

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

CRIMINAL WRIT PETITION NO.883 OF 2023

**HARI KATHALU RANDHIVE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

Mr. A. P. Basarkar, Advocate for the petitioner
Mrs. G. L. Deshpande, APP for the respondent

CORAM : R. M. JOSHI, J.

DATE : 30th AUGUST, 2023

P.C. :-

1. By consent, heard finally at admission stage.
2. This petition is an example as to how the trial of any proceeding can be protracted at the instance of the informant.
3. The informant is the brother of the deceased who died on 8th July, 2009. The accused are in-laws of the deceased. The first information report came to be lodged with the allegation that the accused used to demand dowry from the deceased and for not getting the same she was harassed. Suspicious is also raised with regard to the death of the deceased. The offence came to be registered against the accused punishable under Sections 498A and 306 of IPC. The charge-sheet was however filed for the offence punishable under Section 498A of the IPC only.

4. An application (Exhibit 111) was filed through learned APP appearing before the Trial Court to add offence punishable under Section 302 of IPC against the accused. Trial Court passed order on 22nd August, 2016 to the effect that this application will be considered after recording the evidence of Medical Officer. Thereafter evidence of the Medical Officer was recorded on 7th December, 2016. After the recording of said evidence learned Trial Court passed the impugned order dated 15th December, 2016 rejecting application Exhibit 111. It is observed therein that material medical evidence on record indicates that the death is caused due to hemorrhagic shock due to rupture of left ovarian artery. It is also found by the Medical Officer that there were no external or internal injuries caused to the deceased. With these observations the application for adding offence punishable under Section 302 of IPC came to be rejected.

5. Learned counsel for the petitioner submits that though the revision petition was filed against this order, it was dismissed on technical grounds.

6. Though technically order passed by Magistrate needs to be challenged before the Revisional Court but having regard to the fact that the proceeding before the learned Trial Court is pending since year 2010, this Court does not find it appropriate to relegate the matter back to

the revisional Court for seeking its decision as the same will further delay trial. Instead the validity of order can be tested in this petition itself.

7. At the outset, it needs to be recorded that learned Magistrate has rightly waited for evidence of Medical Officer to get over, before passing order on Exhibit 111. This application is rejected after considering testimony of Medical Officer, post mortem report and other material on record. Perusal of the testimony of the informant/petitioner herein does not show that he has any personal knowledge about the occurrences of 8th July, 2009. Apart from this there is no witness examined by the prosecution to indicate that the death of deceased is homicidal. With regard to cause of death, the only evidence on record is in the form of the post mortem report of the deceased which shows that the cause of death is hemorrhagic shock due to rupture of left ovarian artery. The evidence of Medical Officer indicates that there are no external or internal injuries caused to the deceased in order to hold that it is a homicidal death. Merely because in the cross examination to the question asked by defence counsel states that no exact opinion can be given whether the death of deceased is natural no inference can be drawn about homicidal death. More particularly, when he further explains that there is no evidence of external or internal injuries to the other tissues

and vital organs and since poison was detected, there is possibility of rupture of ovarian artery naturally resulting in death. This opinion of the Medical Officer is more than sufficient to rule out possibility of deceased meeting homicidal death. In such circumstances no fault can be found with the order passed by the learned Magistrate in rejecting the application at Exhibit 111. Hence petition stands dismissed.

(R. M. JOSHI, J.)

ssp