

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 12 OF 2016

Miss Chand Bi Khan,
daughter of Oli Khan,
resident of House No.15/C,
Patto, Panaji-Goa.

..... Petitioner.

V e r s u s

1) Mr. Abbas Oli Khan, Major.

2) Mrs. Zarina Shaikh Jamal, Major,
Both residents of House No.384,
Valpoi Maket, Valpoi,
Sattari-Goa.

3) State, through Valpoi Police,
Station, Valpoi-Goa.

4) Public Prosecutor,
having Office at High Court,
Complex, Altinho, Panaji-Goa.

.... Respondents

Mr. P. Lotlikar, Advocate for the Petitioner.

Mr. Nigel Da Costa, Advocate for Respondents no.1. And 2.

Mr. M. Amonkar, Additional Public Prosecutor for the
Respondent no.3.

CORAM: C. V. BHADANG, J.
DATE: 22nd July, 2016.

O R D E R:

By this petition under Article 227 of the

Constitution of India and section 482 of Code of Criminal Procedure, the petitioner is challenging the order dated 16/4/2015 passed by the learned Additional Sessions Judge, Mapusa in Criminal Revision Application no.9/2014, by which the order dated 9/12/2013 passed by the learned Judicial Magistrate First Class at Valpoi in Criminal Misc. Application no.45/2013 has been confirmed. By the order dated 9/12/2013, the learned Magistrate has dismissed the private complaint filed by the petitioner seeking a direction to the Valpoi police to investigate the matter regarding the unnatural death of her sister Ms. Nek Aktar Bi and to prosecute the accused in order to secure the ends of justice.

2. The brief facts are that the complainant is the daughter of one Oli Khan while the first respondent is the brother of the complainant. Oli Khan died some where in the year 1980. According to the petitioner out of the four brothers, the first respondent was sent to the boarding school at Hubli. However, he absconded from there and came down to Goa. He was doing some job in the shop of Mr. Daud Karol at Vasco and had developed friendly relations with the

daughter of Mr. Daud i.e the respondent no.2. In short, according to the petitioner, since beginning the first respondent was hostile towards the family members. There are some allegations made about the power of attorney got executed by the first respondent from the mother which was revoked on 11/5/2003. It was contended that the first respondent is cruel and a potentially dangerous person. There are several other allegations made against the first respondent regarding his alleged misbehavior with the family members to the extent of an attempt to administer poison to now deceased Nek Aktar some time in the last week of August 2005. Then there is a reference to the incident dated 18/7/2006 in which the first respondent had allegedly assaulted his mother, at the instigation of Smt. Zarina Sheikh Jamal, which matter was reported to police. There are also allegations made about Nek Aktar being sexually abused by the first respondent and about she being wrongfully restrained on 21/6/2006.

3. It so happened that on 24/6/2006, the dead body of Ms. Nek Aktar was found at Miramar in respect of which

the police registered a case of unnatural death under section 174 of Cr.P.C., being Case No.36/2006. It appears that the said matter was investigated and the Investigating Officer filed a final report before the learned Sub Divisional Magistrate on 11/8/2006, in which it was claimed that during the course of investigation it had transpired that the deceased had died due to Asphyxia as a result of drowning, and there was no foul play suspected. The Investigating Officer sought the death summary to be classified as 'suicidal death'. The learned Sub Divisional Magistrate has granted the same on 30/5/2008 classifying the death as 'natural death summary'.

4. About 5 years thereafter, the petitioner approached the Judicial Magistrate with a complaint seeking direction for investigation of the matter. The learned Magistrate has found that there is nothing at this stage to doubt the earlier order by which the final summary was accepted. The petitioner challenged the same before the learned Sessions Judge in Criminal Revision Application no.9/2014, which was dismissed on 16/4/2014 which brings the petitioner to this

Court.

5. I have heard Shri Lotlikar, the learned counsel for the petitioner, Mr. Amonkar, the learned Additional Public Prosecutor for respondent no.3 and Mr. Costa Frias, the learned counsel for respondent nos.1 and 2.

6. The only contention raised on behalf of the petitioner is that there were several complaints lodged against the first respondent by the family members including about the assault on the deceased Ms. Nek Aktar, her alleged sexual abuse as also assault on the mother. The learned counsel has produced a copy of the NC report bearing no.153/2006 dated 21/6/2006 and some letters addressed to the Police Inspector of Valpoi police station. It is submitted that it was necessary for the Investigating Officer to record the statements of the concerned witnesses and to find out whether the death was either homicidal or suicidal, in the nature, which has not been done. The learned counsel submits that looking to the seriousness of the matter it was necessary for the learned Magistrate to have directed further

investigation.

7. The learned Additional Public Prosecutor has produced a copy of the final report in Panaji P S U.D. No.36/2006 along with the copy of the order dated 30/5/2008 passed by the Sub Divisional Magistrate. The learned Addl. Public Prosecutor points out that final summary report was submitted after proper investigation of the offence including the recording of the statements of the family members of the deceased and there was no material found to show that the death was either homicidal or suicidal in nature. It is submitted that the petitioner has approached the learned Magistrate after about after 7 years of the incident. The learned Additional Public Prosecutor has thus supported the impugned order.

8. The learned counsel for respondent nos. 1 and 2 has also supported the impugned order on similar grounds.

9. I have carefully considered the rival circumstances and the submissions made and I do not find that any case for

interference is made out. At the outset, it is necessary to mention that it was on 24/6/2006 that the dead body of Ms. Nek Aktar was found at Miramar beach in respect of which the final summary was accepted in the year 2008, while the petitioner had approached the learned Magistrate only in the year 2013. I am conscious of the fact that looking to the seriousness of the matter, delay may not be the only consideration, however, it is necessary to look into the nature of the investigation conducted by the investigating officer and other circumstances in order to find out whether a case for directing further investigation was made out or not. The final summary report dated 11/8/2006 submitted by the investigating officer shows that during the post mortem examination of the dead body, the cause of death was shown as Asphyxia as a result of drowning in water. The report further discloses that the investigating officer had recorded the statements of the brothers of the deceased namely, Mr. Abdul Ghani Khan, Mr. Abu Khan, Mr. Samsheer Khan, Mr. Abbas Khan and also the sisters of the deceased including the petitioner, which are appended to the case papers. After perusal of these investigation/inquiry papers, the Sub

Divisional Magistrate had accepted the final summary report classifying the death as 'natural death summary'.

10. As noted earlier on behalf of the petitioner a copy of the N.C. Case No.153/2006 is produced on record which is dated 20/6/2006 i.e. prior to the date on which the dead body of Ms. Nek Aktar was found. The incident dated 21/6/2006 is about the first respondent having slapped the deceased. There are no subsequent complaints lodged with the police about any incident produced or brought to the notice of this Court. There are some letters written to the police authorities asking them to take action. All these letters are subsequent to the death of Ms. Nek Aktar. It can thus be seen that the only complaint in respect of which a non cognizable case was registered is regarding the first respondent having slapped the deceased, which is dated 21/6/2006. Merely on the basis of such a complaint the complicity of the first respondent in the unnatural death of the deceased cannot be inferred. As noticed earlier, the investigating officer after recording the statement of all concerned witnesses including the brothers and sisters of the

deceased had filed a final summary which has been accepted. In my considered view, there is no reason for taking a different view than the one taken by the Courts below, concurrently. I, therefore, find that the petition is without any merit and it is accordingly dismissed.

C. V. BHADANG, J.

ap/-