



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.3518 OF 2023

1. Kakamaharaj @ Kakasaheb Bibhishan Umbare
Age: 53 years, Occu.: Agri.,
R/o. Wanewadi, Tq. And Dist. Osmanabad.
2. Maulimaharaj @ Vaishnav Kakasaheb Umbare
Age: 20 years, Occu.: Agri.,
R/o. Wanewadi, Tq. And Dist. Osmanabad.

.. Applicants

Versus

1. The State of Maharashtra
2. Lahu Shivaji Shinde
Age: 39 years, Occu.: Agri. And Labourer,
R/o. Wakharvadi, Tq. And Dist. Osmanabad.

.. Respondents

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Mr. Jaydeep Mane, Advocate for the applicants.
Mr. A. R. Kale, APP for respondent No.1/State.
Mr. Sushant Dixit, Advocate for respondent No.2.

...

**CORAM : SMT. VIBHA KANKANWADI &
SANJAY A. DESHMUKH, JJ.**

DATE : 16 JUNE 2025

ORDER :

. Present application has been filed initially for quashing the FIR vide Crime No.333 of 2023 dated 06.08.2023 registered with Dhoki Police Station, Taluka and District Osmanabad and later on, by way of amendment, for quashing the proceedings in Regular Criminal Case No.485 of 2024 (Charge-sheet No.171 of 2024), pending before the learned Judicial Magistrate First Class, Osmanabad for the offences

punishable under Section 305, 323, 324 read with Section 34 of the Indian Penal Code.

2. Heard learned Advocate Mr. Jaydeep Mane for the applicants, learned APP Mr. A. R. Kale for respondent No.1/State and learned Advocate Mr. Sushant Dixit for respondent No.2.

3. Learned Advocate appearing for the applicants has taken us through the contents of the charge-sheet including the FIR and the other documents. He submits that even taking the case as it is and the documents it would show that no specific role has been attributed to the present applicants. Though applicant No.1 is the head of the Ashram, yet none of the witnesses say that he had ever assaulted the deceased. In fact, the witnesses have stated that the deceased had committed theft of money and had admitted it, but when it came to giving back the amount, he was avoiding. Of course, some of the witnesses have stated that the other accused had assaulted the deceased and then the deceased had taken out the amount, which he had concealed below his suitcase. That incident had taken place on 04.08.2023 and then some of the witnesses say that the deceased had his breakfast with other persons around 9.30 a.m. on 05.08.2023 and thereafter, he went outside to answer the nature's call, but did not return. He was searched by all the persons in the Ashram and his dead body was then found in

hanging position to a Tamarind tree. The applicants had no role to play in the entire episode, which would amount to abetment and, therefore, their involvement in the offence appears to be with some *mala fide* intention. It would be unjust to ask the applicants to face the trial.

4. Learned APP strongly opposed the application and submits that the young boy of 14 years 8 months has committed suicide. That means he would have been given such kind of treatment at the Ashram, which led him to commit suicide. Statement of witnesses under Section 161 as well as Section 164 of the Code of Criminal Procedure have been recorded, which would show that after it was realized that amount from one Manohar Vikhe and Rushikesh Raut's suitcase/box were stolen by damaging the latch, inquiry was made with all the students as to who has committed the theft. Deceased had admitted the theft, but in order to get the said admission, it appears that he was assaulted by certain persons. The Ashram is run by applicant Nos.1 and 2 and even the informant in the FIR states that deceased had told him that the present applicants used to assault him when he was not doing work in the field. Certainly, present applicants have role to play in the entire FIR and, therefore, this is not a fit case where this Court should exercise its powers under Section 482 of the Code of Criminal Procedure.

5. Learned Advocate, who is appointed to represent the cause of respondent No.2/informant, submits that taking into consideration the

contents of the spot panchanama and the situation that was at the spot, it would be doubtful as to whether deceased had committed suicide. Informant's statement under Section 161 of the Code of Criminal Procedure has been recorded and in that statement, he has clearly stated that the FIR was not taken by the police as per his contention, rather the applicants and the Ashram had come with the story about theft at a later point of time. The applicants are the initial persons who appear to have exercised their influence just to get away with the allegations. In specific statement, the informant has stated that his son has been murdered and this can be seen from the contents of the postmortem report also. The postmortem report shows that there were about seven bodily injuries, especially multiple (more than 16 to 18 in numbers) contusions on the part of the body. This is nothing but the sign of beating that was given. There was internal injury corresponding to the brain and, therefore, investigation ought to have been on the point of murder also. When the entire Ashram is run by the present applicants, it appears that the witnesses have been managed to say that it was initially the case of theft by the deceased and then the deceased was assaulted. The informant specifically states that applicant No.1 used to ask the deceased to work in the field of the Ashram and in case of refusal, the punishment was assault. Therefore, the deceased was not willing to go back to the Ashram, however, the informant left him and at

that time, he had requested applicant No.1 not to assault deceased. Under these circumstances, it would be premature to come to the conclusion that there is no *prima facie* case to stand as against the applicants.

6. Here, it is to be noted that respondent No.2/informant at the time of lodging the FIR has specifically stated that his son had committed suicide by hanging. The FIR has been lodged on 06.08.2023. Then it appears that his statement under Section 164 of the Code of Criminal Procedure came to be recorded on 01.09.2023 by learned Judicial Magistrate First Class, Osmanabad. In his statement, he has tried to give the different story leading to the inference of offence under Section 302 of Indian Penal Code. That means, the story which he had tried to give in his statement under Section 164 of the Code of Criminal Procedure was not there in his FIR. In spite of this difference we are then required to consider as to whether case is made out for exercise of powers under Section 482 of the Code of Criminal Procedure. Here, as per the FIR, there were five accused persons and even at the time of charge-sheet, there were five accused persons. The prosecution has come out with the case that the present applicants, who are the accused Nos.4 and 5, used to ask deceased to work in the field and they used to assault him in case of failure. In a way, the prosecution has tried to segregate present two applicants from the alleged incident dated

04.08.2023 and 05.08.2023. The informant was not present in the Ashram when the incident took place and, therefore, certainly, he is dependent on the information that was supplied to him by some other person. Therefore, we will have to consider the statements of all the witnesses, who were inside the Ashram on that day. Statements of witnesses including the students who are minor and also the staff have stated about the alleged theft that was noted on 04.08.2023. It is stated that amount of Rs.1100/- belonging to Manohar Vikhe and amount of Rs.900/- of Rushikesh Raut were stolen from box/suitcase by damaging the latch. One witness Aditya says that Manohar then had raised the issue of theft of amount in presence of all the boys i.e. students, when they had gathered for Haripath. It is then stated that deceased Prem Shinde admitted that he has stolen the amount. The witnesses have then stated that said Manohar had assaulted Prem with stick. When they were insisting that the amount should be given, it is stated that Prem was avoiding. He was then assaulted by one Nande Maharaj with the help of sticks and slaps. Upon insistence, it is stated that Prem brought amount of Rs.900/-, which he had concealed near his suitcase/box and handed it over to Nande Maharaj. The said incident had taken place on 04.08.2023 and then Prem committed suicide on 05.08.2023. We consider the case from another angle, which is now tried to be raised and pointed out in view of the statement of the informant under Section

164 of the Code of Criminal Procedure. His statement has been recorded on 01.09.2023 and even at that time also it can be seen that he was aware about what are the contents of the FIR, that means the story about suicide. Then in his statement under Section 164 of the Code of Criminal Procedure on 01.09.2023, he states that it was in fact a murder. He has even raised suspicion over the medical officer, who had conducted the autopsy. Here, from the contents of the charge-sheet it can be seen that at no point of time the informant had approached before a Court of law with a prayer for further investigation, addition of Section/Offence etc. Mere statements in statement under Section 164 of the Code of Criminal Procedure will not be sufficient then. A positive act is required when the person wants to say that in fact the story is different than it was recorded. Another aspect to be noted is that though multiple injuries have been noted in the postmortem report, yet the probable cause of death is stated to be "death due to asphyxia due to hanging". It appears that still a query was made by the investigating officer through his letter dated 23.08.2023 and the medical officer has informed that death of Prem Lahu Shinde is due to hanging, thereby indicating that it is a suicide. When *prima facie* expert's opinion is there, then to dislodge the said opinion, there should be some strong evidence, but there are no efforts by the informant to fetch such extra evidence.

7. None of the witnesses have given a specific role to the applicants in the entire episode. None of the witnesses have stated that just prior to the suicide, deceased Prem had met any of the applicants. If the applicants had not even come in contact with deceased prior to his commission of suicide, then it cannot be stated that there is abetment as contemplated under Section 305 of Indian Penal Code. We would like to rely on the decision in ***Prakash and Ors. Vs. The State of Maharashtra and Ors., [MANU/SC/1397/2024]***, in which catena of judgments have been considered and the Hon'ble Supreme Court lays down that unless there is active role played by any accused, question of continuing with the prosecution for the offence under Section 306 of Indian Penal Code (here, in this case, it is Section 305 of Indian Penal Code, but the basic ingredients are same) would not arise. The statements of various persons under Section 164 of the Code of Criminal Procedure are also on the same line and they are not assigning any specific role to the present applicants. It is unfortunate that a young boy has committed suicide, but we are also guided by the legal principles and, therefore, continuation of trial as against the applicants would be an abuse of process of law. This is a fit case where we should exercise our powers under Section 482 of the Code of Criminal Procedure. Hence, the following order:-

ORDER

I) Criminal Application stands allowed.

II) The FIR vide Crime No.333 of 2023 dated 06.08.2023 registered with Dhoki Police Station, Taluka and District Osmanabad as well as the proceedings in Regular Criminal Case No.485 of 2024 (Charge-sheet No.171 of 2024), pending before the learned Judicial Magistrate First Class, Osmanabad for the offences punishable under Section 305, 323, 324 read with Section 34 of the Indian Penal Code, stand quashed and set aside as against the present applicants i.e. (i) **Kakamaharaj @ Kakasaheb Bibhishan Umbare** and (ii) **Maulimaharaj @ Vaishnav Kakasaheb Umbare**.

III) Fees of learned Advocate, who is appointed to represent the cause of respondent No.2, is quantified at Rs.10,000/- (Rupees Ten Thousand only) to be paid by the High Court Legal Services, Sub Committee, Aurangabad.

[SANJAY A. DESHMUKH]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm