

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.5119 OF 2017

Mohammed Atiq Ibrahim Ansari.] ... Petitioner

Versus

The State of Maharashtra & Ors.] ... Respondents

Mr. A. M. Saraogi i/b Mr. P. H. Jaggi for Petitioner.

Mrs. A. S. Pai, Addl. P. P. for State.

CORAM :- R. M. SAVANT &
SARANG V. KOTWAL, JJ.

DATE :- 24 APRIL, 2018

P. C. :-

1. The above Writ Petition has been filed for seeking a direction to the Respondents for appointment of any other agency to be formed for the purposes of further investigation into the matter pertaining to the death of son of the Petitioner and take necessary action in accordance with law.

2. It is required to be noted that the investigation is complete and the charge-sheet has been filed for the offences punishable under

Sections 304A, 279 and 338 of the IPC and Sections 182 and 134 (a) and (b) of the Motor Vehicles Act, 1988. The FIR was originally lodged by one Danish Shaikh as regards the incident which took place on 18/09/2014 at about 10.35 p.m. The FIR as originally lodged contains the facts as to how the incident namely the accident, has occurred. It seems that a supplementary statement came to be recorded of the first informant and thereafter the statement of one Avez Abdulla Shaikh also came to be recorded who was riding on the motorbike which was following the motorbike on which the son of the Petitioner was riding as a pillion. It seems that after the investigation was completed, an 'A' Summary Report was filed by the police in the concerned Trial Court which was accepted on 15/04/2015. It seems that on 17/02/2016, an application came to be made by the investigating agency for further investigation at the instance of the Petitioner. It seems that the first informant Danish was made an accused at the said point of time. The police, after carrying out further investigation, has filed the charge-sheet on 16/01/2017 for the offences punishable under Sections 304A, 279 and 338 of the IPC and Sections 182 and 134 (a) and (b) of the Motor Vehicles Act, 1988. The Petitioner, being dissatisfied with the fact the accused has only

been charged with the offence under Section 304A of the IPC, has, therefore, filed the instant petition for a change in the investigating agency and for carrying out further investigation.

3. The learned Counsel for the Petitioner Mr. A. M. Saraogi sought to highlight before us the material which, according to him, warrants a change in the investigating agency and for further investigation, though the charge-sheet has been filed. The learned Counsel would draw our attention to the versions of the incident which appear in the original statement of the accused Danish and his supplementary statement as juxtaposed with the supplementary statement of Avez Shaikh so as to contend that the said statements disclose different versions as regards the incident which has taken place. The learned Counsel also sought to point out that though in the FIR the incident, as narrated, includes a BEST bus; no statement of any bus driver or the person connected with the BEST, has been recorded.

4. We have, with the assistance of the learned Counsel for the Petitioner Mr. A. M. Saraogi and the learned Addl P. P. Mrs. A. S.

Pai, gone through the material which is annexed to the charge-sheet and which is part of the above Petition. We have also gone through the statements which were sought to be highlighted by Mr. Saraogi. On such perusal, we do not find that the investigation carried out by the police can be faulted with in any manner. Insofar as the BEST is concerned, the record discloses that the statements of a number of Drivers and Conductors who ply on the same route, have been recorded and which are part of the charge-sheet. It is, therefore, not possible for us to accept the contention of Mr. Saraogi calling in question the investigation that has been carried out by the investigating agency so as to warrant the transfer of investigation to another agency and a further investigation. It is also required to be noted that the incident has taken place on 18/09/2014 and therefore a period of almost four years has elapsed. In that view of the matter, though we have compassion and sympathy for the Petitioner who has lost his son, but in the facts of the present case, we are unable to accede to his request for the relief sought. The Petition is accordingly dismissed.

(SARANG V. KOTWAL, J.)

(R. M. SAVANT, J.)