

THE HON'BLE SRI JUSTICE VILAS V.AFZULPURKAR

WRIT PETITION No.7334 OF 2015

ORDER:

Heard.

The grievance of the petitioner is that fresh FIR has not been registered by the 3rd respondent in spite of his detailed representation dated 12.08.2014.

It is not in dispute that the unnatural death of the daughter of the petitioner was subject matter of FIR No.242 of 2014, dated 07.08.2014 on the file of the 3rd respondent. The said FIR said to have been registered on the report given by the son-in-law of the petitioner. After registration of the aforesaid FIR, the petitioner filed representation dated 12.08.2014 seeking registration of another FIR.

The 3rd respondent filed counter affidavit which states that on the basis of the complaint from the son-in-law of the petitioner that his wife by name Lalitha Bai, aged 34 years, who is daughter of the petitioner, was brutally killed by unknown persons, the police registered FIR No.242 of 2014 and taken up investigation. Meanwhile, on the basis of the report given by the petitioner, dated 12.08.2014, implicating his son-in-law along with his associates in the said crime, investigation taken up, which reveals that while the son-in-law of the petitioner was found to be accused, but no case was established against other persons. Therefore, it is stated that the son-in-law of the petitioner was arrested on 16.12.2014 and later he was enlarged on bail. It is stated that 14 witnesses were already examined and the investigation is at the fag end. At that stage, the petitioner sought registration of another FIR. The respondents therefore, states that on the same incident, two FIRs cannot be registered and that registration of FIR No.242 of 2014 and its investigation has been done promptly and is conducted in fair and impartial manner and that the final report is to be filed shortly before the jurisdictional Court. It is stated that the petitioner is not co-operating with the Investigating Officer and making various allegations against the police officers which are not correct.

Learned counsel for the petitioner placed strong reliance on the judgment of the Supreme Court in **Kari Choudhary v. Most. Sita Devi and others** wherein it was held as follows:

“Learned counsel adopted an alternative contention that once the proceeding initiated under FIR No.135 ended in a final report the police had no authority to register a second FIR and number it as FIR 208. Of course the legal position is that there cannot be two FIRs against the same accused in respect of the same case. But when there are rival versions in respect of the same episode, they would normally take the shape of two different FIRs and investigation can be carried on under both of them by the same investigating agency.”

From the above judgment of the Supreme Court itself shows that there cannot be any second FIR on the same incident when there is earlier report as well as the petitioner's report. Both referred to and sought investigation in to the murder of the said Lalitha Bai.

During hearing, however, learned counsel for the petitioner contended that instead of registering the Crime under Section 304-B IPC in FIR No.242 of 2014, the same was registered under Section 302 IPC. He also contended that the investigation is not properly conducted. However, in the affidavit all these averments in support of the aforesaid allegations are not found. Hence, at this stage, the petitioner counsel cannot develop contentions without any foundation in the pleading nor any material with regard to the registration of self same FIR all over on the basis of the report of the petitioner. Therefore, it does not appear sustainable and the aforesaid decision of the Supreme Court would not also be applicable to the present case. It is not the case of multiple versions relating to the same incident. If the petitioner has any grievance regarding the manner of investigation, he is at liberty to invoke appropriate remedy. Since the prayer sought for in this writ petition is not supported by any of the criteria, the same cannot be granted.

Therefore, the writ petition is dismissed.

Pending miscellaneous petitions in this writ petition, if any, shall stand

dismissed. No costs.

VILAS V.AFZULPURKAR, J

13.04.2015

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THE HON'BLE SRI JUSTICE VILAS V.AFZULPURKAR

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