

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1322 OF 2018

Bhaurao s/o Sahebrao Chavan,
Age 22 years, Occupation Labour,
R/o Godawari Tanda Tq. Gangakhed
District Parbhani.

...Petitioner
(Accused)

VERSUS

- 1) The State of Maharashtra,
Through Police Station,
Gangakhed Dist. Parbhani.
- 2) Dadarao s/o Parasram Pawar,
Age 55 years, Occupation Service,
R/o Devakatwadi Tanda,
Tq. Gangakhed Dist. Parbhani.

...Respondents
(Respd.No.1 -orig.complainant)

.....
Advocate for Petitioner : Mr. S. J. Salunke
APP for Respondent No.1-State : Mr. A. M. Phule.
Advocate for Respondent No.2 : Mr. V. C. Patil.
.....

CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 17-03-2021.

JUDGMENT :

1. Rule. Rule made returnable forthwith. By consent of both the parties, the matter is taken up for final hearing.
2. Heard learned Advocate Mr. S. J. Salunke for petitioner, learned Additional Public Prosecutor for respondent No.1 State, and learned

Advocate Mr. V. C. Patil for respondent No.2.

3. It has been vehemently submitted on behalf of the writ petitioner, who is the original accused, that he is already prosecuted by virtue of First Information Report Crime No.11 of 2013 dated 17-01-2013, for the offences punishable under Section 279, 304-A of Indian Penal Code and Section 181 (3) of the Motor Vehicles Act. In that case, the prosecution had come with a case that the present petitioner drove his tractor bearing No.MH-22/H-5982 with trolleys in rash and negligent manner and caused death of Balu @ Shrikrushna Dadarao Pawar. The First Information Report in that case was filed by one Ram Parasram Pawar. Entire investigation was over and charge-sheet was also filed by the police. However, thereafter one Dadarao Parasram Pawar i.e. present respondent No.2 filed private complaint bearing Miscellaneous Criminal Application No.56 of 2014 making allegations against the present petitioner and four more accused persons stating that they have committed murder of said Balu and in order to screen themselves, they have caused the evidence disappear. He has blown the facts out of proportion and submitted that in fact the petitioner and co-accused have committed offence punishable under Section 302, 201,

203, 195, 109, 120-B read with 34 of Indian Penal Code. The learned Magistrate had then taken the verification and process came to be issued against all the accused persons for the offence punishable under Section 302, 201, 203, 109, 120-B read with 34 of the Indian Penal Code by order dated 22-04-2015. Accused No.2 to 5 had then filed Criminal Revision No.20 of 2015 challenging the said order under Section 397 of Code of Criminal Procedure before learned Additional Sessions Judge, Gangakhed, who allowed the revision on 02-03-2016 by setting aside the order dated 22-04-2015 passed by learned Judicial Magistrate First Class, Gangakhed, and the complaint was dismissed against the accused No.2 to 5. Present Writ Petitioner had filed separate Revision i.e. Criminal Revision No.06 of 2018. Learned Additional Sessions Judge by Judgment and order dated 06-07-2018 partly allowed his revision and the order of issuing process under Section 120-B read with 34 of Indian Penal Code came to be set aside, however the other part of the order against the present petitioner was maintained. Hence, this writ petition.

4. Further it will not be out of place to mention here that the present respondent No.2 – original complainant approached this

Court in Criminal Writ Petition No.560 of 2016 challenging the order of Revisional Court in Criminal Revision Application No.20 of 2015 which was filed by original accused No.2 to 5 and this Court by order dated 28-04-2016 dismissed the said writ petition.

5. It has been submitted on behalf of the writ petitioner that if we peruse the charge-sheet filed under Section 279, 304-A of Indian Penal Code then there are statements of witnesses. Further the copy of the spot panchanama and post mortem report would show that it was accidental death. The informant in the same case i.e. Ram Parasram Pawar had stated that he had received the phone call about death of Balu and then he went to the spot. Ram Pawar is the paternal uncle of the deceased. He has stated that he saw the dead body of his nephew and found that his stomach was crushed as a result of running over of tractor over him. In that case itself the statement of present respondent No.2 was recorded on 17-01-2013 and at that time he had given statement that his son died due to running over of the tractor from his body. Now he is coming with a different story that it was murder and there was previous enmity and dispute between deceased and the petitioner. The course that was taken by the learned Magistrate of taking cognizance of the

second complaint was wrong. When already police had taken cognizance of the earlier complaint/ First Information Report, then the second complaint was not maintainable at all. This aspect ought to have been considered by the Revisional Court under Section 397 of Code of Criminal Procedure. The said order deserves to be set aside.

6. Per contra, the learned Additional Public Prosecutor as well as learned Advocate for respondent No.2 supported the reasons given by learned Magistrate and the Revisional Court. Learned Magistrate has given very much detailed order stating as to how the matter appears to be not investigated properly by the police. The post mortem report gives probable cause of death as, "haemorrhage and shock due to polytrauma – unnatural death." The complainant had given reasons as to why earlier First Information Report has been considered hurriedly by police, and thereafter, how the Magistrate has held inquiry under Section 202 of Code of Criminal Procedure, and on the basis of material that is produced before the Magistrate, he has taken cognizance and passed order of issuing process. Therefore, there is no necessity to interfere in the said decisions.

7. At the outset, it is to be noted that the case under Section

279, 304-A of Indian Penal Code arising from Crime No.11 of 2013 is still pending and in the meantime the private complaint came to be lodged i.e. Miscellaneous Criminal Application No.56 of 2014. They both relate to the death of Balu Pawar who was the son of present respondent No.2. The death had occurred wherein tractor bearing No.MH-22/ H-5982 was involved. In the normal course there could not have been a second complaint. The law on this point well crystallized by Hon'ble Supreme Court in *Pramatha Nath Talukdar v. Saroj Ranjan Sarkar*, reported in AIR 1962 Supreme Court 876, relying upon *Vadilal Panachal v. Dattatraya Dulaji Ghadigaonkar and another*, reported in AIR 1960 Supreme Court 1113, was that,

"An order of dismissal under Section 203 of Code of Criminal Procedure is no bar to the entertainment of a second complaint, on the same facts but it will be entertained only in exceptional circumstances, e.g. where the previous order was passed on an incomplete record or on a misunderstanding of the nature of the complaint or it was manifestly absurd, unjust or foolish or where new facts which could not, with reasonable diligence, have been brought on the record in the previous proceedings have been adduced."

However, in this case the first proceedings are still pending and,

therefore, naturally the above said legal aspect is not applicable to the facts of the case. Further it can also be seen from the complaint i.e. Miscellaneous Application No.56 of 2014 wherein it is specifically stated that after the offence was registered, immediately he had taken objection. According to him his brother Ram Parasram Pawar had given oral complaint of murder but police have intentionally recorded First Information Report of accidental case which is a false offence that was registered. His brother Ram Pawar is illiterate and his thumb mark has been obtained. The photocopy of the said First Information Report shows that said Ram Pawar had impressed his thumb mark on the said First Information Report. Further, it is stated in the private complaint by present respondent No.2 that immediately he had given written complaint on 20-01-2013 to Police Station, Gangakhed, but no offence was registered against the petitioner under the relevant provisions. It was then told to him that already the First Information Report has been registered, and therefore, there is no question of lodging of First Information Report under Section 302 of Indian Penal Code. He then made complaint to Superintendent of Police as well as Hon'ble the Home Minister, however no action was taken on the same. He then had approached Judicial Magistrate First Class, Gangakhed with private complaint

No.37 of 2013 on 01-04-2013. His prayer of sending the matter for investigation under Section 156 (3) of Code of Criminal Procedure was rejected. However, in the same order, directions were given to the police to make thorough investigation. He had then challenged the said order before Additional Sessions Judge, Gangakhed by filing Criminal Revision Application No.12 of 2013, which came to be dismissed. He also states that now the investigation is over and charge-sheet is filed for the offence under Section 279, 304-A of Indian Penal Code. He has then also stated that the directions which were given by the learned Judicial Magistrate First Class to consider the case and have thorough investigation, has not been followed by police. He, therefore, again made written complaints to various authorities and did not receive any kind of reply, therefore he constrained to file the private complaint. Thus, it can be seen that the complainant is giving fresh facts though the incident is same and since beginning he is making an endeavour to point out that the illiteracy of his brother has been misused, and a false case has been got registered in his name, therefore definitely the second complaint was maintainable.

8. The evidence which was on record which had come in the

inquiry under Section 202 of Code of Criminal Procedure has been considered by both the authorities below in detail. Since it relates to the facts, it may not be considered in the revision here. Both the authorities have found that there is sufficient material adduced by the complainant in private complaint to proceed for the offence punishable under Section 302, 201, 203, 109 of Indian Penal Code against the present petitioner. If the complainant is coming with a case that intentionally the police have investigated the matter mala fide, then definitely the complainant has a right to agitate his grievances and, therefore, there was no bar in entertaining the complaint filed by respondent No.2 by the learned Magistrate. No case is made out to interfere with the well reasoned orders and no legal impediment has been pointed out to discard the second complaint. No reasonable ground has been shown for invoking the constitutional powers of this Court under Article 227 of the Constitution of India, therefore, the writ petition stands dismissed. Rule is discharged.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-