

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

CRIMINAL WRIT PETITION NO. 264 OF 2001

Smt. Sitabai w/o Prakash Pawar,
Age 32 years, Occu. Labourer,
R/o C/o Baban Karbhari Pawar,
At : Kauki Shiwar, Taluka Kopargaon,
District Ahmednagar

.. Petitioner

Versus

1. The State of Maharashtra
2. Secretary,
Home Department,
Mantralaya, Mumbai
3. Inspector General of Police,
State of Maharashtra
4. Inspector General of Police
(Special), Nasik Division,
Nasik
5. District Superintendent of Police,
Ahmednagar
6. Police Inspector,
Shirdi Police Stataion,
Shirdi, Taluka Kopargaon,
District Ahmednagar
7. Sub Divisional Magistrate,
Sangamner, Dist. Ahmednagar
8. Uttam s/o Parashuram Shelke,
R/o Shirdi, Taluka Kopargaon,
District Ahmednagar

..Respondents

Mr B.S. Kudale, Advocate (appointed) for petitioner
Mr S.J. Salgare, A.P.P. for respondents no.1 to 7
Mr M.N. Navandar, Advocate for respondent no.8

**CORAM : T.V. NALAWADE AND
A.M. DHAVALA, JJ**

DATE : 21st November 2017

ORAL JUDGMENT (Per A.M. Dhavale, J.)

1. The petitioner, a labourer belonging to scheduled caste who lost her husband on 15.8.1996 in suspicious circumstance has filed this writ petition under Articles 14, 21, 226 of the Constitution and Section 482 of Cr.P.C. for following reliefs :

(C) By issuing appropriate writ, order, directions the order dated 25.10.1996 issued by Sub-Divisional Magistrate may be quashed and set aside;

(D) By issuing appropriate writ, order, directions respondent State be directed to register F.I.R. regarding the murder of petitioner's husband Prakash Pawar;

(E) By issuing appropriate writ, order or directions respondent State be directed to investigate into the matter through independent investigating agency like State C.I.D. And submit its report to the High Court;

(E) Respondents be directed to register offence regarding murder of deceased Prakash Pawar against respondent no.8 Uttam Parshuram Shelke and arrest him;

(F) Respondent State be directed to pay amount of compensation of Rs.3 lacs to the petitioner.

2. Since Advocate for the petitioner was no more, Advocate Mr B.S. Kudale was appointed by this Court to represent the petitioner. The petition shows that the petitioner is a widow belonging to scheduled caste category and poor labourer. Her husband Prakash Pawar, a Bhill was working as a labourer in the farm of respondent no.8 Uttam Shelke, residing at Shirdi during 1990 to 1996. He was getting wages of Rs.400/- per month (+) 7 kg. Grains per week. In the year 1996, a water pipeline of respondent no.8 was broken at the hands of Prakash Pawar and hence, Prakash was mercilessly beaten and was handed over to police. He was detained in police custody for three days. After returning from custody, respondent no.8 Uttam did not pay him the due wages. Then Prakash decided to change his employer and started working with one Yuvraj Turkane at Pimplewadi. Respondent no.8 Uttam was hurt by his conduct and had threatened Prakash that he would be killed. From 15.8.1996, Prakash Pawar along with the petitioner, who was pregnant and was having four children went to the matrimonial place of the petitioner at Kopargaon for work. While on the way, Prakash told the petitioner that he was going to respondent no.8 Uttam Shelke to collect his arrears of wages and she should wait near Shirdi bus stand. Her husband went but did not return. Hence, the petitioner approached police of Kopargaon on 17.8.1996 apprehending that he might have been again arrested. She was asked to come again on the next day. On 18.8.1996, she was shown photographs of a dead body. It was of her husband. She was told that the dead body was found in respondent no.8 Uttam's well and since it was unidentifiable was disposed of through municipality. The petitioner and her relatives suspected that her husband must

have been killed by respondent no.8 Uttam Shelke. They made complaint to the police, but no cognizance thereof was taken. On 27.10.1996, a '*morcha*' of dalit people was also arranged against the atrocities of police against scheduled caste people. One of the subjects of said '*morcha*' was accidental death of Prakash. The petitioner wrote a complaint dated 19.12.1996 to D.S.P. Ahmednagar narrating the above referred facts and expressing her suspicion that her husband was killed. Again, on 7.6.1999, one application was moved by adiwasi people for holding enquiry in the suspicious death of Prakash Pawar. Letter dated 22.8.1996 was written to Special Inspector General of Police. On 8.6.1999, the petitioner was informed that accidental death case enquiry was held and final summary was approved. Still, if any new material would found, appropriate action would be taken against the persons responsible. The enquiry revealed that S.D.P.O. Has passed order dated 25.10.1996 holding that Prakash met with accidental death by drowning. The aggrieved petitioner filed this petition on 25.6.2001.

3. Police Inspector of Shirdi Police Station has filed reply dated 18.2.2003. He has clarified that he was not there at the time of incident and was filing the reply on the basis of documents. He stated that Accidental Death case was registered at Shirdi Police Station on the report of Purushottam Shelke, i.e. father of respondent no.8 Uttam pertaining to death of Prakash Pawar. It was enquired into by Head Constable Shaikh. The inquest panchnama was drawn and post mortem was conducted. Statements of witnesses were recorded and thereafter a report for final summary was submitted and the same

was accepted by Sub Divisional Magistrate, Sangamner. It is also submitted that the record of Accidental Death case No.23/1996 was not traceable in the Tahsil Office, Kopargaon. The report is based on the case diary of Head Constable Shaikh, who conducted enquiry into Accidental Death case. It disclosed that on 15.8.1996 at 5.00 p.m., Purushottam heard some sound that something is fallen into the well. He immediately came there and saw some unknown person jumped into the well, but there was deep water in the well. He after informing the police, started electric motor for drawing out the water for search of unknown person. When the water level came down, one dead body was traced in the well. Parts of the body were eaten by aquatic animals. The photographs of the body were taken. After inquest and post mortem was done, since the body was not identified by anybody in three days, it was handed over to municipality for disposal. Accordingly, funeral was carried out. When the petitioner identified the photographs and clothes of the deceased, it was learnt that the dead body was of her husband. The statements recorded during the enquiry disclosed that the petitioner's husband had received Rs.50/- and had consumed large quantity of liquor on 15.8.1996. There was quarrel between him and the petitioner. Prakash ran away and the petitioner came to know about his death on 19.8.1996. The enquiry revealed that deceased Prakash had served for a period of two months with respondent no.8 Uttam fifteen days before the incident, but as he was addict, he was removed from work. Prakash had died due to drowning. There was no homicidal death, no F.I.R. could be registered. It is not a case of murder and, therefore, the petition deserves to be rejected.

4. Respondent no.8 Uttam's father Purushottam has filed affidavit. He denied that Prakash was working with him from 1990 to 1996. He denied the allegations about beating to Prakash on account of breaking of pipeline in his field and detention of Prakash in police custody for three days. He denied all material allegations in the petition and claimed that the petition was filed at belated stage. Hence, the petition should be dismissed.

5. The petitioner has filed additional affidavit dated 23.11.2003 wherein she has claimed that her husband was not drowned and she has not given any statement to that effect. On 20.8.1996, her husband had gone to respondent no.8 Uttam Shelke for collecting his arrears of wages and thereafter he disappeared. The photographs disclosed swellings and injuries on the body of deceased Prakash. His body was found in the well of respondent no.8 Uttam Shelke who is rich person. He runs a big hotel 'Sai Krupa' at Shirdi and holds influence. She had requested for copies of the record of the enquiry conducted by S.D.O., but she was not provided such copies. The deceased Prakash was a good swimmer. He could not have drowned. The police have failed and neglected to take complaints made by the petitioner from time to time.

6. The Tahsildar has filed affidavit dated 4.12.2003 disclosing that in spite of efforts, the papers of Accidental Death case enquiry could not be traced out. Dnyandeo Namdeo Pacharne, (Retd. Deputy Collector), during the relevant period has stated that he had handed

over the papers to Record Keeper, Tahsil Office on 6.1.1997. There are also affidavits of R.S. Kshirsagar, Sub-Divisional Officer, Sangamner Division, Sangamner, Umrao Amir Shaikh, P.S.I., Balasaheb Sarjerao Khillari, Police Inspector, Aurangabad (Rural). Copy of the station diary entry has been filed on record.

7. After going through the entire record and hearing the arguments of learned Counsel for the parties, we find many suspicious circumstances with regard to the death of Prakash Pawar. It is unfortunate that this writ petition of 2001 was not disposed of at the earliest.

8. The papers disclosed following facts :

(I) Respondent no.8 Uttam Shelke is a rich person, while deceased Prakash Pawar was serving with him as a labourer.

(II) Respondent no.8 Uttam belongs to general category, whereas the deceased was belonging to dalit category.

(III) The dead body of Prakash was found in the well of respondent no.8 Uttam situated in his field. The first report was given by respondent no.8 Uttam's father on 16.8.1996 and the inquest panchnama was also drawn.

9. The contention of the police and respondent no.8 Uttam that the dead body was unidentifiable has no substance. There were some minor injuries due to aquatic animals bites, but there is nothing to

show that the face of the deceased was unidentifiable. His wife has identified him by looking to the photographs of dead body taken. It is certain that respondent no.8 Uttam and his father Purushottam were in a position to identify dead body, but they have not identified it. It is highly suspicious circumstance.

10. The dead body was not preserved for sufficient length of time and it was disposed of within short time. It was duty of police as well as respondent no.8 Uttam to trace out the relative of deceased and hand over the dead body of Prakash Pawar to the petitioner. It is suspicious that instead of handing over the dead body to the wife of the deceased Prakash, it was disposed of as '*Lawaris*'.

11. The petitioner has claimed that her husband was a good swimmer and he could not have drowned. She also claimed that the photographs of the dead body disclosed injuries on his person but the inquest panchnama and post mortem notes do not disclose any ante mortem injuries. It is found that the viscera of the dead body was not preserved and sent for chemical analysis. There is no material to show that the deceased was drunk and he might have committed suicide under the influence of liquor.

12. The petitioner has stated that her statement purportedly recorded on 20.8.1996 is false. She has not given such statement. Pertinently, the dead body was disposed of on 19.8.1996 and statement of Petitioner – Sitabai came to be recorded on 20.8.1996.

13. The petition shows that there was accidental breaking of pipeline in the field of respondent no.8 at the hands of deceased Prakash Pawar. Therefore, he was mercilessly beaten and a complaint was lodged at police station and he was in police custody for three days. No record of these allegations was collected. If it was true, the police must be aware that the deceased Prakash Pawar and disposal of his body as '*Lawaris*' becomes highly suspicious.

14. The material shows that there was parapet wall around the well which considerably reduces the possibility of any accidental death.

15. The report of Purushottam shows that the dead body was of unidentified person and still he reported that the said person has committed suicide and he was not from the said locality.

16. In the light of above facts, it is highly suspicious that A.D.M. enquiry has been destroyed. It was argued that the said record should have been preserved for 30 years as 'B' category, but even if it is assumed that it is of 'C' category, it ought to have been preserved for five years and when writ petition was filed and its intimation was given to the government, period of five years was not yet over, it was duty of the government to maintain the record till the disposal of writ petition. The enquiry was completed and final order was passed by Sub Divisional Magistrate on 25.10.1996, then the record should have been preserved at least till 24.10.2001. The present writ petition was filed in June 2001 and the notices were also issued to the parties. There is no record to show that after following the due procedure, the record of the enquiry was destroyed. It is simply untraceable.

17. While granting final summary, no notice was given to the petitioner and she was not heard. The various points raised by her are not dealt with in the order of final summary passed by Sub Divisional Magistrate.

18. We find that the death of Prakash Pawar on 15.8.1996 in the well of respondent no.8 Uttam on the background of the previous quarrel between respondent no.8 Uttam and deceased Prakash Pawar and the alleged assault on Prakash Pawar is definitely suspicious. The D.S.P., on receipt of letter of petitioner dated 19.12.1996 ought to have conducted enquiry, but no enquiry was conducted. We find that it has resulted into serious miscarriage of justice and the petitioner is the sufferer on account of the acts of the respondents showing negligence and dereliction of duties. We feel that it is utmost necessary to hold enquiry into the death of deceased Prakash Pawar on 15.8.1996 through C.I.D. in the light of petitioner's letter dated 19.12.1996 addressed to D.S.P., Ahmednagar.

19. Considering all the facts, we feel it proper that the petitioner should be compensated adequately for the harassment and injustice suffered by her during last so many years. Though the prayer is only for compensation of Rs.3,00,000/-, considering the long time gap from the June 2001 till today, we feel that the compensation amount should be enhanced to Rs.5,00,000/- (Rs. Five lacs). It is needless to state that if any material is found against respondent no.8 Uttam showing his involvement in the murder of petitioner's husband Prakash Pawar, the State Government shall be at liberty to recover the said amount from respondent no.8 Uttam.

20. We sincerely appreciate the services rendered by Advocate Mr B.S. Kudale represented the petitioner on our request for the cause of justice and we quantify his fees at Rs.5,000/- (Rs. Five thousand). Hence the order.

21. Criminal Writ Petition stands disposed. Rule made absolute in above terms.

(A.M. DHAVAL, J.)

(T.V. NALAWADE, J.)

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