

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL WRIT PETITION NO. 101 OF 2019

LUCY CARDOZO. ... Petitioner

Versus

STATE, THR. PUBLIC

INSPECTOR/OFFICER-IN-CHARGE OF

CALANGUTE POLICE STATION,

CALANGUTE AND 2 ORS. ... Respondents

Shri Preetam Talaulikar, Advocate for the petitioner.

Shri Pravin N. Faldessai, Additional Public Prosecutor for the respondents.

Coram:- S. C. GUPTE &

NUTAN D. SARDESSAI, JJ.

Date :- 10th June 2019

ORAL ORDER:

Heard learned Counsel for the petitioner and learned Additional Public Prosecutor for the respondents- State.

2. This Criminal Writ Petition seeks to challenge an order passed by the Court of Judicial Magistrate First Class, Mapusa under Section 156(3) of Cr.P.C. The petitioner had filed a private complaint on 4th September, 2017 to Calangute Police Station alleging that her mother, Isabel D'mello Cardozo, was

murdered by her sister, Mrs. Monica Rana Singh Cardozo, and brother, Joao Carridade Cardozo. On her complaint to the police, the latter refused to register any FIR. The Police instead registered an Unnatural Death Case, being Case No.54/2017, under Section 174 of Cr.P.C. on 31st August,2017, in relation to the death of Isabel. The petitioner, in the premises, approached the Court of Judicial Magistrate. The learned Magistrate, in his order dated 21st April,2018, observed that the police had carried out investigation in the case; that the detailed scene of occurrence was drawn in the presence of respectable Pancha witnesses, wherein it was noticed that a walker was lying near the cupboard in the bedroom and no disturbance was noticed in either the bedroom or other rooms of the house. The learned Magistrate observed that the deceased was bed ridden as she was unable to walk and was using a walker; the memorandum of autopsy certified the cause of death as due to head injury in the form of Sub Arachnoid Haemorrhage with bilateral fractures of the ribs and associated injuries to the lungs consequent to blunt force impact by some object and/or surface. Having regard to the fact that there were no injuries caused by any weapon which appeared to have resulted in her death, the

learned Magistrate observed that the injuries sustained by the deceased could be attributed to the fall on account of her old age. The learned Magistrate observed that there was no material on record suggesting any case of murder. The application under Section 156(3)Cr.P.C. filed by the petitioner was accordingly dismissed by the learned Magistrate. The petitioner carried the matter in revision before the Court of Additional Sessions Judge, Mapusa, who, by his impugned order dated 19th November,2018, dismissed the revision application. The learned District Judge found no reason to conclude that the findings arrived at by the learned Magistrate were illegal, perverse or contrary to the material placed on record. The learned Sessions Judge distinguished the judgments cited by the petitioner before him and held that powers under Section 156(3) have to be exercised judicially and not in a mechanical manner. The learned Judge observed that the police had taken into consideration all the material placed on record and registered Unnatural Death Case No.54 of 2017 under Section 174 of Cr.P.C. The learned Judge, in the premises, observed that it was for the police to conduct detailed investigations and

file a chargesheet if the investigations revealed that the deceased was murdered as alleged by the petitioner.

3. The impugned orders of the two Courts below do not call for any interference. There is indeed nothing to suggest that the orders are either perverse or contrary to the record. Neither before the Courts below nor before us any material has been pointed out by the petitioner's advocate to suggest a case of murder besides the lone circumstance of a photograph showing the deceased lying in a pool of blood. The photograph of the deceased lying in a pool of blood is indeed consistent with the case of a head injury caused by a fall leading to Sub Arachnoid Haemorrhage by reason of impact of a blunt surface, which is what was found in the autopsy.

4. Learned Additional Public Prosecutor for the State submits that the police investigations have been concluded; the investigations have yielded nothing to suggest that there was any foul play in the death of the deceased Isabel. The learned Additional Public Prosecutor submits that a closure report would be filed shortly by the police.

5. In any event, the impugned orders passed under Section 156(3) of Cr.P.C. and in revision therefrom, as we have observed above, do not deserve any interference of the writ Court under Articles 226 or 227 of the Constitution of India or Section 482 of Cr.P.C. There is, accordingly, no merit in the petition. The petition is dismissed.

NUTAN D. SARDESSAI, J.

S. C. GUPTE, J.

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