

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.464 OF 2017

Parmeshwar Shivaji Waware

Age 21 Yrs. Occ. Agri.

R/o. Chinchkheda [T.V.], Tq.Jamner,

Dist. Jalgaon.

PETITIONER

VERSUS

1. The State of Maharashtra,
Through Superintendent of Police,
Jalgaon, Dist. Jalgaon.
2. The State of Maharashtra
Through A.P.I. Police Station Pahur,
Dist. Jalgaon.
3. Dinesh Kadu Bholane,
Age: 25 years, Occu : Labour,
R/o. Chinchkheda [T.V]
Tq. Jamner, Dist. Jalgaon
4. Dinkar Sitaram Bhil
Age: 35 years, Occu : Labour
R/o. as above.
5. Praveen Govind Thombre,
Age : 39 years, Occu : Farmer
R/o. as above.

[Respondent nos.3 to 5
amended as per Court's Order
dtd. 07.08.2017]

RESPONDENTS

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Mrs.Vaishali A.Shinde [More], Advocate for the petitioner

Mrs.Dipali S.Jape, APP for the Respondent/ State

Mr.Vijay Y. Patil, Advocate for respondent nos.3 to 5.

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**CORAM: S.S.SHINDE &
MANGESH S.PATIL, JJ.**

Reserved on : 27.11.2017

Pronounced on : 05.12.2017

JUDGMENT: (Per S.S.Shinde, J.):

1. Heard.

2. Rule. Rule made returnable forthwith, and heard finally with the consent of the parties.

3. This Petition is filed praying therein to transfer the investigation in Crime No.96/2016 registered with Pahur Police Station, Taluka Jamner for the offence punishable under Sections 306, 323, 504, 506 r/w. 34 of the Indian Penal Code to the State CID or any other local Police Station for the

ends of justice, and further prayed to direct the investigation agency to add Section 302 and 120 of the Indian Penal Code in Crime No.96/2016.

4. The background facts leading for filing the present Writ Petition, in brief, as disclosed in the Memo of the Petition are as under:

5. The petitioner is informant, who registered the Crime No.96/2016 with Pahur Police Station, Pahur, Taluka Jamner, District Jalgaon, for the offences punishable under Sections 306, 323, 504, 506 r/w.34 of the Indian Penal Code. It is alleged that on 16.12.2016 at 9.30 a.m. when the informant along with his mother and deceased brother namely Sambhaji @ Dnyaneshwar were present at their house, accused namely Dinesh Kadu Bholane, Dinkar Sitaram Bhil and Pravin Govindrao Thombre came at their home and

assaulted his brother Sambhaji and beat him by stick, fist and blow. At that time, the villagers interfered in that ongoing assault and rescued the deceased. All the accused left the spot by threatening that they will not spare him. After one and half hour, all the accused again came on the motor cycle and asked for pardon. The accused Pravin requested Sambhaji not to file complaint and also promised that they will also not file complaint and requested him to forget whatever had happened in the morning. The accused Pravin requested deceased to come with him for the work in his field for spreading insecticide on brinjal. As the deceased always used to work in the field of accused Pravin, hence immediately he get ready to go for work. Accused Pravin along with two other accused took the deceased on their motor cycle for working in the field. The accused persons instead of taking

deceased in their field for the work, they took deceased in the field of Afsar Gulab Tadavi, who is the President of Tanta Mukti Samiti and resident of village Shingola. All the accused started assaulting deceased with stone, kick and blows. The deceased cried for help. At that time Afsar Gulab Tadvi along with labourer Digamber Namdeo Mule was giving water to the crops in his field. Afsar Tadvi heard noise, hence, he went towards the accused and deceased and asked them why they are beating deceased. He tried to interfere and tried to rescue deceased at that time accused Pravin pushed him and threatened him not to interfere as it is their personal matter. The accused Pravin carried the bottle of insecticide "Monocil" and administered it forcefully to the deceased. The accused Pravin threatened Afsar Tadavi not to disclose the fact to anybody and if he disclosed the said fact to anybody he will

not spare him. As Afsar Tadavi was frightened hence he left the spot and returned to his village.

6. It is alleged that as the deceased Sambhaji did not return back to home, they searched for him in the village. They enquired about Sambhaji to the villagers, at that time one Akash Thombre told the maternal uncle of the petitioner that, the deceased is lying near the river. Immediately the informant along with his uncle reached there, at that time deceased was lying near the river and bottle of Monocil i.e. insecticides was lying near the deceased. There were injuries on the body of deceased. The informant immediately took the deceased to the Hospital where he was declared dead. Thereafter, the petitioner along with his uncle Subhash Waware approached the Police Station to lodge the FIR against the accused. They narrated all the facts about the

incident to the police authorities. However, the police authorities neither recorded the statement of the petitioner nor lodged the FIR. The informant along with his uncle waited in the Police Station till midnight of 16.12.2016, still no complaint / FIR was registered by the Police authorities. Thereafter, on 17.12.2016 early in the morning the petitioner again knocked the door of the police for lodging the complaint, however, the Police Authorities did not pay any heed.

7. On 17.12.2016 at about 3.00 p.m. the police authorities enquired with the informant about the incident. The informant narrated all the facts to the police and told that the accused persons administered poison to the deceased as they had grudge in their mind against the deceased and because of which the death has been occurred. The police authorities orally told the informant that

they had lodged the complaint for the offence punishable under Sections 302, 120, 323, 504, 506 r/w. 34 of the Indian Penal Code. However, they lodged the complaint for the offence under Section 306, 323, 504, 506 r/w. 34 of the Indian Penal Code. The informant believed that the police has registered Crime under Section 302 of the IPC because he could not read and write as he is illiterate person.

8. The petitioner approached the Judicial Magistrate First Class by invoking Section 156 [3] of the Criminal Procedure Code by filing Criminal Misc. Application No.13/2017 for further investigation, however, the said application was rejected. Being aggrieved by the same, the petitioner has filed Criminal Revision No.40/2017 before the learned Sessions Court at Jalgaon, however, the said Revision was also rejected. Hence this Petition.

9. Learned counsel appearing for the petitioner invites our attention to the contents raised by the petitioner in paras.7 to 12 and submits that, the concerned Officer incharge of the Police Station did not register the crime as per the complaint given by the petitioner. It was narrated by the informant that the accused had taken deceased with them on motor cycle and forcefully administered poison. The concerned Police Station registered the crime for the offence punishable under Section 306 of the Indian Penal Code instead of Section 302 of the IPC. The Police authorities have overlooked the statement of Akash Thombre and eye witness namely Shri Afsar Tadavi, who have categorically stated that the accused assaulted deceased and Pravin forcefully administered poison to the deceased and thrown him near the river. It is submitted that the investigation carried out by the

Investigating Officer was not fair and the same was done under the pressure of the accused. Though, the statement of Akash Thombre and Afsar Tadavi clearly lead to the conclusion that the accused forcefully administered poison. However, the offence under Section 302 r/w.120B was not registered.

10. On the other hand, learned APP appearing for the respondent-State relying upon the averments in the affidavit-in-reply submits that, the investigation has already completed and the Investigating Officer has filed charge-sheet before the Judicial Magistrate First Class, Jamner. On 16.12.2016, the deceased Dnyaneshwar @ Sambhaji Waware had purchased the "Monocil" [insecticides]. The Investigating Officer has also seized the receipt of purchase of insecticides from the pocket of the shirt of the deceased. The Investigating

Officer has conducted investigation properly by recording the statements of the eye witness. He further submits that the investigation has been carried out as per the narration of the allegations in the FIR, and therefore, the Petition may be rejected.

11. Learned counsel appearing for the added respondent nos.3 to 5 i.e. original accused submits that, there is no material in support of the statement of the alleged eye witness namely Afsar Tadvī and his statement did not inspire confidence. He invites our attention to the various steps taken by the Investigating Officer to carry out the investigation and fact that the deceased on 16.12.2016 purchased "Monocil"[insecticides]. He submits that, the Petition may be rejected.

12. We have given careful consideration to the submissions of the learned counsel

appearing for the petitioner, learned APP appearing for the respondent-State and the learned counsel appearing for respondent nos. 3 to 5. We have carefully perused the statement of Afsar Tadvī. Upon careful perusal of the contents of his statement, it appears that, the deceased was assaulted on 16.12.2016 at about 11.30 a.m. by the accused and thereafter one of the accused namely Pravin has assaulted by stick on the chest of deceased and also carried one green colour plastic bag containing one tin box. Thereafter, they dragged him towards bank of river. As contended by the Afsar Tadvī, he gave two slaps to Pravin Thombre, however, said Pravin Thombre and co-accused continued to drag the deceased towards the bank of river.

13. Upon careful perusal of the witness and in particular witness, namely, Afsar Tadvī, it clearly emerges that the accused

after assaulting Sambhaji [deceased] dragged him towards bank of river and Afsar Tadvī had opportunity to watch them till they disappeared. Therefore, we find considerable force in the submission of the learned counsel appearing for the petitioner that, the FIR has not recorded as per the version of the informant. *Secondly*, the Investigating Officer has not carried out the investigation in a proper manner. It appears that, on such faulty and half-hearted investigation, the charge-sheet has been filed by the Investigating Officer. In our *prima facie* opinion, there was no proper investigation by the concerned Investigating Officer. The statement of Afsar Tadvī merely would *prima facie* lead to the conclusion that Sambhaji has not died due to commission of suicide. Importantly, the injuries are noticed on the body of the deceased Sambhaji. In case of simple suicide, there was no question of

injuries on the body of the deceased. It is true that, the petitioner invoked the jurisdiction of the Court of Judicial Magistrate First Class and also the Revisional Court, however, the said Courts have no jurisdiction to transfer the investigation to the Special Agency, and therefore, in the peculiar facts and circumstances of this case, the case is made out to transfer the investigation to some other Officer. It is true that, the charge-sheet has been filed, however, in view of the exposition of law by the Supreme Court in the case of **Narmada Bai Vs. State of Gujarat and others**¹ merely because the charge-sheet is filed, it cannot be construed as an impediment for further investigation.

14. In that view of the matter, we direct the Superintendent of Police, Jalgaon, to appoint an Officer not below the rank of

¹ AIR 2011 SC 1804

Deputy Superintendent of Police to cause further investigation. Needless to observe that, the earlier Investigating Officer be relieved from the investigation in Crime No.96/2016 registered with Pahur Police Station, Taluka Jamner, District Jalgaon. We direct the Superintendent of Police, Jalgaon to take immediate steps to appoint new Investigating Officer not below the rank of Deputy Superintendent of Police, as expeditiously as possible, however, within one week from today.

15. Upon such appointment of new Investigating Officer, the said Officer shall expedite the investigation, if necessary, to record further statement of the witnesses, and also would be at liberty to add sections of the Indian Penal Code during the course of investigation. Till then, further proceedings in R.C.C.No.43/2017, pending on the file of

Judicial Magistrate First Class, Jamner,
shall remain stayed.

16. Needless to observe that, the Investigating Officer will be at liberty to file additional charge-sheet depending upon the outcome of the investigation.

17. The Writ Petition is allowed to the above extent. Rule is made absolute. The Writ Petition stands disposed of accordingly.

18. List for compliance of today's order on 22nd December, 2017 under caption "compliance".

[MANGESH S.PATIL]
JUDGE

[S.S.SHINDE]
JUDGE