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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2979 OF 2016

Shri Laxmikant Gajanan Bhise

.. Petitioner

Vs.

The State of Maharashtra and anr.

.. Respondents

Mr. Vikas B. Shivarkar for petitioner.

Mrs. G. P. Mulekar, APP for State.

Mrs. Anita Agarwal for respondent no.2.

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

SEPTEMBER 06, 2016.

P.C.

1. The petitioner – complainant approached this court for following reliefs :-

(a) Rule be issued and Record and Proceedings be called for;

(b) This Hon'ble Court be pleased to direct the Respondent State to transfer the present matter being CR No. 108 of 2014 registered at Kothrud Police Station, Pune to CID,

Pune or other investigation agency for further investigation which this Hon'ble Court deems fit.

- (c) This Hon'ble Court be pleased to quash and set aside the order dated 30/7/2016 passed by the learned Sessions Judge, Pune in application Exh. 34 filed by the present petitioner in Sessions Case No. 381 of 2014 and the Respondent No.1 be directed to conduct the further investigation in the present matter.
- (d) Pending the hearing and final disposal of the present petition, the further proceedings in Sessions Case No. 381 of 2014 may kindly be stayed.
- (e) Interim and Ad-interim relief in terms of prayer clause (d) be granted.

2. The complainant claims to be real brother of deceased, who was allegedly murdered. Charge-sheet came to be filed against respondent no.2, accused – Akash Mukesh Shelar. The case was committed to the Sessions Court and numbered as Sessions Case No. 381 of 2014.

3. Admittedly, the trial has commenced. Eight witnesses were

examined. At this stage, the petitioner-complainant preferred an application for further investigation. By an order dated 30/7/2016 below Exhibit – 34, the Additional Sessions Judge, Pune rejected the said application.

4. Learned counsel appearing for the petitioner submits that at any stage the complainant is entitled to file application for further investigation, even during trial also. Learned counsel submit that the prosecution has not preferred an application for further investigation. Learned counsel placed reliance on the following judgments :-

- (a) Ram Lal Narang vs. State (Delhi Administration) – **[(1979) 2 SCC 322]**.
- (b) Sri Bhagwan Samardha Sreepada Vallabha Venkata Vishwanandha Maharaj vs. State of A.P. and ors. **[(1999) 5 SCC 740]**.
- (c) R. Sarala vs. T. S. Velu and ors. **[(2000) 4 SCC 459]**.
- (d) Lingam Subramanyam vs. Putta Seshadri **[2006 2 ALT (Cri) 206]**.

5. Learned counsel for the petitioner submits that the sole eye witness i.e. PW 4 – Reshma Shelar turned hostile. According to the learned counsel there may be persons who must have seen the incident of assault on the deceased and the police is duty bound to investigate and record statements of such persons.

6. Learned counsel appearing for respondent no. 2 – accused submitted that at a highly belated stage, the application was preferred by the complainant. The State has chosen not to prefer any such application. Learned counsel submits that trial got delayed by four months due to filing of the application. Even on merits, the learned counsel submits that no case is made out for entertaining application of the complainant.

7. Learned APP submits that in case the prosecution is of the view that further investigation is required in the matter, then the prosecution may take steps.

8. We have perused the record placed before us, the order passed by the trial court and considered the submissions advanced before us. In the facts, we are not inclined to issue direction for further investigation.

The substantive evidence in the case seems to have been recorded, the injured eye witness is examined. The complainant filed an application during trial after eight witnesses got examined. It is the complaint's case that some persons in the crowd must have seen the incident of assault made on the deceased, who may come forward and depose in favour of the prosecution. In the facts, it would not be appropriate to arrive at the said conclusion. The contention is based on apprehension.

9. In the facts, no case is made out. Petition is dismissed.

(PRAKASH D. NAIK, J.)

(NARESH H. PATIL, J.)