



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPLICATION (APL) NO. 1677 OF 2023

1. **Dnyaneshwar s/o. Ganeshrao
Dhawale**
Aged about 41 years,
Occupation :Serving as Police
Subscriber Inspector Presently
R/o Radha-Krishna Nagri, Behind
Vyanketesh Hotel,
Mangrulpir, District Washim

APPLICANT

// VERSUS //

1. **State of Maharashtra,**
Through Police Station Officer,
Police Station, Awadhutwadi,
District Yavatmal
2. **Mrs. Bhimabai Govindrao Gadve**
Age:- Major, R/o Gurunanak,
Nagar, Godhani Road, Yavatmal

NON-APPLICANTS

Mr. R.M. Daga, Advocate for the applicant.
Mr. N.B. Jawade, APP for non-applicant No.1 /State.

CORAM : URMILA JOSHI PHALKE, J.

**JUDGMENT RESERVED ON:- 12.02.2026
JUDGMENT PRONOUNCED ON:- 18.02.2026**

ORAL JUDGMENT :

1. Heard.

2. **ADMIT.** Taken up for final disposal with the consent of learned counsel for the parties.

3. The present application is filed by the applicant for quashing of the First Information Report in connection with crime No.48/2021 registered with the non-applicant No.1-Police Station Avadhutwadi District Yavatmal under Sections 302, 306, 166, 166-A, 167 read with Section 34 of the Indian Penal Code (for short, 'IPC') against the present applicant.

4. Brief facts which are necessary for the disposal of the application are as under:-

Deceased Vijay Govindrao Gadve died in suspicious circumstances in the house of his in-laws situated at Dandekar Lay Out, Yavatmal. On 26.06.2018 on the report of Dr. Sneha Mankar attached to Criti Care, Yavatmal A.D. No.46/2018 was registered at Police Station Awadhutwadi. During inquiry of the said A.D. the postmortem of deceased Vijay was conducted and cause of death was due to hanging. On 09.07.2018 mother of the deceased Bhimabai Gadve lodged a report at Avadhutwadi Police Station alleging that wife, in-laws of the deceased and her son have committed murder of her son and therefore, offence under Section

302 of the IPC may be registered against the present applicant. However, police authorities have not taken any action and therefore, she preferred Writ Petition bearing No.202/2019 suspecting therein that her son was murdered. By order dated 13.01.2021, this Court after hearing the parties observed that there is material available on record to make an inference that Police Station Officer Avadhutwadi has sided with the suspects in the present case and tried to ignore material facts or change the circumstance which prima-facie led to carrying out investigation for the offence punishable under Section 302 of the IPC against non-applicant Nos.3 to 6 therein.

5. The Division Bench of this Court in order dated 13.01.2021 directed the Superintendent of Police, Yavatmal to appoint a Special Investigating Officer from Local Crime Branch, Yavatmal to carry out further investigation in the matter and further directed non-applicant No.1- Superintendent of Police Yavatmal to register the offence under the relevant sections against all suspects.

6. After the direction of this Court in Writ Petition No.202/2019 the Crime No.48/2021 for the offence punishable under Sections 302, 306, 166, 166-A and 167 of the IPC was registered. After registration of the crime Investigating Officer has recorded statement of mother of the deceased namely Bhimabai Gadve and other relatives including Rupali Vinay Wankhede.

7. The present applicant is the Police Officer, who have carried out the investigation as to the AD No.46/2018 under Section 174 of the Code of Criminal Procedure. On the basis of the report lodged by Dr. Sneha Mankar, Criti Care Hospital, Yavatmal by which she informed about the death of Vijay Gadve. As such, A.D. was registered by Head Constable Narendera Waghmare and immediately inquiry of the said marg had handed over to Police Head Constable Satish Chaudhary. Thereafter the said inquiry was also conducted by present applicant Dhyaneshawar Ganeshrao Dhawale. As per the allegations of mother of the deceased that present applicant has ignored the material evidence while conducting the A.D. and not collected the evidence during inquiry. He has not collected the rope which was

used in the commission of the crime. The picture was created that deceased has committed suicide. However, it is suspected that in-laws of the deceased have caused his death. It is alleged that it is a duty of the present applicant to make an inquiry in the said marg but he has intentionally not conducted spot panchanama to ascertain whether deceased has committed suicide or whether death of deceased is homicidal and also not collected the said rope which was used either in the hanging or causing the death of the deceased. On the basis of the said report police has registered the crime against the present applicant who is also Police Officer alleging that the present applicant has not obeyed the law and committed an offence punishable under Sections 166, 166A, 167 read with 34 of the IPC.

8. Heard Mr. Daga, learned counsel for the applicant. He invited my attention towards the previous orders passed by this Court in Criminal Application No.1147/2022 and Criminal Application No.17/2023 and submitted that in both these applications, the applicants therein, who were the Police Officers against whom the FIR is quashed. He submitted that the offence under Sections 166 or 166-A would not attract against the present

applicant. Only role of the present applicant is that he conducted investigation as to the marg and there is no disobedience of any law by him which is requirement. He submitted that in view of Section 166 of the IPC a public servant who disobeying law, with intent to cause injury to any person is punishable under Section 166 of the IPC. Under Section 166-A is also not applicable as there was no such directions which is disobeyed by the present applicant and therefore, no prima-facie case is made out against him. In view of that application deserves to be allowed.

9. Per contra learned APP strongly opposed the said contention and submitted that the conduct of the present applicant that he was under obligation to carry out the investigation with due care and caution and while conducting the marg inquiry it is his duty to ascertain whether there is involvement of anybody in committing offence. He has not conducted spot panchanama, not seized the relevant evidence which was available immediately on the spot of incident. The ingredient of the offence under Section 166 is that offender should have done act being a “public servant”. Here applicant is a public servant. Next ingredient is that public servant has acted indisobedience any legal direction concerning the way in which he

should have conducted himself as such public servant. Learned APP also invited my attention towards the orders passed by the Division Bench of this Court in Writ Petition No. 202/2019 and submitted that at this stage, there is some material against the present applicant to show that he has not performed his duty with utmost care and it is the duty of the police officer that he should not leave back any suspicion if he suspected that any offence is committed by anybody. The statements of the witnesses disclose that the necessary evidence is not collected by him which is sufficient to show that there is prima-facie material against him. In view of that, application deserves to be rejected.

10. After hearing both the sides and on perusal of the record there is no dispute that the present applicant was the Police Officer attached to Avadhutwadi Police Station at the relevant time. There is no dispute that he has conducted the investigation as to the marg report registered vide A.D. No.46/2018. He has not allegedly collected the evidence when he visited the spot immediately after the incident on receipt of the information from doctor regarding the death of the deceased. The spot panchnama which is on record shows that he has immediately visited the

alleged spot of incident and not collected the rope which was either used in commission of crime or used for committing the suicide. The record shows that earlier spot panchnama was drawn by one Police Head Constable Satish Chaudhary being Superior Officer of the said Police Station he was under obligation to verify the same and conduct an inquiry as to the cause of death of the deceased under Section 174 of Cr.P.C.

11. The mother of the deceased has approached to this Court by filing Criminal Writ Petition No.202/2019. The order passed by Division Bench of this Court on 13.01.2021 which is reproduced as under:-

“2. Prima-facie, we find that there is available on record material to make an inference that the Police Station Officer Avadhutwadi, Yavatmal has sided with the suspects in the present case and tried either to ignore material evidence or change the circumstances, which has, prima-facie, led to carrying out investigation for the offence punishable under Section 302 of the Indian Penal Code against respondent Nos. 3 to 6. At this stage itself, it appears to us that this case goes beyond the stage of gross negligence and it enters the arena of joining hands with the accused persons in committing a serious crime in the present case. Just three circumstances are enough to support our conclusion. Document at page 27 is a

certificate issued by the doctor in-charge of casualty. It shows that the patient was brought dead to the hospital. The spot-panchanama however shows that the I.C.U. unit of the hospital has been shown to be the spot of the incident. Admittedly, even the Investigating Officer does not deny that the hanging death had occurred in the house of respondent Nos.3 to 6. The third one is that rope by which the deceased hanged himself, according to the own story of respondent Nos.3 to 6, has not been seized in the present case”.

The Division Bench further in paragraph No.6 has observed as under:-

“In the circumstances, we direct the Superintendent of Police, Yavatmal- respondent No.1 to appoint a Special Investigating Officer of competence from Local Crime Branch, Yavatmal, who shall be carrying out the further investigation in the matter. The Superintendent of Police, Yavatmal- respondent No.1 to register the offences under the relevant sections against all the suspects in the present case including the first Investigating Officer, who has prima-facie destroyed the evidence and attempted to prepare false evidence.”

12. The Division Bench of this Court directed Superintendent of Police, Yavatmal – respondent No.1 to submit his report in this matter to Court.

The communication by Superintendent of Police, Yavatmal dated 24.01.2021 shows that the present applicant was attached to the Avadhutwadi Police Station and has investigated

the marg No.48/2021. Initial investigation of the said marg was carried by Police Head Constable Satish Chaudhary. Dr. Sneha Mankar has reported death of the deceased. Thereafter the said Satish Chaudhary has visited the hospital and drawn the panchnama at hospital showing the hospital as spot of incident. In fact the deceased was brought dead in the hospital and admittedly statements of the witnesses show that the deceased died at the house of his in-laws. The statements of the witnesses i.e. wife of the deceased Reshma mother-in-law of deceased Chabubai and brother-in-law of deceased disclose that deceased died at their house. Thereafter also despite present applicant has recorded the statements of these witnesses and it revealed to him alleged incident has taken placed at the house, he has not visited the spot of incident and drawn the spot panchanama. Even accepting the statements of the wife of the deceased and relatives of the wife of the deceased that he has committed suicide at the house of in-laws then also it was the duty of the present applicant to visit the said spot of incident and ascertain the genuineness of the contention of these witnesses and to recover the material articles from the spot of incident but he has not taken any pains to visit the said place and seized the rope which allegedly used by

the deceased for commission of suicide. The communication of P.I. Avadhutwadi dated 24.07.2018 also shows that it was present applicant who was Investigating Officer in respect of marg No.46/2018. Thus, on the basis of the said material the Division Bench of this Court has observed that there are circumstances to infer that Police Station Officer, Avadhutwadi had attempted to side the suspects in the present case and also tried to ignore the material evidence or change the circumstances.

13. Being the applicant is the Police Officer and the serious allegations are levelled against him the reference of the observations of the Hon'ble Apex Court in the case of ***Ajay Kumar Yadav Vs. State of Uttar Pradesh and others*** in arising out of SLP No.9816/2023 is relevant wherein it is observed by the Hon'ble Apex Court that "In the light of these serious allegations made against no less than a senior police officer, an essential cog in the machinery of law enforcement, the High Court ought not to have taken a liberal view in the matter for the mere asking. Considering the position held by the respondent, even if he was suspended from service and the chargesheet had already been filed against him, the possibility of his tampering with the witnesses and the

evidence was sufficiently high. That apart, grant of such relief to a police officer facing allegations of manipulating the investigation so as to favour an accused would send out a wrong signal in society. It would be against public interest.

14. In the case of *Pravat Chandra Mohanti vs. State of Odisha and another* reported in *(2021) 3 SCC 521* wherein also it is observed by the Hon'ble Apex Court that in the event people holding public officer abuse their position, it becomes a matter of grave public concern. When the police is violators of the law whose primary responsibility is to protect the law, the punishment for such violation has to be proportionately stringent so as to have effective deterrent effect and instil confidence in the society.

15. Thus, considering the role of the present applicant who is Police Officer, appears to have disobeyed the law as he was under obligation to carry the investigation with all fairness and with due care with intent that no guilty person shall be escaped and guilty person shall be protected and his primary responsibility is to protect and uphold the law. But he has not taken care while

investigating the matter and there was no fairness on his part to collect the all possible evidence. It may not be out of context to remind that the motto of Maharashtra State Police is “Sadrakshnaya Khalanighrahanaya” [“To Protect Good and To Punish The Evil”] which needs to be respected. Those, who are called upon to administer criminal law, must bear, in mind, that they have a duty not merely to the individual accused before them, but also to the State and to the community at large. Such incidents involving police usually tend to deplete the confidence in our criminal justice system much more than those incidents involving private individuals. It must be remembered that while considering the prayer of the present applicant it is to be kept in mind that he has not performed his duty with a responsibility to protect and uphold the law. The observation of the Division Bench of this Court specially shows that the circumstances on record from which inference can be drawn that Police Station Officer, Avadhutwadi, Yavatmal has sided the suspects in the present case and tried to ignore the material evidence and tried to change the circumstances which at this stage is sufficient material to force the present applicant to face the trial.

16. Though learned counsel for the applicant has placed reliance on the orders passed by this Court in Criminal Application No.1147/2022 and Criminal Application No.17/2023 but the role of concerned applicants therein and the role of the present applicant is completely different. To attract the offence punishable under Section 166 of the IPC indispensable ingredient of the offence under Section 166 of the IPC is that the offender should have done the act “ being a public servant”. The next ingredient close to its heels is that such public servant has acted in disobedience of any legal directions concerning the way in which he should have conducted himself as such public servant. The applicant being an officer directed by law to carry out the investigation in fair manner, in order to satisfy no offence is committed by anybody and also to ascertain whether there is an involvement of anybody in causing death of deceased or not. Section 166-A of the Code would attract when a public servant knowingly disobeys any direction of the law which prohibits for requiring the attendance at any place, or knowingly disobeys to the prejudice of any person or any other direction of the law or fails to record any information given to him under sub section (1) of Section 154 of the Cr.P.C. Admittedly there are no directions to

the present applicant but he was under obligation to follow the law. He was under directions to record the information or the circumstance which is helpful to carry out the fair investigation but he has not done so. While exercising the jurisdiction under Section 482 of Cr.P.C. it is necessary that the High Court should not ordinarily embark upon an inquiry into whether there is reliable evidence or not. The jurisdiction has to be exercised sparingly, careful and with caution only when such exercise is justified by the specific provisions Section 482 of the CrPC itself. Criminal proceeding can be said to be in abuse of process of Court, to warrant intervention under Section 482 of Cr.P.C. when the allegations in the FIR do not at all disclose any offence or there are materials on record from which the Court can reasonably arrive at a finding that the proceedings are in abuse of process of Court.

17. In this case it appears that present applicant who was the Investigating Officer investigating marg report. He recorded various statements from which it reveals that alleged incident i.e. death of the deceased is caused in the house of his in-laws. Despite statements recorded by him and the fact reveal to him that

spot of incident is the house in law of the deceased, he has not visited the said house, not drawn panchanama of the said house, not collected incriminating evidence from the spot of incident is sufficient to constitute the offence under Section 166 to show that being public servant he disobeyed the law and caused the injury to family members of the deceased. The offence under Section 166 of the IPC is prima-facie is made out against the present applicant.

18. By applying parameters laid down by the Hon'ble Apex Court in the case of **State of Haryana and others vs. Bhajanlal and others** reported in **1992 Supp(1) Supreme Court Cases 335**, where it is stated as under:-

“ (a) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

(b) where the allegations in the First information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(c) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(d) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(e) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(f) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(g) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

By applying the same to the facts of the present case, this is not a fit case wherein the power under Section 482 of the Cr.P.C./528 of the Bharatiya Nyaya Sanhita can be exercised in favour of the present applicant. Therefore, the application deserves to be rejected.

19. Accordingly application is rejected

The criminal application stands disposed of

Pending applications, if any, also stand disposed of.

(URMILA JOSHI PHALKE, J.)

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