

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL WRIT PETITION NO.118/2016

Sakhru s/o Naktu Chimurkar

...Versus...

State of Maharashtra, through its Secretary, Home Department, Mantralaya,
Mumbai – 32 and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri N.S. Khandewale, Counsel for petitioner
Shri S.S. Doifode, APP for respondent nos.1 and 2
Shri Anand Deshpande, Counsel for respondent nos.3 to 5

CORAM : SMT. VASANTI A NAIK AND
ARUN D. UPADHYE, JJ.

DATE : 21/02/2018

By this criminal writ petition, the petitioner seeks a direction against the respondent no.2 to investigate into the matter of the homicidal death of his son Ajit on 26/2/2015 at village Navegaon, District Chandrapur and register an offence against the respondent nos.3 to 5 under the provisions of Section 302 read with Section 34 of the Penal Code.

According to the petitioner, who is the father of Ajit, who died on 26/2/2015 due to the head injury, the respondent no.3 to 5 seem to have caused the death of his son Ajit. It is the case of the petitioner that the respondent no.3 had come to his house on 26/2/2015 and Ajit accompanied the respondent no.3 on foot. It is stated that the petitioner suspects that there is some

foul play in the matter of the death of his son Ajit and the respondent nos.3 to 5 have some role to play in the same. The petitioner has therefore sought for a direction against the respondent no.2 to investigate the matter properly and thoroughly with a view to book the culprits.

The learned Additional Public Prosecutor appearing for the respondent nos.1 and 2 submitted that a thorough investigation was made in the death of the son of the petitioner who expired due to the head injury suffered by him on 26/2/2015. It is submitted that when the respondent no.3 went inside the field to attend the nature's call, Ajit was on the road. In the statement of the respondent no.3 it is stated that a two-wheeler had hit Ajit as a result of which he had a fall and sustained the injury. It is stated that the respondent no.3 had taken the son of the petitioner to the primary health centre at Bembal and he was then shifted to the General Hospital, Gadchiroli. It is stated that the statements of at least 30 persons were recorded and the Investigating Officer did not find any foul play in the death of the son of the petitioner. It is stated that since the offending vehicle could not be traced despite best efforts, it could not be gathered as to who was the instrumental in causing the accident.

The learned Counsel for the respondent nos.3 to 5 has raised a preliminary objection to the tenability of the writ petition. It is stated by referring to the judgment of the Hon'ble Supreme Court, reported in **2007 (9) SCALE 275** that in the circumstances like the one in this case it is necessary for the aggrieved person to avail the alternate remedy under the provisions of Section 156 (3) of the Code of Criminal Procedure

or to file a private complaint.

In the circumstances of the case, we are not inclined to direct the respondent nos.1 and 2 to file a charge-sheet against the respondent nos.3 to 5 for the offence punishable under Section 302 read with Section 34 of the Penal Code. From the post-mortem report it appears that the son of the petitioner had suffered a head injury and the death was caused due to head injury, i.e., extra dural haematoma. Since the head injury could have occurred either due to the assault or due to a fall, the Investigating Officer appears to have recorded the statements of 30 witnesses. It appears from the statements recorded by the Investigating Officer that when the respondent no.3 was answering the nature's call inside the field, the son of the petitioner was listening to music on his mobile phone and at that time, a motorcycle gave a dash to the son of the petitioner as a result of which he fell on the road after shouting "Aai". The respondent no.3 himself took the son of the petitioner to the primary health centre with the help of the respondent no.4.

In the circumstances of the case, a direction cannot be issued against the respondent nos.1 and 2 to register an offence punishable under Section 302 of the Penal Code against the respondent nos.3 to 5. The petitioner is free to avail the alternate remedy, if so advised. The criminal writ petition is disposed of accordingly. No costs.

JUDGE

JUDGE