

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 858 OF 2016

1. Bhanudas s/o Radhakisan Katkade,
Age : 28 years, Occu. Driver,
R/o Devle Gavan, Tq. Jafarabad,
Dist. Jalna
2. Dnyaneshwar Pralahadrao Nikam,
Age : 37 years, Occu. Service
(Private), R/o Jafarabad,
Dist. Jalna
3. Vilas Samadhan Ghonge,
Age : 30 years, Occu.: Teacher,
R/o Bamkheda Tq. Deogaon Raja,
Dist. Buldhana
4. Vishnu Sahebrao Burkul,
Age : 38 years, Occu.: Service,
R/o Chincholi, Tq. Deogaon Raja,
Dist. Buldhana

..PETITIONERS

VERSUS

1. The State of Maharashtra,
2. Samadhan Kachruba Sasane,
Age : 40 years, Occu.: Labour,
R/o Papal, Tq. Jafrarabad,
Dist. Jalna

..RESPONDENTS

Mr. Prashant S. Shinde, Advocate for the petitioners
Mr. S.W. Munde, A.P.P. for respondent no.1

CORAM : S.S. SHINDE AND
SANGITRAO S. PATIL, JJ.
DATE : 30th AUGUST, 2016

JUDGMENT (PER : SANGITRAO S. PATIL, J.):

Heard the learned counsel for the petitioners and the learned A.P.P. for the respondent/State.

2. The petitioners have sought the relief of quashing the First Information Report (for short, "report"), on the basis of which Crime No.33 of 2016 has been registered against them in Police Station Tembhurni, District Jalna, for the offences punishable under sections 304-A, 279, 338, 427, 201, 34 of the Indian Penal Code (for short, "I.P. Code") and section 134/177 of the Motor Vehicles Act.

3. Respondent no.2 lodged a report in Police Station Tembhurni on 21.04.2016 against the petitioners, alleging inter alia that on 03.03.2016 at about 2:05 p.m., his son namely Ashok was riding motorcycle bearing Registration No. MH-20-AK-4838 along the road from his school to his house. One Pawan Eknath Ingle was the pillion rider. When the motorcycle reached at the distance of about $\frac{1}{2}$ k.m. from Jai Bhavani Vidhya Mandir Dele Ghavan, one TATA Magic school bus bearing Registration No.MH-21-AX-0682, which

was being driven by petitioner no.1 in a rash and negligent manner, came from behind and dashed the motorcycle. The pillion rider Pawan Ingle fell from the motorcycle to the opposite site of the school bus, while the rider of the motorcycle i.e. Ashok fell down towards the school bus and the wheel of the school bus ran from over his head. He sustained serious injuries on his head and chest.

4. Petitioner nos.2 to 4, who are the teachers serving in the school, to which the bus involved in the incident was belonging, came to the spot of the incident on receiving telephonic massage. The injured was taken by them to the school at Dele Ghavan, where he was kept for about 20 minutes. Thereafter, he was taken to Jalna in a taxi. However, on the way, he become serious. He was taken to a private hospital by name "Warkad Hospital" at Jalna, where he was declared dead.

5. It is alleged that petitioner no.3 did not allow the mother of the deceased – Ashok to see him. The informant and his wife were taken to their village in the taxi in which the injured Ashok was brought to

Jalna. Petitioner no.3 assured them that the post-mortem would be performed on the body of the deceased - Ashok and thereafter, it would be brought to their house. Accordingly, the informant and his wife went to their native place. Petitioner no.3 brought the body of deceased - Ashok in the Ambulance. The informant and his wife were not made aware that the post-mortem of the body was performed or not. Petitioner no.3 and other teachers performed funeral of Ashok at his native place i.e. at Papal. The informant asked petitioner no.2 to supply copy of the post-mortem report on 04.03.2016. At that time, he informed that the post-mortem was not performed. Petitioner no.4 assured the informant that the compensation amount would be paid to him, but nothing was paid to him. Therefore, the informant lodged report against all the petitioners in the Police Station Tembhurni on 21.04.2016.

6. The learned counsel for the petitioners submits that there is absolutely no concern of petitioner nos.2 to 4, who are the teachers of the school to which the above mentioned bus was belonging, with the above-referred incident. They cannot be said

to have committed the offences in question. They were not responsible to pay compensation to the informant. The above numbered bus has been duly insured. Petitioner no.1 was holding valid driving licence. Therefore, whatever compensation would be payable to the informant on account of death of Ashok, would be paid by the Insurance Company. The teachers would not have taken the responsibility to pay compensation to the informant as claimed by him. He submits that the incident took place on 03.03.2016, however, the report has been lodged on 21.04.2016, without explaining the delay. He submits that petitioner nos.2 to 4 have been unnecessarily involved in this crime. He, therefore, prays that at least, so far as petitioner nos.2 to 4 are concerned, the F.I.R. may be quashed and set aside.

7. As against this, the learned A.P.P. submits that though petitioner no.1 is basically responsible for commission of the offence under section 304-A of the I.P. Code, the petitioners did not allow the informant to lodge the report on the say that he would be paid sufficient compensation for the death of Ashok. He, further, submits that petitioner nos.2 to 4 were

present with the dead body of Ashok when they were in the hospital at Jalna. They managed to see that post-mortem was not performed on the body of Ashok. The post-mortem report would have been the best piece of evidence to establish the offence under section 304-A of the I.P. Code. Petitioner nos.2 to 4 arranged to perform funeral of Ashok without subjecting his body to post-mortem with a view to screen petitioner no.1. He, therefore, submits that the petitioners have rightly been booked for the above mentioned offences. He, therefore, prays that the petition may be dismissed.

8. As seen from the facts disclosed from the report, prima facie petitioner no.1 would be responsible for the occurrence of the incident in which the son of the informant sustained serious injuries to which ultimately he succumbed. The pillion rider viz: Pawan Ingale also sustained injuries. The school bus which was being driven by petitioner no.1 at the relevant time was belonging to the school where petitioner nos.2 to 4 are serving as a teachers. It seems that petitioner nos.2 to 4, intervened and tried to see that petitioner no.1 is saved from the penal

action by giving assurance to pay compensation to the informant. It seems that the informant did not lodge report immediately on the same day relying on that assurance. There is specific allegation against petitioner nos.2 to 4 that they saw to it that the post-mortem was not conducted on the body of Ashok. The said fact was not within the knowledge of the informant and his wife. Petitioner nos.2 to 4 took the dead body of Ashok to his native place and performed his funeral without informing the informant that post-mortem was not conducted. In the circumstances, the allegations came to be made against them by the informant that they destroyed the evidence with a view to screen petitioner no.1 from the penal consequences of the act done by him i.e. rash and negligent driving of the above numbered bus. In our view, the contents of the report show a prima facie case against petitioner no.1 for the offences punishable under sections 304-A, 279 and 338 and against petitioner nos.2 to 4 for the offence punishable under section 201 of the I.P. Code, which needs further investigation. Consequently, the investigation into the above numbered crime cannot be interfered with.

9. In the above circumstances, we are not inclined to quash the report and stop the investigation into above numbered crime. We make it clear that the observations made by us in the foregoing paragraphs are limited to the controversy involved in this writ petition and they would have no bearing on the case that would be tried on merits before the Trial Court. The Trial Court will have to decide the case on the basis of the evidence that would be adduced before it and without being influenced by any observations made hereinabove.

10. In the result, we pass the following order:-

O R D E R

The Criminal Writ Petition is hereby dismissed.

Sd/-
[**SANGITRAO S. PATIL**]
JUDGE

Sd/-
[**S.S. SHINDE**]
JUDGE