IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL Nos.961-62 OF 2015
(Arising out of SLP(Crl.)Nos.3967-3968 of 2008)

MURAD ABDUL MULANI .....APPELLANT

VERSUS

SALMA BABU SHAIKH & ORS. .....RESPONDENTS

WITH
CRIMINAL APPEAL Nos.963-64 OF 2015
(Arising out of SLP(Crl.)Nos.4051-4052 of 2008)

CRIMINAL APPEAL Nos.965-66 OF 2015
(Arising out of SLP(Crl.)Nos.4130-4131 of 2008)

O R D E R

Heard learned counsel for the parties.

Leave granted.

Through the instant criminal appeals, a challenge has been raised to the directions issued through the order passed by the Bombay High Court in Criminal Writ Petition No.400 of 2007 dated 28.02.2008 and 03.03.2008. The operative part of the order, which is relevant to the surviving prayers, is extracted hereunder:

> **"42. In the above circumstances, though the learned P.P. had strenuously tried to argue that the matter should be left to the concerned authorities to conduct the necessary preliminary inquiry and to take appropriate decision, with utmost respect, we are unable to agree with the**

said suggestion. We find that the Police Officers who were entrusted with the investigation in the case in hand, who were expected to conduct the investigation honestly, sincerely and to the best of their ability, have not only failed to perform their duties accordingly but unfortunately and shockingly their conduct reveal to be those of the persons acting with the sole purpose of shielding the real culprit and allowing him to go scot-free and there was not even an attempt to collect the evidence which was to their knowledge available and could have been collected much earlier. An investigation officer who is required to conduct investigation in relation to a cognizable offence when intentionally avoids to collect the required evidence, or even fails to take appropriate steps which in normal circumstances any investigation officer is expected to take, without any justification and explanation in that regard, then the only conclusion which can be drawn is that the inaction in that regard was deliberate and intentional and with the sole intention to help the wrongdoers unless otherwise is established. Certainly, such an inaction on the part of the police authorities cannot be ignored nor can be pardoned. It will send not only wrong message but it will result in great prejudice to the public and will hamper the process of law and lead to lawlessness. The members of the public who approach the Police authorities with the hope and expectation that the wrongdoers should be booked for the commission of offences and should be punished, would stand to loose trust in the police department, if such officers for their serious inactions are allowed to go scot-free. Mere disciplinary action in that regard would not be sufficient answer. Shielding or trying to shield any wrongdoer is itself a serious offence and assumes more seriousness when it is committed by a person none other than from the police department. Therefore, we do expect the Government to take a serious note of this and to take appropriate action against the erring Police officers and personnel, failing which the petitioner is at liberty to approach the Court afresh.

43. We, therefore, direct the respondent No.1 to take immediate action in the matter and in any case within twelve weeks, in accordance with the provisions of law for disciplinary action as well as for criminal proceedings against the concerned

> **officers. The respondent Nos.9 to 11 to pay costs of Rs.10,000/- to the petitioner. The costs shall be paid from the personal account of those respondents and shall not be a burden on the Government treasury. The costs to be paid within twelve weeks. Needless to say that all the observations made herein above are in relation to the conduct of the investigation officers and shall not in any way weigh in the mind of the Courts below while dealing with the matter arising out of the FIR lodged in relation to the death of Yasmin. The action taken report should be placed before the Court within two weeks after twelve weeks for necessary further orders, if any, in the matter. The rule is made absolute accordingly in above terms."**

When the challenge was raised with reference to the above order passed by the Bombay High Court, this Court, on the very first day of hearing, passed an interim order of stay. The aforesaid order has been continued till date, and as such, the above directions have remained unimplemented.

It is relevant to record that the petitioner before the High Court, who is a resident of Mumbai, had two daughters. One of the daughters – Yasmin died on 17.01.2006 in suspicious circumstances. Yasmin who was then studying in the 10th standard is stated to have poured kerosene on herself and taken her life on 17.01.2006 in her own house. The mother of Yasmin had alleged that Umesh Yallapa Arote, who had a one sided love affair with her daughter, was responsible for the death of her daughter. It was also her case, that the investigation being carried out by the Police Department, was not fair. It is in the above background, that the High Court had passed the impugned order, incorporating therein two express directions in paragraph 43. A perusal of paragraph 43 reveals that the High Court had directed the State

Government to take disciplinary action against the officials entrusted with the investigation of the case. Secondly, a direction was issued to initiate criminal prosecution against the investigating officers.

It is not a matter of dispute that with reference to the death of Yasmin on 17.01.2006, Sessions Case No.745 of 2010 was registered. On the conclusion of the trial thereof, the Ad hoc Asstt.Sessions Judge, Greater Bombay by an order dated 17.06.2011, acquitted the accused Umesh Yallapa Arote. In the order of acquittal, the Ad hoc Asstt.Sessions Judge, Greater Bombay, took into consideration, the issue of abetment to suicide, at the hands of the accused Umesh Yallapa Arote, and recorded a finding thereupon, that there was no evidence on the record, that prior to the incident dated 17.01.2006, the accused Umesh Yallapa Arote, had instigated or abetted the deceased Yasmin, to commit suicide. In the above determination, the dying declaration of Yasmin was also taken into consideration.

The aforesaid determination at the hands of the Ad hoc Asstt.Sessions Judge, Greater Bombay is the subject matter of serious contest at the hands of the learned counsel for the respondents i.e. the petitioner before the High Court. It is his contention, that the aforesaid conclusions were based on the manipulation of the investigative process by the appellant before this Court.

Having given our thoughtful consideration to the directions issued by the High Court, and keeping in mind the fact that the occurrence took place almost a decade ago on 17.01.2006,

we are of the view, that the impugned direction contained in paragraph 43 of the order passed by the High Court deserves to be modified. With the concurrence of the learned counsel for the rival parties, we consider it just and appropriate to direct, that the matter in question with reference to the inappropriate investigation at the hands of the appellant in regard to the death of Yasmin (who committed suicide on 17.01.2006), be examined by the Home Secretary, of the State of Maharashtra. It shall be open to the rival parties including the complainant i.e. the respondents herein, to appear before the Home Secretary, of the State of Maharashtra, either in person or through their counsel, and place before him such material as is considered necessary. The Home Secretary, of the State of Maharashtra, shall examine the material placed before him, and after hearing the rival parties, pass an order whether departmental action needs to be taken, and also whether, criminal prosecution needs to be initiated against the appellant. A copy of the above order, will be furnished to the rival parties, without any delay. It will be open to the aggrieved party, to assail the same in accordance with law.

The parties are directed to appear before the Home Secretary, of the State of Maharashtra on 01.09.2015 at 11.00 A.M. The Home Secretary, of the State of Maharashtra, shall pass an appropriate order within three months, from the date of first appearance of the parties before him.

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The instant appeals are disposed of accordingly.

.....J.
(JAGDISH SINGH KHEHAR)

.....J.
(ADARSH KUMAR GOEL)

NEW DELHI;
JULY 21, 2015.

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