

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

CRIMINAL WRIT PETITION NO. 1529 OF 2018.

- 1) Bhagwat s/o Dagadu Rathod,
Age 54 years, Occ. Business,
R/o. Kurha (ka) Tq. Muktainagar,
District Jalgaon.
 - 2) Sow. Pramila w/o Bhagwat Rathod,
Age 50 years, Occ. Deputy Chairman,
Panchayat Samiti, Muktainagar,
R/o. Kurha (Ka) Tq. Muktainagar,
District Jalgaon.
 - 3) Rahul s/o Samadhan Rathod,
Age 24 years, Occ. Business,
R/o. Kurha (Ka) Tq. Muktainagar,
Dist. Jalgaon.
 - 4) Aslam Shah s/o Amirshah Fakir,
Age 25 years, Occ. Labour,
R/o. Kurha (Ka) Tq. Muktainagar,
District Jalgaon.
- ... **Petitioners.**

VERSUS.

1. The State of Maharashtra,
Through The Secretary,
Home Department, Mantralaya,
Mumbai.
2. The Collector, Jalgaon,
Tq. & Dist. Jalgaon.
3. The Tahsildar,
Muktainagar, Tq. Muktainagar,
District Jalgaon.
4. Shri. Ashok Kadlag,
Police Inspector,
Muktainagar Police Station,
Tq. Muktainagar, Dist. Jalgaon.

5. The Police Officer,
Muktainagar Police Station,
Tq. Muktainagar, Dist. Jalgaon.
6. Padmabai wd/o Samadhan Khiralkar,
Age 47 years, Occ. Labour,
R/o. Ward No. 3, Village Kurha (ka)
Tq. Muktainagar, Dist. Jalgaon.
7. Rahul s/o Samadhan Khiralkar,
Age 25 years, Occ. Labour,
R/o. Ward No. 3, Village Kurha (ka)
Tq. Muktainagar, Dist. Jalgaon. ... **Respondents.**

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Mr. A.R. Rathod, Advocate for Petitioners.

Mr. P. G. Borade, A.P.P. for respondents No. 1, 2, 3 & 5.

Mr. Satej S. Jadhav, Advocate for respondent No. 4.

Mr. Y. L. Bidve, Advocate for respondents No. 6 & 7.

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

DATE : 04.04.2019

JUDGMENT (PER MANGESH S. PATIL, J.) :

Heard.

2. Rule. The rule is made returnable forthwith. The learned APP waives service for respondents No. 1 to 3 and 5. Learned advocate Mr. Satej Patil waives service for respondent No. 4 and learned advocate Mr. Y.L. Bidve waives service of notice for respondents No. 6 and 7. With the consent of both the sides the matter is heard finally at the stage of admission.

3. The petitioners who are the accused in Crime No. 166/2017 registered with Muktainagar police station for the offences punishable under section 353, 332, 143, 147, 149, 341, 297, 186 read with section 109 of the

Indian Penal Code and section 135 of the Maharashtra Police Act, are seeking its quashment as well as quashing of the Regular Criminal Case No. 75/2018 filed pursuant thereto and pending in the Court of Judicial Magistrate First Class, Muktainagar.

4. The F.I.R. was lodged by Police Constable Santosh Jagdev Katre on 15.09.2017 inter alia alleging that on that day at about 12.15 p.m. he received an information that deceased Samadhan was lying dead on a road in front of the house of one Pravin Rupchand Patil at village Therola. When he along with Police Head Constable Sudhakar Shejole went to the spot they found that the petitioners and 30 to 40 other persons had gathered there and the dead body was lying there which was completely wet in the rain water. The police then instructed the Police Patil to take the dead body for postmortem examination. However the petitioners obstructed them and refused to allow the dead body to be moved from the place. They started behaving in arrogant manner and instigated the mob. They therefore called Rahul who is the son of the deceased and told him that the inquest was to be performed as well as the Post Mortem examination but the petitioners were not allowing the dead body to be moved. He reported the matter to his senior-the respondent No. 4 who was then officiating as a Police Inspector of the concerned police station. When he arrived at the spot and tried to convince the petitioners they were adamant. They insisted that the Post Mortem examination should be conducted in presence of Tahsildar and in the process disgraced the dead body. Some how the respondent No. 4

managed to remove the dead body in a vehicle to the Government Hospital at Muktainagar. When he tried to enter into the premises of the Government Hospital a vehicle was parked exactly at the gate obstructing the vehicle carrying the dead body to enter into the hospital. It is alleged that during all this process all the petitioners created obstruction to the public servants in discharging their official duty by forming an unlawful assembly.

5. The learned advocate for the petitioners vehemently submitted that they have been working for a social cause and had taken initiative to ban liquor from the village. They were suspecting that the deceased had died of illicit liquor and were requesting the police officers to get the Post Mortem examination done in a fair manner to ascertain the fact. However, the police personnel were bent upon to hustle-up the entire matter and have falsely implicated the petitioners. They have no personal agenda and were only interested in having the cause of death to be ascertained to wreck vengeance at the instance of liquor lobby that they have being falsely implicated. There is strong material to show that the petitioners are being made to face the prosecution without any rhyme or reason. The circumstances on record clearly indicate that the allegations are concocted and motivated

6. The learned APP and the learned advocates for the respondents strongly oppose the petition. They submit that going by the allegations, the

ingredients for constituting the offences can easily be made out. There is apparent material to demonstrate as to how the petitioners had obstructed the public servants in discharge of their official duties. They had arrived at the scene with a mob and had instigated it. They refused to remove the dead body even for the Post Mortem examination and in the process disgraced the dead body. Therefore irrespective of the intention of the petitioners, the allegations are sufficient to reveal the manner in which the crime was committed and the petition may be rejected.

7. The learned advocate for the respondents No. 6 and 7 submits that even they were suspecting some foul play and wanted the Post Mortem examination to be performed in a fair and transparent manner. They were suspecting about the deceased having died of some poisonous substance.

8. We have carefully considered the papers of the investigation. As can be easily appreciated, even according to the prosecution the petitioners were insisting for the Post Mortem examination to take place in presence of Tahsildar. It is also apparent that they were suspecting that he must have died of consuming illicit liquor. For that matter even the relations of the deceased were suspecting that he died of some poison. If that be so, it is quite apparent that since inception the police machinery was aware as to what was the cause for the dispute.

9. Still, surprisingly, the Post Mortem examination notes show that no attempt was made to rule out the possibility. The Post Mortem report shows

that it has not been specifically mentioned by the concerned Medical Officer that the stomach did not contain any alcohol. Only the viscera was preserved and the opinion was reserved. After obtaining chemical analysis report which ruled out the possibility of any poison, a final opinion has been given.

10. In this regard it is also equally important to note that irrespective of the stand of the prosecution now, even the family members of the deceased were suspecting about he having died of some poison. Enquiry into the Accidental Death Register No. 72/2017 under section 174 of the Code of Criminal Procedure was also conducted. During that enquiry also they had specifically raised this suspicion. In none of their statements they have whispered about the petitioners having created any obstruction while removing the dead body for Post Mortem examination. His son Rahul, brother Ramesh, nephew Ganesh, wife Padmabai, daughters Swati, Priyanka and Jyoti have not at all stated about the petitioners having created any obstruction when the dead body was being removed for Post Mortem examination. Even in this matter they have been granted leave to intervene and have apparently corroborated the petitioners' version.

11. It is the matter of record that the petitioners have been acting for liquor prohibition in the village and were apparently interested in having a fair Post Mortem examination beyond that even there are no allegations about any other reason for them to act in a manner alleged by the informant

and prosecution.

12. In our considered view, this is a fit case where allowing the petitioners to face the trial would not only be a sheer abuse of process of law but it would have an adverse effect in the society where a signal would go to the public that they are likely to be roped in some crime if they take up a public cause as serious as liquor ban. The petition therefore deserves to be allowed and accordingly it is allowed in terms of prayer clause 'B'.

13. Rule is made absolute in those terms only to the extent of the petitioners.

(MANGESH S. PATIL, J.)

(T.V. NALAWADE, J.)

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