

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

933 CRIMINAL APPLICATION NO.2481 OF 2021

ANIL SANGRAM POTE
VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

Advocate for Applicant : Mr.Abhaysinh K. Bhosle

APP for Respondent No.1 : Mr.M.M.Nerlikar

Advocate for Respondent No.2 : Mr. Dnyaneshwar A. Bide

**CORAM : MANGESH S. PATIL &
ABHAY S. WAGHWASE, JJ.**

DATE : 11 November 2022

PER COURT :-

1. By invoking powers of this Court under Section 482 of the Code of Criminal Procedure, the applicant is seeking quashment of a crime registered at the instance of respondent No.2 for the offence punishable under Section 304 of the Indian Penal Code with Chakur Police Station, Dist.Latur, being Crime No.386 of 2021.

2. Going by the FIR lodged by respondent No.2, his deceased father had purchased a motorcycle by borrowing money from the applicant but latter was reluctant in taking steps for registration of the motorcycle in his name. In spite of repeated insistence, the applicant was not buzzing to the request of the deceased.

On the date of incident the deceased had been to the applicant's Office where he smashed his hand on the glass table top and sustained a bleeding injury. He was shifted to Vivekanand Hospital, Latur, where he died of hemorrhagic shock as per the final opinion given by that Hospital.

3. Mr.Bhosle, learned Advocate for the applicant submits that accepting the allegations in the First Information Report (FIR) and statements of the witnesses at their face value, no offence punishable under Section 304 of the Indian Penal Code can be made out. Assuming that there was some civil dispute between the parties, still when the witnesses have specifically stated about the deceased having sustained injury which was in the form of self inflicted injury, it would be sheer abuse of process of law if the applicant is made to face the prosecution.

4. Learned APP for respondent No.1 as learned Advocate for respondent No.2 submit that there is enough evidence to demonstrate that some sort of scuffle must have taken place resulting in the deceased sustaining the injury.

5. The learned Advocate for respondent No.2 would further submit that the respondent No.2 was making grievance of illegal

money lending by the applicant. He had made several grievances with the Police Authorities. No steps were being taken. Though not in so many words in his contemporaneous complaint to the Police Authorities, he had stated about scuffle having preceded the injury. The respondent No.2 and the prosecution deserve to be extended sufficient opportunity to lead evidence to substantiate the allegations, considering the very fact that the deceased has died due to hemorrhagic shock indicating of huge bleed loss resulting from the injury sustained by him in that scuffle.

6. We have considered rival contentions and Police record. As can be seen a bare look of the FIR clearly indicates that the deceased himself had smashed his hand against a glass table top and had sustained the injury. The FIR is conspicuously silent regarding applicant having got injured in some physical contact with the deceased.

7. Similar is the case of the statement of the eye witnesses recorded under Section 161 of the Code of the Criminal Procedure. They have also corroborated the allegations in the FIR about the deceased having sustained the injury when he himself smashed against glass table top.

8. For that matter, even if it is assumed that the FIR was not recorded strictly according to the version of respondent No.2, he had in written application addressed to the concerned Police Inspector of Chakur Police Station dated 25-08-2021 has narrated his own version as to the manner in which the incident had taken place. However, there is conspicuous absence of any allegation even in this complaint about the applicant having assaulted the deceased at the time of alleged incident, albeit allegation about abuse and physical assault on some earlier occasion has been referred to. Infact, even in this complaint, respondent No.2 has specifically stated that his father had consumed alcohol and in rage his father started ruckus and sustained the injury.

9. Though allegations have been levelled by respondent No.2 regarding illegal money lending by applicant, we are afraid to state that this is not a proper proceeding to advert attention to that aspect of the matter. Suffice for the purpose to observe that going by the papers of the investigation and more importantly the stand of respondent No.2 while lodging the FIR or even at the later point of time while addressing the letter to the Police Authorities, specific and precise allegations about the applicant having assaulted the deceased which had resulted in sustaining the bleeding injury, are conspicuously absent. Even while

narrating history to the doctors at the Vivekanand Hospital, Latur, he similarly informed about the deceased himself having sustained injury by smashing his hand against the glass table top.

10. In view of such state of affairs, it is indeed a matter falling under the guidelines laid down in the case of *State of Haryana and Others Vs. Ch. Bhajan Lal; AIR 1992 SC 604*. It would be sheer abuse of process of law if applicant is made to face the prosecution when the ingredients to constitute offence under Section 304 of the Indian Penal Code are conspicuously missing from the allegations and the material collected by the Investigating Officer.

11. Application is allowed.

12. The Crime No.386 of 2021 registered with Chakur Police Station, Dist.Latur, for the offence punishable under Section 304 of the Indian Penal Code and RCC No.46 of 2022 pending before the learned Judicial Magistrate First Class, Chakur, are quashed and set aside.

(**ABHAY S. WAGHWASE**)
JUDGE

(**MANGESH S. PATIL**)
JUDGE