



Judgment

apl1402.22

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

CRIMINAL APPLICATION [APL] No. 1402 OF 2022.

1.Sneha d/o Chandrashekhar Ubale,
Aged about 34 years, Occupation –
Service, resident of New Bhendipada,
Tahsil Ambarnath, District Thane.

2.Abhishekh Chandrashekhar Ubale,
Aged about 31 years, Occupation –
Service, resident of New Bhendipada,
Tahsil Ambarnath, District Thane.

3.Ashok s/o Jaitu Kholambe,
Aged about 56 years, Occupation –
Businessman, resident of Apte Wadi,
Shirasgon Badlapur, Tahsil Ambarnath,
District Thane.

4.Manisha Ashok Kholambe,
Aged about 54 years, Occupation –
Household, resident of Apte Wadi,
Shirasgon Badlapur, Tahsil Ambarnath,
District Thane.

5.Akshay s/o Ashok Kholambe,
Aged about 30 years, Occupation –
Service, resident of Apte Wadi,
Shirasgon Badlapur, Tahsil Ambarnath,
District Thane.

6.Kapil s/o Vithal Satpute,
Aged about 35 years, Occupation –
Service,

Rgd.

7. Ankita w/o Kapil Satpute,
Aged about 33 years, Occupation
Service.

Nos.6 and 7 both residents of
Mukund Nagar, Ulhas Nagar,
Tahsil Kalyan, District Thane.

... **APPLICANTS.**

VERSUS

1. The State of Maharashtra,
through Police Station Officer,
Police Station Lohara,
District Yavatmal.

2. Surendra Sudhakar Khandalikar
Aged about 25 years, Occupation –
Student,

3. Sudhakar s/o Narayanrao Kamble,
Aged about 65 years, Advocate.

Nos.2 and 3 both residents of
House No.01-07-321, Rajnagar,
Nanded, District Nanded.

... **NON-APPLICANTS.**

Mr. A.S. Manohar, Advocate for Applicants.
Mr. M. Badar, A.P.P. for Non-applicant No.1.
Mr. M.N. Ali, Advocate for Non-applicant Nos.2 and 3.

**CORAM : VINAY JOSHI AND
VRUSHALI V. JOSHI, JJ.**

DATE : FEBRUARY 15, 2024.

ORAL JUDGMENT (PER VINAY JOSHI, J.) :

Heard. **Admit.**

By consent of the learned Counsel for the parties, the matter is taken up for final disposal.

2. By this application, applicants are principally seeking to quash the first information report bearing Crime No.65/2022 registered with Lohara Police Station, District Yavatmal for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code.

3. At the inception, the learned Counsel appearing for applicants would submit that this is a classic case wherein the offence of homicidal death amounting to murder has been registered by the police without any iota of material. Rather he would submit

Rgd.

that there is no material to indicate that Sharadkumar, the deceased, met with a homicidal death, and thus, the entire prosecution would collapse. In short, it is submitted that even if the prosecution case is accepted at its face value, it does not make out a prima facie case.

4. The learned Counsel appearing for non-applicants opposed the application, however, they are unable to point out any material from which the culpability of the accused/applicants can be inferred. Vide interim order dated 14.10.2022, this Court though precluded the police from filing charge sheet, however permitted to go on with their investigation. The police have carried out investigation and investigation papers are produced before us.

5. Applicant no.1 is widow of deceased Sharadkumar, whilst rest of the applicants are relatives of applicant no.1. On 25.08.2020 Sharadkumar died at Yavatmal after returning from eating house. The informant, who is brother of the deceased, suspecting a foul play, persistently approached to the police to register the crime. On refusal of police, he has filed an application to the Magistrate in

terms of Section 156[3] of the Criminal Procedure Code, however, the learned Magistrate found that there is no material to direct the police to register crime, and hence, declined to issue directions. However, the Magistrate treated the said application as a private complaint.

6. Being aggrieved, he has invoked the revisional jurisdiction of Sessions Court in which directions have been issued to the police to register the crime. Notably applicants have not been made party to the revision, though they have right to defend a favourable order passed by the Magistrate. Be that as it may, at the instance of said direction, the police have registered the crime on the basis of statement given by the informant Surendra.

7. The prosecution case in brief is that the deceased Sharadkumar was married with applicant no.1 Sneha on 06.01.2019. From the wedlock, she remained pregnant and delivered a female baby on 13.10.2019, while she was at her matrimonial house. There happened to be a matrimonial dispute between the couple. The

deceased Sharadkumar has filed an application to the Magistrate alleging that his wife i.e. applicant no.1 Sneha has been wrongfully confined by other applicants. Deceased Sharadkumar has also filed an application for restitution of conjugal rights. In response, the applicant no.1 Sneha has filed a complaint to the Magistrate under the provisions of Domestic Violence Act. It was followed by applicant no.1 lodging report against deceased Sharadkumar and others alleging matrimonial cruelty. In such a background the couple was residing separately under strained relationship.

8. The informant brother stated that since Sharadkumar was facing matrimonial issues and was not allowed to meet his child, he was in depression. He was also suffering from hypertension due to matrimonial discord. The informant stated that the deceased Sharadkumar went to Yavatmal on 24.08.2020 to meet his wife, but, as the house was locked he went to his friend's house. Within short time the informant came to know from the friends that Sharadkumar has been admitted to the hospital and his condition is serious. The informant went to the Government Hospital, Yavatmal and found

7

that Sharadkumar had already expired. The informant noted that there were some blackish marks on the right shoulder of the deceased. It is the contention of the informant that the applicant no.1 [wife of the deceased] and other applicants who are her near relatives, have persistently harassed the deceased mentally as well as physically, and thus, caused his death under mysterious circumstances. On the basis of said report, police have registered the aforesaid crime.

9. Since the crime has been registered for the offence of murder defined under Section 300 of the Indian Penal Code and punishable under Section 302 of the Code, it is pre-requisite to establish that a person has met with a homicidal death. Besides that there are further requirements that death was caused with specific intent or knowledge. We have been taken through the inquest panchnama from which it is evident that besides minor blackish mark on the right shoulder, there were no other injury. More particularly we have gone through the post mortem report which is totally silent about the surface wound and injury. The medical

officer has initially reserved the opinion about final cause of death, but, after obtaining chemical analyzer's report, it was revealed that no poisonous substance was found, hence final cause of death was opined as 'coronary artery disease'.

10. In above context, we have examined the entire material. We have also gone through various statements. Besides a speculative suspicion, there is nothing on record. It is evident that the relations between the couple were strained, which may have prompted the brother and father of the deceased to suspect the evil. We have gone through the statement of friends of the deceased with whom on earlier night the deceased halted. Those statement indicates that on earlier night the deceased came and all of them went to a eating house for dinner. They consumed liquor and after return the deceased got uneasy, vomited and then he was shifted to the hospital, where he breathed last. Thus, these consistent statements prima facie supports the cause of death which relates to the heart disease. While conducting autopsy, it was found that the coronary arteries were hard thickened, but, patent coronary ostium are patent.

These symptoms are indicative of heart disease. Examination of all police papers nowhere remotely suggest any motive or intentional act on the part of either of the applicants. It is evident that since the Court of Sessions has directed to register the crime, the police have registered the crime and carried investigation. Rather the reply filed by the State also bears a reference that there was no material to indicate that the deceased met with homicidal death.

11. We do have sympathy with the informant party, however, merely because Sharadkumar died, it does not mean that his death is a result of foul play. The prerequisite to establish the charge of murder i.e. homicidal death is totally missing. The entire material collected during the course of investigation, does not make out the ingredients to constitute the offence of murder. Facing of criminal trial has manifold consequences. Merely on the basis of speculative inferences, one cannot be put to hardship of facing criminal trial, that too under serious charges. We are fully satisfied that continuation of prosecution would amount to abuse of the process of Court, rather this is a fit case where the Court must step in and

exercise inherent powers to secure the ends of justice. In view of above, Criminal Application is required to be allowed, hence the following order.

ORDER

- (i) Criminal Application is allowed and disposed of.
- (ii) The first information report bearing Crime No.65/2022 registered with Lohara Police Station, District Yavatmal for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code is hereby quashed and set aside.

JUDGE

JUDGE