

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 2870 OF 2019

1. Vishal s/o. Dilip Kakde,
Age 30 years, Occu. Agri.,
R/o. Bhandewadi Ward No. 12,
Akkakai Nagar Taluka Karjat,
District Ahmadnagar.
2. Innus Dastagir Qureshi,
Age 35 years, Occu. Agri.,
R/o. Qureshi Mohella Sidharth Nagar,
Taluka Karjat, District Ahmadnagar.
3. Amjad Nabi Shaikh,
Age 27 years, Occu. Agri.,
R/o. Bhandewadi Ward No. 12,
Akkakai Nagar Taluka Karjat,
District Ahmadnagar.
4. Amin Rashid Jharekar,
Age 31 years, Occu. Business,
R/o. Sidharth Nagar near Jama Masjid,
Tq. Karjat, Dist. Ahmadnagar.
5. Pappu Mohdin Shaikh,
Age 35 years, Occu. Business,
R/o. Kaprewadi West Karjat,
Tq. Karjat, Dist. Ahmadnagar.

....Applicants.

Versus

1. The State of Maharashtra,
Through Police Station Kotwali,
Dist. Ahmadnagar.
2. Ravindra Tukaram Ghunga,
Age 32 years, Occu. Police Constable-2383,
Police Station Kotwali,
Dist. Ahmadnagar. Mo.No. 9850495157.
3. Hashim Shaikh,
Age Major, Occu. Business,
R/o. Kaprewadi West Karjat,

Tq. Karjat, Dist. Ahmadnagar.**Respondents.**

Mr. Y.M. Khan, Advocate for applicants.

Mrs. V.N. Patil (Jadhav), APP for respondent Nos. 1 & 2.

Mr. Syed Moizuddin Biyabani, Advocate for respondent No. 3.

WITH
CRIMINAL APPLICATION NO. 1919 OF 2019

Jahangir Ibrahim Shaikh,
Age 84 years, Occu. Nil.,
R/o. 12, C-3, Tolaram Nagar,
Chembur Colony, Mumbai.

....**Applicant.**

Versus

1. State of Maharashtra.
2. Ravindra Tukaram Ghungase,
Age 32 years, Occu. Police Constable/2383,
Kotwali Police Station, Ahmednagar.
Mo.No. 9850495157.
3. Pappu Shaikh,
Age Major, R/o. Kaprewadi
(West) Karjat, Dist. Ahmednagar.**Respondents.**

Mr. Joydeep Chatterji, Advocate for applicant.

Mrs. V.N. Patil (Jadhav), APP for respondent Nos. 1 & 2.

Mr. Syed Moizuddin Biyabani, Advocate for respondent No. 3.

**CORAM : T.V. NALAWADE AND
V.K. JADHAV, JJ.**

DATED : 08/11/2019.

JUDGMENT : [PER T.V. NALAWADE, J.]

- 1) Rule. Rule made returnable forthwith. By consent, heard both the sides for final disposal.

2) Both the proceedings are filed for relief of quashing of F.I.R. No. 219/2019 registered with Kotwali Police Station, Ahmednagar for the offences punishable under sections 306, 109, 114 and 34 and 36 of Indian Penal Code. The crime is registered on the basis of report given by Police Constable, who was attached to Kotwali Police Station at the relevant time.

3) The incident in question took place on 20.12.2018. On that day, a representation was given by the deceased which was titled 'Notice of Self Immolation' to District Collector, Ahmednagar. He had grievance that the authorities were not taking action to remove the encroachment made on the property of one Darga by name Pir Daval Malik Trust, Karjat, District Ahmednagar. Applicant from proceeding bearing Criminal Application No. 1919/19 Jahangir is the trustee of the said trust. Applicants from proceeding bearing Criminal Application No. 2870/19 were in the company of the deceased on that day at the relevant time. At about 15.20 hours of 20.12.2018 when the informant police constable was present as he was kept on duty due to aforesaid notice of self immolation, he got news that inside of the compound of the office of Collector, one person had set fire to himself for self immolation. He rushed to the spot. Already persons who were present in the campus like the persons who were sitting in the campus for some agitation had extinguished the fire. On inquiry he gave his name as Tausif Hashim

Shaikh, resident of Karjat. He was the same person who had given the notice of self immolation. He was taken to Sasun General Hospital Pune as he sustained serious burn injuries. He died there on the same day in the night time. The F.I.R. came to be given on 13.2.2019 in respect of incident dated 20.12.2018 and the crime came to be registered. As applicant from Criminal Application No. 1919/19 was in a position to take action against encroachers and the agitation was due to his inaction, he was made accused and as applicants from other proceeding were in the company of deceased from the beginning and with them, the deceased had come to the campus with a can containing diesel, they are made accused.

4) The record of investigation which includes statements of persons who were present there show that the applicants of Criminal Application No.2870/19 were not seen in the vicinity of the deceased when he poured diesel on his person and set fire to himself. There is one statement of one press reporter showing that he was in the vicinity and he had attempted to save the deceased, by snatching the match box from the deceased and then by actually extinguishing the fire. His statement also does not show that the applicants of Criminal Application No. 2870/19 were in the vicinity. The papers of investigation show that everybody thought that the deceased was only trying to pressurize the authorities and he was interested in taking action against the encroachers. The record of investigation

shows that the deceased had informed to others that he was only creating a show to pressurize the authorities and nobody had believed that he would take such step.

5) The applicant from Criminal Application No. 1919/19 has produced on record copies of the litigation to show that he had already taken the steps against persons who encroached on the property of said Darga. Though it can be said that proper steps like approaching the Chief Officer of Waqf Board ought to have been taken as it was Darga property, the fact remains that at the relevant time applicant from Criminal Application No. 1919/19 was not present on the spot and as per the record, he was not supposed to remain present in the campus of district Collector. The notice was given to the authorities like District Collector by the deceased. Though it can be said that with the applicants from other proceeding the deceased had gone to the campus of office of District Collector, the record shows that he had taken steps to see that reporters and others came there to make reporting of the incident. He had given notice of self immolation. In view of these circumstances, it cannot be said that the applicants of both the proceedings had in any way abetted the suicide of the deceased.

6) By way of precaution, this Court had issued notice to father of deceased and one counsel made submissions for father of

the deceased. He submitted that the authorities who were present inside of the campus of the office of District Collector ought to have taken proper care and they ought to have taken steps also on previous representation to remove encroachment and so, authorities were also responsible for the death of his son. In any case, it cannot be said that nobody had abetted in any way to suicide of the deceased. This Court holds that it will be abuse of process of law if the applicants from both the proceedings are made to face the trial for aforesaid offences. In the result, both the applications are allowed. Relief is granted in terms of prayer clause 'B' of both the proceedings.

Rule is made absolute in those terms.

[V.K. JADHAV, J.]

[T.V. NALAWADE, J.]

ssc/