

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR

CRIMINAL WRIT PETITION NO.213 Of 2016

Raibhan Amarsingh Ufade

..vs..

The State of Maharashtra, through its Additional Secretary, Ministry of Home Affairs,
Home Department, Mantralaya, Mumbai-440032 and ors

.....
Office Notes, Office Memoranda of Coram,
appearances, Court orders or directions
and Registrar's orders
.....

Court's or Judge's Order

Shri M.M. Sudame, Counsel for the Petitioner.

Shri N.B. Jawade, Addl.P.P. for the respondents/State.

**CORAM : B.P. DHARMADHIKARI &
A.S. CHANDURKAR, JJ.**

DATED : SEPTEMBER 2, 2016.

Heard learned counsel Shri M.M. Sudame
for the petitioner and learned Additional Public
Prosecutor Shri N.B. Jawade for the respondents/State.

The prayer of the petitioner, father of
deceased Vinaybhan @ Binni, is to transfer investigation
in relation to Crime No.114 of 2015 at Police Station
Kanhana to either the Crime Branch or the State Criminal
Investigation Department (C.I.D.).

After hearing respective learned counsel for
the parties on 20.8.2016, we directed the concerned
Assistant Police Inspector to remain present with case
papers. We have also permitted learned counsel Shri
M.M. Sudame for the petitioner to peruse those papers.

According to the petitioner, the relations of

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Vinaybhan with his in-laws were strained and, on 18.12.2015 because of those strained relations, he has been eliminated by contending that he died accidentally.

Respondent No.4 has filed reply-affidavit and in paragraph No.7 reasons, which prompted wife of deceased viz. Bhagyashree not to give her statement to the police, are mentioned. It is, thereafter, stated that on 8.1.2016 she has narrated the incident that occurred on 18.12.2015 to Corporator and Social Worker Aruna Ashtankar. Thereafter, her statement has been recorded also under Section 164 of the Code of Criminal Procedure.

Perusal of case diary also shows that Bhagyashree's statement was initially recorded on 18.12.2015 itself and her supplementary statement has been recorded on 8.1.2016. Her statement under Section 164 of the Code of Criminal Procedure is recorded on 25.1.2016.

Perusal of these three statements shows material variance.

In supplementary statement dated 8.1.2016 the quarrel, between husband and wife leading to some physical force, also appears. She has stated that when she was trying to restrain him, his shirt came in her

hands.

We are deliberately not commenting on the entire material. However, even on 18.12.2015, material indicating that apart from accident, there was some other incident was available and finds mention in spot panchnama and that material is sought to be explained by Bhagyashree in her later statement. In her last statement (under Section 164 of the Code of Criminal Procedure recorded before the Magistrate), she has again observed silence about that explanation.

When material, which was required to be explained by Bhagyashree on 8.1.2016, was available on spot on 18.12.2015 itself, we find it objectionable that it was not investigated into. Learned Additional Public Prosecutor Shri N.B. Jawade for the respondents/State submits that after postmortem, the relatives of the deceased created ruckus by bringing body in police station. Such situations are required to be handled by the police authorities, that does not mean that investigation into crime assumes secondary importance.

In reply, mention of initial statement given by Bhagyashree, is totally missing.

If after alleged slapping of his wife in house by deceased, deceased came on road, wife was trying to restrain him in night hours and in the process, her

bangles broke down, her hairs were broken or then buttons on her husband's shirt were lost and or shirt came in her hands, all these facts call for serious investigation.

It appears that the police has permitted accused persons (if any) to improve their story and on 8.1.2016, an additional statement has been recorded to bring on record that explanation. Not only this, perhaps the results, which could have been achieved because of timely intervention, may now never be achieved.

However, we find, in this situation that the respondents have not handled the investigation correctly and properly. We, therefore, forthwith hand over the investigation to the State C.I.D..

As the statement of Bhagyashree recorded on 18.12.2015 is not pointed out in reply-affidavit by respondent No.4 and it appears in case papers produced before us by learned Additional Public Prosecutor Shri N.B. Jawade, we direct the Registry of this Court to seal those papers and to hand it over to the Superintendent of Police C.I.D. by summoning him personally.

Accordingly, we have retained the case papers on record for said purpose.

These papers do not have page numbers, but on F.I.R. dated 18.12.2015 and F.I.R. No.114 of

2015 by pencil No.1 has been written. This numbering continues up to serial No.59 and on page at serial No.59 is statement under Section 164 of Bhagyashree. Then, thereafter, there are other papers, which carry page numbers from 60 up to 86 and then again statement of one Lalchand, C.D.R. and other papers.

These papers shall be sealed and handed over to above mentioned officer in a sealed envelope.

The criminal writ petition is, accordingly partly allowed.

The petitioner is given liberty to approach again, if after investigation by the C.I.D. he finds that things have been made irreversible by the respondents.

JUDGE

JUDGE

!! BRW !!

C E R T I F I C A T E

I certify that this Order/Judgment uploaded is a true and correct copy of original signed Order.

Uploaded by : Bhushan R.Wankhede.
(Personal Assistant)

Uploaded on :- 2/9/2016

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