

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AURANGABAD**

CRIMINAL APPLICATION NO. 5011 OF 2016

Sitaram Ganpat Pawar and others ...Applicants

VERSUS

The State of Maharashtra ...Respondent

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Shri S.B.Bhapkar, advocate h/f

Shri K.B.Jadhav, advocate for applicants

Shri C.V.Dharurkar, A.P.P. for respondent

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CORAM : N.W.SAMBRE, J.

DATED : 18th October, 2016

PER COURT :-

Heard learned counsel for the parties.

2. All the applicants are charged for offences punishable under Sections 498-A, 323, 504, 506 r/w 34 of the Indian Penal Code, in Sessions Case No. 69 of 2014 (State vs Sitaram) pending on the file of the learned Additional Sessions Judge, Vaijapur.

3. The case of the prosecution against the present applicants, as is reflected in the charge sheet, appears to be that deceased Jyoti was married to present petitioner no.3 prior to seven years of the incident and she was blessed with a daughter Anuja and son Tejas.

4. It is the case of the prosecution that on 22.9.2013 when deceased Jyoti asked her husband i.e. applicant no.3 as to why new clothes were not brought to celebrate the birth day of their son, applicant no.3 assaulted her. As a consequence, Jyoti poured kerosene on her person and set herself on fire. Applicant no.3 tried to extinguish the fire. It is claimed that Jyoti committed suicide which was abetted by the present applicants and there was also demand of dowry resulting into crime in question.

5. While trying to challenge the case for framing of charge, the learned counsel for the applicants would place reliance upon the contents

of the first information report, the dying declarations of Jyoti recorded on 23.9.2013, the dying declaration recorded by the Special Executive Magistrate on 23.9.2013, doctors' notes from Bembade hospital where deceased Jyoti was brought for treatment, wherein she narrated that she herself poured kerosene on her person and set herself on fire.

6. Learned counsel for the applicants, in the above background, would urge that deceased Jyoti in her dying declaration in categorical terms stated that she was staying with applicant no.3 in the farm, whereas applicant nos. 1 and 2 were residing at separate place with the brothers of applicant no.3. According to him, applicant no.3 has sustained burn injuries in the incident in question, and as such, it could be inferred that there was no attempt on the part of applicant no.3 to abet the suicide, but he rather tried to avoid the occurrence of the said incident. Learned counsel then would urge that applicant no.1,

cousin father-in-law, was not present on the spot of incident when Jyoti set herself on fire. Applicant no.2 resides with her other two sons. He would then urge that the cumulative effect of pleadings and evidence brought on record depicts that all the applicants are innocent and the necessary ingredients of Section 498-A, 306, 323, 504 r/w 34 of the Indian Penal Code are not satisfied. He would then urge that based on admitted facts, particularly version stated by Jyoti in two dying declarations prompts for discharge of the applicants from the criminal trial, as no case, based on available material, could be established against the applicants.

7. Per contra, learned A.P.P. would urge that perusal of both the dying declarations speak of direct involvement of all the three applicants in the crime in question. According to learned A.P.P., applicant no.3 assaulted deceased Jyoti before the incident in question and in dying declaration it is specifically stated that on the

same day applicant nos.2 and 3 have illtreated deceased Jyoti on the issue of demand of dowry. Learned A.P.P. while trying to oppose the application would submit that it is not open for this Court to appreciate the evidence at this stage, as the same is required to be corrected at its face value, and as such, necessary ingredients for offences in question were very much satisfied and charge came to be framed against the accused persons. He would submit that the application be rejected.

8. Having bestowed my thoughts to the submissions made, it is required to be stated that in the first information report specific role is attributed to the present applicant no.1 and the role attributed to her husband and in-laws of deceased Jyoti is that they tried to practice cruelty on deceased Jyoti for demand of dowry. She has in categorical terms admitted in her statement given to the police under Section 161 of the Code of Criminal Procedure, which is stated to

be a dying declaration, that she herself poured kerosene on her person and set on fire and fire was tried to be extinguished by her husband i.e. applicant no.3. It is then claimed that while fire was tried to be extinguished by applicant no.3, she heard the applicant no.1 to have uttered, 'let her burn, do not extinguish the fire'.

9. So far as role attributed to applicant no.2 mother-in-law of deceased Jyoti is concerned, there is hardly any material to infer her presence on the spot of the incident, as, though a passing reference is made to some incident of 23.9.2013 as regards demand of dowry, however, it does not speak in categorical terms about presence of applicant no.2.

10. Apart from above, the fact remains that deceased Jyoti in her two dying declarations in clear terms stated that applicant nos.1 and 2 are not residing with her, but she is residing with

her husband applicant no.3 in the farm. It is then to be noted that applicant no.3 has suffered burn injuries while trying to extinguish the fire. Prima facie, what could be noticed from the material, as is available on record, is that presence of applicant no.2 mother-in-law of deceased Jyoti on the spot of the incident on the relevant day cannot be inferred, particularly Jyoti having stated in her dying declarations that her mother-in-law and father-in-law are residing at some different place. It is then to be noted that she has specifically stated about presence of applicant nos.1 and 3 on the spot of the incident. The fact remains that death of deceased Jyoti is suicidal and not homicidal, though there is certain reference about earlier events of cruelty practiced on her, however, the same allegations in the first information report and the investigation papers are completely vague.

11. Upon perusal of the charge sheet, it could be easily inferred that the prosecution has no

case to proceed against applicant no.2 mother-in-law of deceased Jyoti, as none of the dying declarations speak of her presence when the incident occurred. It is also required to be observed that there is no material on record to confirm the abetment of suicide on the part of applicant no.2.

12. The utterances by applicant no.1, as are referred in the dying declaration, and the injuries suffered by applicant no.3 speak volumes about their presence on the spot of incident in question.

13. Hence, in my opinion, the case for quashing the prosecution case against applicant no.2 Rukhmanbai Raosaheb Pawar is made out, as necessary ingredients of Section 498-A r/w 34 and Section 323, 504 and 306 of the Indian Penal Code are not established against applicant no.2.

14. In view of above observations, Criminal Application No. 5011 of 2016 is partly allowed. Prosecution case against applicant no.2 is quashed and set aside. Applicant no.2-Rukhmanbai Raosaheb Pawar is discharged from Sessions Case No. 69 of 2014.

15. It is clarified that Criminal Application, so far as applicant nos.1-Sitaram and applicant no.3-Vijay are concerned, stands dismissed.

(N.W.SAMBRE, J.)

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