

THE HON'BLE SRI JUSTICE A.V. SESA SAI

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WRIT PETITION No.16279 OF 2015
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ORDER:

This writ petition is filed under Article 226 of the Constitution of India for the following relief:

“to issue a Writ, Order or Direction more particularly one in the nature of Writ of Mandamus declaring the inaction of the respondents in sending the Article I, II and III i.e., Suicide note and undisputed hand writing of the deceased Smt. Nagma to hand writing expert in any other Forensic Lab in India and non-consideration of the report/opinion of Truth Labs, Hyderabad vide File No.TLH/QD/053/15, dated 03.03.2015 as arbitrary and illegal and violative of u/s 174 Cr.P.C. and Article 14 and 21 of the Constitution of India consequently direct the respondents either to send the Article I, II and III to hand writing expert in any other Forensic Lab in India or to consider the report/opinion of Truth Labs vide File No. TLH/QD/053/15, dated 03.03.2015 or to pass such any other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.”

2. Heard Sri B.H.R.Chowdary, learned counsel for the petitioner and learned Government Pleader for Home for the respondents.
3. The petitioner herein is accused No.1 in Crime No.158/2012, registered for the offences under sections 302, 304-B, 201 read with 34 IPC. The police filed charge sheet on 30.03.2015 and the same is numbered as SC.No.139/2015 on the file of VII Additional District Judge, Bodhan, Nizamabad District.
4. According to the petitioner, the opinion of the expert is very much essential for the purpose of adjudication of the case in a just and fair manner.
5. The learned Government pleader has placed on record the written instructions dated 20.07.2015 furnished by the Sub-Inspector of Police, Bodhan Police Station, Nizamabad District. In the said instructions, it is stated as follows:

“ It is submitted that, one Syeeda Begum had lodged a complaint on 06.08.2012 with the Station House Officer, Bodhan Police Station, Nizamabad District stating that, she performed the marriage of her daughter by name Nagma with the petitioner herein on 07.08.2008. After the marriage her husband and family members were harassed mentally and physically for additional dowry. On 05.08.2012 one Md. Zaheer telephoned to her that her daughter Nagma died. And on enquiry she was told that the petitioner and his family killed her daughter for want of additional dowry. The complainant requested the police to take necessary action.

It is submitted that, basing on the said complaint a case in Cr.No.158/2012, dated 06.08.2012, u/s.304-B IPC (added Sec.302, 304-B, 201 r/w 34 IPC) was registered against 1) Lateefuddin/petitioner, 2) Ahmedi Begum, 3) Shameem Begum, 4) Md. Abdul Razzakh, 5) Md. Azeemuddin, 6) Md. Zheruddin, 7) Aneesunnisa Begum, 8) Sabiya Begum and 9) Shaik Imran on the file of Bodhan Police Station, Nizamabad District and investigation was taken up by the Sub Divisional Police Officer, Bodhan.

It is submitted that the Team of Doctors issued Post Mortem Examination report as “death due to mechanical asphyxia due to strangulation”.

It is submitted that, while the investigation was under progress the Md.Zaheeruddin/A-6 sent a copy of the suicide note alleged to have been written by the deceased. It is submitted that the investigating officer sent Article I, II and III sent to Forensic Science Laboratory, Hyderabad through Judicial First Class Magistrate, Bodhan. But the Forensic Science Laboratory, Hyderabad, returned the said articles stating that no one is conversant with the Urdu language so the document herewith returned.

Again the same articles were sent to Central Forensic Laboratory, Hyderabad, through Judicial First Class Magistrate, Bodhan, the same was also returned stating that no expert in this laboratory is acquainted with the Urdu Script.

Further on 03.03.2015, the investigating officer re-examined Lws-1, 2 and 12 i.e., mother of deceased, elder sister of deceased and Urdu hand writing learner to the deceased who can identify the Urdu hand writing of the deceased and own them the suicide note of the deceased (pretext to be written by the deceased) and asked to identify

whether the hand writing is belongs to the deceased or not. The witnesses stated that Urdu hand writing of the deceased cannot be tallied with the suicide note.

As per the evidence prima-facie case was established against A-1/Md.Lateefuddin, U/sec.302, 304-B, 201 r/w 34 IPC and A-2 to A-6 established U/s.304-B, 201 r/w.34IPC. The case was charged sheeted on 30.03.2015 vide PRC No.05/2015.

It is submitted that as stated above that the Team of Doctors issued Post Mortem Examination report as “death due to mechanical asphyxia due to strangulation”. Hence the question of obtaining expert opinion of suicide note is not required.”

6. Reiterating the said instructions, it is submitted by the learned Government Pleader for Home that since charge sheet is already filed before the court of the VII Additional District Judge, vide SC.No.139/2015, it is the option for the petitioner herein to file appropriate application before the said court under Section 45 of the evidence Act.

7. This court is of the considered opinion that there is force in the said submission of the learned Government Pleader. On the otherhand, it is submitted by the learned counsel for petitioner that this court has also the power to direct the police to send for opinion of the expert. When alternative and efficacious remedies are available, this court is not inclined to consider the request and deems it appropriate to keep it open to the petitioner herein to approach the court below with appropriate application.

7. For the aforesaid reasons, writ petition is disposed of, leaving it open to the petitioner herein to file appropriate application before the court of VII Additional District Judge, Bodhan, Nizamabad District, for the relief which is now being sought in the present writ petition, in SC.No.139/2015, within a period of two weeks from the date of receipt of this order. If any such application is filed, the court below shall pass appropriate orders on the same as per law, as expeditiously as possible. It is also made clear that till such exercise is completed, the

court of VII Additional District Judge, Bodhan, Nizamabad District,
shall defer the proceedings in SC.No.139/2015.

8. MiSCellaneous petitions pending consideration, if any, in the
Writ Petition shall stand closed in consequence. No order as to costs.

A.V.SESHA SAI, J

05th August, 2015

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