

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

CRIMINAL WRIT PETITION NO.751 OF 2006

1. Nanabhau S/o Shenphadu Patil
Aged: 35 years, Occ: Agril.
R/o Khandalay (K),
Tq. & Dist. Dhule.
2. Shenphadu S/o Lakdu Patil
Aged: 66 years, Occ: Agril,
R/o Khandalay(K),
Tq. & Dist. Dhule.
3. Sau. Maltibai Shenphadu Patil,
Aged: 63 years, Occ: Household,
R/o Khandalay(K),
Tq. & Dist. Dhule.
4. Naval Shenphadu Patil
Aged: 40 years, Occ: Agril.,
R/o Khandalay(K),
Tq. & Dist. Dhule.
5. Sau. Kamalbai Naval Patil
Aged: 38 years, Occ: Household,
R/o Khandalay(K),
Tq. & Dist. Dhule.
6. Budha Shenphadu Patil
Aged: 33 years, Occ: Agril.,
R/o Khandalay(K),
Tq. & Dist. Dhule.
7. Sau. Sangita Budha Patil
Aged: 30 years, Occ: Household,
R/o Khandalay(K),
Tq. & Dist. Dhule.
8. Pundalik Lakdu Patil
Aged: 64 years, Occ: Agril.,
R/o Khandalay(K),

Tq.& Dist.Dhule.

9. Sau.Hansabai Pundlik Patil
Aged:61 years,Occ:Household,
R/o Khandalay(K),
Tq.& Dist.Dhule.

10. Kailash Pundalik Patil
Aged:36 years,Occ:Agril.,
R/o Khandalay(K),
Tq.& Dist.Dhule.

11. Sau.Kalabai Shantaram Patil
Aged: __years,Occ:Agril.,
R/o Khandalay(K),
Tq.& Dist.Dhule.

12. Sau.Sarubai Daga Patil
Aged: __years,Occ:Agril.,
R/o Khandalay(K),
Tq.& Dist.Dhule.

... **Petitioners**

VERSUS

1. The State of Maharashtra
(Copy to be served on Public
Prosecutor, High Court of
Bombay Bench at Aurangabad)

2. Raghunath S/o Bhika Shinde
Aged:Major,Occ:Agril.
R/o Udane, Tq.& Dist.Dhule.

... **Respondents**

Mr. D. S. Bagul, Advocate for the Petitioners
Mr. A. P. Basarkar, APP for the respondent State.
Mr. S. S. Londhe h/for Mr. S. I. Nandode, Advocate for
respondent No.2.

CORAM : K. L. WADANE, J.

DATE : 3rd April, 2018

JUDGMENT:

1. Heard Mr. Bagul, the learned counsel for the

petitioners as well as Mr. Londhe, learned counsel for the respondent No.2.

2. Order issuing process against the present petitioners /accused is challenged in the present petition.

3. Petitioner No.1 had married with one Nirmalabai (since deceased) on 27.04.1996. On 17.03.2006, in the early morning, Nirmalabai sustained burn injuries due to accidental fall of chimney on her person. Immediately she was taken to Jawahar Medical Foundation at Morane. While taking medical treatment, Nirmalabai died on 20.03.2006 due to burn injuries.

4. After the incident, police have investigated the matter and have recorded the statement of complainant, his wife and son and other witnesses. During investigation, complainant as well as other witnesses including Dipak Shinde i.e. son of the complainant have not stated anything against the accused persons. Subsequently on 21st July, 2006, the complainant had filed a private complaint in the Court of Chief Judicial Magistrate, First Class, Dhule, in which evidence of the complainant and other witnesses

namely Girdhar Karve, Deepak Shinde were recorded before issuance of process and relying upon the evidence of above witnesses, process has been issued against 12 accused i.e. petitioners herein for the offences punishable under section 302, 498-A read with section 34 of the Indian Penal Code by order dated 04.10.2006 in RCC No.517/2006. The petitioners have challenged this order before the Sessions Court by way of filing Criminal Revision No.150/2006. The learned Sessions Judge, Dhule, by relying upon the evidence of aforesaid three witnesses, has rejected the revision.

5. Mr. Bagul, learned counsel for the petitioners/ original accused pointed out the statements of the witnesses including complainant recorded by the police, wherein none of the witnesses has complained against any of the accused regarding any of the offences alleged in the private complainant. He further pointed out the Dying Declaration recorded by the Investigating Officer in presence of Medical Officer on 17.03.2006, wherein, the deceased Nirmalabai stated that she sustained burn injuries due to accidental fall of Kerosene lamp (Chimney). Mr. Bagul, the learned counsel further pointed out that the incident took place on 17.03.2006.

The complainant or the other witnesses have not made any grievance against any of the accused persons till filing of the private complaint. For the first time serious allegations are made against all the accused persons in the private complaint. According to Mr. Bagul, these allegations are absolutely after thought and that aspect has not been considered by the learned Magistrate as well as learned Additional Sessions Judge.

6. I have carefully gone through the statements of all the witnesses, however, none of them has stated regarding the said incidents/allegations but subsequently, the complainant has filed a complaint on various allegations. There is no reference in the order of learned Magistrate as well as learned Sessions Judge about the earlier statements of all the witnesses including contents of the dying declaration.

7. Mr. Londhe, the learned counsel appearing for respondent No.2 submits that no statement of any of the witness including statement of the complainant was recorded. On perusal of the copies of the statements of witnesses, it appears that same was recorded by the Investigating Officer. Dying Declaration was recorded by the Investigating Officer in presence of the Medical

officer. The complainant and other witnesses have not made any grievance in reference to the death of Nirmala or alleged ill-treatment given to her during her matrimonial life.

8. The learned counsel for the respondent has relied upon the observations of this Court in the case of **Natural Sugar and Allied Industries Ltd. & Anr. Vs. Razzak s/o Hazi Gaffar & ors, reported in 2006 ALL MR (Cri) 2822**, wherein, it is observed that it is not permissible for the High Court to go into truthfulness or otherwise of the allegations in the complaint. On the face of record, on the basis of statements of witnesses, apparently it is seen that the complainant or other witnesses have not alleged anything against the accused persons. The learned Magistrate as well as learned Sessions Judge have not made any reference as to the statements recorded by the Police during investigation. Therefore, continuation of trial against the accused persons/petitioners is nothing but an abuse of process of law.

9. In view of the above, I am of the opinion that the process issued by the Magistrate against the petitioners/accused persons is without any basis/

evidence. Therefore, the present petition needs to be allowed and accordingly it is allowed in terms of prayer clause (C).

10. Rule is made absolute in the above terms. No costs.

(K. L. WADANE, J.)

JPC