the entire body of the deceased Prashant and various part of skin was torn. Therefore, there is possibility of removing of clothes, while the said deceased was dragged by the black colour car and on the relevant date, time and place there was season of heavy rain at Lonawala and due to rain water, separated clothes from the body might have flowed away from the spot. Therefore, there is no substance to say that since the body is found in necked position, somebody is committed murder of deceased Prashant Shinde.”

10. We are not inclined to accept this explanation. The explanation offered is neither plausible nor satisfy our conscious.

11. Having considered over all facts of the case, we are of the considered opinion that this is a case of most unfair, improper and negligent conduct of the investigation. The case diary produced before us nowhere finds remarks of senior officers that

they had seen the case papers, supervised the investigation and issued appropriate directions for proper conduct of the investigation. Because of the delay in registration of the offence and collecting of the vital evidence, already great damage has been caused in the matter. Looking to over all facts of the case, the suspicious circumstances in which the deceased was found on road in naked condition with multiple injuries and we are of the considered opinion that the request of the petitioner to transfer the investigation to state CID deserves to be accepted. We are therefore, inclined to allow the petition to the extent of transfer of investigation to the State CID. Accordingly we direct the respondent no. 1 and 2 to withdraw the investigation of C.R. No. 85 of 2013 registered with Lonavala City Police Station, District Pune dated 25th July, 2013 from local police station Lonavala and transfer the case for investigation to State CID. It is further directed that the Investigating Officer from Lonavala City Police Station shall hand over all the papers of the subject FIR to the State CID Office at Pune within one week from the date of receipt of this order.

12. Accordingly, the petition is disposed of in above terms.

(V.L.ACHLIYA,J.)

(RANJIT MORE,J.)