

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.3326 OF 2015

Hanmant Jalindar Langar

Petitioner

versus

The State of Maharashtra and others

Respondents

Mr.Rajaram V. Bansode for Petitioner.

Mrs.Sangeeta Shinde, APP, for State.

CORAM : NARESH H. PATIL AND
PRAKASH D. NAIK, JJ.

DATE : 23rd September 2016

PC :

1. The Petitioner is the father of the deceased son, who was murdered on 20 August 2007. Initially charge sheet came to be filed on 21 November 2007 against two accused persons. One of the accused person was absconding at the relevant time. Thereafter consequent to the further investigation carried out under Section 173 of Code of Criminal Procedure, 1973, second charge sheet was filed on 27 July 2009.

2. Petitioner had approached this Court earlier by filing Criminal Writ Petition No.1476 of 2008. By order dated 11 August 2008, a Division Bench of this Court stayed the trial in Sessions Case No.94 of 2008 pending before Sessions Judge, Solapur. By an order dated 1st February 2010, a Division Bench of this Court (Mrs.Ranjana Desai and Mrs.Mridula Bhatkar, JJ.) disposed of Writ Petition No.1476 of 2008 by observing :

"3. Mr.Pradhan states that as stated by Mr.Shelar in the above paragraph, the investigation has been carried out carefully and it is proceeding in the right direction. It is apparent from the affidavit of Mr.Shelar that permission to record statement of one of the accused under Section 164 of the Criminal Procedure Code was sought. However, the permission has been rejected by the Sessions Court, Solapur. The State CID has filed a revision application being Revision Application (Stamp) No.618 of 2009. The said application is pending in this Court. Learned APP states that the said revision application will be prosecuted in accordance with law. He states that the said application will be taken up for admission expeditiously. This statement is accepted. In view of the affidavit of Mr.Shelar and in view of the submission of Mr.Pradhan, learned amicus curiae, that the investigation is proceeding in the right direction, in our opinion, the petition has become infructuous and is disposed of as such. Since, the revision application is pending, we continue the stay of the trial granted by this Court on 11/8/2008 for a period of six weeks from today. Thereafter, appropriate order be obtained from learned Single Judge of this Court by the investigating officer."

3. In Writ Petition No.1476 of 2008, the then Superintendent of Police Dnyaneshwar M. Phadtare filed an affidavit. He narrated the steps taken by the investigating agency. In paragraph 11 of the affidavit, the deponent stated as under :

"11. With reference to paragraph no.17 of the petition, I say that the record discloses that the Narco Analysis Test on accused no.1 Mr.Amol @ Datta Changdev Shinde was conducted on 1.4.2008 and prior to it the brain mapping and lie dictator test of accused no.2 i.e. Mr.Jevar H. Kale was conducted on 5.2.2008 by the investigating agency."

4. Learned counsel for Petitioner submits that the deceased son of the Petitioner was mercilessly beaten who suffered severe injuries on his person. The investigation was not carried out properly in spite of sufficient time provided to the investigating agency. The investigating agency, according to the Petitioner, has failed to collect sufficient material against the accused persons. Learned counsel for Petitioner submitted that the case is required to be transferred to CBI. According to the Petitioner, on two issues the investigation is required to be conducted afresh viz. : (i) why weapons from the accused were not recovered; and (ii) why mobile phone was not recovered from the accused persons.

5. Learned APP submits that the investigating agency conducted the investigation in the best possible manner. Whatever material the investigating agency could gather was placed before the Court in the shape of two reports. She submitted that the trial is very likely to commence shortly. The incident is of the year 2007. Therefore, by keeping open all issues, appropriate order be passed.

6. We have perused the record, earlier orders passed by this Court in Writ Petition No.1476 of 2008 and affidavits filed therein. It was submitted on behalf of the Petitioner that on the basis of above materials, fresh investigation through CBI be ordered . The Petitioner is not satisfied with the investigation made by the State agency. According to the Petitioner, all the necessary circumstances are not brought before the Court, which would secure conviction of the accused persons. The son of the Petitioner was assaulted and he succumbed to the injuries. As a father, the Petitioner certainly has

serious concern about the circumstance which resulted in death of his son. At the same time, we will have to look into the nature of investigation conducted and at this stage whether anything more could be investigated by the agency on realistic basis.

7. In the facts, during the trial, in case some circumstances emerge, the Trial Court is not precluded to exercise its power in accordance with provisions of Code of Criminal Procedure, 1973. An investigation cannot be continued for indefinite period.

8. Keeping all issues on merits open, we are of the view that petition could be disposed of at this stage. The Trial Court shall proceed with the case in accordance with law and deal with the issues uninfluenced by this order. Petition stands disposed of.

(PRAKASH D. NAIK, J.)

(NARESH H. PATIL, J.)

MST