



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

**CRIMINAL APPLICATION NO.2873 OF 2024
IN
CRIMINAL WRIT PETITION NO.994 OF 2022**

Mira W/o Balasaheb Ghodake,
Age-35 years, Occu:Household & Agri.,
R/o-Safepur, Taluka and District-Beed.

**...APPLICANT
(Orig. Petitioner)**

VERSUS

- 1) The State of Maharashtra,
Superintendent of Police,
Beed, Taluka and District-Beed,
- 2) Deputy Superintendent of Police
at Beed, Taluka and District-Beed,
- 3) Police Inspector,
Police Station, Kaij,
Taluka-Kaij, District-Beed,
- 4) Shri S.G. Misale,
Age-Major, Occu:Service,
Assistant Police Inspector,
Police Station, Kaij,
R/o-Police Station, Kaij,
Taluka-Kaij, District-Beed,
- 5) Dr. Pramod Suryakant Dode,
Age-40 years, Occu:Service,
Assistant Professor,
Dept. of Forensic Medicine,
SRTRGMC, Ambajogain,
- 6) Ravikumar Murlidhar Kambale,
Age-41 years, Occu:Service,
Assistant Professor,
Dept. of Forensic Medicine,
SRTRGMC, Ambajogai,

7) Dr. Lakshmy Sajeevan,
Age-35 years, Occu:Service,
Junior Resident Doctor,
Dept. of Forensic Medicine,
SRTRGMC, Ambajogai,

Respondent Nos.5 to 7:
R/o-Dept. of Forensic Medicine,
SRTRGMC, Ambajogai,

8) Jivraj Keshav Hange,
Age-55 years, Occu:Contractor,

9) Baburao Keshav Hange,
Age-53 years, Occu:Contractor,

Respondent Nos.8 and 9:
R/o-Shirpura, Taluka-Kaij, District-Beed,
Now R/o-Shikshak Colony, Kaij,
Taluka-Kaij, District-Beed.

...RESPONDENTS

...
Mr. Aniruddha A. Nimbalkar Advocate for Applicant.
Ms. R.P. Gour, A.P.P. for Respondent Nos. 1 to 3.
...

**CORAM: SMT. VIBHA KANKANWADI AND
S.G. CHAPALGAONKAR, JJ.**

DATE : 22nd AUGUST, 2024

ORDER [PER SMT. VIBHA KANKANWADI, J.] :

1. By this application, the applicant is praying for carrying out amendment in Criminal Writ Petition No.994 of 2022 and wants to insert the prayer for writ of mandamus in the nature of direction for fresh investigation through independent agency for

investigating the First Information Report (for short "the FIR") vide Crime No.533 of 2021 registered with Kaij Police Station, District-Beed for the offence punishable under Sections 302, 365, 342 read with Section 34 of the Indian Penal Code and issuance of writ of mandamus for quashing the charge-sheet now filed arising out of the said FIR by saying that the said charge-sheet is the outcome of an unfair investigation.

2. Heard learned Advocate for the applicant and learned APP for respondent Nos. 1 to 3. It is not necessary to issue notices to other respondents in respect of the Application.

3. Learned Advocate for the applicant/petitioner is relying on the decision in ***Vinubhai Haribhau Malaviya and others vs. State of Gujarat and another, AIR 2019 SC 5233***, wherein it has been held that "It is clear that the Magistrate's power under Section 156(3) of the Code of Criminal Procedure is very wide, for it is this judicial authority that must be satisfied that a proper investigation by the police taken place. To ensure that a proper investigation takes place in the sense of a fair and just investigation by the police-which such Magistrate is to supervise- Article 21 of the Constitution of India mandates that all powers necessary, which may also be incidental or implied, are available to the Magistrate to ensure a proper investigation which, without doubt, would include the ordering of further investigation after a report is received by him under Section 173(2) and which power would continue to enure in such Magistrate at all stages of the criminal

proceedings until the trial itself commences.” Learned Advocate for the applicant points out that by this decision, earlier decisions in *Randhir Singh Rana vs. State (Delhi Administration), (1997) 1 SCC 361* and *Reeta Nag vs. State of West Bengal and others (2009) 9 SCC 129* were overruled.

4. Learned Advocate for the applicant further places reliance on *Babubhai vs. State of Gujarat and others, 2010, AIR SCW 5126*, wherein it has been held that,

“The Scheme of investigation, particularly Section 173(8), Cr.P.C. provides for further investigation and not of re-investigation. Therefore, if the Court, comes to the conclusion that the investigation has been done in a manner with an object of helping a party, the Court may direct for further investigation and ordinarily not for re-investigation.”

5. Before we consider the application, we would like to take note that the present applicant has filed Criminal Writ Petition No.994 of 2022 for following reliefs:-

“(B) By way of writ of mandamus, order or directions of the like nature the Respondent nos. 1 & 2 may kindly be directed to take action against illegal acts of the respondents No. 4 to 7 by taking cognizance and initiating disciplinary as well as criminal proceedings.

(C) By way of writ of mandamus, order or directions of the like nature the learned Additional Sessions Judge, Ambajogai to frame charges against the respondents No.8 and 9 u/s. 302, 365, 342 and 34 of Indian Penal Code 1860 on the basis of well established facts on record.

(D) Alternatively, By way of writ of mandamus, order or directions of the like nature by directing further investigation in the crime registered as F.I.R. No.533 dated 31.10.2021 at police station, Kaij, it may kindly be handed over to Central Bureau of Investigation considering seriousness and gravity of the offence."

6. The said Writ Petition was filed on 16th July 2022 and it is pending. It will not be out of place further to mention here that when the Writ Petition was heard for the first time on 10th August 2022, this Court gave following directions:-

"2. The State should file affidavit in reply of the concerned person only to the extent that when the offence that was registered at the time of FIR, it was under Section 302, 365, 342 read with Section 34 of the Indian Penal Code, then only on the basis of cause of death given in postmortem report why Section 302 of the Indian Penal Code has been dropped and converted to Section 306 of the Indian Penal Code. Though such explanation might have been given in the charge-sheet, yet an opportunity is given to the State to explain the things. Such affidavit to be filed on or before 13th September 2022."

7. Thereafter when the Writ Petition was taken up on 12th March 2024, this Court directed that considering prayer (B), it would be appropriate that the learned Advocate for the petitioner advances arguments in the light of the observations in the matter of *Vinubhai Haribhau Malaviya and others vs. State of Gujarat and another*, (supra). Therefore, it appears that the present Application has been filed. Taking into consideration the prayers those were made in the Writ Petition, the prayers sought to be made by way of amendment, are contrary. In the present case, the charge-sheet has been filed on 25th February 2022 before the learned Magistrate and then it appears that the case was committed to the Court of Sessions by order dated 15th March 2022 by the learned Magistrate. The FIR was in fact filed on 31st October 2021. At no point of time till the charge-sheet was filed, it appears that the applicant/petitioner had made any grievance regarding the investigation. Even in the present application, no *mala fides* have been pleaded. But in the main Writ Petition the *mala fides* have been pleaded also against the doctor who conducted the autopsy and in the main Writ Petition in fact there was no prayer for re-investigation or further investigation. The ratios in *Vinubhai Haribhau Malaviya and others vs. State of Gujarat and another* (supra) and *Babubhai*

vs. State of Gujarat and others (supra), are binding on this Court. However, taking into consideration the peculiar facts and the fact that the applicant is approaching belatedly, we do not find any merit in the present Application and it deserves to be rejected.

8. Accordingly, the Application stands rejected.

[S.G. CHAPALGAONKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

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