

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

CRIMINAL APPLICATION NO.463 OF 2016

1. Kesharbai wd/o Sakharam Barbinde
Age; 65 yrs, Occ: Household,
 2. Rajendra @ Raju s/o Sakharam Barbinde
Age: 26 yrs, Occ: Labour,
- Both R/o. Antarwala, Post-Kajala,
Tq. & Dist. Jalna. **APPLICANTS**

VERSUS

1. The State of Maharashtra.
2. Ram s/o. Ashruba Gavhad
Age: 31 yrs, Occ: Agri.,
R/o.Patoda, Post-Patoda,
Tq.Mantha, Dist. Jalna. **RESPONDENTS**

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Mr.S.S.Panale, Advocate for the applicants
Mrs.P.V.Diggikar, APP for the Respondent
No1./State

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**CORAM: S.S.SHINDE &
K.K.SONAWANE, JJ.**

Reserved on : 20.02.2017
Pronounced on : 23.02.2017

JUDGMENT: (Per S.S.Shinde, J.):

1] Heard the learned counsel appearing
for the applicants. He submits that the

applicants are residing at Antarwala, Post Kajala, Taluka and District Jalna. The learned counsel appearing for the applicants invites our attention to the copies of the card issued to the applicants by the Election Commission of India and also copy of the Aadhar card issued in favour of applicant no. 1. It is submitted that son of applicant no.1 namely Ankush was married with Vandana, sister of respondent no.2, in the year 2006. The couple is blessed with daughter Gauri 6 years old and son Gaurav 4 years old.

2] It is submitted that son of applicant no.1 Ankush came to reside at Aurangabad and also purchased a plot and constructed his own house at Aurangabad. It is submitted that on 26th August, 2015, Ankush and Vandana were proceedings towards the village Antarwala at that time at about 10.45 a.m. when Ankush stopped the vehicle on Aurangabad-Jalna Road for answering nature's

call, Vandana was given dash by one truck and in the said accident, she sustained grievous injuries to her head and Vandana succumbed to the said injuries on 27.08.2015. It is submitted that the applicants are nothing to do with the accidental death of Vandana. The death of Vandana was accidental and not suicidal. The First Information Report itself does not disclose any material *prima facie* to meet the ingredients of the offence punishable under Section 306 of the Indian Penal Code. There is no act or overt act or omission or any illegal act on the part of the present applicants, which has abetted the suicide of Vandana. It is submitted that even if the allegations in the FIR are read in its entirety, there is no specific act attributed on the part of the applicants, which would amount to abetment as contemplated under Section 107 of the IPC. There is no instigation, conspiracy or intentional aid to

the commission of suicide by Vandana at the instance of the applicants. The entire documents placed on record will show that the applicants were residing separately from deceased Vandana, therefore, the applicants cannot be accused for abetting the suicide or causing ill-treatment of any kind to Vandana. The applicants are falsely implicated in the alleged commission of offence. The allegations are omnibus in nature, therefore the FIR qua applicants deserves to be quashed and set aside.

3] On the other hand, the learned APP appearing for the respondent-State relying upon the investigation papers submits that, during the course of investigation, the Investigating Officer has recorded the statements of various witnesses and they have stated that along with other accused, the applicants have also harassed and ill-treated the sister of respondent no.2. There are

specific allegation even against the applicants. Apart from Section 306 of the IPC, even Section 498A is invoked. There is sufficient material collected during the course of investigation by the Investigating Officer and the trial can proceed on the basis of the said material.

4] The learned counsel appearing for respondent no.2 submits that in fact sister of respondent no.2 i.e. wife of Ankush, is murdered and is not the case of the accidental death. He submits that it is settled law that the allegations in the FIR will have to be taken as it is and can be tested only during trial, and therefore, when there are specific allegation against even the applicants, that the applicants were suspecting chastity / character of the sister of respondent no.2, and therefore, the ingredients of Section 498A are clearly attracted. Even there are allegations that

the applicants not only suspected her character/chastity, however, abused her and extended threats that they will kill her. Therefore, he submits that, this Court may not entertain the application for quashing of the FIR.

5] It is submitted that in the year 2015, the deceased Vandana discovered that her husband Ankush was having an extra marital affair. He was addicted to liquor. When respondent no.2 visited Vandana in his matrimonial home on 24th August, 2015, she stated that applicant no.1 Kesharbai had instigated Ankush to beat Vandana by revealing the occurrences prior to his coming home. She further stated that applicant no.2 had also instigated Ankush likewise and have also taken away the children in his room on the upper floor in order to facilitate Ankush to have his revenge against Vandana. On 24.08.2015, Ankush had beaten her badly on

instigation of the applicants. It is submitted that, applicants are managed to produce certain documents to demonstrate that they are resident of Antarwala, Taluka and District Jalna. However, they are residing at Bajrang Nagar, Chikalthana, Aurangabad.

6] We have heard the learned counsel appearing for the applicants, learned APP appearing for the respondent – State and the learned counsel appearing for respondent no.2. With their able assistance, we have perused the grounds taken in the application, annexures thereto, the contents of the FIR and the charge-sheet and its accompaniment made available for perusal by the learned APP. Upon careful perusal of the statements of the witnesses recorded by the Investigating Officer, there are allegations against the present applicants, the ingredients of Section 498 of the IPC are clearly attracted, the Investigating Officer

after full-fledged investigation, has filed charge-sheet.

7] In that view of the matter, in our opinion, the Investigating Officer has collected sufficient material during the course of investigation. In this Application, there is no challenge to the charge-sheet and only the FIR is questioned by the applicants. Be that as it may, in view of the exposition of law by the Supreme Court in the case of ***Bhaskar Lal Sharma and another Vs. Monica and others***¹ wherein in para 11 of the judgment it is held that the facts, as alleged, in the FIR will have to be proved which can be done only in the course of a regular trial. The appreciation, in a summary manner, of the averments made in the FIR would not be permissible at the stage of quashing of FIR and the facts stated will have to be accepted as they appear on the very face thereof. In

¹ (2014) 3 SCC 383

that view of the matter, we are not inclined to quash the First Information Report, hence the Application stands rejected.

8] However, we make it clear that in case the applicants wish to file application for discharge before the concerned Court and if charge is already not framed, the rejection of this application shall not construed as an impediment to the applicants to avail said remedy. However, we make it clear that if applicants are desirous to file application for discharge, they can avail the said remedy by way of filing appropriate application within three weeks from today. In case such application is filed, the concerned Court shall decide the same in accordance with law on its own merits within 6 weeks from filing such application.

However, we make it clear that, in case an appropriate application is not filed

within three weeks from today, after three weeks the concerned Court shall not entertain the application of the applicants praying therein for discharge. The observations made hereinabove are *prima facie* in nature.

[K.K.SONAWANE]
JUDGE

[S.S.SHINDE]
JUDGE

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