



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

CRIMINAL APPLICATION (APL) NO. 352 OF 2024

Bharat Khamele s/o Ashokrao Khamele

Vs.

State of Maharashtra, Thru. PSO, PS Hingana, District – Nagpur

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Ms. Nikita Shrivastav, Advocate for applicant.

Mr. Nikhil Joshi, APP for non-applicant/State.

**CORAM : SMT.VIBHA KANKANWADI, AND
MRS. VRUSHALI V. JOSHI, JJ.**

DATE : 08.07.2024

The present application has been filed invoking the inherent powers of this Court under Section 482 of the Code of Criminal Procedure as well as the constitute powers of this Court under Article 226 of the Constitution of India for direction to the non-applicant to investigate the matter related to FIR vide Crime No.127/2009 dated 01.07.2009.

2. Heard Ms. Shrivastav, learned counsel for applicant and Mr. Joshi, learned APP for respondent/State.

3. It has been vehemently submitted again and again by the learned Advocate for the applicant that the applicant is a senior citizen approximately 79 years of age. Unfortunately, his son Vikram was killed. The non-applicant – police authority has not investigated the matter properly instead the FIR was erroneously registered as an accident and the offence was registered under Section 279, 338 of the Indian Penal Code. The charge-sheet was produced before the learned Judicial Magistrate First Class, Court No.1, Nagpur, however, the accused was never arrested. Infact, the offence ought to have been registered under Section 307 of the Indian Penal Code, unfortunately, the learned Judicial Magistrate First Class, Hingana, closed the proceedings by invoking the powers under Section 258 of the Code of Criminal Procedure by order dated 20.02.2018. In view of the fact that there was no possibility of securing the presence of the accused. There was an attempt by the applicant to challenge the said order passed by the learned Judicial Magistrate First Class, Hingana, which was along with the application for condonation of delay, however, there also the respondent No.1 i.e. the original accused did not appear and therefore, application was filed for withdrawing the application with leave to file fresh

application but the learned Special Judge of Special Court for differently abled persons, senior citizens and marginalized section of society Nagpur by order dated 22.08.2023 allowed the application to be withdrawn without the leave to file fresh application. The applicant is unable to get justice and unfortunately, at the fag end of his life, he is required to go pillar to post so that he gets justice. At no point of time, the police had informed the stages of investigation to the applicant and they had never made a serious attempt to arrest the accused and therefore, the directions as prayed deserves to be granted.

4. Learned APP submits that the investigation was already over and the charge-sheet, which was then filed before the learned Judicial Magistrate First Class, Hingana, for almost nine years. Inordinately said that the accused is absent since long, non-bailable warrant was issued against the accused but there was no possibility of securing the presence of the accused and therefore, the learned Judicial Magistrate First Class, closed the proceedings under Section 258 of the Code of Criminal Procedure. That order was challenged by the present applicant but then he has withdrawn the

said application which appears to be voluntary. Therefore, there is no question of any fresh investigation.

5. At the outset, we considered that the application suffers from delay and laches only on the count that the applicant is senior citizen, we cannot allow the application. The option was available to the applicant to approach the appropriate authority to get legal aid or engage Advocate of his choice. Though, it appears that he lodged the FIR. The offence was registered under Sections 279 and 338 of the Indian Penal Code. Only the circumstance that deceased had gone along with accused at night time and the dead body of the deceased was found on the next day could not have been the ground for registering the offence under Section 307 of the Indian Penal Code. The applicant has not produced the copy of the entire charge-sheet before us only the P.M. report has been produced which shows that as per column No.17 there were 17 external injuries and they were corresponding internal injuries mentioned in column No.19. The cause of death is stated to be a head injury. It appears that the charge-sheet was also filed in the year 2009 and the order for stopping the proceedings was passed by the

learned Judicial Magistrate First Class on 20.02.2018. The learned Magistrate First Class had exercised his powers under Section 258 of the Code of Criminal Procedure. It is also to be noted that thereafter the present applicant appears to have approached the Sessions Court within application for condonation of delay to challenge the order passed by the learned JMFC on 20.02.2018. He could get an order passed by the Additional Sessions Judge, 6th Nagpur, where it be said that the respondent No.1 i.e. the original accused had appeared in the matter but had not filed the same. But, thereafter, it appears that he remained absent and the matter was decided to be proceeded in absence of the respondent No.1. But then, on 22.08.2023, it appears that the Special Judge had take a note of the Pursis (Exhibit-A) filed by the present applicant seeking withdrawal of the application. The copy of said application is filed on record and we can see that no reason has been given as to why the fresh petition would be filed. Therefore, the withdrawal was granted without leave as prayed. Under the said circumstance, when the applicant has exhausted whatever remedy was available ; cannot invoke the inherent powers of this Court under Section 482 of the Code of Criminal Procedure, there is no question

of invoking the constitutional powers of this Court under Article 226 of Constitution of India, when already the appropriate remedy has been exhausted. When the withdrawal was voluntary, now it cannot be re-agitated by saying that there was no proper investigation or the offence ought to have been registered under different sections. No doubt, an informant or a citizen of this country would legitimately expect from the police that he or she should be informed about the progress in the investigation but when the police are not responding, then such citizen should approach the appropriate authority within reasonable time.

6. The FIR was lodged in the year 2009 and the present application has been filed in 2023, when there is in an ordinate delay, this Court cannot exercise its constitutional powers, much less inherent powers.

7. Application stands rejected.

(MRS. VRUSHALI V. JOSHI,J) (SMT. VIBHA KANKANWADI,J)