

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1155 OF 2017

BABAN S/O. BANSI PAWAR

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for Petitioner : Mr. Kanade Angad L

APP for Respondent/State : Mr. Y. G. Gujrati

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CORAM : KISHORE C. SANT, J.

DATE : 17th JANUARY 2023.

Per Court :

Heard. the matter is taken up for final disposal at the stage of admission by consent of the parties.

1. This petition is filed challenging an order dated 01.02.2017 dismissing the Criminal Revision Petition No.80/2015 filed by the present petitioner. The Revision was filed challenging the order dated 18.09.2015 accepting 'B' summary report filed by the Sub Divisional Police Officer, Kallam passed by the learned Judicial Magistrate First Class, Kallam.

2. It is the case of the petitioner that his mother, Banabai Bansi Pawar had been to the Kallam Court premises, since her two sons-in-law and 4 nephews were to be produced in the Court, bail applications of all of them came to be rejected. Therefore she started protesting and for that reason at around 03:00 pm., the respondent no.3/API Shri. Patil poured kerosene on her person and respondent no.2/PSI Shri. Aghav set her on fire by match-stick and thereby she received burned injury. Thereafter, she was admitted to the hospital. Her dying declaration was recorded on 29.08.2001. Ultimately, she succumbed to the injuries on 30.08.2001. It is for this reason, the petitioner tried to lodge complaint in the police station, however no heed was paid by the police and no complaint was recorded. It is for this reason, he filed an application under Section 156(3) in the Court of JMFC, Kallam, in which the investigation was directed.

3. The police filed 'B' summary report after recording the statements of various persons, including advocates present in the Court premises and many other persons. It transpired in the investigation that at the time of alleged incident, a huge mob was gathered of the persons

related to the present petitioner from his community to support the accused. After the bail applications came to be rejected, there was a chaos created in the Court premises. In the protest, mother of the petitioner put herself on fire. The police officer recorded statements of almost 32 persons and came to a conclusion that no such incident has taken place. However it is the victim herself, who in a protest tried to set her on fire, since bail applications of her sons and relatives were rejected. The investigation was carried by the responsible officer of the level of Sub Divisional Police Officer. After this investigation, the 'B' summary report came to be filed.

4. After the 'B' summary report was filed, the learned Magistrate considered the 'B' summary report and accepted the same. While considering the 'B' summary report, the learned Magistrate considered that there are two dying declarations, which are exactly contradictory to each other. In one dying declaration which was recorded by police, the statement was that API-Patil poured the kerosene and PSI-Aghav set her on fire by throwing a match-stick, whereas in another dying declaration which was recorded by Special Executive Magistrate, she

stated that PSI-Aghav poured the kerosene and API-Patil thrown match-stick and set her on fire. The learned Magistrate also observed that the statement of even a person who extinguished a fire also was recorded.

5. The order dated 18.09.2015 was challenged by filing the Revision. The Revisional Court also observed that there are two contrary dying declarations recorded. In addition to these dying declarations, there is no statement except the alleged dying declarations supporting the case of the petitioner. From the statements, it appears that in the chaotic situation, the event has taken place and thus the Revision also came to be dismissed.

6. It is vehemently submitted by the learned Advocate for the petitioner that clearly a case is made out to prosecute the respondents under Section 302 of the Indian Penal Code. The police have deliberately not recorded the statements of independent witnesses. The statements only supporting to the respondent no.2 and 3 were recorded. The 'B' summary report is accepted by the Magistrate by considering the report superficially. The report ought not to have been

accepted and instead the respondents ought to have been sent for trial. He submitted that the learned Sessions Judge has failed to appreciate that there are at-least two dying declarations, which clearly shows the involvement of both the respondents, just because the respondents happens to be police officers, investigation is carried in biased manner.

7. Heard learned Advocate for respondent no.2 and 3. He submits that they are responsible officers. On the alleged date of incident, there was a huge mob gathered of the persons belonging to the community of the petitioner to protest the arrest of the relatives of the deceased. After the bail applications came to be rejected, they immediately created law and order situation and it is in that chaotic situation, just to protest the deceased herself set her on fire. There is no question of the respondents having any intention to commit a murder that too in the Court premises.

8. The learned APP placed on record a report sent by the police officer. From this, it is seen that the persons, who were accused of preparation to commit dacoity, were apprehended and were produced

in the Court. In support of such persons, the huge mob had gathered in the Court. The persons were more than 100 in number. The persons, who were produced in the Court, were having criminal antecedents. Since the respondents were investigating into various offences against these persons, they are deliberately made the false allegations. Learned APP further submits that the alleged incident is of 2001, whereas the application under Section 156(3) itself was moved in the year 2012 that is after a gap of 11 years. This itself shows that just to rope the respondents in an offence, the application is filed.

9. In view of the above and considering that the incident is of 2001 and application under Section 156(3) was filed in the year 2012 creates serious doubt about the story of the petitioner. For all these reasons, this Court finds that there is no merit in the petition and the same is therefore dismissed.

10. With this, the Writ Petition is disposed off.

[KISHORE C. SANT, J.]

Najeeb.