

(1999) 09 BOM CK 0007

In the Bombay High Court

Case No : Criminal Writ Petition No. 168 of 1999

Smt. Chandrakanta

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 28-09-1999

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 319
Penal Code, 1860 (IPC) — Section 201, 302, 304B, 34

Citation : (2000) 1 DMC 614

Hon'ble Judges : S.G. Mahajan, J;J.N. Patel, J

Bench : Division Bench

Advocate : P.K. Sathianathan, for the Appellant; A.S. Sonare, APP for the Respondent No. 1 and M.R. Daga, for the Respondent Nos. 2 to 8, for the Respondent

Judgement

J.N. Patel, J.—Rule returnable forthwith. Heard the learned Counsel for parties and the learned A.P.P. for the State.

The petitioner moves this Court seeking directions to reopen the investigation in Crime No. 287 of 1999 of Police Station, Sadar, and direct the respondent No. 1 to register offence under Sections 201, 302 read with Section 34 of I.P.C. against the respondent Nos. 2 to 8. They have also sought directions that investigation may be trusted to an independent agency like State C.I.D. or C.B.I, as the petitioner was not satisfied with the investigation done by the local police.

3. It is the case of the petitioner that her daughter-deceased Ranjana was married to the respondent No. 2 on 19.4.1998. It is also her contention that the respondent Nos. 2 to 8 treated her with cruelty in order to extract dowry and that on the day of the incident, her daughter Ranjana died of burn injuries, at about 8.30 a.m. At about 8.45 a.m., the respondent No. 5 informed her that Ranjana had burnt herself and she was in the Mayo Hospital. On receiving the said information, the petitioner accompanied the respondent No. 5 to Mayo

Hospital and she was taken towards the mortuary. The petitioner alongwith her husband and son saw the dead body of Ranjana at Mayo Hospital. They found that none of the respondent Nos. 2 to 8 were present there. As the petitioner suspected some foul game, she immediately rushed to the Sadar Police Station and lodged an oral report that the respondent Nos. 2 to 8 have murdered her daughter Ranjana by setting her on fire. Though the report came to be taken down in writing by P.S.I, on duty, the contents were not read over to the petitioner, nor her signature was obtained on the F.I.R. As the petitioner was in a state of shock, she left the police station without verifying as to what has been recorded as F.I.R.

4. It is submitted that as the respondent Nos. 3, 5 and 7 are Police Officers holding the ranks of Head Constable and Constable and being the members of the Police Force, Sadar Police Station did not conduct the investigation properly and failed to register the offence u/s 302 read with Sections 34, 201 of I.P.C. against the respondent Nos. 2 to 8.

5. It is submitted that though the police has conducted spot Panchnama between 11 to 11.30 a.m., they have failed to register F.I.R. prior to that though the petitioner lodged a complaint with the police at about 10 a.m. on the same day and it is only in the evening that the police registered the F.I.R. which was tampered so as to protect the respondent Nos. 2 to 8, particularly when the FIR records that the information regarding the crime was received at 1800 hours which is totally false and incorrect. It is, therefore, submitted that because of this delay in registering the First Information Report and the absence of the name of the respondent No. 7, the benefit would go to the respondents /accused.

6. It is further contended that the Investigating Agency has also failed to record complete statement of the complainant, her husband i.e. the father of the victim and Prashant Ghulakhe and Ravindrasingh Motisingh who had accompanied the petitioner when she had gone to lodge the report at Sadar Police Station on 8.4.1999 at 10 a.m. Till the petitioner moved this Court, the respondent No. 1 had not registered the offence u/s 304-B, I.P.C. which came to be subsequently added.

7. On the other hand, it is the contention of the respondent No. 1 that they have fairly conducted the investigation and have pleaded on record all the possible material and evidence which they could collect in the course of investigation and that they have registered offences under Sections 498-A, 306, 304-B read with Section 34, I.P.C, against the respondent Nos. 2 to 6 and 8, and as no case was made out against the respondent No. 7, his name came to be excluded from the final report.

8. At this stage, the learned A.P.P. requests the Court to defer the order till 2.15. p.m. so that he can take instructions and assist the Court. Request granted.

9. The learned A.P.P., after taking instructions, makes a categorical statement that the petitioner's contention that she came to Sadar Police Station at 10 a.m.

and lodged the report, is not correct as no such record came to be made at the police station and it is only in the evening at 1800 hours that F.I.R. came to be lodged by Smt. Chandrakanta Ranchhor Pandey-the petitioner in the case. The learned A.P.P. states that on getting information from the hospital in respect of the deceased Ranjana the Investigating Officer immediately went to the spot and prepared the Panchanama on the basis of A.D. registered at the Police Station. The Investigating Officer who recorded the Panchnama, has not received any oral report from the petitioner at 10 a.m. and, therefore, it cannot be said that the concerned officer has not registered F.I.R. promptly.

10. We find that the petitioner's main grievance is that though the report was made by her to the concerned officer, he has failed to register it as F.I.R. and on the other hand, proceeded to the spot to prepare a scene of offence Panchnama with the assistance of the accused Rajendra son of Shivpoojan Shukla. According to petitioner, this itself shows that the Investigating Officer sided with the respondent/ accused persons in conducting the investigation. It is submitted that the Investigating Officer has intentionally delayed the recording of F.I.R. for the benefit of the accused persons. Mr. Daga, the learned Counsel appearing for the respondent Nos. 2 to 8 submits that it is the case of the respondents that the F.I.R. was lodged in the evening at 1800 hours after deliberation with the police and the respondents/ accused have been falsely implicated. At this stage we are not concerned with the merits of the case of the prosecution and the defence which the respondents propose to take up in the matter in relation to the registration of F.I.R. Unfortunately, there is no record made at the Police Station relating to the visit of the petitioner at 10 a.m. on the day of her incident and lodging of the report, but the petitioner has come forward with this contention and states that she had been to the Police Station alongwith two persons namely Prashant and Ravindrasingh. In this circumstance, it will be proper if the Investigating Officer records further statements of the petitioner and that of the two witnesses cited by her and also that of the father of the victim i.e. deceased Ranjana and file a supplementary report in the matter.

11. In respect of respondent No. 7 - Satyam Mishra, in case on making further investigation i.e. recording of the additional statements of the petitioner and witnesses, if the Investigating Officer is satisfied that the said respondent is involved in the case, it is open for him to arrest him as one of the co-accused in the case. Even otherwise, the petitioner or the prosecution would be at liberty to move the Court of Sessions during the trial to implead the respondent Satyam Mishra, by invoking the powers of the Court u/s 319, Cr. P.C.

12. As regards the contention of the petitioner that the Police Authority should take departmental action against the Investigating Officer and his team of officers for not conducting fair and proper investigation in the case and also prosecute them, this Court finds that this is not a proper stage to direct their prosecution without proper enquiry into the allegations. We leave it to the Commissioner of Police to consider the matter after making necessary enquiry

through a Senior Police Officer of the rank of D.C.P. as to whether the Investigating Officer and his team have conducted the investigation properly or not and decide the course of action. The learned A.P.P. assures us that the Commissioner of Police would take steps as directed by this Court.

13. Therefore, after considering all the facts and circumstances, we find that our aforesaid directions would sufficiently meet the ends of justice as the police have already filed the charge sheet in the case and have charge sheeted accused for having committed offence u/s 304-B read with 34, 201, I.P.C. in addition to other offences and, therefore, the investigation need not be reopened or assigned to the State C.I.D. or C.B.I, as sought by the petitioner. We make it clear that any observations made by this Court while disposing of this petition, should not influence the learned Magistrate before whom charge sheet is filed or the Court of Sessions before whom the trial will take place as the Court below would consider the case on its own merit. Rule is made absolute in the aforesaid terms. C.C. expedited.