

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

CRIMINAL WRIT PETITION NO.1382 OF 2017

Ambadas s/o Bhanudas Udmale
Age 49 years, Occu. Labourer,
R/o Santnagar Narala, Paithan,
Tq. Paithan, District Aurangabad

... **PETITIONER**

VERSUS

1. The State of Maharashtra
through Pathardi Police Station,
Tq. Pathardi, Dist. Ahmednagar

(Copy to be served on Public
Prosecutor, High Court of Judicature of
Bombay, Bench at Aurangabad)

2. Shankar s/o Suresh Bhagvat,
Age major, Occu. Business
3. Suresh s/o Ganpat Bhagvat,
Age major, Occu. Nil
4. Kamal w/o Suresh Bhagvat,
Age major, Occu. Household
5. Ramesh s/o Ganpat Bhagvat,
Age major, Occu. Nil
6. Seema Ramesh Bhagvat,
Age major, Occu. Household,

Nos.2 to 6 R/o Kasar Galli,
Pathardi, Tq. Pathardi,
District Ahmednagar.

... **RESPONDENTS**

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Shri S.D. Munde, Advocate for petitioner
Shri D.R. Kale, A.P.P. for respondent No.1/ State
Shri Joydeep Chatterji, Advocate for respondents No.2 to 6
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**CORAM: S.S. SHINDE AND
R.G. AVACHAT, JJ.**

Date of reserving judgment : 5th February, 2019

Date of pronouncing judgment : 18th February, 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. In this petition under Article 226 of the Constitution of India, the petitioner seeks the following two main reliefs :

(B) By allowing this Criminal Writ Petition kindly issue directions in respect of further investigation or reinvestigation of F.I.R. No.0116/2017, dated 25.2.2017 registered with Pathardi Police Station, Dist. Ahmednagar for the offence punishable under Section 302,498-A read with 34 of Indian Penal Code.

(C) By allowing this Criminal Writ Petition, kindly direct the respondent police station to carry proper de novo further investigation of F.I.R. No.0116/2017, dated 25.2.2017 registered with Pathardi Police Station, Dist.

Ahmednagar for the offence punishable under Section 302,498-A read with 34 of Indian Penal Code.

3. Heard Mr. Munde, learned counsel for the petitioner, Mr. Kale, learned A.P.P. for respondent No.1 and Mr. Chatterji, learned counsel for respondent No.2

4. Learned counsel for the petitioner would submit that, the petitioner has lodged the F.I.R. alleging the respondents No.2 to 6 to have committed murder of his daughter by setting her ablaze. Later on, when the petitioner received witness summons of the case, he realised that, the investigating officer filed the charge sheet for offence punishable under Sections 306, 498-A read with Section 34 of the Indian Penal Code. To the petitioner's surprise, it was found that his additional statement was recorded so as to make out a case of the offence punishable under Section 306 of the Indian Penal Code and not Section 302. According to learned counsel for the petitioner, the investigating officer played mischief. It is, therefore, desirable that the matter is investigated afresh/ de novo by an independent agency.

5. The learned A.P.P. for the State and learned counsel for respondents No.2 to 6 would submit that the petitioner gave supplementary statement, wherein he alleged that, his daughter

Seema committed suicide as a result of harassment and ill-treatment meted out to her by the respondents No.2 to 6. The statements of other relatives of the deceased are also in that regard. The learned A.P.P. and learned counsel would urge for rejection of the petition.

6. The petitioner is father of Seema (deceased). Seema married Shankar (respondent No.1) in 2011. After marriage, she started residing at her matrimonial home along with her husband and the in-laws (respondents No.2 and 4 to 6). The deceased was treated well for first 2 - 3 years of her marriage. From one and a half year before the fateful day, the respondents No.2 to 6 harassed and ill-treated the deceased on account of her failure to beget. The deceased was taking treatment for her fertility.

7. On 21.2.2017, Shankar (respondent No.2), the son-in-law of the petitioner informed the petitioner that Seema suffered burns. The petitioner, therefore, rushed to Pathardi to find that Seema was shifted to Lifeline Hospital, Ahmednagar. The petitioner, therefore, came to Ahmednagar to find Seema unconscious. On 25.2.2017, Seema breathed her last. The petitioner, therefore, lodged F.I.R. with Pathardi Police Station, alleging the respondents No.2 to 6 to have committed murder of her daughter, Seema by setting her ablaze.

8. Crime for the offence punishable under Sections 302, 498-A read with Section 34 of the Indian Penal Code was registered at Pathardi Police Station. The scene of offence panchanama was drawn. Statements of the persons acquainted with the facts and circumstances of the case came to be recorded. The charge sheet has been filed. We have perused the police papers to find that on 21.5.2017, i.e. about three weeks after registration of the F.I.R., the first informant gave a supplementary statement. He has alleged in his supplementary statement that the husband and the in-laws of his deceased daughter harassed and ill-treated her on account of having not been given freeze and were not duly honoured in the marriage. The deceased did not conceive. The husband and the in-laws would, therefore, also harassed and ill-treated her. The deceased was taking treatment for fertility. The petitioner is stated to have alleged in his supplementary statement that the deceased committed suicide by setting her ablaze.

9. It was found that, the investigating officer made efforts to get the statement of the deceased recorded from the Executive Magistrate. The deceased was, however, found to be unconscious and unfit to make a statement. The post mortem report indicates, the deceased died of septicemia shock due to

75% superficial deep burns. Scrutiny of police papers would indicate that the investigating officer has recorded statements on 2.3.2017 and thereafter. There are statements of the mother, brother, maternal uncles and other relations of the deceased.

10. Admittedly, the deceased suffered extensive burns. She died of burn injuries. The first informant and all the relations of the deceased from her parental side cannot be witnesses to the incident. The husband and the in-laws are the only persons to know how the deceased suffered burns. We have, however, reached such a pass that investigation of the crime was over long back and the charge sheet has been laid. The charge is said to have been framed. In the factual backdrop, no useful purpose would be served by issuing directions either to reinvestigate the crime or make further investigation.

11. Section 216 of the Criminal Procedure Code speaks of powers of the Court to alter charge. The Section says that, any Court may alter or add any charge before judgment is pronounced. Even alternative charge can be framed. True, the petitioner cannot move the trial Court for alteration of the charge. We hope that, the trial Court, before proceeding with the trial of the case, and/ or at any time during recording of evidence, may alter or add, if necessary, to the charge already framed.

12. With the above observations, the Writ Petition stands dismissed. Rule discharged. Interim relief stands vacated.

R.G. AVACHAT
JUDGE

S.S. SHINDE
JUDGE

fmp/-