

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH : NAGPUR.

CRIMINAL WRIT PETITION NO. 743 OF 2017

Sheetal Digambar Chavhan and others

Vs.

The State of Mah and others

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

None for petitioner.
Shri A.S.Fulzele, APP for respondent nos. 1 to 3
Shri S.PPalshikar, Advocate for Respondent No.5

CORAM :- SUNIL B. SHUKRE AND
AVINASH G. GHAROTE, JJ.

DATED :- 12.01.2021

Nobody present for the petitioners.

As the petition is pending since 2017 and the petition has been filed for seeking something which ordinarily criminal jurisprudence of the country would not grant, we have taken up this petition for consideration of its merit at the stage of admission.

The petition seeks the following reliefs;

“(i) issue an appropriate writ, order or direction and thereby direct the respondent No.1 to conduct investigation through an independent investigation agency in respect of the death of deceased Digambar s/o Ratansingh Chavhan caused due to the negligence in duties shown by the concerned officers of respondent No.3 and further direct the respondent No.1 to take necessary action against the erring officers who are responsible for the death of Digambar s/o Ratansingh Chavhan.

(ii) hold the respondent No.1 vicariously liable for the negligence in duties shown by its servants i.e. the concerned officers of respondent No.3 and further on account of vicarious liability direct the respondent No.1 to pay the compensation of Rs.20,000,00/- along with the

interest @ 12% per annum to the petitioners from the date of filing this petition till the date of actual payment.”

The background facts which have led to seeking of the aforestated reliefs lie in an accident which took place on 20.10.2016 at 4 p.m. near village Nandrun. It so happened that one Pramod Prabhudas Mankar, a resident of village Nandrun, noticed that there was one unknown person riding the motor-cycle bearing registration No. MH-30 N-501 had met with some accident and had fallen down on the road. He also found that the motor-cycle was lying beside him in damaged condition. He was then accompanied by some villagers. Upon seeing that the unknown person was lying in unconscious condition on the spot of incident, they found that the unknown person was a liquor peddler. Since the unknown person though unconscious, was alive, the villagers called for an ambulance and made arrangement to send him to P.H.C.Daryapur. The Police Officer within whose jurisdiction the spot of incident was situated, it was Police Station Yewda, was also informed appropriately. It appears that thereafter the unknown person was admitted at Daryapur and then was shifted to Government Hospital, Nagpur, where he succumbed to injuries on 01.12.2016.

The petitioners who are respectively wife, son, mother and father of deceased Digambar, however, suspected that there was utter negligence on the part of Police Officers in taking proper care when he was in hospital and it was their negligence in affording the deceased best of medical facilities, that resulted in the deceased not surviving the accident. They also believed that as they were not informed anything about the condition of the deceased Digambar, they were prevented from intervening and providing medical help to the deceased. It is their case that they were informed

only after the deceased Digambar had died.

These are the facts which have made the petitioners to seek a direction from this Court to conduct the investigation through an independent investigating agency in respect of the death of deceased Digambar caused due to negligence in performance of duties by some Police Officers who have been specifically named and arrayed as respondents, respondent Nos. 5 and 6 in the present petition and to take necessary action against these officers and that vicarious liability be fastened upon these officers and these officers be directed to pay compensation of Rs.2 lakhs along with interest.

We have gone through the petition and we are in agreement with the learned APP for the State and also Shri Palshikar, learned counsel for respondent No.5 that there is not a single circumstance mentioned in the petition which would show the involvement of any criminal liability of respondent Nos. 5 and 6 or for that matter any of the Police Officers. We also agree that if any criminal investigation into an incident, such as death under suspicious circumstances, is to be launched, there has to be present on record some facts which would atleast give rise to strong suspicion about some deliberate act on the part of some persons which could be said to be indicating commission of some cognizable offence. In the present case, there being no such act and no such circumstances having been pleaded directly or indirectly or shown to the Court through some other material filed on record, it will not be possible for us to set criminal law in motion by issuing direction to Respondent No.1 to conduct investigation through independent investigating agency into the death of Digambar under so called suspicious circumstances.

Having seen the nature of this petition and absence of any sufficient material to direct criminal investigation, the only aspect that now we have to consider is of issue of negligence and vicarious liability for negligence. For this purpose, the petitioners would be at liberty to seek appropriate remedy by approaching the higher authority of the concerned Police Officer and also such other remedy as may be available in law. Such other remedy can never be a criminal writ petition, like the present one. Besides this, it is seen from the reply filed by Respondent No.3 on 13.03.2018 that appropriate departmental action has already been taken against respondent No.5. During the departmental enquiry that was ordered against him, he was placed under suspension and now it appears that increments of respondent No.5 have been stopped for a period of one year, against which respondent No.5 has filed an appeal. All these facts are already in the knowledge of the petitioners, but the petitioners are not satisfied with the same. The petitioners are also desirous of some departmental action be directed against respondent No.6. Again we would say that, the petitioner can secure such reliefs by resorting to appropriate remedy, but not a criminal writ petition.

In the circumstances, we find no substance in this petition and it deserves to be summarily dismissed. The petition stands summarily dismissed.

JUDGE

JUDGE

Rvjalit

**Rajesh
Jalit**

Digitally
signed by
Rajesh Jalit
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