

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

CRIMINAL WRIT PETITION NO. 652 OF 2018

1. Shri Bhagchand Khemchand Verma,
Age:77 Years, Occu.- Nil,
2. Smt. Kamlabai W/o Bhagchand Verma,
Age:72 Years, Occu.:Housewife,
Both resident of Daveregali,
In front of Vitthal Mandir,
City, Police Station & District Ahmednagar. ... **Petitioners**

Versus

1. State of Maharashtra,
Through the Home Secretary,
Government of Maharashtra,
Mantralaya, Mumbai.
2. Vitthal Babanrao Khanddagle,
P.S.I. C/o. Police Commissioner, Ahmednagar,
Age: Adult,
Retired Police Officer
R/o. Nawava Phata, Khandagale Wasti,
Shirvoor Satara Road, Taluka Shiroom,
Dist. Pune. Mob.9890172978 ... **Respondents**

.....

Mr. Samir V. Nigam, Advocate for the Petitioners.
Mr. S.J. Salgare, A.P.P. for Respondent-State.

.....

**CORAM : T.V. NALAWADE &
MANGESH S. PATIL, JJ.**

**DATE OF RESERVING THE JUDGMENT : 13.03.2019
DATE OF PRONOUNCING THE JUDGMENT : 03.05.2019**

...

JUDGMENT :- (Per: Mangesh S. Patil, J.)

Heard. Rule. Rule is made returnable forthwith. The learned A.P.P. waives service for the respondent-state. With the consent of both the sides the matter is heard finally at the stage of admission.

2. The petitioners are the parents of deceased Ram @ Rambha who unfortunately died of bullet injuries fired by the respondent no.2 who happened to be a Police Officer, since retired, in an episode which took place on 09.10.1996 at about 20.30 hours at Ganjbazar, Ahmednagar. Crime No. 240 of 1996 was registered when one Sanjay Pandurang Waghmare lodged the report about the episode. The investigation was conducted and the Investigating Officer submitted a 'C' Summary report which connotes that the offence was neither true nor false.

3. Initially the summary was not accepted by the learned Magistrate. The order refusing to accept the 'C' Summary report was challenged by the respondent no.2 in Revision Application No.69 of 1998. The Sessions Court allowed the revision on 08.02.2000. The petitioners challenged that order in this Court in Criminal Writ Petition No.05 of 1997. The order passed by the Sessions Court was quashed and set aside and a direction was given to the Sessions Court to extend an opportunity of being heard to the informant Sanjay Waghmare.

4. The Chief Judicial Magistrate then conducted fresh hearing and by the order dated 23.10.1997 took cognizance and directed the process to be issued against the respondent no.2. The respondent no.2 then prayed for recalling the order of issuance of process but it was rejected. He preferred Criminal Revision before the Sessions Court which was allowed by the Sessions Court. The petitioners and the informant Sanjay Waghmare preferred Criminal Application No.473 of 2000 before this Court which was allowed by the order dated 25.08.2003. The order passed by the Sessions Court was set aside. While remanding the matter to the trial Court this Court directed the Magistrate to follow either of the three courses namely 1) accepting the 'C' Summary report 2) directing concerned Investigating Officer to carry out the investigation further and 3) to issue process under Section 204 of the Code of Criminal Procedure if there was sufficient material collected during further investigation.

5. Pursuant to such direction by this Court, the learned Magistrate called upon the petitioner no.1 and informant Sanjay and offered them to lead evidence if any. The Magistrate as a result of the inquiry and after examining the statements of the witnesses recorded under Section 161 concluded that the deceased had died of a bullet injury fired by the respondent no.2. But it was done by him in exercise of his right of private defence and by the order dated 24.09.2003 approved the 'C' Summary report.

6. Being aggrieved the petitioners preferred Criminal Revision Application No.174 of 2014 before the Sessions Court. By the impugned order dated 20.09.2016 the learned Additional Sessions Judge dismissed the revision, hence this writ petition.

7. The learned advocate for the petitioner submitted that every attempt has been made by the police machinery to save the respondent no.2 who belongs to their fraternity. There is absolutely no material to show that the respondent no.2 has no other alternative but to fire couple of bullets one of which hit the son of the petitioners on the vital part of the body and from a close range. He would submit that the stand of the respondent no.2 all the while has been that he had merely fired on the ground and perhaps the bullet had ricocheted, when the medical evidence clearly demonstrates that the deceased had received the bullet injury on the abdomen and there was also an exist wound which could not have been possible if the bullet was fired towards the ground and had ricocheted. The learned advocate would further point out that there was absolutely no material to jump to the conclusion that the respondent no.2 has had any occasion to apprehend that there was any danger to his person or property without which the right of private defence could not have been available for him much less of causing death of the deceased.

8. The learned advocate for the petitioner would further point out that a counter F.I.R. in the form of Crime No.239 of 1996 was registered in respect of the alleged incident wherein one Mohan Purushottam Khandelwal and his brother Ramdev were allegedly threatened by the deceased and because of which incident said Mohan had approached the respondent no.2 and the latter along with the other police had reached the spot during which episode the respondent no.2 allegedly had caused death of the petitioner's son. However, pursuant to a trial, by the judgment and order dated 18.03.2000 all the accused were acquitted. This circumstance clearly falsifies the stand of the respondent no.2 that any incident had occurred as alleged for which he along with the other police had gone to the spot. He would point out that the charge in that Crime No.239 of 1996 *inter alia* was that an attempt was made to rob the respondent no.2 of his service pistol which was an offence punishable under Section 393 of the Indian Penal Code. However, the accused were acquitted of this charge. Thus according to the learned advocate, the respondent no.2 having no sufficient reason had fired at the deceased on the vital part of the body causing his death. It was a serious matter which ought to have been allowed to be investigated, inquired into and he should have been made to face the trial. It is only during the course of the trial that he could have been extended an opportunity to substantiate his claim regarding exercise of the right of the private defence. There could not

have been any presumption in his favour and the matter should have been left to be decided on the judicial side.

9. The learned advocate would further submit that unfortunately the eye witness who lodged the F.I.R. and was the friend of the deceased has unfortunately died in the meantime and it would now be very difficult for the petitioner to substantiate his allegations. The first informant had also sustained a brushing bullet injury and would have been vital witness. He would therefore submit that the petitioner at least deserves to be adequately compensated for the untimely death of his son in these circumstances.

10. The learned A.P.P. submitted that there has been a concurrent findings of the two courts below which are clearly borne out from the reasoning which are plausible. Therefore, this Court under the writ jurisdiction should not interfere with such concurrent findings of facts. It is a matter of record that this Court had sent back the matter to the learned Magistrate for considering the report submitted by the Investigating Officer, 'C' summary, by extending an opportunity to the first informant to oppose it. Pursuant to such an opportunity, the first informant Sanjay Waghmare as well as the petitioners were directed to appear before the Magistrate. Accordingly, they had appeared before the Magistrate and an opportunity of being heard and to lead evidence was extended to them. Only the first informant Sanjay

Waghmare then filed the affidavit. The learned Magistrate thereafter considered the report and the affidavit submitted by Sanjay Waghmare. It is only after objective analysis of all the material including the report submitted by the District Magistrate it was concluded that there was no sufficient basis to direct the process to be issued and the 'C' summary report was accepted. The learned Additional Sessions Judge also objectively considered the entire material and record and reached the plausible conclusion confirming the order of the learned Magistrate. Therefore, there is not sufficient material for this Court to interfere.

11. We have carefully considered the rival submissions and the material placed on record. It is indeed unfortunate that the deceased has died of bullet injury fired by the respondent no.2. However, it is important to note that, there are absolutely no allegations levelled by the informant Sanjay Waghmare or the present petitioners attributing any ulterior motive or malice on the part of the respondent no.2 to cause death of the deceased.

12. The respondent no.2 had only reached the place after Mohan Khandagale had approached at Kotwali police station and lodged the complaint that deceased was threatening him and his brother Ramdev and the Non Cognizable Case No.778 of 1996 was registered. It is only thereafter that the respondent no.2 along with couple of other constables had gone to the

spot, where apart from the deceased few other boys were present. The respondent no.2 had admonished the deceased and his companies but was attacked. The respondent no.2 was snatched to the ground and his service pistol was attempted to be snatched and even his uniform was torned.

13. It is to be noted that an inquiry was conducted by the District Magistrate. Statements of several witnesses were recorded including that of the petitioners. As many as 33 witnesses were examined during the course of investigation of this crime. It is only after scrutiny of such material and the statements of these many witnesses that the Investigating Officer had reached a conclusion which has been duly endorsed by the District Magistrate concluding that the accused i.e. respondent no.2 had caused death in exercise of his right of private defence.

14. True it is that in the F.I.R. lodged by the respondent no.2 in respect of the incident bearing Crime No.239 of 1996, the accused have been acquitted from the charge of an attempting to rob him of his service pistol. However, it is not the case of the petitioners that the learned trial Judge while acquitting the accused had concluded that no incident at all had taken place or that the allegations in that F.I.R. were false or concocted. Therefore, merely because in that crime the accused were acquitted, one cannot jump to the conclusion that the report submitted by the respondent no.2 was false. The

circumstance would not ensure any benefit to the petitioners.

15. As can be easily appreciated from the statements of the witnesses recorded, on 09.10.1996 a mob armed with deadly weapons became unruly and had assaulted the respondent no.2 and an attempt was made to snatch his service pistol and it is during that process that he had fired a bullet. He was only accompanied by couple of constables, whereas the mob consisted of at least 10-12 persons having sword, iron rod and sticks. They were pelting stones and it is under these circumstances that the respondent no.2 had fired. Taking note of all these facts and circumstances and the material the learned Magistrate has accepted the 'C' summary report and the learned Additional Sessions Judge has endorsed the finding after an objective scrutiny of the entire material once again.

16. In our considered view, there is no strong reason for this Court to interfere with the concurrent observations and the conclusions of the two courts below. Besides the incident had taken place in the year 1996. The informant Sanjay Waghmare has also unfortunately died in the meanwhile and it would be an exercise in futility to refute the 'C' summary report and ask the Magistrate to take cognizance and then to wait for the sanction to prosecute the respondent no.2 and to make him face the trial. We do not intend to close the doors of justice to the petitioners abruptly but all these

circumstances, in our considered view need to be borne in mind while deciding this writ petition.

17. Though we are not inclined to direct the Magistrate to take cognizance by refuting the 'C' summary report, in our considered view the circumstances in which the son of the petitioners has died and the subsequent ordeal which they had to face, it would be just and proper and in the fitness of the things that petitioners are compensated for the untimely loss of their son who was in his twenties. The state must shoulder its responsibility for the death albeit it has occurred in above peculiar circumstances. By resorting to the inevitable guess work and only by way of a token, in our considered view, the respondents are liable to pay to the petitioners Rupees Two Lakhs. They shall further be entitled to an amount of Rs.25,000/- as cost of this petition.

18. The writ petition is therefore partly allowed.

19. The writ petition impugning the order passed by the learned Additional Sessions Judge in Criminal Revision No.174 of 2014 dated 20.09.2016 is dismissed.

20. However, the respondent no.1-State shall pay to the petitioners Rupees Two Lakhs as compensation and the cost of Rs.25,000/- shall be paid within two months from the date of this order failing which they shall be

entitled to receive the amount together with interest @ 9% per annum. The Rule is accordingly made absolute in these terms.

[MANGESH S. PATIL, J.]

[T.V. NALAWADE, J.]