

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2831 OF 2018

1. Sundar Triambakrao Munde,
Age : 35 Years, Occ. Service,
R/o. Conductor Colony,
Parli (V) Dist. Beed
 2. Premkumar Babasaheb Gaikwad,
Age : 28 Years, Occ. Private Service,
R/o. Government Hospitals Quarters,
Parli (V) Dist. Beed
- ..PETITIONERS

VERSUS

1. The State of Maharashtra
Through its Principal Secretary
Department of Home,
Mantralaya, Mumbai 400032
Notice be served through
P. P. High Court, Aurangabad
 2. Police Inspector,
Police Station Samb haji Nagar,
Parli (V) Dist. Beed
 3. Sindhubai Shivajirao Andale
Age : 55 Years, Occ. Household,
R/o. Conductor Colony,
Parli (V) Dist. Beed.
- ..RESPONDENTS

...
 Advocate for Applicants : Mr. U.L. Telgaonkar
 APP for Respondent No.1 & 2 : Mr. R.V. Dasalkar
 ...

CORAM :T.V. NALAWADE AND
 SMT.VIBHA KANKANWADI,JJ.
 DATE : 19th DECEMBER, 2018.

ORAL JUDGMENT [PER T.V. NALAWADE J] :-

Rule. Rule made returnable forthwith. By consent heard both the sides for final disposal.

2. The proceeding is filed under Section 482 of the Code of Criminal Procedure for granting relief of quashing of proceeding of Summery Criminal Case No. 629 of 2018, presently pending in the Court of Judicial Magistrate, (First Class), Ambejogai and which is filed in C.R. No. 117/2017 registered with Sambhaji Nagar Police Station, Parli (V) for the offence punishable under Section 304-A read with Section 34 of Indian Penal Code.

3. This Court has carefully gone through the FIR given by respondent No.3 who is mother of the deceased Deepkraj. Deepkraj was married. On 02.07.2017, he left home to bring his wife and daughter from her parents house in his alto car. He contacted mother at 7.00 p.m. to 8.00 p.m to inform that he was living Latur from Parli where he was living with his mother and family. He informed that his wife and daughter were to come afterwords and he alone was returning. He did not return home. On the night between 2nd and 3rd at about 3.00 hours the mother checked as to whether Deepkraj had returned but she found that his car was not there. In the morning at about 6.30 a.m. she noticed that car of the deceased was present in front of the house. She noticed that Deepkraj was inside of the car and it appeared to her that he was

sleeping. She noticed that froth was coming from the mouth of Deepkraj. She called her other son and then he was taken to hospital where doctor declared that Deepkraj had died 5 to 6 hours back. On the inquiry, it revealed to mother that on 02.07.2017, at about 11 p.m present applicants were in the company of deceased and they had consumed liquor and they had reached Deepkraj at 3.30 hours of that night with his car.

4. This Court has gone through the opinion given by the doctor who had conducted post mortem examination. The opinion is to effect that Deepkraj died due to cardio respiratory arrest due to pulmonary oedema with fatty changes in liver. There was no injury on the person of the dead body.

5. Learned counsel for the first informant and learned A.P.P submitted that there is statement of owner of hotel to show that applicants were in the company of Deepkraj in the said hotel and there due to insistence of applicants, Deepkraj had consumed liquor. Even if that circumstances is accepted as it is, it cannot be inferred that there was negligence or carelessness as mentioned in Section 304-A of the Indian Penal Code of the applicant. Deepkraj was married man and he had already leaver problem probably due to his bad habit of taking liquor. His wife and issue were in the house of parents of his wife and

they had not returned to the house of Deepkraj. Due to all these circumstances, this Courts holds that it will be abuse of process of law, if the applicants are made to face the trial, for the aforesaid offences. In the result following order :-

ORDER

1. Application is allowed.
2. Relief is granted in terms of prayer clause (B).
3. Rule made absolute in those terms.

**[SMT.VIBHA KANKANWADI]
JUDGE**

**[T.V. NALAWADE]
JUDGE**

YSK/