

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

923 CRIMINAL WRIT PETITION NO. 363 OF 2020

1. Subhash Dodhu Bhandarkar (Shimpi) ...**PETITIONERS**
Age-72 years, Occu-Agri, (Ori. Accused)
2. Abhijit Subhash Bhandarkar (Shimpi)
Age-45 years, Occu-Agri,

Both R/o. Gayatri Nagar, Behind
Krushi Utpanna Bazar Samiti,
Amalner, Tq. Amalner,
Dist. Jalgaon
3. Anil S/o. Shankar Wani (Wani),
Age-52 years, Occu-Service,
R/o. Wadi Chowk, Saraf Galli,
Amalner, Tq. Amalner,
Dist. Jalgaon

VERSUS

The State of Maharashtra,
Through Police Inspector
Jalgaon City Police Station,
Jalgaon at Jalgaon

...**RESPONDENT**

Mr. Sanjeev B. Deshpande, Advocate h/f Mr. A. G. Talhar, Advocate
for the petitioners
Mr. R. B. Bagul, APP for the respondent/State

CORAM : SURENDRA P. TAVADE, J.

RESERVED ON : 12-08-2021

PRONOUNCED ON : 20-08-2021

JUDGMENT :

. Rule. Rule made returnable forthwith, with the consent of the learned counsel for the parties.

2. The petitioners herein are challenging the legality and validity of the order dated 18-01-2020 passed by the Additional Sessions Judge, Jalgaon on the application below Exh. 75 in Sessions Case No. 202 of 2011.

3. It is contended that the Public Prosecutor had submitted an application before the Sessions Court to direct the Investigation Officer to send the suicidal note and natural handwriting of the deceased to Hand Writing Expert for obtaining his opinion.

4. The informant lodged the FIR dated 06-01-2010 against the petitioners for the offences punishable under Sections 306 read with Section 34 of the Indian Penal Code and Section 3(2)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (hereinafter referred to as the 'Atrocities Act'). It was alleged that the deceased committed suicide by consuming poisonous substance in the canteen of court premise. Thereafter, he was admitted in the Civil Hospital where he died. The investigation was carried out by police and charge-sheet came to be filed against the petitioners. The case was committed to the court of Sessions bearing Sessions Case No. 202 of 2011 which is pending before the Additional Sessions Judge, Jalgaon.

5. On 06-12-2018 charge came to be framed against the petitioners. During pendency of the trial, on 17-07-2019 the petitioners have filed an application and demanded opinion of handwriting expert of alleged seized note. But, it was disclosed that the seized note was not referred to handwriting expert by the Investigating Officer. Hence, on 16-09-2019 the Public Prosecutor filed an application below Exh. 75 purportedly to be filed under Section 173(8) of the Code of Criminal Procedure and it was prayed that the Investigation Officer be directed to send the seized chit to handwriting expert for his opinion. Said application was objected by the petitioners on the ground that charge is already framed against them, therefore, further investigation is not permissible. Said application came to be allowed which is under challenge.

6. It is submitted on behalf of the petitioners that the Investigating Officer had seized the alleged chit and it was sent alongwith charge-sheet. The chit was deposited in muddemal bearing PR No. 62 of 2017. But, the Investigating Officer did not send it to handwriting expert. It is submitted that the chit was available with Investigating Officer. But, he did not thought it fit to refer to handwriting expert for the reasons best known to him. Now the charge is framed. Therefore, the provision of 173(8) cannot be invoked.

7. On the other hand, on behalf of respondent the learned

APP submits that the entire case revolves around the suicidal note. The Investigating Officer collected the natural handwriting of deceased. Therefore, there was no hitch to send the seized suicidal note alongwith natural handwriting of deceased to Handwriting Expert to give correct conclusion. He submits that the trial court has power to direct the Investigating Officer to carryout the further investigation. The opinion of handwriting expert can be sought at any stage of trial. Therefore, the impugned order is legal and valid. Hence, the present petition be dismissed with costs.

8. Perused the impugned order. It appears that the trial Court has considered the application of prosecutor and the reply of the petitioners. The trial court has observed that the case was pending for recording the evidence for long time. No evidence was recorded on behalf of the prosecution. It appears that the petitioners demanded the copy of handwriting expert at that point of time, the prosecution realized that the chit of deceased was never referred to handwriting expert for opinion. The trial court has relied on the case of Tushar Najukrao Pundkar and Ors Vs State of Maharashtra reported in 2016 ALL MR (Cri) 322 and M. Rubin Britto Vs Inspector of Police, Kuduthini and Anr, reported in 2019 ALL MR (Cri) Journal 325. According to the trial court further investigation can be directed by the Sessions Court during pendency of the trial.

9. On the other hand learned counsel for the petitioners relied on the ratio laid down in the case of Vinubhai Haribhai

Malaviya and Ors. Vs State of Gujrat and ors reported in AIR 2019 SC 5233 wherein question before the Apex Court was “whether after charge-sheet filed by police, the Magistrate had power to order further investigation and if so, up to what stage of criminal proceedings”. Said point was decided as under:-

- (i) It was clear that the Magistrate’s power under Section 156(3) of the Code of Criminal Procedure was very wide, for it was this judicial authority that must be satisfied that a proper investigation by the police takes place. To ensure that a proper investigation takes place in the sense of a fair and just investigation by the police-which such Magistrate is to supervise Article 21 of the Constitution of India mandates that all powers necessary, which may also be incidental or implied, were available to the Magistrate to ensure a proper investigation which, without doubt, would include the ordering of further investigation after a report was received by him under Section 173(2) of the Act and which power would continue to ensure in such Magistrate at all stages of the criminal proceedings until the trial itself commences. Indeed, even textually, the investigation referred to in Section 156 (1) of the Code of Criminal Procedure would, as per the definition of investigation under Section 2(h) of Act, include all proceedings for collection of evidence conducted by a police officer which would undoubtedly include proceedings by way of further investigation under Section 173(8) of the Code of Criminal Procedure.

10. It was held that the Magistrate has power to direct the further Investigation is available till trial commencement of trial.

11. It is settled that the trial commences after framing of charges. In the present case, charge is already framed.

12. Learned APP on the basis of ratio laid down in the case of *Kishan Lal Vs. Dharmendra Bafna and Anr reported in 2009 AIR (SC) 2932* submits that further investigation can be made at various stages including stage of trial that is after taking cognizance of the offence. But, the ratio laid down in the case of *Kishan Lal (supra)* is considered in the case of *Vinubhai Haribhai Malaviya and ors (supra)*. Therefore, the ratio in the case of *Vinubhai Haribhai Malaviya and ors (supra)* is latest observation of the Supreme Court which is binding on this court. So, it can be said that the order impugned in this petition is not sustainable. Therefore, the impugned order required to be quashed and set aside. Hence, the following order.

ORDER

- i. The petition is allowed.
- ii. The impugned order dated 18-01-2020 passed by the Learned Additional Sessions Judge, Jalgaon in Sessions Case No. 202 of 2011 below Exh.75 is hereby quashed and set aside.

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iii. Rule is made absolute.

[SURENDRA P. TAVADE, J.]

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