

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

CRIMINAL WRIT PETITION NO.779 OF 2018

Latabai w/o Prakash Birajdar
Age 49 years, Occu. Service,
R/o Lamjana, Taluka Ausa,
District Latur

...PETITIONER

VERSUS

1. The State of Maharashtra
through its Secretary,
Home Department,
Mantralaya, Mumbai - 32
2. The Director General of Police,
Maharashtra State, Police Headquarters,
Old Council Hall,
Shaheed Bhagat Singh Marg,
Mumbai - 400 001
3. The Superintendent of Police,
District Latur
4. The Police Station/ Investigation Officer
Killari Police Station,
Taluka Ausa, District Latur.

(Copy for respondents No.1 to 4
to be served upon Public Prosecutor,
High Court of Judicature of Bombay,
Bench at Aurangabad)

5. V.B. Ghodke
Assistant Police Inspector,
Killa Police Station,
Taluka Ausa, District Latur.

...RESPONDENTS

.....
Shri Kuldeep S. Patil, Advocate for petitioner
Shri D.R. Kale, A.P.P. for respondents No.1 to 4
Shri R.P.Bhumkar, Advocate for respondent No.5
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**CORAM: S.S. SHINDE AND
R.G. AVACHAT, JJ.**

Date of reserving judgment : 29th January, 2019

Date of pronouncing judgment : 1st March, 2019

JUDGMENT (PER R.G. AVACHAT, J.)

1. Rule. Rule made returnable forthwith and heard finally with the consent of learned counsel appearing for the parties.

2. The petitioner, by this petition under Article 226 of the Constitution of India, seeks the following reliefs :

(B) Issue a writ of mandamus or any other appropriate writ, order or direction in the nature of writ of mandamus, thereby directing the respondent No.1 and 2, to investigate the matter in F.I.R. bearing Crime No.0012/2015 dated 30.1.2015, registered with Killari Police Station, Tq. Ausa, District Latur for an offence punishable under Section 306, 34 of Indian Penal Code, by constituting Special Investigating Team (SIT) headed by Senior Officer not below the rank of Dy. S.P., and to undertake de novo, free and fair investigation within stipulated period and to undertake further investigation after

effecting the arrest of the accused persons and for that purpose issue necessary orders.

- (C) Issue a writ of mandamus or any other appropriate writ, order or direction in the nature of writ of mandamus, directing the respondent No.1 and 2 to conduct the thorough enquiry with regard to lapses in investigation of F.I.R. bearing Crime No.0012/2015 registered with Killari Police Station, Tq. Ausa, District Latur and to submit report before this Hon'ble Court with further directions to take disciplinary action against erring police officials within stipulated period and for that purpose issue necessary orders.

3. Mr. Kuldeep S. Patil, learned counsel appearing for the petitioner made his submissions on the line of the averments made in the petition. The learned counsel also took us through the order passed by the Chairman of the Maharashtra State Human Rights Commission (hereinafter referred to as the MHRC for short) to ultimately contend that the investigating officer did not conduct the investigation properly. He was hand in gloves with the accused. The MHRC has, in its order dated 19.12.2017, observed that there was apathy and negligence on the part of the concerned

investigating officer. This itself would show that the investigation was not made properly. Report under Section 169 of the Criminal Procedure Code was filed against all the accused except accused No.1. The learned counsel, therefore, urged for grant of the petition in terms of the prayer clauses (B) and (C).

4. The learned A.P.P. and the learned counsel appearing for the respondent No.5 submitted that, the investigation has been made in accordance with law and the charge sheet has been filed against one, whose involvement for the alleged offence was writ large. Both the learned counsel, therefore, urged for dismissal of the Writ Petition.

5. The F.I.R. was lodged by the petitioner. The deceased victim was the daughter of the petitioner. The victim was serving as a Computer Teacher with Kesharbai Vidyalaya, Karla. She was suffering from Psoriasis (skin disease) for over 7 years. Sachin Chikundare was also serving as a Computer Teacher with Kesharbai Vidyalaya. Both the victim and Sachin got acquainted with each other. It was alleged in the F.I.R. that, Sachin gave promise to marry the victim. Taking advantage of promise of marriage, he had sexual intercourse with the deceased many times. Later on,

Sachin refused to marry the victim. The victim had, therefore, been to Ausa Police Station to lodge report against Sachin and his family members. The family members of Sachin had initially given their consent for the marriage. They later on prevailed upon Sachin to renege. The Assistant Police Inspector of Ausa Police Station, instead of registering the crime, informed the deceased that he will call the accused to the Police Station and would see that the marriage takes place. The concerned police officer had also told the victim that if the crime was registered, it would be her defamation. It was also alleged in the F.I.R. that, the concerned police officials made it to appear that the writ petitioner and the deceased had made a demand of Rs.2,50,000/- so as to settle the matter and not to register the crime against Sachin and his family members.

6. In short, the contention of the petitioner is that, Sachin, under the pretext of false promise of marriage, had sexual intercourse with the deceased many a times. The family members of Sachin instigated him and ultimately, did not give consent for marriage. The concerned police officials, instead of registering the crime at the behest of the deceased, joined hands with the culprits and made it to appear that the petitioner and the deceased made a demand of money for

settlement of the matter and non-registration of the crime.

7. We have considered the matter in detail. The victim committed suicide on 12.1.2015. It appears that, she left behind a suicide note. In the suicide note, she did not hold any one responsible for her extreme step of ending her life. The deceased was suffering from Psoriasis. Based on the F.I.R. lodged by the petitioner, mother of the deceased, crime was registered against Sachin and his family members. The record indicates that the offence was investigated. The charge sheet has been filed against Sachin alone. Report under Section 169 of the Criminal Procedure Code has been filed against all other accused, family members of Sachin.

8. It is true that the investigating officer was found to be negligent. The SHRC, on the basis of the complaint lodged by the petitioner herein, observed the concerned investigating officer to be apathetic and negligent in the matter. The Director General of Police was directed to hold enquiry against the concerned police official. Since it was found that there was violation of human rights, the State was directed to pay compensation of Rs.50,000/- to the complainant. The same has now been paid.

9. The Director General of Police has filed his affidavit, stating that the delay in complying with the order issued by the SHRC was procedural and unintentional. It has also been informed that departmental enquiry has been initiated against the concerned police officials for apathy and negligence in the matter.

10. The crime registered pursuant to the F.I.R. lodged by the petitioner has been investigated. The charge sheet has been laid against Sachin alone. The deceased left behind the suicide note stating therein that she was ending her life as she had been suffering from Psoriasis and no one should be held responsible for her death. True, the allegations in the F.I.R. are other way round. It is reiterated that the crime has been investigated and the charge sheet has been laid against Sachin alone. In this factual backdrop and fitness of things, we are not inclined to grant the reliefs prayed for. Suffice it to say that, based on allegations in the F.I.R., the statements of witnesses and other material on record, the trial Court has every jurisdiction to frame the charge for offences which are made out on the basis of the police papers. Even on the basis of evidence in the case, if it appears that some other offences are committed by the accused before the Court or someone who is not before the Court as an accused, the trial Court can

very well exercise its powers under Section 319 of the Criminal Procedure Code.

11. In the result, Criminal Writ Petition is rejected. Rule discharged.

R.G. AVACHAT
JUDGE

S.S. SHINDE
JUDGE

fmp/