

(2021) 03 BOM CK 0041

In the Bombay High Court

Case No : Criminal Writ Petition No. 77 Of 2020

Rajendra @ Raju

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 31-03-2021

Acts Referred:

Indian Penal Code, 1860 — Section 120B, 201, 302, 341, 363, 364
Scheduled Caste And Scheduled Tribe (Prevention Of Atrocities) Act, 1989 — Section 3(2)(v)
Code Of Criminal Procedure, 1973 — Section 169, 319

Citation : (2021) 03 BOM CK 0041

Hon'ble Judges : Ravindra V. Ghuge, J; B. U. Debadwar, J

Bench : Division Bench

Advocate : A. L. Kanade, S. G. Sangle, P. P. More

Final Decision : Dismissed

Judgement

B. U. Debadwar, J

1. By this petition, the petitioner has claimed following reliefs :-

"B. By issuing appropriate writ, order or directions to respondent No. 1 to 3 to re-investigate the Crime No.74/2019 (In charge-sheet mentioned Crime No.34/2019) registered at Pahur Police Station on 23.03.2019 for the offences punishable U/s. 363, 364, 120-B, 341 of I.P.C. r/w. Sec. 3(2)(v) of S.C. & S.T. Prevention of Atrocities Act and subsequently added Sec.302, 201 of I.P.C. in Charge-sheet bearing No. 19/2019 dated 31.05.2019 filed before District and Sessions Judge, Jalgaon in resulted into Special Atrocity Case No.06/2019, through the Criminal Investigation Department (CID) or any other Special Investigation Agency except District Local Police Machinery against present respondent No. 6 to 8 who are the original accused No.1, 3 & 4 and also seeking direction to add the names of respondent No. 6 to 8 in the present crime and adding their names may kindly be filed supplementary charge-sheet.

C. By issuing appropriate writ, order or directions to respondents No. 1 to 5 to collect CDR record of present respondent No. 6 to 8 from the date of 01.02.2018 to 01.04.2019 in respect of Mobile Sim No. 9112746544, 9156906335 and 9860888863 in the connection of present crime as present respondent no. 6 i.e. original accused no.1 namely Chandrashekhar Padmakar Wani in several occasion contacted with accused namely Mahendra Shamlal Rajput who committed the murder of deceased Vinod Chandane with other co-accused.

D. The order dated 15.6.2019 passed by Additional Sessions Judge Jalgaon whereby accepted the report u/s. 169 of Cr.P.C. filed by Sub Divisional Police Officer Pachora, Pachora Division in the connection of crime No. 174/2019 registered at Pahur Police Station, Tq. Jamner, Dist. Jalgaon and thereby released present respondent No. 6 to 8 from the said crime may kindly be quashed and set aside.”

2. Heard Mr. A. L. Kanade, learned advocate for petitioner, Mr. S. G. Sangle, learned APP for respondent Nos. 1 to 5 and Mr. P. P. More, learned advocate for respondent No.6. Nobody appeared for respondent Nos. 7 and 8, despite service of notice.

3. Facts of the criminal case which gave rise to this writ petition, in nutshell, are as under :

a) The deceased Vinod Chandane was the elder brother of petitioner Rajendra Chandane, resident of village Wakadi, Tq. Jamner, Dist. Jaglaon. They were the members of Matang community which falls in the scheduled castes category. Vinod Chandane had contested the Gram Panchayat Election as an independent candidate and elected as a Member of Gram Panchayat Wakadi. He used to fight for the protection of rights of poor and needy persons of village Wakadi, with Government Machinery at local level, and if necessary to the State level.

b) Accused Sumit Kishor Shastri (Joshi) is also resident of village Wakadi.

c) In the year 2018, some boys belonging to Matang community had been to the field, standing in the name of mother of accused Sumit Shastri, for swimming in the well situated in the said field. Being annoyed by the same, accused Sumit Shastri along with his cousin Ishwar Joshi and three more persons, resident of village Wakadi, caught hold of those boys belonging to Matang community, in field itself, disgraced and insulted them by moving them in the village in a naked condition, after beating them mercilessly.

d) Deceased Vinod Chandane took the cognizance of that incident and made publicity of the same upto national level. Taking cognizance of that incident, brought to light by deceased Vinod Chandane, crime was registered and after trial, Ishwar Joshi, cousin brother of Sumit Shastri was arrested and prosecuted.

e) Being annoyed by the aforesaid act of Vinod Chandane, Sumit Shastri and other prominent persons of the village, having political background, decided to take revenge and teach a lesson to Vinod Chandane, when they would get

opportunity.

f) On 19-03-2019 at about 09:30 a.m. Vinod Chandane had left his house with motorcycle. Meanwhile, one Ajabsing, who wanted to go to his field, requested Vinod Chandane for lift. Accordingly, Vinod Chandane gave lift and carried him up to his field and proceeded towards dam.

g) On that day at about 02:00 p.m. one Atul Mahajan met Ajabsing and informed that he noticed not only motorcycle of the Vinod Chandane, but also foot wears i.e. chappals and some papers, lying near the dam. Thus, Ajabsing was the person who had lastly seen Vinod Chandane alive.

h) On 19-03-2019 itself, Vijay Laxman Chandane, younger brother of Vinod Chandane, lodged report to Pahur police station about missing of his elder brother Vinod Chandane, after visiting and verifying the place near the wall of Wakadi dam, where motorcycle, chappals, Adhar Card, cell phone and other articles belonging to Vinod Chandane were found lying.

i) On the basis of the said report, missing case No.11/2019 was registered at Pahur Police Station at 11:25 p.m.

j) After lodging the missing report on 23-03-2019, Rajendra Chandane lodged FIR bearing No.74/2019 at Pahur Police Station inter alia narrating many instances leading to suspicion against Chandrashekhar Wani and others.

k) On the basis of the said report, Crime bearing No. 74/2019, for the offences punishable under Sections 363, 364, 120-B, 341 of I.P.C. and Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 came to be registered against original accused Nos. 1 to 4 viz. Chandrashekhar Wani, Mahendra Rajput, Namdar Tadvli and Vinod Deshmukh, at Pahur Police Station.

l) After lodging the aforesaid FIR, dead body of Vinod Chandane was found, with multiple injuries, in the well situated within the limits of village Mohadi.

m) During the course of investigation, it was revealed that accused No.2 Mahendra Rajput, accused No.5 Pradip @ Pintya Pardeshi, accused No.6 Yogesh Sonar and accused No.7 Sumit Shastri (Joshi), out of the rivalry for various reasons referred above, hatched conspiracy and committed murder of Vinod Chandane, by assaulting him with iron rod on his head and thrown his dead body in the well situated at Wakadi dam.

n) This was done by accused No.2 Mahendra, accused No.5 Pradip and accused No.6 Yogesh, at the instance of accused No.7 Sumit.

o) According to the prosecution, accused No.7 Sumit was the master mind. He had given the contract of murder of Vinod to aforesaid three accused and in execution of the said contract, Vinod was eliminated by accused No.2 Mahendra, accused No.5 Pradip and accused No.6 Yogesh. Therefore, they have been charge-sheeted for the offences punishable under Sections, 302, 201, 120- B,

341, 363, 364 of I.P.C. and Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and, by separate report under Section 169 of Cr.P.C., claimed discharge of accused No.1 Chandrashekhar Wani, accused No.3 Vinod Deshmukh and accused No.4 Namdar Tadvi.

p) Aforesaid charge-sheet and report under Section 169 of Cr.P.C. came to be submitted before the Special Court, Jalgaon on 31-05-2019.

q) In pursuance of the notice in respect of report under Section 169 of Cr.P.C., first informant Rajendra Chandane appeared before Special Court and submitted his protest petition Exhibit-24 on 14-06-2019, inter alia contending that he had grave suspicion against the aforesaid three accused, against whom I.O. had claimed discharge alleging that after investigation no evidence to connect them with the incident was found. According to Rajendra Chandane, his brother had made various complaints to the various authorities against Chandrashekhar Wani, in respect of misappropriation of funds of Gram Panchayat, committed by Chandrashekhar Wani by playing fraud.

r) That being the reason, involvement of Chandrashekhar Wani, Vinod Deshmukh and Namdar Tadvi, in the murder of his brother Vinod Chandane, is sure and certain.

s) They are the persons who, along with other four accused, hatched the conspiracy to eliminate Vinod Chandane and in execution of that plan they ultimately eliminated Vinod Chandane.

t) Chandrashekhar Wani was the main person of the conspiracy under which brutal murder of Vinod was committed. Therefore, they are required to be tried along with four accused, against whom charge-sheet is filed.

u) Having heard learned advocates for both the sides, learned Judge of Special Court accepted the report under Section 169 of Cr.P.C. and discharged aforesaid three accused viz. Chandrashekhar Wani, Vinod Deshmukh and Namdar Tadvi, holding that after conducting thorough investigation, no incriminating material was found against them. In the FIR lodged by Rajendra Chandane only suspicion was raised against the aforesaid three accused. Nothing was placed before I.O. to substantiate the said suspicion. Moreover, after investigation, it was found that another four accused (against whom charge-sheet is filed), have committed the murder of Vinod, after hatching conspiracy. Therefore, protest petition is liable to be discarded.

v) It is pertinent to note that, after about seven months of acceptance of report under Section 169 of Cr.P.C., Rajendra Chandane, first informant of the case, has approached this Court with present writ petition, claiming various reliefs, including relief of quashing of the order dated 15-06-2019, passed by Additional Sessions Judge, Jaglaon.

4. While taking us through the paper-book annexed to the petition, Mr. Kanade vehemently argued that Chandrashekhar Wani is a rich person having strong

political background. He had indulged in misappropriation of funds allocated to the Gram Panchayat for disbursing the same to the needy persons, under various schemes sponsored by the Government. His brother Vinod Chandane was efficient and loyal member of Gram Panchayat. He was deadly against corruption and misappropriation of Government money. Number of times, he had exposed Chandrashekhar Wani. He had made complaints against Chandrashekhar Wani to various authorities for the act of his indulging in fraudulently misappropriating funds of the Gram Panchayat and thereby causing harm to the downtrodden people, for betterment of whom funds were allotted by the Government. Therefore, Chandrashekhar Wani had grudge against his brother Vinod Chandane. Many times Chandrashekhar had given threats of elimination, to his brother Vinod Chandane. This being the motive, which is very material aspect, involvement of three accused viz. Chandrashekhar Wani, Vinod Deshmukh and Namdar Tadv, in the incident of abduction and murder of his brother Vinod Chandane, is sure and certain.

5. According to Mr. Kanade, investigating officer failed to investigate the matter in the light of aforesaid motive. He had not taken efforts to collect evidence in respect of misappropriation of funds of Gram Panchayat, committed by Chandrashekhar Wani. Having regard to the totality of the allegations made in the missing report and FIR, investigating officer ought to have seized cell phones of all the aforesaid three accused, and then collect CDR and SDR reports from concerned cellular companies and verify as to whether they were parties to the conspiracy under which Vinod Chandane was brutally killed. Without collecting appropriate documentary evidence and other evidence, I.O. has submitted false report of discharge and learned Special Court has wrongly accepted the same without considering the protest petition submitted by Rajendra Chandane. Therefore, it is just and necessary to set aside the order dated 15-06-2019 passed by the Special Court, Jalgaon, by which respondent Nos. 6 to 8 who are the original accused Nos. 1, 3 and 4 viz. Chandrashekhar Wani, Vinod Deshmukh and Namdar Tadv, have been discharged by accepting report under Section 169 of Cr.P.C. and direct respondent Nos. 1 to 5 to re-investigate the matter, collect the additional evidence in the light of averments made in the missing report and FIR, including CDR and SDR reports of cell phones of aforesaid three accused, and file supplementary charge-sheet against the said accused.

6. Per contra, Mr. P. P. More, learned advocate representing respondent No.6, strenuously argued that the petition is baseless and misconceived. I.O. has investigated the matter thoroughly, having regard to the allegations made in missing report and FIR. After investigation, no prima facie evidence showing involvement of respondent Nos. 6 to 8 found in the crime. Therefore, he had no other option than to submit the report under Section 169 of Cr.P.C. against them.

7. Rajendra Chandane, first informant, had not submitted any evidence to substantiate his suspicion. During the course of investigation, number of witnesses came to be examined, but nobody made any kind of incriminating

statement against respondent Nos. 6 to 8. In the absence of prima facie evidence, only on the basis of baseless suspicion raised in the FIR, respondent Nos. 6 to 8 cannot be dragged to face the trial. The I.O. had no reason to act hand in glove with respondent Nos. 6 to 8. Had the police hand in glove with respondent Nos. 6 to 8, they would not have arrested respondent Nos. 6 to 8 and sought their police custody. In spite of doing in-depth investigation, nothing was found against them. Now, case is reached to the stage of framing charge. After commencement of trial, if any incriminating evidence comes on record against respondent Nos. 6 to 8, or in the meantime I.O. comes across any cogent evidence, then respondent Nos. 6 to 8 can be again prosecuted by filing supplementary charge-sheet, but at this juncture, only on the basis of vague suspicion raised by Rajendra Chandane, none of the reliefs as prayed by him can be granted. Therefore, writ petition is liable to be dismissed.

8. Mr. Sangle, learned APP adopted aforesaid arguments advanced by Mr. More and additionally argued that cell phones of accused Nos. 2, 5, 6 and 7 were seized, CDR and SDR reports of the same were collected from cellular companies of those cell phones and after cross verifying the said CDR and SDR reports, involvement of those four accused were found. However, no involvement of respondent Nos. 6 to 8 was found. Therefore, there is no substance in saying that I.O. did not investigate the matter properly, in respect of respondent Nos. 6 to 8.

9. In the light of aforesaid submissions, we have carefully gone through the record in its entirety. It is pertinent to note that the petitioner is claiming prosecution of respondent Nos. 6 to 8, only on the basis of suspicion. In the absence of prima facie evidence, only on the basis of allegations made in the missing report and the FIR that deceased Vinod Chandane was exposing Chandrashekhar Wani by way of making various complaints to various authorities alleging that he had misappropriated funds allocated to the Gram Panchayat for disbursement of the same to needy persons under various Government schemes, inference cannot be drawn that respondent Nos. 6 to 8 were also party to the conspiracy hatched for commission of murder of Vinod Chandane.

10. It is a matter of record that during course of investigation neither Rajendra Chandane had submitted any documentary evidence nor I.O. has come across cogent evidence, on the basis of which it can be gathered that respondent Nos. 6 to 8 were also parties to the conspiracy, under which murder of Vinod was committed.

11. When there is no evidence showing that respondents No. 6 to 8 were parties to the conspiracy hatched for commission of crime i.e. murder of Vinod Chandane, report under Section 169 of Cr.P.C. submitted by the I.O. vis-a-vis order passed by the learned Special Court accepting the said report, cannot be said to be incorrect.

12. Having regard to the date of submission of report under Section 169 of

Cr.P.C., date of the incident, date of arrest of respondent Nos. 6 to 8 and the date of filing of present writ petition, as on today, even if by accepting allegations made in the FIR, directions are given for obtaining CDR and SDR report from the concerned cellular companies of cell phones of respondent Nos. 6 to 8, which were seized from them immediately after their arrest, then also, no purpose would be served, as after one year call details of every cell phone gets deleted from the data storage of server of concerned cellular company. From this angle also, relief pertaining to giving direction to respondent Nos. 1 to 5 as prayed in prayer clause 'C' of the petition, becomes redundant.

13. Since, the averments made in the writ petition are vague as to the lapses in the investigation, relief of directing respondent Nos. 1 to 5 for conducting further investigation cannot be granted. Had the petitioner pinpointed particular aspect of the case left uninvestigated then, further investigation in respect of that aspect could have been directed. Instead of pinpointing what is left to be investigated, petitioner went on harping on previous enmity and insisting for re-joining respondent Nos. 6 to 8 in the criminal case, only on the basis of the same, when there is no evidence of their participation in the conspiracy hatched by the rest of the accused who have been charge-sheeted.

14. Record reveals that after receiving the complaint made by deceased Vinod Chandane, in-charge officer of Pahur Police Station had summoned him, so as to verify the contents of the complaint and proceed further. But in spite of calling him time and again, deceased Vinod did not approach Pahur Police Station, in connection with the complaint he had made against accused Chandrashekhar Wani. This conduct of the deceased cannot be lost sight of.

15. On the basis of CDR and SDR reports, nexus of accused Nos. 2, 5, 6 and 7 with the homicidal death of Vinod Chandane established, and hence, they have been rightly charge-sheeted. CDR and SDR reports do not reveal about calling by respondent Nos. 6 to 8 to any of the charge-sheeted accused or receiving calls from them, in relevant period. So also, nobody from the witnesses spoke that they saw respondent Nos. 6 to 8 in the company of deceased Vinod Chandane, prior to his disappearance. Therefore, from any angle, discharge of respondent Nos. 6 to 8 cannot said to be incorrect.

16. It is pertinent to note that I.O. gets every right to file supplementary charge sheet against respondent Nos. 6 to 8, if some evidence establishing their involvement in the crime is found. Therefore, if the I.O. comes across such evidence or during the course of evidence something comes on record, prima facie establishing involvement of respondent Nos. 6 to 8 in the incident, then they can very well be directed to face the trial, by invoking powers under Section 319 of Cr.P.C. But in any case, at this juncture, either relief of re-investigation or giving direction to police for calling CDR and SDR reports of cell phones of respondent Nos. 6 to 8 and verifying the same or quashing the order accepting the report under Section 169 of Cr.P.C., passed by the Special Court, Jalgaon can not be granted.

17. In view of the above, writ petition, being devoid of merits, is dismissed.