

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

CRIMINAL APPLICATION (APL) NO.1147 OF 2022

Dineshchandra s/o Raghuwardayal Shukla
Aged 49 years, Occupation–Police Inspector,
Presently residing at Pusad,
Tahsil Pusad,
District Yavatmal

...APPLICANT

VERSUS

1. The State of Maharashtra,
through P.S.O., P.S. Awadhutwadi,
District Yavatmal
2. Mrs. Bhimabai Govindrao Gadve,
Aged Major,
R/o. Gurunanak Nagar,
Godhni Road,
Yavatmal

...NON-APPLICANTS

Shri R.M. Daga, Advocate for the applicant.
Shri T.A. Mirza, Additional Public Prosecutor for
non-applicant No.1/State.
Ms Neerja G. Choubey, Advocate (appointed) for
non-applicant No.2.

CORAM : ROHIT B. DEO & URMILA JOSHI-PHALKE, JJ.
DATE : OCTOBER 12, 2022.

JUDGMENT (Per Urmila Joshi-Phalke, J.)

ADMIT. Heard finally with the consent of learned Counsel
for the parties.

2. The applicant has preferred this application under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as “Cr.P.C.” for short) for quashing of First Information Report vide Crime No.48/2021 registered against him for the offences punishable under Sections 302, 306, 166, 166-A and 167 read with Section 34 of the Indian Penal Code (hereinafter referred to as “the Code” for short) at police Station Awadhutwadi, District Yavatmal.

3. Non-applicant No.2 has lodged the report on an allegation that the deceased Vijay Gadhave died in suspicious circumstances in the house of his in-laws situated at Dandekar Layout, Yavatmal. The postmortem of the deceased Vijay Gadhave was carried out and cause of death as per the postmortem report is ‘death due to hanging’. Therefore, on 09/07/2018 non-applicant No.2 – Smt. Bhimabai Gadhave who is the mother of the deceased Vijay lodged report at Awadhutwadi police station that the wife of Vijay and in-laws of her son had committed murder of Vijay and, therefore, the offence punishable under Section 302 be registered against accused persons. However, police authorities had not taken any action, therefore, non-applicant No.2 had filed Criminal Writ Petition No.202/2019 before this Court for seeking independent inquiry in the crime. This Court by order dated 13/01/2021 has directed further investigation to be carried out by Local Crime Branch, Yavatmal

and had also directed to register offences against all suspects including the First Investigating officer. In pursuance of the said order dated 13/01/2021, present crime was registered against total 8 persons in which the applicant is shown as accused No.7.

4. As per the contention of the applicant, at the relevant time of the incident he was on the duty as a Police Station In-charge of police station Awadhutwadi, Yavatmal. He has not played any role in the investigation. There are specific directions of this Court to register the offence against the First Investigating Officer. Initially, A.D. No.46/2018 was registered on 26/06/2018 by Police Head Constable Satish Choudhary and spot and inquest panchnama was also conducted by the Head Constable Satish Choudhary. Thereafter he handed over investigation of A.D. to P.S.I. Dhawale and issued requisition to the hospital for getting postmortem report. Now applicant is transferred to the police station Pusad, District Yavatmal. On the perusal of the F.I.R. also no specific allegation against the applicant except attributing negligence in performing official duty which is not substantiated by any reliable evidence and, therefore, the F.I.R. be quashed against him. It is further the contention of the applicant that *prima facie* ingredients of Section 166, 166-A and 167 of the Code are not made out against the present applicant.

5. In response to the notice, the non-applicant No.1 submitted reply. As per reply, the applicant was Police Station In-charge of police station Awadhutwadi at the relevant time when the incident had happened. It is further the contention of the non-applicant No.1 that being In-charge of Police Station it was his duty to verify as to whether Satish Choudhary who was sent by him to make preliminary inquiry of the death of Vijay Gadhave has been done correctly or not and the present applicant did not verify all aspects of the matter. Hence, application deserves to be rejected.

6. To represent non-applicant No.2 Ms Neerja Choubey, learned Counsel was appointed through Legal Aid.

7. Heard both the sides and perused the record

8. It is undisputed that deceased Vijay Gadhave died in the house of his in-laws situated at Dandekar Layout, Yavatmal. On the basis of report of Dr. Sneha Mankar, attached to Criti Care Hospital, Yavatmal, A.D. No.46/2018 was registered at police station Awadhutwadi on 26/06/2018. As per the postmortem report death of the deceased Vijay was 'death due to hanging'. It is also not in dispute that on 09/07/2018, non-applicant No.2 who is the mother of the deceased Vijay approached

to the Awadhutwadi police station and lodged the report against the wife and in-laws of her son alleging that they had committed murder of Vijay and, therefore, the offence under Section 302 of the Code be registered. However, police authorities have not taken any action and, therefore, non-applicant No.2 had filed Criminal Writ Petition No.202/2019 wherein this Court by passing order gave following directions :

“XXXX XXXX XXXX

3. *In the circumstances, we direct the Superintendent of Police, Yavatmal - respondent No.1 to appoint a Special Investigating Officer of competence from Local Crime Branch, Yavatmal, who shall be carrying out the further investigation in the matter. The Superintendent of Police, Yavatmal - respondent No.1 to register the offences under the relevant sections against all the suspects in the present case including the first Investigating Officer, who has prima facie destroyed the evidence and attempted to prepare false evidence.*

4. *The Superintendent of Police, Yavatmal - respondent No.1 is also directed to submit his report in this matter to this Court on or before the next date.*

XXXX XXXX XXXX”

9. Thus, as per the order passed by this Court the Superintendent of Police, Yavatmal was directed to register the offences under the relevant Sections against all the suspects in the present case including the First Investigating Officer, who has *prima facie* destroyed the evidence and attempted to prepare false evidence. Admittedly, the role of the present applicant was that he was Police Station In-charge of Awadhutwadi police station on the day of incident but he was not Police

Station In-charge on the day i.e. on 09/07/2018 when non-applicant No.2 approached to the police station for lodging the report. Non-applicant No.1 had also contended in the reply that he was Police Station In-charge of police station Awadhutwadi at the relevant time of the incident. It is nowhere contention of the non-applicant No.1 that he was also Police Station In-charge on the day when the non-applicant No.2 approached to the police station. The role attributed to the applicant is only to the extent that he handed over the inquiry to P.S.I. Dhawale. The present applicant had neither investigated during A.D. inquiry nor drawn any panchnama. As per the allegation in the F.I.R., applicant had not registered the offence and has not taken any action regarding the grievances made by the non-applicant No.2.

10. After perusal of the F.I.R. and the order passed by this Court in Criminal Writ Petition No.202/2019 wherein by passing order on 13/01/2021, this Court has specifically directed the Superintendent of Police to register the offences under the relevant Sections against all the suspects in the present case including First Investigating Officer who has *prima facie* destroyed the evidence and attempted to prepare false evidence. Admittedly, there was no direction to register the offence against the present applicant. Even *prima facie* it appears that the applicant was only the Station Officer and the role which he had played

after receipt of the information on the day of incident is that he issued a requisition to the hospital for getting postmortem report and handed over the investigation of A.D. No.46/2018. To attract Section 166, 166-A and 167 of the Code, the person who is a public servant if disobeys the law with intend to cause injury to any person then Section 166 of the Code would attract.

11. Section 166-A of the Code would attract when a public servant knowingly disobeys any direction of the law which prohibits him for requiring the attendance at any place, or knowingly disobeys to the prejudice of any person or any other direction of the law or fails to record any information given to him under sub-section (1) of Section 154 of the Cr.P.C.

12. Admittedly, non-applicant No.2 approached to the police station on 09/07/2018. On that day, present applicant was not the Police Station In-charge. He was the Police Station In-charge only on the day of incident i.e. on 26/06/2018.

13. But in the present case, admittedly, there were no directions by this Court to register the offences against the present applicant. There are no allegation against the present applicant regarding disobedience of

any direction or law with intend to cause injury to any person. The Hon'ble Apex Court in the case of *Jagmohan Singh Vs. Vimlesh Kumar and ors. 2022 LiveLaw (SC) 546* wherein it is held that while exercising jurisdiction under Section 482 of the Cr.P.C., the High Court should not ordinarily embark upon an enquiry into whether there is reliable evidence or not. The jurisdiction has to be exercised sparingly, carefully and with caution only when such exercise is justified by the specific provisions of Section 482 of the Cr.P.C. itself. It is further held that the criminal proceedings can be said to be in abuse of the process of Court, to warrant intervention under Section 482 Cr.P.C., when the allegations in the FIR do not at all disclose any offence or there are materials on record from which the Court can reasonably arrive at a finding that the proceedings are in abuse of the process of the Court.

14. In this case, it appears that there is no allegation in the F.I.R. which discloses any offence or there are no materials on record from which the Court can reasonably arrived at a finding that the present applicant is involved in disobeying of the order of this Court or the negligence by conducting the investigation. In the result, the prayer of the applicant needs to be allowed.

15. Therefore, we proceed to pass the following order:

(a) The criminal application is allowed.

(b) The First Information Report vide Crime No.48/2021 registered against the applicant at Awadhutwadi Police Station, Yavatmal, District Yavatmal for the offences punishable under Sections 302, 306, 166, 166-A and 167 read with Section 34 of the Indian Penal Code is quashed and set aside.

(c) Consequential all the proceedings arising therefrom also stand disposed of.

16. Rule is made absolute in the aforesaid terms.

17. The fees of the appointed learned Counsel be paid as per rules.

(URMILA JOSHI-PHALKE, J.)

(ROHIT B. DEO, J.)

**Divya*