

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1235 OF 2015

Onkar S/o Dhondiram Chavhan,
 Age : 50 years, Occu. : Service,
 R/o : Galli No. 1, Bhanudasnagar,
 Jawahar Colony, Aurangabad,
 Tq. and Dist. Aurangabad

.. Applicant
 (Orig. Accused)

Vs.

1] The State of Maharashtra
 Through Police Station, Chikalthana,
 Tq. and Dist. Aurangabad

2] Kalyan S/o Bansi Chavhan,
 Age : 47 years, Occu.: Service,
 R/o : Beed Bypass, Naiknagar,
 Deolai Parisar, Aurangabad,
 Dist. Aurangabad

.. Respondents
 (Resp. No.2-Orig.
 Complainant)

AND

CRIMINAL APPLICATION NO. 1339 OF 2015

Rahul S/o Gulabrao Rathod,
 Age : 26 years, Occu : Service
 R/o Yogesh Nagar, Ambad Road,
 Jalna Taluka and District : Jalna

.. Applicant

Vs.

1] The State of Maharashtra

2] Kalyan S/o Bansi Chavan,
 Age : 50 years, Occu.: Service,
 R/o : Beed Bypass, Naiknagar,
 Deolai Parisar, Aurangabad,
 Dist. Aurangabad

.. Respondents

Mr. S.C. Swami, Advocate h/f Mr. V.D. Gunale, Advocate for
 the applicant (Cri. Appln. 1235/2015)

Mr. Rahul G. Joshi, Advocate for respondent no.2 in Criminal Application No. 1235/2015

Mr. R.A. Jaiswal, Advocate h/f Mr. N.S. Ghanekar, Advocate for the applicant (Cri. Application No. 1339 of 2015)

Mr. A.R. Kale, APP for the respondent/State in both Applications

CORAM : V.K. JADHAV, J.

DATE : 14/10/2016

ORAL ORDER :

Both Applications are heard finally at the admission stage with consent of the parties.

2. Being aggrieved by the order dated 31/12/2014 passed by the learned Additional Sessions Judge, Aurangabad below exhibit 10 in Sessions Case No. 11 of 2013, the original accused no.2 and 3 have preferred these two separate Criminal Applications.

3. Brief facts giving rise to the present Criminal Applications, are as follows :-

. Respondent no.2 – complainant – Kalyan S/o Bansi Chavhan lodged a complaint at Police Station, Chikalthana, Aurangabad against the present applicants and one more accused and on the basis of the said complaint, crime no. 128 of 2011 for the offences

punishable under section 306 r/w. 34 of the Indian Penal Code came to be registered in the said Police Station.

. It is alleged in the complaint that the marriage of deceased Surekha was solemnized with accused Rahul on 28/5/2011. She was treated well for initial period of 15-18 days. However, thereafter, her husband Rahul started suspecting about her character and left her to her parent's house. It is further alleged in the complaint that her husband – Rahul was suspecting about her character by saying that she had some illicit relations with one Suraj Narayan Divekar and that he was having evidence to that effect. Even her husband Rahul informed to the complainant that he would not allow deceased Surekha to cohabit with him. It is also alleged in the complaint that said Suraj also used to talk with deceased Surekha on mobile and giving threats to her that he will see as to how she cohabits with her husband Rahul and in future, she will have to cohabit with him only. Even said Suraj was insisting deceased Surekha to leave her husband. It is also alleged in the complaint that said Suraj remained in contact with Rahul. Even one meeting had taken place in the house of the applicant – accused/ Onkar and in the said

meeting, both the applicants and said Suraj remained present.

. On 16/9/2011, complainant had approached the applicant – Rahul and requested him to take back deceased Surekha for further cohabitation, however, the applicant/accused – Rahul refused for the same and further driven the complainant out from his house. On 21/9/2011, deceased Surekha had committed suicide by hanging herself to the iron angle in the house. She was immediately taken to the hospital, where she was declared dead on arrival.

. It is alleged in the complaint that applicants mentally harassed deceased Surekha by suspecting about her character and, therefore, the deceased Surekha had committed suicide. It is also alleged in the complaint that both the applicants, in furtherance of their common intention, abetted the commission of suicide of deceased Surekha.

. On the basis of these allegations, the crime as aforesaid, came to be registered and the Police accordingly carried out the investigation.

. During the course of investigation, the Investigating Officer also found the suicide note left by deceased Surekha, wherein she has made allegations against said Suraj.

. After completion of the investigation, the Police submitted the chargesheet and in due course, the case was committed to the Sessions Court, as the offences alleged to have been committed, are exclusively triable by the Court of Sessions.

. Both the applicants have filed application Exhibit 10 in the Sessions Case No. 11 of 2013 for their discharge. The learned Additional Sessions Judge, Aurangabad by order dated 31/12/2014 rejected the said application. Hence, these two separate Criminal Applications.

4. Learned counsel for the applicant in Criminal Application No. 1235 of 2015 submits that it is only alleged in the complaint that the applicant and said Suraj used to assemble in the house of the applicant – Onkar and discuss about the character of deceased Surekha and further course of action in the matter. Learned counsel submits that except this, no further

role is ascribed to the applicant – Onkar. Learned counsel submits that in the suicide note left by deceased Surekha, she has made allegations only against said Suraj. She has stated in her suicidal note that said Suraj had exaggerated the things and accordingly prejudiced her husband Rahul and thus annoyed her. She had further stated in her suicidal note that because of Suraj alone, she decided to finish her life. Further, in the said suicidal note, she proposed stern action against said Suraj, by expressing an apprehension that in future also, said Suraj may spoil the life of some other girls. Learned counsel submits that applicant – Onkar is related to both the applicants i.e. the family of deceased Surekha and also her husband Rahul. Learned counsel submits that there is absolutely nothing in the suicide note as well as in the FIR to suggest that the applicant – Onkar abetted the commission of suicide by deceased Surekha. There are no allegations against the applicant – Onkar that he had instigated deceased – Surekha to commit suicide or that the applicant – Onkar conspired or in any way aided by any act or illegal omission, to bring about the said suicide.

5. Learned counsel for the applicant in Criminal Application No. 1339 of 2015 submits that in the suicidal note left by deceased – Surekha, there are absolutely no allegations against the applicant – Rahul. Deceased Surekha had stated in clear words in her suicide note that accused Suraj is only responsible for her death and further proposed that stern action should be taken against him. She also stated in her suicidal note that said Suraj had spoiled her marital relations with the applicant – Rahul and he is liable to face the punishment. Learned counsel submits that though there are certain allegations in the said complaint against the applicant – Rahul, even accepting those allegations as it is, it cannot be said that the applicant – Rahul had any intention to instigate or abet the commission of suicide by deceased Surekha.

6. Learned counsel for the applicant in Criminal Application No. 1339 of 2015, in order to substantiate his contention, places reliance on the judgment of Division Bench of this Court dated 5th August, 2016 passed in Criminal Application (APL) No. 332 of 2016 and judgment of this Court dated 2nd September, 2016 passed in Criminal Writ Petition No. 782 of 2016.

7. Learned counsel for respondent no. 2 – original complainant submits that in the complaint, it is alleged that applicant – Rahul was suspecting about the character of deceased Surekha and even he has refused to cohabit with her. He even informed to the complainant that he had a compact disc (C.D.) about the acts done by deceased Surekha and that he would not allow her to cohabit with him. Learned counsel submits that instead of trusting his wife – deceased Surekha, applicant – Rahul was frequently meeting said Suraj and thus giving mental torture and harassment to deceased Surekha. Few days prior to the death of deceased Surekha, the complainant had been to house of Rahul, however, applicant – Rahul flatly refused further cohabitation with deceased Surekha and accordingly driven out the complainant from his house. Learned counsel submits that deceased Surekha, therefore, committed suicide on account of said mental harassment. Though in the suicidal note, deceased Surekha has made allegations against said Suraj, however, she was annoyed as her husband – applicant – Rahul refused further cohabitation and she had to live in her parent's house only 15-18 days after the marriage.

8. Learned counsel for respondent no.2 submits that applicant – Onkar has also informed to the complainant that deceased Surekha was not a woman of good character and that applicant – Rahul would not take her back for further cohabitation. Learned counsel submits that probative value of the material on record by the prosecution, cannot be gone into at this stage. Learned counsel submits that there is *prima facie* case against both the applicants and the learned Additional Sessions Judge has therefore rightly rejected the application Exhibit 10.

9. Learned counsel for respondent no.2 – original complainant, in order to substantiate his contention, relies on the ratio in the case of “**Soma Chakravarty Vs. State through CBI**” (2007) 5 SCC 403.

10. I have also heard learned A.P.P. for the respondent/State.

11. So far as applicant – Onkar S/o Dhondiram Chavhan in Criminal Application No. 1235 of 2015 is concerned, the allegations made in the complaint are restricted to the effect that the applicant – Rahul and said Suraj used to gather in the house of applicant –

Onkar and talk about the further cohabitation of deceased Surekha with applicant – Rahul. It is alleged in the complaint that even on one occasion, applicant – Onkar, in response to queries made by the complainant, informed to him that deceased Surekha was not having good character and, therefore, she would not be taken back for further cohabitation. Merely by saying so, I do not think that the applicant – Onkar has abetted the commission of suicide by deceased Surekha. Even in the suicidal note left by deceased Surekha, she had not made allegations against applicant – Onkar. In absence of any further role ascribed to the applicant – Onkar, continuation of trial against the applicant – Onkar, would be an abuse of process of law.

12. The Hon'ble Division Bench of this Court in Criminal Application No. 332 of 2016 (cited supra) elaborately discussed the requirements to constitute offence punishable under section 306 of the Indian Penal Code and referred the judgment of the Apex Court in the cases of **"Sanju alias Sanjay Singh Sengar Vs. State of Madhya Pradesh"** reported in 2002 Cri. L.J. 2796 and **"Madan Mohan Singh Vs. State of Gujrat and anr."** reported in (2010) 8 SCC 628 and **"S.S. Chheena V. Vijay**

Kumar Mahajan" reported in **2010 All MR (Cri.) 3298 (S.C.)**. The Division Bench has also referred recent case of **"State of Kerala and others Vs. S. Unnikrishnan Nair and others"** reported in **AIR 2015 S.C. 3351**. Thus, the Division Bench in paragraph no. 20 of the judgment, made the following observations :-

"20. As has been held by Their Lordships of the Apex Court that for permitting a trial to proceed against the accused for the offence punishable under Section 306 of the Indian Penal Code, it is necessary for the prosecution to at least *prima facie* establish that the accused had an intention to aid or instigate or abet the deceased to commit suicide. In the absence of availability of such material, the accused cannot be compelled to face trial for the offence punishable under Section 306 of the Indian Penal Code. As has been held by Their Lordships of the Apex Court that abetment involves mental process of instigating a person or intentionally aiding a person in doing of a thing and without a positive act on the part of the accused in aiding or instigating or abetting the deceased to commit suicide, the said persons cannot be compelled to face the trial. Unless there is clear mens rea to commit an offence or active act or direct act, which led the deceased to commit suicide seeing no option or the act intending to push the deceased into

such a position, the trial against the accused under Section 306 of the Indian Penal Code, in our considered view, would be an abuse of process of law."

13. Thus, the ratio laid down in the above case squarely applies to the facts of the present case so far as applicant – Onkar is concerned. I do not think that the charge under section 306 of the Indian Penal Code is sustainable against applicant – Onkar. Thus, he is entitled for discharge.

14. So far as applicant – Rahul S/o Gulabrao Rathod is concerned, it appears that there are allegations made against him in the complaint. After the marriage, he had believed the information given to him by Suraj and on the basis of said information and without verifying the said information, sent deceased Surekha back to her parent's house. Even applicant – Rahul started saying that he had evidence in the form of bond about the illicit relations of deceased Surekha with said Suraj and also he had one compact disc of her conduct prior to the marriage. Even on 16/9/2011, when the complainant met him and requested for the cohabitation of deceased Surekha, applicant Rahul flatly refused for

further cohabitation and driven out the complainant from his house. Though, there are no allegations in the suicidal note, during the course of investigation, the complainant and even the family members have stated in their respective Police statements, that deceased Surekha got annoyed because of her husband applicant – Rahul started suspecting her character and only after 15-18 days of her marriage, she had to start residing with her parents by leaving the matrimonial home. Whether these allegations are sufficient to constitute the abetment, as defined under section 107 of the Indian Penal Code, is a matter to be considered during the course of trial. However, *prima facie*, there is evidence against applicant – Rahul S/o Gulabrao Rathod. Learned Additional Sessions Judge has rightly rejected his application for discharge. No interference is required.

15. Needless to state that the observations made while disposing of the application of applicant – Rahul S/o Gulabrao Rathod are *prima facie* in nature and the learned Additional Sessions Judge, is required to dispose of the Sessions Case on its own merits, uninfluenced by the observations made by this Court while

disposing of the present Criminal Application.

16. Hence, I proceed to pass the following order :-

ORDER

I] Criminal Application No. 1235 of 2015 is hereby allowed.

II] The impugned order dated 31/12/2014 passed below Exhibit 10 in Sessions Case No. 11 of 2013 by the learned Additional Sessions Judge, Aurangabad, to the extent of applicant – Onkar S/o Dhondiram Chavhan is hereby quashed and set aside.

III] Application Exhibit 10 in Sessions Case No. 11 of 2013, to the extent of applicant – Onkar S/o Dhondiram Chavhan is allowed and the applicant – Onkar S/o Dhondiram Chavhan is discharged from the offence punishable under section 306 r/w. 34 of the Indian Penal Code.

IV] Criminal Application No. 1339 of 2015 is hereby dismissed.

17. Both Criminal Applications are accordingly disposed of.

[V.K. JADHAV]
JUDGE

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