

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 3905 OF 2016

Mohammad Inamulla Ubaidullah Khan ...	Petitioner
Vs.	
Senior Inspector of Police, Mankhurd Police Station & Ors. ...	Respondents

Mr.Mubin Solkar i/b. Mr. Yusuf Shabbir Mithi, Advocate for the petitioner
Mrs. Anamika Malhotra, APP, for the State.

CORAM: SMT.SADHANA S.JADHAV, J.
DATE : 5th April, 2017.

P.C.

Heard the learned counsel for the petitioner and the learned
APP.

2. Being aggrieved by the order dated 9.8.2016 passed by the
Addl. Sessions Judge, Greater Mumbai, thereby rejecting the application
filed by the petitioner, below Exhibit 10, in Sessions Case No.271 of 2014,
the petitioner has approached this Court. The petitioner happens to be the
first informant.

3. It is the case of the prosecution that the daughter of the
petitioner had died due to burn injuries in her matrimonial house on
3.12.2013. The dying declaration of the daughter of the petitioner was
recorded in the hospital and hence the case rests on dying declaration. She

had died due to burn injuries within seven years of marriage as the date of marriage is 15.5.2010 and she has died in the year 2013.

4. It is the case of the petitioner that there was a demand of Rs.2 lakhs. Since the demand could not be fulfilled, his daughter was being harassed and ill-treated. It appears from the records that on 3.12.2013, deceased Rehana had given a missed call to her father. The petitioner had called her back and he was informed that she was being assaulted by her husband as he was demanding money for business. She had also requested the petitioner to take custody of her minor son Danish. It appears that the petitioner had received a subsequent missed call and that was answered by her husband who informed him that Rehana was in the process of setting herself ablaze. The petitioner was shocked as he could not imagine the audacity of her husband i.e. the accused stating that Rehana was in the process of setting herself ablaze while he was at home. It appears that thereafter also the petitioner had tried to call upon his daughter and it was found that the phone was switched off. Soon thereafter he was informed that she was admitted in the hospital. Petitioner was informed by an unknown person that Rehana was admitted in the hospital with history of burn injuries. Fortunately, the petitioner had taken the snapshot of the calls received and made to the deceased just prior to her death.

5. The dying declaration was recorded by PSI Mali of Mankhurd Police Station, wherein the deceased had disclosed that on 3.12.2013, at 9 p.m. she was assaulted by her husband when she was cooking food and being enraged by the said act, she had immolated herself. It is also stated that her husband and others had extinguished the flames by pouring water. The investigation is completed and charge-sheet is filed against the husband under Section 498. While granting bail in favour of the accused, the learned Sessions Judge had observed that in view of the dying declaration, it cannot be said that it is a case of dowry death and no case under Section 304-B of the IPC can be made out. The charge sheet is filed for offence punishable under Section 304(B), 498-A of the IPC.

6. The learned counsel for the petitioner submits that the investigation has not been fair. He had, therefore, filed an application seeking further investigation under Section 173(8) of Cr.P.C. as the compilation of the charge-sheet did not include the call details made by the deceased to her father or the calls made by the petitioner to the deceased just before her death. It is also submitted that the statement of the minor son of the deceased was recorded in question and answer form. It is also submitted that video recording was done of the said statement. Despite this, it does not find place in the charge-sheet.

7. The learned counsel for the petitioner submits that deceased Rehana was not in a position to talk ever since the time she was admitted in the hospital.

8. Perused the papers of National Burns Centre which shows that she was admitted in the hospital at about 3.15 a.m. She was drowsy. Her B.P. and pulse not recordable. At about 8 a.m., her pulse was not recordable. Pupils dilated and not reacting to light.

9. The learned counsel submits that despite this condition, the dying declaration is purportedly recorded which bears an endorsement of the doctor that she is conscious and in a position to give statement. According to the learned counsel, the dying declaration has not been given by the deceased. That her husband was present when she was admitted and continued to accompany her till her death. The genuineness and truthfulness of the dying declaration are doubtful in the given circumstances and that is precisely the reason why the petitioner was constrained to file an application seeking further investigation.

10. In fact, the application ought to have been filed through the prosecution. The complainant had not filed any application under Section 301 of the Cr.P.C. and, therefore, the application ought to have been filed by the prosecution agency as the call details record as well as the video

recorded statement of the minor were within the knowledge of the investigating agency prior to filing of charge-sheet.

11. The learned APP submits that in view of the submissions advanced across the Bar and the papers annexed to the present petition, the prosecution in the present case would file an application under Section 173(8) of Cr.P.C. seeking to file on record the call details between the first informant and the deceased as well as the video recorded statement of the minor of the deceased and any other particulars as would be given by the complainant.

12. In view of this, no orders need to be passed. The learned Sessions Judge shall consider the application so filed on its own merits and decide the same within one week from the date of filing. The learned Sessions Judge shall not take into consideration the observations made in the impugned order and shall pass order on the basis of the material filed by the complainant through prosecution.

13. With these directions, Rule is made absolute and the Petition stands disposed of.

(SMT. SADHANA S.JADHAV, J.)