

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.301 OF 2016

Sayed Minhajuddin Sayed Kamaluddin & Anr. Petitioners

V/s.

State of Maharashtra,
Through City Police Station, Malegaon,
Dist. Nashik & Anr. Respondents

Mr. R.B. Paranjape, i/by Mr. Mahendra N.
Sandhyanshiv, for the Petitioners.

Smt. V.R. Bhonsale, A.P.P., for Respondent
No.1-State.

Mr. Anilkumar K. Patil for Respondent No.2.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 1ST MARCH 2016.

P.C. :

1. This Writ Petition is preferred for challenging the order dated 8th December 2015 passed by the Assistant Sessions Judge, Malegaon, in Sessions Case No.81 of 2009, thereby allowing the application filed by Original Informant, the Respondent No.2 herein, for further investigation under Section 173(8) of Cr.P.C.

2. Brief facts of the Petition are to the effect that the Respondent No.2, who is Original Informant in Sessions Case No.81 of 2009, is the elder brother of deceased Shahid, who was married with one Sayeda Shahana. After marriage, while they were residing at Sahil Plaza, Aurangabad,

Sayedra died due to burn injuries. However, on the basis of the report of her brother, Shahid, along with his father, was prosecuted under Sections 498-A and 306 of IPC in Sessions Case No.160 of 2009. During the pendency of that case, the brother of Respondent No.2 committed suicide. In the suicide note left behind by him, he has clearly attributed reason for his suicide to the false implication in the Sessions Case No.160 of 2009 by his brother-in-law and his father-in-law. In view thereof, his brother-in-law and father-in-law, Petitioner Nos.1 and 2 herein, were prosecuted as Accused in Sessions Case No.81 of 2009.

3. It is the submission of Respondent No.2 that, since beginning, the Police had not carried out proper investigation in respect of the cause of his brother's suicide. The suicidal note of his brother was not sent to the Handwriting Expert. Moreover, no investigation was carried out to find out the truthfulness of the contents in the suicide note as to whether the amount of Rs.1,40,000/-, which was stated to be given as dowry, was really the loan which Sayedra had taken from her father and repaid the same after receiving amount from G.P.F. It was further urged that, in the suicide note, several allegations were made in respect of the false propaganda undertaken on T.V. and other media like newspaper, by the Petitioners herein, which was also the cause of his committing suicide. However, no investigation was carried out on that score also.

4. According to Respondent No.2, in the instant case, therefore, further investigation is essential to arrive at the just decision of the case. Earlier also, he had approached the Court for sending suicide note to Handwriting Expert. However, his application was rejected. Against that order, he approached this Court, by filing Criminal Writ Petition No.237 of

2012. While deciding the said Writ Petition, by its order dated 17th October 2012, this Court has observed that, *“as the application under Section 311 of Cr.P.C. was not tenable for the said purpose, no fault can be attributed to the learned Judge in carrying out such exercise. However, if the prosecution or the complainant moves an application in terms of Section 173(8) of Cr.P.C., the learned Judge shall consider the same on its own merits as flaws left in the investigation should be taken proper care of”*.

5. In view of these observations, the application was moved by Respondent No.2 before the Trial Court and the Trial Court, after considering the submissions advanced by learned A.P.P. and also by the present Petitioners, passed the impugned order.

6. Perusal of the impugned order of the Trial Court reveals that, even learned A.P.P., who has given his say in writing at Exhibit-30 before the Trial Court, has admitted the fact that the Investigating Officer ought to have carried out investigation in the light of the suicide note, so also he should have investigated in respect of filing of case at Aurangabad to unearth the real truth. Learned A.P.P. has further stated that the master-mind of the case Syed Merajuddin should have been arrested, which has not been done by the Investigating Officer. The learned A.P.P. has also supported the case of the Informant in respect of the lapses in investigation as regards the interview given by the present Petitioner No.1 to the T.V. and other media. Learned A.P.P. has also supported the contention of the Informant in respect of seeking opinion of Handwriting Expert as regards the suicide note. Thus, all in all, learned A.P.P. has conceded the fact that the Investigating Officer has not investigated the matter in the right perspective and important factors relating to

investigation were ignored. As such, in order to find out the truth, it is necessary to direct further investigation in the matter and to file Supplementary Charge-Sheet under Section 173(8) of Cr.P.C.

7. Thus, it can be clearly seen that whatever grievances were raised by Respondent No.1 in the present case before the Trial Court were virtually confirmed and upheld by learned A.P.P.

8. Even in this Petition, learned counsel for the Petitioners-Accused is conceding that he has no objection for sending the suicide note along with admitted handwriting of the Deceased to the Handwriting Expert. Thus, to some extent, he is also conceding that part of the investigation pertaining to the suicide note was not carried out at all by the Investigating Officer.

9. In such situation, no fault can be found in the impugned order of the Trial Court when the Trial Court found that, to unearth the truth, further investigation is necessary. The mere fact that there is delay in making such application is no ground to reject further investigation, if in the interest of substantial cause of justice, such investigation is essential. No jurisdictional error can be pointed out from the impugned order of the Trial Court. The Trial Court has also restricted the period for re-investigation to be completed three months from the date of receipt of the order. Therefore, there is no likelihood of the matter being dragged also.

10. In such situation, the Writ Petition is devoid of merits and hence stands dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.]