

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CRIMINAL APPELLATE JURISDICTION**

**WRIT PETITION NO.3933 OF 2017**  
**WITH**  
**CRIMINAL APPLICATION NO.449 OF 2017**

Mangesh Janardan Gavand

.. Petitioner

V/s.

Varun Vinod Asrani & Ors.

.. Respondents

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Mr.H.E. Mooman i/b. Mr. Rohidas Bhoir, Advocate for the Petitioner.  
Mr. Vikram Chaudhri, Senior Advocate i/b. Mr.Yogesh Rohira,  
Advocate for the respondent No.1.

Mr.H.K. Sudhakara, Advocate for Respondent No.2.

Mr. Sujay Kantawala along with Mr. Ashish Mehta, Mr.Pratik Jhaveri  
i/b.Mr. Ashish Mehta, Advocate for Respondent No.3.

Mr. Vikram Nankani, Senior Advocate along with Ms.Neha Ahuja,  
Advocate for the respondent No.4.

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**CORAM : RANJIT MORE AND**  
**PRAKASH D. NAIK, JJ.**

**DATED : OCTOBER 11, 2017.**

**P.C. :**

This petition is preferred by the petitioner under Article 226 of the Constitution of India seeking issuance of writ or directions for transferring criminal case no.126 of 2011, arising out of C.R. No.25 of 2011, registered with Lonavala Police Station, Pune and disposed of by the learned Civil Judge, Junior Division, Vadgaon Maval, Pune, for further and proper investigation to the Central Bureau of Investigation or any other independent investigating machinery.

2           We have heard the counsel for the petitioner as well as the advocate representing the respondents. The FIR was registered with Lonavala Police Station, Pune, on 15<sup>th</sup> February, 2011 in respect to incident dated 22<sup>nd</sup> May, 2010. The offence was registered under Section 325 read with Section 34 of the IPC against respondent nos.1 to 3. Petitioner has submitted that the investigation was conducted in hasty manner with a view to support accused. It is submitted that the respondent nos.1 to 5 in connivance with the Lonavala Police Station, closed the investigation. It is also contended that after consulting with the father of respondent no.1, steps were planned to paint a clean picture of innocence of respondent nos.1 to 3. The father of respondent no.1 took the assistance of respondent no.4 who tried his best to see that the deceased was admitted in Sion Hospital so that it can be manipulated that the deceased died a natural death. It is also submitted that with the assistance of respondent no.4 - Doctor played a major role in getting the postmortem report. The compromise was entered between the parties without conducting any inquiry about the genuineness of the parties who are allegedly relatives of the deceased and the matter was compounded. The said deponents have neither signed the

affidavits nor they were present before the Court. The affidavit of compounding was filed *exparte*. They were not the relatives of the deceased Inderdas Arora. It is also alleged that the Lok Nyayalaya had passed an order hurriedly. It is submitted that inspite of the application preferred by APP before the Court seeking clarification regarding applicability of the offence under Section 302 of I.P.C., the Court did not pass any order and simply kept the application on record.

3           We have perused the documents. The incident in question had arisen on 22<sup>nd</sup> May, 2010. The statement of respondent no.5 was recorded by police on 23<sup>rd</sup> May, 2010 and ADR No.00/10 was registered. Thereafter, the aforesaid FIR was registered on 15<sup>th</sup> February, 2011. On completing investigation, charge-sheet was filed against respondent nos.1 to 3. The offence was compromised on the basis of the application preferred by the accused on 11<sup>th</sup> October, 2015. The petitioner had not made any grievance with regards to faulty investigation, hushing up case, connivance of all the respondents or suspicion regarding compounding of offence from 2010 till filing of petition.

4           The statements of the petitioner were recorded by

investigating authority are contrary to the grievance of the petitioner in the present petition. There is no explanation as to why he waited for all these years from lodging protest against the same. It is submitted by the counsel for respondents that the services of the petitioner were terminated by respondent no.5 and hence out of vengeance, he has filed the present petition. Statements of various persons were recorded and, thereafter, charge-sheet was filed. The statements of the petitioner were recorded in 2010 and after a period of about seven years the petitioner has changed his version. He did not raise any doubt the genuineness of the investigation. Apparently, the petition is being filed with *malafides*. The petition contains contrary versions of the petitioner which are disputed question of facts. The petitioner has no *locus standi* to seek the prayers in the present petition. After filing of charge-sheet and compounding of offence, no relief as prayed for by the petitioner can be granted. If the petitioners version is to be accepted, it will have to be inferred that he suppressed the same while recording his statements.

5           The version of the petitioner in the present petition is contrary to his statement recorded by the investigating machinery which is annexed at page nos.90 and 100 of this

petition. It is not the case of the petitioner that his statements which were recorded by the police were recorded under coercion or undue influence. In the charge-sheet, there was no reference of respondent nos.4 and 5. According to the version of the petitioner in the aforesaid statement, the victim was brought by the said petitioner himself in the municipal hospital on 22<sup>nd</sup> May, 2010. The victim was breathing while on the way to the hospital. In the statement, it is further stated that the petitioner with respondent no.5 intended to take the victim to another hospital, however, due to precarious condition, the victim was taken to the municipal hospital at Vashi. From the said statements, it is also apparent that when the petitioner and the respondent no.5 had reached the place of incident, the victim was already injured and hence he was taken to hospital. There was no reason for the petitioner to keep silent, inspite of his statement being recorded in 2010, charge-sheet being filed and the matter being compromised thereafter. This petition is being filed in the year 2017 i.e. almost after a period of seven years from the date of the incident. The petitioner is also casting aspersions on the Court (Loknyalaya), which passed the order of compromise which is contemptuous. We have also noticed that the concerned Court has passed orders on 11<sup>th</sup> April, 2015 allowing compromise and

acquitting the accused. The order also refers to application at Exhibits - 29 and 30 stating that settlement of dispute had taken place between the relatives of the complainant and accused and also compromise memo vide Exhibit - 31. The order dated 11<sup>th</sup> April, 2015, refers to the fact that the heirs of the deceased namely Hajinderdas Harnamdas Arora, Ishkumar Indradas Arora, are present before the Court and stated that their dispute is settled and they have no objection. They have noted that there were affidavits executed by Hajinderdas Harnamdas Arora-brother of the victim and Ishkumar Indradas Arora-son of the victim as well as Shri Jaspalsingh Banga who is the close relative of the accused which are at pages 204 to 206. The said deponents have signed their affidavits as well as compromise memos which is at page 197 of the petition. We have also considered the fact that on the application of APP, notice was issued by the Court concerned officer vide order dated 17<sup>th</sup> January, 2013. Vide report dated 15<sup>th</sup> February, 2013, the order was complied. The report is at page 190 of the petition. Learned APP had put up an endorsement on the application stating that on perusal of the documents advanced by the investigating officer, the application is not pressed. This is apparent from the application and endorsement which is appearing at page 182 of the petition. In

view of the above, the version of the petitioner which is coming after a period of 7 years and which is contrary to his own statement is *malafide*. In the light of aforesaid circumstances, the petitioner has no locus to seek the reliefs in this petition. Hence, therefore, the prayer sought in this petition cannot be granted.

6 In view of the above, we pass the following order:

**:: ORDER ::**

- (i) Criminal Writ Petition No.3933 of 2017 is dismissed;
- (ii) Criminal Application No.449 of 2017 stands disposed of accordingly.

**(PRAKASH D. NAIK, J.)**

**(RANJIT MORE)**