

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

CRIMINAL WRIT PETITION NO.1458 OF 2019

Archana w/o Devidas Pawar,
age 27 years, Occ. Household,
R/o C/o Madan Uttam Rathod,
R/o Tanda No.3, Kargaon,
Taluka Chalisgaon, District Jalgaon. Petitioner.
(Orig complainant)

VERSUS

1. The State of Maharashtra,
 Through its
 The Superintendent of Police,
 Jalgaon, Taluka & District Jalgaon.
2. The Deputy Superintendent of Police,
 Chalisgaon, Taluka Chalisgaon,
 District Jalgaon.
3. The Police Inspector,
 Rural Police Station,
 Chalisgaon, Taluka Chalisgaon,
 District Jalgaon. Respondents.

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Advocate for Petitioner : Mr. K. N. Shermale
APP for Respondents : Mr. Sachin J. Salgare

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CORAM : V. K. JADHAV & SHRIKANT D. KULKARNI, JJ.

Dated: August 24, 2021

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JUDGMENT :- (Per V K JADHAV, J.)

1. Heard. Leave to amend the prayer clause "C".

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2. Rule. Rule made returnable forthwith. Heard finally with consent of the parties at admission stage.

3. This writ petition is filed seeking directions to the respondents to register the crime pursuant to the complaint filed by the petitioner dated 30.9.2017.

4. Brief facts, giving rise to the present writ petition, are as follows :-

a] Deceased Ambibai Ganesh Rathod was the mother of the petitioner. On 06.09.2017 deceased Ambibai had filed a complaint before the Superintendent of Police, Jalgaon against (1) Pankaj Nagindas Chajjed, (2) Afzal Khan Pathan and (3) Dadabhau Pundlik Patil, alleging therein that she was subjected to harassment, abuses in filthy language and life threats. According to the petitioner, the land Gat No.59 ad-measuring 6 H 92 R is owned by the grand mother and father of the petitioner. In order to alienate the said land, a General Power of Attorney was executed in favour of one Pundlik Daulat Patil, r/o Umbarkhed, Taluka Chalisgaon, District Jalgaon on 18.11.2013. On 16.3.2016, said land was
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sold to one Nagindas Navindar Chajjed under a registered sale deed. It was sold for a consideration of Rs.3,55,000/- per acre and in view of the same, the total consideration amount was Rs.61,00,000/-. However, the entire amount was not paid by the power of attorney and said purchaser to deceased Ambibai Ganesh Rathod. Deceased Ambibai was insisting the power of attorney, the agent and the said purchaser for payment of the consideration amount. The father of the petitioner, namely, Ganesh Parsu Rathod, was heavily addicted to liquor. He was also mentally ill. By taking undue advantage of his mental illness and so also addiction to liquor, the mediator, the purchaser and power of attorney completed the said transaction. Consequently, deceased Ambibai had lodged a complaint on 16.08.2017 to the Police Inspector, Rural Police Station, Chalisgaon, then on 19.08.2017 and also on 06.09.2017 to the Superintendent of Police, Jalgaon. However, no cognizance of her complaint was taken. After filing a complaint on 06.09.2017 before the Superintendent of Police, Jalgaon, deceased Ambibai

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died on 10.9.2017 otherwise than under the normal circumstances. The petitioner has expressed her doubts that because of the said transaction pertaining to the agricultural land, she was murdered.

5. Learned counsel for the petitioner submits that respondent no.3 has made a formal inquiry by recording the statements of certain witnesses including the proposed accused persons and also Dr. Amit Bhupendrakumar Jain and arrived at a conclusion that the petitioner has filed the said complaint for grabbing money from the persons mentioned in the complaint as proposed accused persons. Learned counsel submits that, even thereafter those proposed accused persons gave threats to the petitioner/complainant for filing the complaint against them. Learned counsel submits that the father of the petitioner, namely, Ganesh Rathod and others had executed the power of attorney in favour of Pundlik Daulit Patil, in which all the powers were assigned to the power of attorney Pundlik Daulat Patil. However, those documents got executed by taking

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undue advantage of the addiction of liquor of the father of the petitioner.

6. Learned counsel submits that, in view of the ratio laid down by the Supreme Court in the case of ***Lalita Kumari v. Govt. of U.P.***, reported in AIR 2014 SC 187, recording of FIR is mandatory despite the police officer being unsatisfied by its reasonableness or credibility. Learned counsel submits that in a serious case wherein the petitioner has expressed her suspicion about homicidal death of her deceased mother, respondent no.3 has conducted the inquiry, which is contrary to the law laid down by the Supreme Court in the aforesaid case.

7. Learned APP submits that there is a considerable delay in lodging the complaint and as such, respondent no.3 has conducted preliminary inquiry into the matter. Respondent no.3 has concluded that deceased Ambibai was not the owner in possession of the land Gat No.59 and she was not even the legal heir of the person, who

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was in possession of the said land as an owner thereof. It is thus not acceptable that deceased Ambibai was subjected to harassment and threats by the proposed accused persons on that count. The husband of deceased Ambibai, namely, Ganesh Parsu Rathod and his mother and sister were the owners of the said land and they had executed agreement to sale on 20.12.2013 by accepting the earnest amount of Rs.5,43,000/- and on 16.03.2016, sold the entire land to the proposed accused Pankaj Nagindas Chajjed by accepting the remaining amount of consideration. Even said agricultural land was mutated in the name of the purchaser Pankaj Nagindas Chajjed on the basis of the execution of the sale deed. It has been revealed in the inquiry that thereafter, the husband of deceased Ambibai and the co-owners of the agricultural land have sold the said land on 9.3.2017 for Rs.12,11,000/- to one JBM Solar Power Maharashtra Limited and the said amount has been paid to the father of the petitioner. Nothing has been revealed during the inquiry about cheating. Deceased Ambibai died due to old
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stomach disease. Though petitioner was present for funeral, she has not lodged the complaint immediately. Learned APP submits that the Investigating Officer has thoroughly inquired into the matter and found that there is no substance in the allegations.

8. In the case of ***Lalita Kumari*** (supra), relied upon by learned counsel for the petitioner, the Supreme Court has dealt with the issue as to “whether a police officer is bound to register a First Information Report (FIR) upon receiving any information relating to commission of cognizable offence under Section 154 of the Code of Criminal Procedure, 1973 (in short ‘the Code’) or the police officer has the power to conduct a ‘preliminary inquiry’ in order to test the veracity of such information before registering the same?” In paragraph No.111 the Supreme Court has drawn the conclusion in the form of the directions which is as follows :-

“111) In view of the aforesaid discussion, we hold:

i) Registration of FIR is mandatory under Section 154 of the Code, if the information discloses

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commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

ii) If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

iii) If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

iv) The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

v) The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

vi) As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of

cases in which preliminary inquiry may be made are as under:

a) Matrimonial disputes/ family disputes

b) Commercial offences

c) Medical negligence cases

d) Corruption cases

e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

vii) While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.

viii) Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said Diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above."

9. In the instant case, the petitioner has expressed suspicion about the death of her mother Ambibai as otherwise than under the normal circumstances. The petitioner has pointed out the transactions in respect of the agricultural land. It appears that the father of the petitioner (husband of deceased Ambibai) was the co-owner of the said agricultural land alongwith his mother and sister. The petitioner has also alleged in her complaint that her father was heavily addicted to liquor and he was also suffering from mental illness. Thus, by taking undue advantage of the same, certain transaction was entered into in respect of the said agricultural land. Deceased Ambibai was frequently complaining against the proposed co-accused persons by filing complaints before various authorities. She was subjected to harassment, abuses in filthy language by the proposed accused persons and also threats to life. Deceased Ambibai had lastly filed her complaint before the Superintendent of Police, Jalgaon on 6.9.2017 and four days thereafter, she died otherwise than under the normal circumstances. Though, there is delay of 20

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days in lodging the complaint, however, in clause no. (vi) of the said conclusions/directions, the Supreme Court in ***Lalita kumari*** (supra) has specifically mentioned the types of cases, in which preliminary inquiry is to be conducted. It also includes the cases where there is abnormal delay/laches in initiating criminal prosecution i.e. over three months delay in reporting the matter without satisfactorily explaining the reasons for delay.

10. In the instant case, though the information discloses commission of a serious cognizable offence, respondent no.3 has conducted preliminary inquiry, which is not permissible in terms of the ratio laid down by the Supreme Court in the case of ***Lalita Kumari*** (supra) in conclusion/direction no. (vi). Further, we have carefully gone through the preliminary inquiry, However, the same is contrary to the direction no. (v) in ***Lalita Kumari*** (supra) as, in clause no. (v) it has been specifically observed that scope of the preliminary inquiry is not to verify the veracity or otherwise of the

information received but only to ascertain whether the information reveals any cognizable offence.

11. During the course of said so-called inquiry, respondent no.3 has recorded the statement of Dr. Amit Bhupendrakumar Jain. We are shocked to read his statement. He has stated that on 09.11.2017 i.e. before death, deceased Ambibai was taken to the hospital of Dr. Amit Jain by her relatives. It has come in the statement of Dr. Amit Jain that deceased Ambibai was disoriented when brought to his hospital. Dr. Jain had directed certain blood tests and noticed some swelling on her Kidney. He further stated in his statement that he is unable to state as to the reason for said swelling on kidney. According to him, swelling on kidney may appear due to various reasons. He found the condition of deceased Ambibai critical and thus referred her to Dhule. He has further explained in his statement that he is not in a position to state as to the illness suffered by deceased Ambibai when she was brought to his hospital. Even there are no papers of her admission in

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his hospital. The Investigating Officer has not taken pains to find out as to what happened to the deceased Ambibai when she was taken to the hospital at Dhule. It is not clear from the said papers that deceased Ambibai was treated in the hospital at Dhule or not and even as to what is the cause of her death. It thus appears that the approach of respondent no.3 is highly suspicious, objectionable and contrary to the law laid down by the Supreme Court in the case of *Lalita Kumari*. There is delay of only 20 days in lodging the complaint, which appears to have been explained by the petitioner. In view of the same, preliminary inquiry conducted by respondent no.3 was contrary to the law laid down by the Supreme Court in the aforesaid case.

12. We accordingly, partly allow this criminal writ petition to the extent of Prayer Clause "C". Rule is partly made absolute in above terms. Writ Petition is accordingly disposed off.

13. However, we hope and expect from the Superintendent of Police, District Jalgaon, to assign the investigation of the crime to any other efficient police officer.

(SHRIKANT D. KULKARNI, J.) (V.K. JADHAV, J.)

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