

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

CRIMINAL WRIT PETITION NO. 120 OF 2015

Shri. Bhaskar Kashinath Patil,
Age: 46 years, Occ: Agri.,
R/o. Kerhala, Raver,
Tal. Raver, Dist. Jalgaon.

...Petitioner

versus

1. State of Maharashtra
 2. Shri. Shivaji Hiranman Mali
@ Mahajan, Age: 31 years,
Occ: Service,
 3. Shri. Manohar Ramgir Gosavi,
Age: 43 years, Occ: Service,
Both R/o. C/o. Micro Vision
English Medium School,
Vivare Shivar, Raver,
Tal. Raver, Dist. Jalgaon.
- ...Respondents

.....
Mr. Naseem R. Shaikh, Advocate for petitioner
Ms. R.P. Gour, A.P.P. for respondent/State
.....

CORAM : N.W. SAMBRE, J.

DATE : 26th APRIL, 2016

ORAL ORDER :

Heard finally with the consent of the parties.

2. Present writ petition is by the original complainant questioning the legality and validity of the order dated 08/12/2014 passed in Criminal Revision Application No. 60 of 2014 by Additional

Sessions Judge, Bhusawal and the order dated 28/06/2011 passed in Crime No. 36 of 2010 by learned Judicial Magistrate, First Class, Raver accepting the report submitted under Section 169 of the Code of Criminal Procedure, by ordering discharge of the accused.

3. The facts, as are necessary for deciding the present writ petition, are as under :-

On 19/07/2010 the first information report came to be lodged by present petitioner that his son Sachin was serving in Micro Vision English Medium School at Vivra Shivar as attendant and has died of drowning, for which the accused persons were responsible for.

4. Pursuant to the first information report lodged by present petitioner, Crime No. 36 of 2010 came to be registered for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code.

5. It is claimed in the first information report that the death of Sachin is unnatural and homicidal, as he was murdered.

6. After registration of crime, the Investigating Officer has

submitted report under Section 169 of the Code of Criminal Procedure on 14/03/2011 giving entire details of offence and investigation carried out. The Investigating Officer, Senior Police Inspector of Local Crime Branch, Jalgaon has submitted before learned magistrate that the accused persons be discharged as there is no evidence available against the accused persons in the commission of crime and death could be accidental or suicidal. Learned Magistrate, by an order dated 28/06/2011, discharged the accused and accepted the report under Section 169 of the Code of Criminal Procedure after application of mind.

7. The petitioner then preferred revision before learned Sessions Judge, which came to be dismissed by an order dated 08/12/1994, hence present writ petition.

8. Mr. Naseem Shaikh, learned Counsel for the petitioner has taken me through the contents of the first information report so as to submit that there was sufficient material on the record to infer that it is the case of homicidal death and not accidental or suicidal. According to him, perusal of the post mortem report depicts sufficient injuries to the deceased and as such, he would urge that the deceased was subjected to violence prior to his death. He would then claim that the petitioner was not heard before discharge order

was passed. In support of his contention, he has relied upon the judgment of Allahabad High Court in the matter of ***Kallu and another vs. Shaid Ali and another*** reported in ***1995 CRI. L.J. 3489*** so as to submit that once protest application was filed by the present petitioner, same has to be considered as complaint and the Magistrate himself has to be dealt with the same in accordance with the provisions of Section 200 and 203 of the Code of Criminal Procedure. He would rely upon paragraph-6 of the said judgment.

9. Learned Counsel for the petitioner would then rely upon the Apex Court judgment in the matter of ***Sahebrao Mohan Berad vs. State of Maharashtra*** reported in ***2011 CRI.L.J. 2157(1)*** so as to canvass that the medical circumstances as are available on record cannot be equated with that of death because of drowning, but according to him, it was homicidal death. He relied upon paragraph-3 of the said judgment.

10. I have bestowed my thoughts to the submissions made. At the outset, it is required to be noted that the first information report came to be lodged on 19/07/2010 and death of deceased Sachin took place on 30/05/2010. There is delay of more than six weeks in lodging the first information report. Apart from above, it is required to be noted that the first information report is based on hearsay

information received by the petitioner. Perusal of the post mortem report depicts that the injuries which were found on the dead body of the deceased Sachin, were post mortem injuries and not ante-mortem. It is then required to be noted that cause of death of deceased Sachin is asphyxia due to drowning. In view of resistance shown by the petitioner and his family members, viscera was preserved and sent to forensic science library, however, nothing incriminating could be noticed from the report.

11. While ordering discharge under Section 169 of the Code of Criminal Procedure, the objection of the petitioner was considered by learned Magistrate. It is then required to be noted that the petitioner, at no point of time, has brought on record the intention to produce any additional witnesses so as to substantiate his contention to show that the learned Magistrate can go ahead with further inquiry in the matter. The Magistrate within his jurisdiction has scanned the entire investigation papers and thereafter reached to the conclusion to accept the report and discharge the accused pursuant to the Section 169 of the Code of Criminal Procedure. In the above referred background, reliance placed on the judgment of Allahabad High Court in the matter of **Kallu and another** cited supra, will be of hardly any assistance.

12. Furthermore, it is required to be noted that in the matter of **Sahebrao Mohan Berad**, cited supra, factual matrix as is relied upon by the learned Counsel for the petitioner is altogether different than one as is narrated in the present case. The Apex Court was dealing with the differed conclusion of Judges of Division Bench and the Apex Court has not laid down any law as regards symptoms of homicidal death because of drowning. In this background, the judgment of the Apex Court in the matter of **Sahebrao Mohan Berad**, cited supra will be of hardly any assistance.

13. The revisional Court, pursuant to the revision preferred by the petitioner, has gone into submissions made and noted that there is no substance in the submissions.

14. One more aspect of which this Court must take note of is that the petitioner sought C.B.I. investigation in the matter, however, dedicated Senior Officer, Local Crime Branch, has conducted the investigation in the matter. In this background, in my opinion, no case for interference is made out. As such, criminal writ petition fails and stands dismissed.

[N.W. SAMBRE, J.]