

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

CRIMINAL WRIT PETITION NO.1121 OF 2020

**MOHAMMED ZAHEER S/O. MOHAMMED AZAM
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

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Advocate for Petitioner : Mr. Saeed S. Shaikh
P.P. for Respondent Nos.1 to 3 and 5 : Mr. D. R. Kale with
Mr. K. S. Patil

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**CORAM : RAVINDRA V. GHUGE AND
B. U. DEBADWAR, JJ.**

DATE : 19TH MARCH, 2021

PER COURT :

1. By this petition, the petitioner, who is the father of a college going daughter killed in an accident in which respondent No.6 is an accused, has put forth prayer clauses (B), (C) and (D) as under :-

"B. By issuing Writ of Certiorari / Mandamus or any other Writ, order or directions in the like nature, the respondent No.6 and his accomplice be arrested and the investigation in the matter bearing Crime No.156/2019 dated 23.04.2019 registered with the City Chowk Police Station, Aurangabad be transferred to Crime Investigation Department or to some other Investigative Agency under the supervision of this Hon'ble Court.

C. By issuing writ of Certiorari / Mandamus or any other writ or order or directions in the like nature, the Respondent Nos. 1 to 3 be directed to conduct impartial inquiry in the matter bearing Crime No. 156/2019 dated 23.04.2019 registered with the City Chowk Police Station, Aurangabad and take necessary actions against the erring Police Officer etc.

D. By issuing Writ of Certiorari / Mandamus or any other writ or order or directions in the like nature the Respondent Nos. 1 to 3 be directed to initiate necessary action against the Respondent No.6, who has intentionally killed the Petitioner's daughter namely Akefa Mehrin and also against the other Police Officials trying to cover up the matter with an intention to give clean chit to the Respondent No.6."

2. On 11-12-2020, this Court had passed the following order :

"1. In response to the order made by this Court on 24.11.2020, today, the learned APP has produced on record the papers of investigation and the case diary.

2. This Court has carefully gone through the papers of investigation and case diary. In the papers of investigation, there are statements of the eye-witnesses showing that on the same day and on the next day, the eye-witnesses had given account of the accident and it was informed that one grey colour Swift Desire was involved in the accident. The papers show that on 02.05.2020, the car was taken in custody during investigation. Surprisingly, panchanama of seizure of car was not prepared. Due to that it is not possible to ascertain even the colour of the car. The record shows that the car was referred for technical examination to the RTO and it came to be examined on 09.05.2020 i.e. very late.

3. When one four wheeler gives dash to a two wheeler, no damage is ordinarily caused to the four wheeler. It appears that after giving dash to the two wheeler of the deceased, the deceased was virtually ran over by the car and the driver of the four wheeler had escaped from the spot. Thus, not only the offence of causing the accident and causing death was committed, but other offences of not taking care of the deceased and not informing to the police about the incident are also committed by the said driver of the four wheeler.

4. In view of the nature of allegations and

nature of report which the Investigating Agency has filed, this Court had made specific order on 24.11.2020 and due to this, some record like case diary and papers of investigation are produced.

5. It appears that there are allegations that one Police Sub-Inspector was driving the four wheeler at the relevant time. Even when there are allegations against the Police Officer, no seriousness is shown by the Investigating Agency. This Court has no hesitation to observe that when there are allegations against some person of the department, more care needs to be taken by the Investigating Officer and such officer needs to be always above the board. Such officer is not expected to protect the person of his own department but he needs to be more serious as the image of the department is involved in such matters. Due to observations made by this Court today, affidavit of some of the witnesses are produced by the petitioner and they show the seriousness of the offence committed by the driver of the swift car. There is nothing to show that the witnesses have falsely implicated the said Police Sub Inspector.

6. Due to the aforesaid circumstances, this Court has formed an opinion that the officer of the higher level like the Commissioner of Police needs to look into the matter. He needs to see the record, go to the place and personally make enquiry with the eye-witnesses who have filed affidavits and whose statements were recorded by the police during investigation. He may then think about changing the Investigating Officer. He is expected to take stringent action against the Investigating Officer if it is noticed that the Investigating Officer had made an attempt to cover up the things to protect a person of his department. This needs to be done before the next date by the Commissioner of Police, Aurangabad.

7. Stand over to 5th January, 2021.

8. Authenticated copy of the order is allowed to both the parties."

3. Pursuant to the order of this Court reproduced above, the Commissioner of Police, Aurangabad has promptly initiated an

enquiry and after conducting detailed enquiry, he has submitted his report dated 02-01-2021, which is placed before us.

4. In order to avoid discrepancies and for clarity, we would be reproducing certain portions of the report of the Commissioner of Police. He has stated in paragraph No.2 that after he received the copy of the order reproduced above, he has initiated the following steps :

"i) I have called the copy of the case papers of the City Chowk Police Station C.R. No. 156/2019 u/s 304 (a), 279, 337, 338, 427 IPC r/w 134/177 MV Act. The original file is submitted in the concerned JMFC Court, Aurangabad with "A" summary report.

ii) After going through the copy of case papers, I then discussed the matter with the then investigating officer API Mr. S. K. Khatane, the then Police Station in charge officer Mr. D. S. Singare P.I., and the concerned Deputy Commissioner of Police Mr. Nikesh Khatmode.

iii) I then visited the spot of accident along with all these officers.

iv) After that I have made enquiry with the four eye witnesses who have filed affidavits.

v) I have also recorded the statement of Mr. Santosh Pate PSI, who has been suspected by the applicant Mr. Mohmad Zaheer s/o Mohmad Azam and his brother Mr. Arun Pate, in whose name the suspected vehicle is registered.

vi) I then called the detailed expert report of autopsy by way of letter given to the Dean, Government Medical College and Hospital, Aurangabad.

vii) I have also called for detailed expert report of the inspection of vehicles by the Regional Transport Officer, Aurangabad.

viii) I requested the cell phone operator company to

provide Call Detailed Report (CDR) and the location of above named suspect on the day of incident.”

5. He has stated in paragraph No.3 of his report that Medico Legal Case (MLC) papers were received from the Government Medical College and Hospital as well as from Apex Super Specialty Hospital, Aurangabad by the City Chowk Police Station on 22-04-2019. The case was handed over to Assistant Police Sub-Inspector Mr. D. J. Shinde for further enquiry and he approached GMCH and the Apex Hospital to record the statement of the accident victim, who was not in a position to do so. He has noted in the said paragraph that the crime was registered on 23-04-2019, initially invoking Sections 279, 337, 338 and 427 of the Indian Penal Code read with Section 134 and 177 of the Motor Vehicles Act.

6. ASI Shinde prepared the spot panchanama and recorded the statements of two witnesses namely Mr. Mohammad Tariq Mohammad Tahir and Mr. Adil Ahemad Siddiqui Khalil Ahemad Siddiqui. After noticing the statements indicating that a grey coloured Maruti Swift Desire car had knocked off the victim who was riding a scooty, further investigation was initiated.

7. In the meanwhile, the victim passed away at 02:10 a.m. on 24-04-2019 and hence, Section 304-A of the Indian Penal

Code was invoked. Consequentially, the investigation was handed over to Assistant Police Inspector Mr. S. K. Khatane. Mr. Khatane was the person who conducted further investigation. It is claimed by Mr. Khatane that only on 02-05-2019, Mr. Khatane noted the involvement of a car bearing registration No. MH-02-CB-2079. He then approached the R.T.O. and seized the said car and brought it to the police station. It was subjected to examination by the R.T.O., which tendered it's report on 09-05-2019. The first glaring lapse in the investigation, left by Mr. Khatane, is that he did not prepare a seizure panchanama of the said car. It cannot be ignored that the said car belonged to the accused – Police Sub-Inspector at Aurangabad, who was believed to be on duty and was believed to be driving the said vehicle when the accident occurred.

8. The Commissioner of Police has, thereafter, recorded the statements of six persons namely Mr. Mohamed Tariq S/o Mohamad Taher, Mr. Abdul Haq s/o Abdul Rahim, Mr. Adil Ahemad Siddiqui s/o Khalil Ahemad Siddiqui, Mr. Shahid Khan s/o Umar Khan, Mr. Santosh Ramdas Pate (the accused) and Mr. Arun Ramdas Pate (elder brother of accused). We are not going into the details of the statements of these persons recorded by the Commissioner of Police, for the reason that the charge-sheet has now been filed and the case is committed for trial. We, however, deem it appropriate to reproduce the impressions arrived at by the

Commissioner of Police in paragraph No.5 which read as under :-

"5. It has been observed that I.O. Mr. Khatane API has failed to do the following things as the part of investigation :-

a) Failed to record statement of Mr. Santosh Pate PSI, Mr. Arun Pate (brother of Mr. Santosh Pate PSI) and Mr. Shahid Khan Umarkhan, a person who shifted injured to the hospital.

b) Failure to seek detailed report from doctors who performed autopsy.

c) Failure to seek tower location of suspect PSI Mr. Pate from the mobile company.

d) Failure to seek expert report (forensic report) of possibility of contact between two vehicles due to collusion.

e) Failure to prepare seizure panchanama of the suspected car No. MH 02 CB 2079"

9. From the above, it is obvious that the then I.O. Mr. Khatane has seriously failed in properly investigating into the crime, as has been noted by the Commissioner of Police in paragraph No.5 reproduced above. The learned Government Pleader has strenuously tried to convince us that the I.O. may not have intentionally left such loopholes or deficiencies in the investigation. However, he fairly states that he is not defending an erring I.O. He is canvassing that the element of intentionally leaving loopholes in the investigation, may not be the case as is being tried to be made out by the petitioner.

10. We have no hesitation in observing that an investigating

officer is supposed to investigate the crime in accordance with the Code of Criminal Procedure / the procedure applicable and to the best of his ability. He is not supposed to indulge in any such act during investigation, which would have a semblance or a flavour of the I.O. deliberately leaving loopholes in the investigation, so as to tacitly create an advantage in favour of the accused. We equally find it appropriate to record our high appreciation for the efforts put in by the Commissioner of Police while conducting the enquiry pursuant to our order. We can surely say that he has conducted the enquiry with great promptitude and by applying his investigation skills. He has also, without fear or favour, drawn his observations in paragraph No.5 based on such enquiry.

11. The learned prosecutor submits, on instructions from an officer of the Police Department present in the Court, that the investigation was handed over to Assistant Commissioner of Police Mr. Hanumant N. Bhapkar of the City Division, Aurangabad. He has conducted the investigation in view of the above factors and has now submitted the charge-sheet before the learned Judicial Magistrate First Class-3, Aurangabad. The learned Chief Public Prosecutor submits, on instructions, that a show-cause notice has been issued to the then I.O. Mr. Khatane as to why his increment for one year should not be stopped permanently by way of punishment.

12. Considering the law laid down in the matter of *Kulwant Singh Gill Vs. State of Punjab [1991 (Suppl.1) SCC 504]*, stoppage of increment permanently for one year or more, is a major punishment and this punishment cannot be imposed without conducting a departmental enquiry. It is not brought to our notice as to whether specific set of service rules are applicable to the Police Department which would facilitate the stoppage of one increment permanently for one year, without conducting a departmental enquiry. If that is permissible in law, we would not make any observations. However, if that is not permissible, it would be incumbent upon the Commissioner of Police to issue a charge-sheet-cum-show-cause notice to I.O. Mr. Khatane and commence a departmental enquiry.

13. Notwithstanding the above, we find from the observations of the Commissioner of Police, as set out in the reproduced paragraph No.5, that the deficiencies were allowed to creep in into the investigation in crime No. 156 of 2019, registered with the City Chowk Police Station. They may eventually be damaging to the case of the prosecution. The learned public prosecutor submits that such mistakes may have occurred inadvertently. We cannot accept such contention for the reason that an experienced I.O. would never commit such acts

inadvertently. There is a clear averment by the petitioner that the I.O. was trying to protect the accused, who was an in-service Sub-Inspector of Police posted in the same Police Station in which the crime has been registered, and within whose jurisdiction the offence had occurred. We would have appreciated, if the accused Sub-Inspector would have been immediately transferred out of the jurisdiction of the said police station. He continued to be a part of the said police station until he was subsequently trapped in an anti-corruption bribery case in October, 2020. He was on duty in the same police station when, it is alleged that, he threatened a *Gutkha* seller of false implication and extracted an amount of Rs.50,000/-, after negotiations on the initial demand of Rs.2 lakhs. Presently, he is under suspension.

14. In view of the above, though we sincerely appreciate the steps initiated by the Commissioner of Police, Aurangabad and having independently and uninfluentially, conducted the inquiry, we wish to record that stoppage of increment for one year would be a punishment which would not be commensurate to the gravity and the seriousness of the conduct of the I.O. It would be an eye wash. The Court cannot be a silent spectator and close it's eyes or turn a Nelson's eye, as if it is helpless, in such a case. We would be failing in our duty, if we blink at such a conduct of a police officer.

15. We are, therefore, directing the Commissioner of Police, Aurangabad to issue an appropriate charge-sheet-cum-show-cause notice and follow the procedure as is laid down in law and the service conditions applicable, for conducting a Departmental Enquiry against the I.O. Needless to state, if he is found guilty, we would expect maximum punishment to be awarded to him, since this is the only way that the faith and trust of the common man and the public at large would be reposed in the police machinery, which otherwise is facing a flak for it's role in such cases. This direction of this Court shall be effected by the Commissioner of Police, forthwith.

16. The learned counsel for the petitioner contends that, firstly, Section 304-A of the I.P.C. has been invoked, only to protect the accused Police Officer from punishment under Section 302 of the I.P.C. He has based his contention on the basis of certain statements made by eye witnesses. We do not find it appropriate to go into the statements of eye witnesses in a petition putting forth the prayer clauses reproduced above, as it would amount to entering upon a parallel trial of the case, which we certainly do not desire.

Secondly, he submits that the accused himself has made a statement on 17-12-2020, before the Commissioner of Police, that a lady Police Sub-Inspector of his batch and personally

known to him, Mrs. Anita Bagul had visited the spot of the accident. He then has stated that he did not make a call to her, so as to facilitate her visit to the place. However, one of the witnesses Mohammad Tariq has claimed that the said lady officer Mrs. Bagul had visited the place by covering her face with a scarf and threatened eye witnesses not to furnish any information or details to the investigating officer with regard to the accident. The learned counsel then submits, on instructions, that she had forced the eye witnesses to delete video recordings and photographs from their respective cell phones. For the reason noted above, we would not get into the exercise of appreciation of evidence, since we have no reason to do so, in this petition. We leave it to the witnesses to depose in a manner as they may deem appropriate, before the trial Court and in the event the trial Court is convinced that there is material before it, it has the liberty to follow section 319 of the Cr.P.C. for appropriate action.

Thirdly, the learned counsel for the petitioner contends that the said lady police officer Mrs. Bagul be arrayed as an accused, since she has indulged in destruction of evidence, punishable under Section 201 of I.P.C. On this count as well, we leave it to the wisdom of the trial Court, within the frame work of Section 319 of the Cr.P.C.

Fourthly, the earlier I.O. Mr. Khatane be arraigned as an

accused. We hold the same view, even with regard to Mr. Khatane, and the trial Court is not powerless under Section 319 of the Cr.P.C.

17. Considering the directions in paragraph No.15 and the observations as above, this petition is disposed off.

(B. U. DEBADWAR, J.)

(RAVINDRA V. GHUGE, J.)