

(1)

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

CRIMINAL WRIT PETITION NO. 1022 OF 2015

1. Vishal S/o Bhausahab Tanpure,
Age: 29 years, Occu: Business,
R/o. Rahuri Kd. Tal. Rahuri,
Dist. Ahmednagar
2. Bhausahab S/o Dattu Pundhar,
Age: 35 years, Occu: Business,
R/o. Near Laxmi Temple, Rahuri,
Tq. Rahuri, Dist. Ahmednagar
3. Sanjay S/o Ashok Darandale,
Age: 36 years, Occu: Business,
R/o. Rahuri Kd. Tal. Rahuri,
Dist. Ahmednagar
4. Indrabhan S/o Bhausahab Perne,
Age: 45 years, Occu: Agri.,
R/o. Rahuri Station, Rahuri,
Tq. Rahuri, Dist Ahmednagar
5. Bhausahab @ Baburao S/o Naguji Gunjal,
Age: 65 years, Occu: Service,
Police Quarters, Rahuri,
Tq. Rahuri, Dist. Ahmednagar ..PETITIONERS

VERSUS

1. The State of Maharashtra,
Through Police Station Officer,
Rahuri Police Station,
Tq. Rahuri, Dist. Ahmednagar
2. Sau. Saraswati W/o Nanasaheb Perne,
Age: 43 years, Occu: Household,
R/o. Rahuri Station, Tandulwadi,
Tq. Rahuri, Dist Ahmednagar ..RESPONDENTS

Mr N. V. Gaware, Advocate for petitioners;
Mr A. R. Kale, Addl. Public Prosecutor for respondent No. 1;
Mr C. K. Shinde, Advocate for respondent No. 2

WITH

(2)

CRIMINAL APPLICATION NO. 4372 OF 2015

Dr. Prakash Nathuji Bhosale,
Age: 50 years, Occu: Government Service,
R/o: Ajnuj, Tq. Khandala, District Satara ..APPLICANT

VERSUS

1. Saraswati Nanasaheb Perne,
Age: 48 years, Occu: Household,
R/o. Rahuri Station, Tandulwadi,
Tq. Rahuri, Dist Ahmednagar
2. The State of Maharashtra ..RESPONDENTS

Mr Joydeep Chatterji, Advocate for applicant;
Mr C. K. Shinde, Advocate for respondent No. 1
Mr A. R. Kale, Addl. Public Prosecutor for respondent No.2

CORAM : N.W. SAMBRE, J.**DATE : 4th April, 2016****ORAL ORDER :**

One Shivaji, son of respondent – complainant Saraswati, died due to drowning on 29th March, 2004.

2. Learned Judicial Magistrate First Class, Rahuri, before whom respondent Saraswati, mother of deceased Shivaji, filed complaint on 16th June, 2005 had called report under section 156 (3) of the Code of Criminal Procedure (for short “Code”), as she had claimed that the applicants are responsible for murder of deceased Shivaji. Without considering the said report, learned Magistrate passed order below Exh.1, in Criminal Misc. Application No.300 of 2005, causing issuance of process against accused nos.1 to 4 for offences punishable under sections 302, 201 read with

(3)

section 34 of the Indian Penal Code and against accused nos.5 and 6 for offence punishable under section 201 of the Indian Penal Code.

3. The aforesaid order was subject-matter of challenge in Criminal Revision No.28 of 2007, which came to be dismissed by learned Additional Sessions Judge, Ahmednagar by an order dated 31st July, 2015. Thus, these proceedings for quashing of process.

4. It is brought to my notice that the learned Magistrate, after receiving the complaint, having regard to the seriousness of the allegations made therein, had called a report under section 156 (3) of the Code. The report speaks of non commission of crime by the present accused persons and the death of Shivaji because of drowning. My attention is also invited to the fact that earlier, the complaint preferred by the complainant was withdrawn, in the post mortem report there are no external injuries suffered by deceased Shivaji and on an earlier occasion, immediately after the incident an accidental death was registered and upon inquiry, nothing adverse could be noticed against the applicants-accused.

5. Relying upon the judgment of this Court, in the matter of **Jagdish s/o Chintaman Khodke vs. The State of Mah. & ors.**, reported in **2015 ALL MR (Cri) 2644**, learned Counsel appearing on behalf of the applicants would urge that it was expected of the Magistrate to deal with the report as was called by him, pursuant to the order dated 16th June, 2005. He would submit that though the learned Magistrate was alive to

(4)

such report as is reflected from the considerations in paragraph 4 of the impugned order, the Magistrate has not recorded findings as to why he is discarding the report submitted by the police officer.

6. According to the learned Counsel, the matter needs to be remitted to the learned Magistrate for deciding it afresh.

7. Mr C.K. Shinde, learned Counsel appearing on behalf of the respondent - complainant and learned Addl. Public Prosecutor support the order on the ground that the order speaks of the reasons for reaching to the conclusion of issuance of process. According to them, the report as was called is duly referred to and should be appropriately inferred to have been rejected by the Magistrate upon application of his mind.

8. Having considered the submissions made, it is noted that after the complaint came to be presented by respondent Saraswati, mother of the deceased, the learned Magistrate had called a report on 16th June, 2005 under section 156 (3) of the Code. The report to that effect was submitted by the police officer and same goes in favour of the accused persons. The learned Magistrate has then proceeded to pass the impugned order of issuance of process on 22nd January, 2007. The Magistrate, without dealing with the said report or recording any finding as to why the report of the police officer is to be rejected, has considered the merits of the matter and has proceeded to order issuance of process against the applicants. Learned Additional Sessions Judge, while dealing with the revision also

(5)

has lost sight of the same and has proceeded to observe that the learned Magistrate is not bound to go by the report filed by the police pursuant to the provisions of section 156 (3) of the Code.

9. It is required to be noted that while dealing with a similar proposition, this Court, in the matter of Jagdish s/o Chintaman Khodke (supra) has expressed a view that in case if the Magistrate before proceeding ahead with the complaint, i.e. at pre-cognizance stage had called for a report from the police officer, it is incumbent for the Magistrate to deal with such report either by accepting it or by rejecting it, after recording due reasons. Appropriate reliance can be placed on observations in paragraphs no.9 to 12 of the said judgment, which read thus :-

“9. In the present case, it is clear that the learned Magistrate has not recorded any reasons while rejecting the report filed by the investigating officer under Section 156 (3) of the Code of Criminal Procedure.

10. Since the learned Revisional Court has mainly allowed the Revision in view of the report submitted by the investigating officer and the statements of the witnesses recorded during the course of said investigation, necessarily the Revisional Court ought to have remanded the matter back to the learned Magistrate.

11. Once the Magistrate has decided to disagree with the police report, the Magistrate ought to have recorded the reasons for his disagreement, because initially the Magistrate was of the view that no case for issuance of process is made out.

(6)

12. Since this court is of the opinion that the learned Revisional Court has only considered the report of the investigating officer and the statements of the witnesses recorded during the investigation for upsetting the order of issuance of process, the said order needs to be quashed and the matter requires to be remanded back to the learned Magistrate for fresh consideration."

10. From perusal of the orders impugned, passed by the Magistrate as also by the revisional Court, it is noted that though the Magistrate has referred to the said report, the fact remains that the Magistrate has not applied his mind and has rejected the same, at least no such findings or considerations are reflected in the order impugned. In view thereof, in my opinion, it will be appropriate to remand the matter back to the learned Magistrate, with an observation that he should first deal with the report filed by the police officer, pursuant to his order dated 16th June, 2005 and then proceed further with the issue as to whether the complaint needs to be dealt with by issuing process or not.

11. In the above background, I pass following order :-

The order dated 22nd January, 2007, passed by Judicial Magistrate First Class, Rahuri, below Exh.1, in Criminal Misc. Application No.300 of 2005, causing issuance of process against accused nos.1 to 4 for offences punishable under sections 302, 201 read with section 34 of the Indian Penal Code and against accused nos.5 and 6 for offence punishable under

(7)

section 201 of the Indian Penal Code and the order dated 31st July, 2015, passed by learned Additional Sessions Judge, Ahmednagar, in Criminal Revision No.28 of 2007 confirming the same, are hereby quashed and set aside.

The learned Magistrate shall deal with the complaint, in accordance with the above observations and shall pass appropriate orders, as expeditiously as possible and in any case within a period of ten weeks from the date of communication of this order.

The respondent – complainant agrees that she shall appear before the learned Magistrate on 28th April, 2016.

It is made clear that this Court has not gone into merits of the matter and all contentions are kept open.

(N.W. SAMBRE, J.)

amj