

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2979 OF 2022

Shivaji S/o Digambar Manurkar & others Applicants

Versus

The State of Maharashtra & another Respondents

Mr. S. B. Bhapkar, Advocate for the applicants.

Mr. M. M. Nerlikar, APP for the State.

Mr. A. N. Suryawanshi, Advocate for respondent No. 2.

**CORAM : SMT. ANUJA PRABHUDESSAI &
R. M. JOSHI, JJ.**

DATE : 24th JANUARY, 2023.

PER COURT :

1. At the outset, learned counsel for the applicants seeks leave to amend prayer clause as to incorporate Sessions Case number. Leave to amend granted. Amendment to be carried out forthwith.

2. By this application under Section 482 of the Code of Criminal Procedure, the applicants have sought to quash Crime No. 4/2022 registered with Umri Police Station and Sessions Case No. 19/2022 emanating from the said First Information Report pending

before the learned Sessions Judge, Bhokar, District Nanded for offences punishable under Sections 143, 147, 302 read with section 34 of the Indian Penal Code.

3. Learned counsel for the applicants states that the material on record clearly indicates that the applicants herein had no motive to cause death of the deceased. He further submits that there are discrepancies in the statement of the witnesses as regards recording of the statement of the deceased. He states that the statements of the eye witnesses who have implicated the applicants herein are patently false. He further submits that the Post Mortem report does not support the case of the prosecution and that First Information Report and the other material on record does not disclose any cognizable offence against the applicants.

4. Per contra, learned APP states that the statements of eye-witnesses clearly indicate that the applicants herein were involved in assaulting the deceased. He submits that there is ample material on record to prima facie show involvement of applicants in committing the said crime. The cause of death will have to be ascertained by examining medical officer and that the evidence of medical officer

alone will be the substantive evidence. He relied on the decision of the Hon'ble Supreme Court in the case of Ghulam Hassain Beigh vs. Mohd. Maqbool Magrey, AIR 2022 SC 5454 to contend that the criminal proceedings cannot be quashed solely on the basis of the opinion recorded on the Post Mortem report.

5. We have perused the record and considered the submissions advanced by learned counsel for the respective parties. The only question for our consideration is whether the uncontroverted allegations in the First Information Report and the material collected in support thereof disclose commission of offence against the applicants herein.

6. The aforesaid crime was registered pursuant to the First Information Report lodged by Balaji Dhondu Kolawar, son of the deceased. He has stated in First Information Report that his father had lodged a complaint alleging that the father of the applicants who was running a fair price shop was selling foodgrains in the open market. It is stated that the Circle Officer and Talathi had come to Gram Panchayat office to conduct enquiry regarding the said complaint. It is stated that while the enquiry was in progress, the

applicants herein severely assaulted his father Dhondu by kicks and blows, as a result of which, he died on the spot. The witnesses Govind Manurkar, Balasaheb Manurkar and Sudhakar Manurkar have also specifically stated that these applicants had severely assaulted the deceased by kicks and blows. It is also stated that they had given blows on his chest and caught hold his neck and pushed him down.

7. It is true that in the statement recorded under Section 164 of the Code of Criminal Procedure the complainant has deviated from the earlier statement. He has stated that on the relevant date at about 12.00 pm, his father had gone to Gram Panchayat office and that he was told by his wife that his father had fainted and that he had taken him to the hospital. This witness has stated that his father had heart issues and that he was not assaulted by any person.

8. The Court while exercising discretion under Section 482 of the Code of Criminal Procedure cannot embark upon an enquiry or undertake critical and meticulous analysis of the evidence to determine genuineness or otherwise of the allegations made in the First Information Report. Discrepancies, self contradictions,

omissions etc. in the statement which can be otherwise explained, cannot be looked into before the trial. The limited scope of the inquiry at this stage is to ascertain and determine whether the allegation made in the First Information Report or in the material collected in the course of the investigation discloses the offence as alleged. Once an offence is disclosed, the prosecution must necessarily follow in accordance with the procedure prescribed in the Code.

9. In the case of Inder Mohan Goswami and another vs. State of Uttaranchal and others, (2007) 12 Supreme Court Cases 1, the Hon'ble Supreme Court has reiterated that the powers possessed by the High Court under Section 482 of the Code of Criminal Procedure are very wide and the same need to be exercised with care and caution. The inherent powers should not be exercised to stifle the legitimate prosecution. The Hon'ble Apex Court has also reiterated the principles laid down in the case of State of Haryana and others vs. Ch. Bhajan Lal and others, AIR 1992 Supreme Court Cases 335. Similarly, in another decision in the case of XYZ vs. State of Gujarat and another, (2019) 10 Supreme Court Cases 337, the Hon'ble Supreme Court has observed that it is improper for the High

Court to quash First Information Report when there are serious allegations in the complaint.

10. As regards the cause of death, the Post Mortem report reveals that the death of the deceased was due to cardiorespiratory failure. There can be no dispute that Post Mortem report is not a substantive evidence. In Gulam Hassan Beigh vs. Mohammad Maqbool Magrey and others, **2022 SCC Online SC 913**, the accused who was facing trial under Section 302 of the Indian Penal Code was discharged in view of the opinion recorded in the Post Mortem report that the death was due to cardiorespiratory failure. The Hon'ble Supreme Court while setting aside the said order observed thus :-

“ 31. The post mortem report, by itself, does not constitute substantive evidence. Whether the “cardio respiratory failure” had any nexus with the incident in question would have to be determined on the basis of the oral evidence of the eye witnesses as well as the medical officer concerned i.e. the expert witness who may be examined by the Prosecution as one of its witnesses. To put it in other words, whether the cause of death has any nexus with the alleged assault on the deceased by the accused persons could have been determined only after the recording of oral evidence of the eye witnesses and the expert witness along with the other substantive evidence on record. The post mortem report of the doctor is his previous statement based on his examination of the dead body. It is not substantive evidence. The doctor's statement in court is alone the substantive evidence. The post mortem

report can be used only to corroborate his statement under Section 157, or to refresh his memory under Section 159, or to contradict his statement in the witness-box under Section 145 of the Evidence Act, 1872. A medical witness called in as an expert to assist the Court is not a witness of fact and the evidence given by the medical officer is really of an advisory character given on the basis of the symptoms found on examination. The expert witness is expected to put before the Court all materials inclusive of the data which induced him to come to the conclusion and enlighten the Court on the technical aspect of the case by explaining the terms of science so that the court although, not an expert may form its own judgment on those materials after giving due regard to the expert's opinion because once the expert's opinion is accepted, it is not the opinion of the medical officer but of the Court.

32. *The prosecution should have been given opportunity to prove all the relevant facts including the post mortem report through the medical officer concerned by leading oral evidence and thereby seek the opinion of the expert. It was too early on the part of the trial court as well as the High Court to arrive at the death of the deceased on account of "cardio respiratory failure" cannot be said to be having any nexus with the incident in question.*

33. *Whether the case falls under Section 302 or 304 Part II, IPC could have been decided by the trial court only after the evaluation of the entire oral evidence that may be led by the prosecution as well as by the defence, if any, comes on record. Ultimately, upon appreciation of the entire evidence on record at the end of the trial, the trial court may take one view or the other i.e. whether it is a case of murder or case of culpable homicide. But at the stage of framing of the charge, the trial court could not have reached to such a conclusion merely relying upon the post mortem report on record. The High Court also*

overlooked such fundamental infirmity in the order passed by the trial court and proceeded to affirm the same.

12. In the instant case, the material on record prima facie shows involvement of the applicants in assaulting the deceased. the records reveal that the deceased died on the spot. Whether he died due to pre-existing sickness or due to the assault by the applicants furthermore, whether the act constitutes offence under Section 302 of the Indian Penal Code or a minor offence will be a matter which will have to be decided at the stage of trial and not in the proceedings under Section 482 of the Code of Criminal Procedure. There are several triable issues which are required to be gone into and considered at the time of trial.

13. In view of the above and for the reasons stated above, this is not a fit case which warrants exercise of powers under Section 482 of the Code of Criminal Procedure. Hence the application is dismissed. It is made clear that the observations made hereinabove are confined to the proceeding under Section 482 of the Code of

Criminal Procedure and the trial Court shall decide the case on its own merits and in accordance with law.

(R. M. JOSHI)
Judge

(SMT. ANUJA PRABHUDESSAI)
Judge

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