

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

CRIMINAL APPLICATION NO. 786 OF 2018

1. Gajanan s/o Bhujangrao Thorat,
Age 40 years, Occ. Agriculture.
2. Ganesh s/o Vishwanath Kakade,
Age Major, Occ. Agriculture.
3. Namdeo s/o Dattatraya Gaikwad,
Age Major, Occ. Agriculture.
All r/o. Hirdi Tq. & Dist. Hingoli.

... **Applicants**

VERSUS

1. The State of Maharashtra,
Through Police Inspector of
Basamba Police Station, Tq.
& Dist. Hingoli.
2. Sadarsing Thakur, Age Major,
Occ. Service, Police Inspector,
Basamba Police Station.
3. Trimbak s/o Bhujang Thorat,
Age Major, Occ. Agriculture,
R/o. Hirdi, Tq. & Dist. Hingoli

... (Respondent No. 2 is
original informant)

... **Respondents.**

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Advocate for Applicants : Mr. A. I. Kanade.
APP for respondent No. 1 & 2/ State : Mrs. D.S. Jape.
Advocate for Respondent No. 3 : Mr. S. B. Solanke.

**CORAM : T.V. NALAWADE &
K. L. WADANE, JJ.**

DATE : 10th AUGUST, 2018.

JUDGMENT (PER K.L. WADANE, J.) :

1. Rule. Rule made returnable forthwith. With the consent of the parties, this application is taken up for final disposal.

2. This application is filed under the provisions of section 482 of the Code of Criminal Procedure for relief of quashing of first information report No. 198/2017 registered at Basamba Police Station Tq. & Dist. Hingoli on 16.12.2017, for the offences punishable under section 279, 304A, 427 of the Indian Penal Code read with section 181 (3)(5) and 171 of Motor Vehicles Act and for the offence punishable under section 302 read with section 34 of the Indian Penal Code, subsequently added in the first information report No. 198/2017, in view of the complaint dated 11.11.2017 given by respondent No. 3.

3. Respondent No. 2, Police Inspector of police station Basamba on behalf of State lodged a complaint against the applicants alleging that the respondent No. 3 gave information that the tractor of the applicant No. 1 is lying in the water tank (Shet-Tale) of the applicant No. 2 and the dead body of driver of the tractor namely Gajanan Jaytanta Chorghode was lying on the bank of the water tank. There were injuries on the face of Gajanan. Initially accidental death was registered. During the enquiry of accidental death, the dead body of Gajanan was referred for postmortem and the opinion of the concerned medical officer was obtained, who gave the cause of death, due to

massive bleeding secondary to the head injury. The medical officer also opined that the injuries sustained by Gajanan were not due to assault but they are due to the motor vehicle accident, as stated by the witnesses to the incident.

4. We have heard the arguments of Mr. Kanade, learned counsel for applicants, Mrs. D.S. Jape, learned APP for respondent No. 1 and 2 and Mr. S.B. Solanke, learned counsel for respondent no. 3.

5. On perusal of the contents of the first information report itself it appears that during the enquiry of the accidental death, the statement of witnesses were recorded, out of them, two eye witnesses have stated that when the deceased Gajanan, the driver of the tractor, was trying to take out the tractor from the tank, it was toppled and due to which deceased Gajanaj sustained bleeding injuries. After the accident, the injured was taken at the bank of the tank, at that time there was bleeding from his nostril. Within short period he succumbed to the injuries. Therefore, even from the contents of the first information report it is very much clear that the deceased Gajanan died due to accident, when he was trying to take the tractor out from the tank.

6. In such circumstances, how these applicants are connected with the alleged incident of the accident is not clear. In fact, the deceased died because of his own negligence. It appears from the record that these applicants/accused persons are made accused in the aforesaid crime only on

the basis of allegations made by respondent No. 3, who is brother-in-law of of deceased Gajanan. Applicant No. 1 is the owner of the tractor and applicant No. 2 is owner of the water tank (Shet-Tale). All the applicants are no way any concern with the alleged accident or negligence. In fact, prima faice it appears that the deceased Gajanan himself was negligent while driving the vehicle.

7. It is made clear that the aforesaid observations are made only for disposal of this application on merits.

8. In view of the above, application is allowed. Relief is granted in terms of prayer clause 'B'. Rule made absolute in those terms.

9. Criminal Application is disposed of.

(K. L. WADANE, J.)

(T.V.NALAWADE, J.)

mkd