



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

CRIMINAL WRIT PETITION NO. 819 OF 2022

1. Badrinath @ Badri Punjaram Dange
Age 41 years, Occu: Agri.
R/o Lohagaon Tq. Paithan Dist. Aurangabad
2. Jaishree @ Jayabai w/o Dnyaneshwar Itaphe
Age 38 years, Occu: Household,
R/o Lohagaon Tq. Paithan, Dist. Aurangabad
3. Dnyaneshwar s/o Murlidhar Ithape ... **Petitioners**
Age 53 years, Occu: Agri.
R/o Lohagaon Tq. Paithan, Dist. Aurangabad

VERSUS

1. The State of Maharashtra
Through Police Station, Bidkin
District Aurangabad.
2. Ramrao Damodhar Kanthale, ... **Respondents**
Age 74 years, Occu: Agril.
R/o Susare Tq. Pathardi,
District Ahmednagar

Mr. Sudarshan J. Salunke, Advocate for the Petitioners,
Mr. S. B. Narwade, APP for the Respondent/State
Mr. C. K. Shinde, Advocate for Respondent No.2.

CORAM : Y. G. KHOBRADE, J.

Dated : 16th December, 2024.

JUDGMENT:-

1. Rule. Rule made returnable forthwith and with the consent of the parties, heard finally at the stage of admission.

2. By the present Petition, the Petitioners take exception to the order dated 30.03.2022 passed by the learned Additional Sessions Judge, Aurangabad in Criminal Revision No. 148 of 2021 thereby reversed order dated 16.06.2021 passed by the learned JMFC, Paithan of accepting "A" Summary Report No. 01/2020 submitted by the Investigation Officer in Crime No. 32 of 2016 registered with Bidkin Police Station, District Aurangabad.

3. In case in hand, the only question arises that, whether the Petitioners/ suspects to the crime can be said to be the aggrieved persons to the order of setting aside order of acceptance of "A" summery report?

4. In order to ascertain above question, necessary facts are summarized as under:

The informant/respondent No.2 lodged a oral Report on 03.02.2016 with Bidkin Police station alleging that, in the 1989, the marriage of his druthers Pushpabai solemnized with the Petitioner no. 3 Shri Dyaneshwar Murlidhar Ithape, however, the petitioner no. 3 performed 2nd marriage with the Petitioner No. 2 Smt. Jayabai Ithape. His another married daughter Smt. Sharda Narayan Ithape and his son-in-law Shri Narayan Ithape are residing at Lohagaon Tq. Paithan District Aurangabad. His daughter Smt. Sharda Narayan Ithape had informed him

about existence of extra marital relationship between the Petitioner No. 1 Shri Badri Punjaram Dange and the petitioner No. 2 Smt. Jayabai Ithape, the second wife of the Petitioner No. 3 Shri Murlidhar Ithape. It is further alleged that, his daughter Smt. Sharda had also informed him that, the Petitioner no. 1 Shri Badri Dange always visiting at the house Petitioner Nos. 2 & 3. His married daughter Smt. Pushpabai is the witness to the illicit relations between the Petitioner no. 1 and petitioner no. 2. Therefore, the Petitioners 1 to 3 have committed murder of his married daughter Mrs. Pushpabai Dnyaneshwar Ithape in between 31.07.2014 to 06.08.2014 to remove obstruction in illicit relations and disposed off her dead body. On the basis of said report, Crime No. 0032 of 2016 came to be registered with the Bidkin Police Station against the petitioners for the offences u/s 302,201 r/w sec. 34 of IPC. The petitioners are enlarged on pre-arrest bail by this Court.

5. The Investigating Officer conducted the investigation, however, no substantial evidence found to file charge sheet against the petitioners/ accused, hence, the Investigating Officer filed 'A' Summary Report u/s 173 and requested for acceptance of the said. On 16.06.2021, the learned JMFC, Paithan passed an order and accepted the said 'A' Summary Report. Being aggrieved by said order, the respondent No.2/informant filed Criminal Revision Application No. 148 of 2021 and

challenged the order of acceptance of "A" Summery Report. On 30.03.2022, the learned Sessions Judge passed the impugned order holding that merely because the Magistrate has accepted the "A" Summary Report it would not preclude the Investigating Officer to invoke provisions of Section 173(8) of the Cr.P.C. and to continue further investigation.

6. The learned counsel for the Petitioners canvassed in vehemence that, after due investigation, the Investigating Officer filed a report under Section 173 and requested for acceptance of the said 'A' Summary report. On 16.06.2021, the learned JMFC, Paithan passed an order and accepted the "A" Summary Report. However, the respondent No.2/informant filed the Criminal Revision Application No. 148 of 2021 and challenged the order of acceptance of "A" Summary Report. On 30.03.2022, the learned Sessions Judge passed the impugned order holding that, merely because the learned Judicial Magistrate has accepted the "A" Summary Report it would not preclude the Investigating Officer to invoke provisions of Section 173(8) of the Cr.P.C. and to commence further investigation. Since the married woman reported to be missing from her matrimonial abode and even after lapse of 3 years, no clue about her whereabouts has been revealed. Therefore, the Investigating officer has to investigate in the crime and can try to detect the crime. The Police machinery can on it's own continue the investigation. Hence, set aside the order of acceptance

of "A" summary report.

7. In the case in hand, on 03.02.2016, Crime No. 32 of 2016 came to be registered as against the present Petitioners being suspects on suspicion about kidnapping and committing murder of Pushpabai Dnyaneshwar Ithape and disposing off her body. It is matter of record that, the Investigation Officer conducted investigation but failed to collect substantial evidence as against the present petitioners, therefore, the I.O. filed the "A" Summery Report in Crime No. 0032 of 2016.

8. On perusal of "A" summary report it appears that, the Investigating Officer recorded statements of 24 witnesses, however, the material collected during course of investigation it did not find sufficient to file charge sheet against the present Petitioners. Further the Investigating Officer took search of missing Smt. Pushpabai Ithape at various places including public places, pilgrimages, etc. Needless to say that, the Investigating Officer had sought permission to conduct polygraphic test and brain mapping test of the present petitioners/ suspects, however, the petitioners/ suspects are declined to under go said tests.

9. No doubt, without consent of the accused, polygraphic test or brain mapping test is not permissible as it is violative of Article 21

of the Constitution of India as per the law laid down by the Hon'ble Supreme Court in **Selvi v. State of Karnataka (2010) 7 SCC 263 : (2010) 3 SCC (Cri) 1]** **State of Gujrat Vs. Shamlal Mohanlal Chokshi, AIR 1965 SC 1251.**

10. Needless to say that, on 16-06-2021, the learned Judicial Magistrate First Class, Paithan passed an order and accepted the "A" Summery Report. Since, the Respondent No.2/complainant, having right to oppose the acceptance of "A" summary report, therefore, he filed Cri. R. A. No. 148 of 2021 before the learned Session Court. On 30.03.2022, the learned Additional Sessions Judge passed the impugned order and set aside order of acceptance of "A" summary report passed on 16.06.2021 by the learned JMFC, Paithan and kept open the investigation under section 173(8) of Cr.PC.

11. Section 173(8) of Cr.PC. provides as under:

"Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer-in-charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2)."

12. On consideration of Sec.173(8) it appears that, the Investigating Officer can continue the investigation in crime and collect evidence in future and upon collection of the same submit report to the Magistrate as provided under sub section (2) of Section 173 of the Cr.P.C.

13. In *Kekoo J. Maneckji Vs. Union of India and others, 1980 Cri.L.J. 258*, the Division Bench of this Court held that, even assuming that issue of letters rogatory was wholly illegal and without jurisdiction, interference with that order would be wholly academic because manner in which documents are required was not relevant for determining their probative value. It is further held that the Petitioner had also no locus standi to question the manner in which evidence was being collected.

14. Similarly, in case in hand, as on today, the Investigation officer has not collected the evidence as against the present petitioners/suspects to implicate them in the Crime No. 0032 of 2016 registered with the Bidkin Police Station. However, as per provisions of Section 173(8) of Cr. P. C., the Investigating Officer cannot be precluded from collecting evidence against the present petitioner's or any other persons in respect of said crime. Therefore, I am on view that, the present petitioners/suspects have no locus to challenge the order of setting aside the order of acceptance of "A" summary report, hence, I answer the above question in negative.

15. In view of above discussion, I do not find that the impugned order is perverse, illegal or bad in law. Accordingly, present Writ Petition is dismissed. Rule discharged.

(Y. G. KHOBRADE, J.)

JPChavan