

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION***

CRIMINAL WRIT PETITION NO.3111 OF 2021

Shabina Bano Shaikh ... Petitioner
Versus
The State of Maharashtra and Ors. ...Respondents

Mr. Gaurav Shenoy i/b Ms. Misbaah Solkar, for the Petitioner.

Mr. V. B. Konde-Deshmukh, A.P.P for the Respondent Nos.1 and 2 – State.

API – Govind A. Aralekar, Thane, is present.

***CORAM: REVATI MOHITE DERE &
GAURI GODSE, JJ.***

DATE : 21st JULY 2023

P.C. :

1. Heard learned counsel for the petitioner and the learned APP for the Respondent Nos. 1 and 2- State.

2. By this petition, the petitioner seeks the following substantive relief;

“a) To issue a Writ of Mandamus, or any other appropriate Writ, order or direction, directing the transfer of the investigation to any other independent investigating agency and/or officer of Dayghar Police Station pertaining to the

crime investigation at C.R. No. 37 of 2021;

- b) To issue a Writ of Mandamus, or any other appropriate Writ, order or direction, directing Respondent No. 1 to register an FIR by invoking Section 304 of the IPC against Respondent Nos. 3 & 4 and pursuant thereto, further direct to take Respondent Nos. 3 & 4 into their lawful custody pertaining to C.R. No. 37 of 2021 registered with Dayghar Police Station because of the inaction of PI Madne and Respondent No. 2;
- c) To issue a Writ of Mandamus, or any other appropriate Writ, order or direction, directing to hold an inquiry against Respondent No. 2 for not arresting Respondent Nos. 3 & 4, and for not following the due process of law as per the guidelines issued from time to time by the Hon'ble Apex Court and to take action as per law;
- d) To issue a Writ of Mandamus, or any other appropriate Writ, order or direction, directing Respondent No. 1 to initiate departmental proceeding immediately by suspending Respondent No. 2 and to submit an action taken report before this Hon'ble Court."

3. The grievance of the petitioner is that her son had gone to work at KGN Garage on 3rd September 2020 at about 10:45 a.m; that about 1:30 p.m. she received a call from the respondent No.3 informing her, that her son had suffered an electric shock in the garage and that he was being taken to Bilal Hospital, Kausa, for medical treatment and she was asked to come to the hospital directly;

that when she reached the hospital at around 1:55 p.m. she saw her son lying there and that the doctors had declared him dead. According to the petitioner, the death of her son was mysterious. It appears that the petitioner also lodged a complaint as against the accused vide C.R. No.37 of 2021 with the Shil-Dayghar Police Station, Thane. The police registered the said complaint for the alleged offences punishable under Sections 304A r/w 34 of the Indian Penal Code ('IPC'). According to the learned counsel for the petitioner, although the postmortem shows that the petitioner's son died of electrocution, no action was taken as against the respondent Nos.3 and 4 for exposing her child, a minor, to life circuits carrying heavy voltage of electricity. According to the petitioner, the offence, if any, would be one under Section 304 Part-II of the IPC.

4. Learned APP submits that the FIR was registered on the petitioner's complaint on 3rd June 2021 and that after investigation, charge-sheet has been filed in the said case. He submits that the charge-sheet has been filed for the offences punishable under Section

304A r/w 34 of the IPC and that the case is presently pending before the learned Judicial Magistrate First Class, 8th Court at Thane.

5. We have perused the papers. It appears that the petitioner's son died an unfortunate death due to electrocution, when he was working in a garge. Charge-sheet has been filed in the said case for the offence punishable under Section 304A r/w 34 of the Indian Penal Code. *Prima facie*, we do not see any infirmity in the same. However, it is always open for the trial Court, while conducting the trial to consider alteration of charge, if such evidence comes on record, so as to attract Section 304 Part-II of the IPC.

6. In view of what is stated aforesaid, nothing survives for consideration in the present petition. Petition is dismissed and accordingly disposed of. All contentions of all parties are kept open.

GAURI GODSE, J.

REVATI MOHITE DERE, J.