

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

CRIMINAL WRIT PETITION NO. 1780 OF 2018.

Shivdas s/o Madhavrao Barse,
Age 50 years, Occ. Agriculture,
R/o. Barasgaon, Tq. Ardhapur,
Dist. Nanded.

... **Applicant.**

VERSUS.

1. The State of Maharashtra,
Through its Additional Chief Secretary,
Home Department, Mantralaya,
Mumbai-32.
2. The Director General Of Police,
Maharashtra State, Mumbai.
3. The Superintendent of Police,
Hingoli.

... **Respondents.**

....
Mr. S. B. Ghatol-Patil, Advocate for Applicant.
Mr. P. G. Borade, A.P.P for respondents.
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**CORAM : T.V. NALAWADE &
MANGESH S. PATIL, JJ.**

**DATE OF RESERVING THE JUDGMENT : 20.03.2019
DATE OF PRONOUNCING THE JUDGMENT : 25.04.2019**

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

Heard.

2. Rule. The rule is made returnable forthwith. The learned APP waives service for the respondents. With the consent of both the sides the matter is heard finally at the stage of admission.

3. By way of this writ petition preferred under Article 226 of Constitution of India the petitioner is seeking enforcement of the order passed in his favour by the Member of Maharashtra State Human Rights Commission, Mumbai in MAS-Case No. 2303/2011-12 dated 18.01.2017 directing the State of Maharashtra to pay him compensation of Rs. 5 lakh with interest at the rate of 12.5 % p.a.

4. The facts leading to the filing of this writ petition may be summarized as under:

(i) The petitioner's daughter by name Jyoti was married to one Vikas on 19.07.2010. After peaceful beginning of marital life her husband and other in laws started harassing and torturing her so as to compel her to meet their unlawful demand for money. She was assaulted and had come back to her parental home in January 2011. Her husband took her back but again she was illtreated and went back to her parental home in the month of March 2011. Once again her husband took her back in the month of June 2011. Unfortunately on 23.06.2011 he received a message about Jyoti having died by falling into a well. He suspected some foul play and submitted a report with Barsambha Police Station, District Hingoli on 27.06.2011. During the postmortem examination it was revealed that she had died due to 'smothering'. Consequently an offence was registered as Crime No. 58/2011 under sections 302, 201, 498A read with section 34 of the Indian Penal Code against the husband and two others.

(ii) It is the petitioner's case that he was not satisfied with the manner in which the investigation was being conducted by the Police Inspector Mr. Ganpat Dhawale. When he approached Mr Dhavale the latter allegedly demanded money to him to implicate the other in laws of Jyoti. Mr. Dhawale also assured him that he would make the case full proof. The petitioners therefore approached Anti-Corruption Bureau. A trap was laid and Police Inspector Mr. Dhawale was caught red handed while accepting Rs. 25,000/- from the petitioner. Accordingly he was implicated under the provisions of Prevention of Corruption Act.

(iii) It appears that in due course of time the charge-sheet was filed in the offence regarding murder of Jyoti. However, the Sessions Court by the judgment and order dated 30.09.2015 acquitted all the accused.

(iv) Feeling aggrieved, the petitioner has preferred an appeal against the acquittal which is pending before this Court as Criminal Appeal No. 41/2016.

(v) Simultaneously, the petitioner also filed a proceeding under Section 12 of the Protection of Human Rights Act, 1993. The Human Rights Commission issued notice to the State Government and after conducting necessary enquiry, by the order dated 18.01.2017 inter alia made following recommendation-

"9. In view of the foregoing discussion and the legal position discuss above I have no hesitation to hold that there has been a

blatant breach of fundamental right of the complainant warranting making of following recommendations:

- a) Additional Chief Secretary, Home Department, Mantralaya, Mumbai to pay Rs. 5,00,000/- (Rupees Five lakhs Only) as compensation to the complainant within six weeks from the receipt of this order and in default to pay an interest of 12.50 % p.a. on the awarded amount till its actual realization.
- b)
- c)”

(vi) Armed with such an order the petitioner approached the State Government requesting it to obey the recommendation of State Human Rights Commission. After several correspondence including a legal notice, the Home Department of the State Government issued a Notification on 31.10.2018 awarding compensation of Rs. 50,000/- to the petitioner instead of Rs. 5,00,000/- recommended by the Human Rights Commission. Hence this petition.

5. The learned advocate for the petitioner would submit that the very fact that the Investigating Officer was expecting a bribe for making the case full proof and was trapped red handed while accepting it is sufficient to justify the apprehension of the petitioner that the investigation was not being done in a fair manner. The Human Rights Commission has endorsed his allegations and has recommended compensation of Rs. 5,00,000/- to be

paid to him and he is left with no other option but to approach this Court. The step taken by the State Government in awarding him Rs. 50,000/- is like rubbing salt to the injury suffered by him. Therefore the respondents may be directed to pay him Rs. 5,00,000/-.

6. The learned APP submitted that since an appeal against acquittal is sub judice before this Court, no comment should be made in this proceeding which could have a bearing on the decision in that appeal. He would further submit that it is merely a recommendation of the State Human Rights Commission which is not enforceable at Law. Still in obedience to such recommendations and after obtaining report from the Commissioner of Police, a resolution has been passed to pay Rs. 50,000/- to the petitioner and that should satisfy him.

7. We have carefully considered the papers and the rival submissions. As can be gathered there is no dispute as far as the facts are concerned and one need not repeat those. It's a common ground that the daughter of the petitioner died a homicidal death since the postmortem examination reported that she had died due to 'smothering'. It is also a matter of record that a charge-sheet was filed which resulted in acquittal of all the accused. The petitioner has also preferred Criminal Appeal No. 41/2016 in this Court against the acquittal which is still pending. Needless to state that the appeal would be decided in due course of time. However, in view of such pendency of the appeal in this Court we have to be careful in making the observations

in this judgment which could have some bearing on the decision of that appeal. That being an appeal preferred under section 378 of the Code of Criminal Procedure, scanning of the evidence led in that trial cannot be gone into in this petition. Therefore what was the material collected by the Investigating Officer, whether there was any lapse on his part are all the questions which can be and should be allowed to be gone into while deciding the appeal.

8. However in our considered opinion it is important to note that since beginning the petitioner was suspecting that there were some lapses during the course of investigation. It is not that his such suspicion was ill founded. Rather, there was a sufficient reason to believe that he had strong reason to entertain such a suspicion. As is mentioned herein above, admittedly the Investigating Officer Mr. Dhawale had demanded him money and was infact trapped red handed while accepting Rs. 25,000/- and a crime was registered against him under the Prevention of Corruption Act. Irrespective of the ultimate decision of the crime registered against Police Inspector Mr. Dhawale, this circumstance in our considered view certainly lends support to the suspicion that was being entertained by the petitioner that the investigation was partisan. Therefore by no stretch of imagination can it be said that he was having some ill founded suspicion about the manner in which the investigation was being conducted.

9. Coupled with these state of affairs it is equally important to note

that inspite of the petitioner having approached the State Human Rights Commission which conducted necessary enquiry and by the order inter alia recommended the State Government to pay Rs. 5,00,000/-to the petitioner, the State Government has not made any attempt to impugn the observations made and conclusions reached by it. Rather, pursuant to such recommendation it has resolved to pay to him Rs. 50,000/- . Therefore one can easily conclude that may not be in express terms but the State Government having accepted the recommendations of the State Human Rights Commission albeit partly, the petitioner's right to seek a fair investigation has certainly been approved and endorsed by the Government.

10. Considering all these aspects we have no hesitation in concluding that the petitioner has indeed suffered a serious injury on account of lapses of the State to complete the investigation into murder of his daughter in a fair and transparent manner.

11. Perusal of the resolution of the Home Department of State Government dated 31.10.2018 shows that it does not refer to any reason even cursorily as to why instead of Rs. 5,00,000/- quantified by the State Human Rights Commission the State was awarding only Rs. 50,000/-. In the absence of any such reason, when the State has not preferred to challenge the observations and conclusions of the State Human Rights Commission, we deem it appropriate to direct the respondents to pay to him Rs. 5,00,000/- by way of compensation together with interest at the rate of

12.5 % p.a. from the date of the order i.e. 18.01.2017 passed by the State Human Rights Commission till realization of the entire amount.

12. The writ petition is therefore allowed and the respondents are directed to pay to the petitioner compensation of Rs. 5,00,000/- together with interest at the rate of 12.5% p.a. from 18.01.2017 till realization of the entire amount.

The rule is accordingly made absolute in these terms.

(MANGESH S. PATIL, J.)

(T.V. NALAWADE, J.)

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