

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

CRIMINAL APPLICATION NO. 3129 OF 2017

Nitesh S/o. John Makasare,
Age : 28 years, Occu. Service,
R/o. C/o. Ashok Chari, Balaji Niwas,
Gawalipura, Near Railway Station,
Nanded, Tq. & Dist. Nanded.

Applicant...

Versus

1. The State of Maharashtra,
Through Nanalpeth Police Station,
Parbhani, Tq. & Dist. Parbhani.
2. Alka W/o. Arunkumar Burla,
Age : 58 years, Occu. Service,
R/o. Kabra Nagar, Nanded,
Tq. & Dist. Nanded.

Respondents....

**WITH
CRIMINAL APPLICATION NO. 3130 OF 2017**

Eknath S/o. Vithalrao Shinde,
Age : 65 years, Occu. Nil,
R/o. House No. 196, Datta Nagar,
Parbhani, Tq. & Dist. Parbhani.

Applicant...

Versus

1. The State of Maharashtra,
Through Nanalpeth Police Station,
Parbhani, Tq. & Dist. Parbhani.
2. Alka W/o. Arunkumar Burla,
Age : 58 years, Occu. Service,
R/o. Kabra Nagar, Nanded,
Tq. & Dist. Nanded.

Respondents....

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In both the applications:

Mr M. V. Ghatge, Advocate for the applicant

Mr K. N. Lokhande, APP for respondent No. 1

Mr S. S. Gangakhedkhar, Advocate for respondent No. 2

CORAM : S. S. SHINDE &
A. M. DHAVAL, JJ.

RESERVED ON : 24.08.2017.
PRONOUNCED ON : 01.09.2017.

JUDGMENT (Per A. M. Dhavale, J.) :

. Rule. Rule made returnable forthwith. Heard finally with the consent of the parties and taken up for final disposal at admission stage.

2. These applications are filed under Section 482 of the Code of Criminal Procedure for quashing First Information Report bearing No. 144/2017 registered with Nanalpeth Police Station, Parbhani, for the offences punishable under Sections 306, 323, 506 r/w 34 of the Indian Penal Code.

3. The facts relevant may be stated as follows:

Deceased-Ashish was doing a private job as male Nurse at Aurangabad. On 21.05.2014, he married to accused No. 3 Namrata at Parbhani. Namrata was a Nurse in Government Hospital at Parbhani. The informant Alka, aged 58 years, is also a Nurse in Health Department at Nanded. Initially, Ashish and Namrata were cohabiting at Parbhani in a rented premises near the house of Namrata's maternal

house. Since Ashish found it difficult to attend his job at Aurangabad, he was constrained to leave the job and thereafter he started residing at Namrata's maternal house. Accused No. 1 – Savita and accused No. 2 – Jaan are in-laws and accused No. 4 – Nitesh is the brother in-law of the deceased whereas; accused no. 5 – Eknath is husband of paternal aunt of Namrata. Mother of the deceased alleged that, all the accused were mentally ill-treating the deceased Ashish and were assaulting him and he was regularly intimating the same to his family members. Whenever informant-Alka and her relatives made inquiries, the accused used to talk with them arrogantly and used to threaten them that they would implicate them in a dowry death case. On 24.04.2017 at 1:30 pm, Ashish made a call on his mother's cell phone and informed her about physical and mental harassment to him by the accused. At that time, he was weeping. The informant tried to persuade him and assured to find out some solution. On 26.04.2017 at 9:30 am, Sharlet Taru, a neighbour of deceased-Ashish, made a phone call to the informant and informed that they should immediately rush to Parbhani. When the informant came to Parbhani, they came to know that Ashish committed suicide by hanging himself. The landlord Ganesh Karad had lodged report of accidental death with the Police Station. The informant filed FIR alleging that, Ashish committed suicide due to harassment by his in-laws and wife. On the basis of the said information, Crime was registered as C.R. No. 144/2017.

4. Criminal Application No. 3129 of 2017 is filed by accused No. 4 – Nitesh, who is brother of the wife of deceased-Ashish, whereas; Criminal Application No. 3130 of 2017 is filed by Eknath Shinde, who is husband of paternal aunt of Namrata.

5. Learned counsel for the applicants argued that, the allegations about the physical and mental harassment are extremely vague. There is no material to show any intention on the part of the applicants to abet the deceased to commit suicide. Reliance is placed on a judgment delivered by the Division Bench of this Court at Nagpur Bench in **Criminal Application (APL) No. 332 of 2016** (Dilip S/o Ramrao Shirasao & Ors. Vs State of Maharashtra & Anr) on 05 August, 2016.

6. Per Contra, learned APP for the State and learned advocate for respondent No. 2 have submitted that, there were some injuries found on the person of the deceased. There was persistent harassment to the deceased-Ashish by his in-laws, which amounts to abetment to commit suicide. There are statements of witnesses disclosing that the relations between the deceased Ashish and his wife Namrata were very much strained and she was subjecting him to ill-treatment. She was not opening the door of the house whenever Ashish was knocking the

door of the house. There are statements of the witnesses to support the allegations of persistent ill-treatment. There are Call Detail Records to show that the deceased had made a phone call to his mother. Hence, this is not a fit case for quashing the FIR.

7. After hearing the arguments, we find that there is no direct evidence of any abetment. There is no material to show that the applicants intended that the deceased should commit suicide. As far as knowledge is concerned, it can be deemed when there is persistent harassment or demand creating a situation for the deceased that he would be left with no other option but to commit suicide. In this regard, we rely on **Ramesh Kumar V. State of Chhattisgarh (2001) 9 SCC 618 & Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi) (2009) 16 SCC 605**. In Ramesh Kumar's case (supra), it is held that, where the accused had, by his acts or omission or by a continued course of conduct, created such circumstances that the deceased was left with no other option except to commit suicide, in which case, an 'instigation' may have to be inferred. In Chitresh Kumar Chopra's case (supra), it is held that, a reasonable certainty to incite the consequences must be capable of being spelt out. More so, a continued course of conduct is to create such circumstances that the deceased was left with no other option but to commit suicide.

8. In Dilip Shirasao's case (*supra*), reliance was placed on Sanju alias Sanjay Singh Sengar vs. State of Madhya Pradesh, reported in 2002 Cri.L.J. 2796, Madan Mohan Singh vs. State of Gujrat and another reported in (2010) 8 SCC 628, and S.S. Chheena vs. Vijay Kumar Mahajan reported in 2010 All MR (Cri) 3298 (S.C.). In this case, it is also laid down that mere recording of name in the suicide note will not be sufficient material to call upon the person named therein to face the prosecution.

9. It is, therefore, necessary to consider whether in the present case there are circumstances which would indicate that the deceased was driven to such a situation that he would be left with no other option but to commit suicide.

10. The deceased was in private employment at Aurangabad while his parents were residing at Nanded. His wife was serving at Parbhani. The deceased had no compelling reason to leave his job and reside in Parbhani. If there was severe illtreatment to him by his wife and in-laws, he could have gone to his parents at any time. In Indian society, culturally, traditionally and socially, a bride is expected to cohabit with her husband at her matrimonial house. If she is harassed at her matrimonial house many a times, she cannot go to her maternal house as the society looks at her with suspicion. It is

difficult for a bride to reside at her maternal house after her marriage. Same is not the case with a bride-groom. He may reside at the house of parents of his wife if it is convenient to him but if it is not convenient, he need not stay there. There is no traditional, social or cultural obligation on him to stay with his wife or at her parents house.

11. In the present case, the deceased had left no suicide note. It is true that whatever he has talked with his mother or any other relatives directly or on phone, it would amount to dying declaration if it relates to cause of his death or the circumstances which drove him to commit suicide.

12. It is well settled that, in a case of physical ill-treatment, there should be specific allegations and the vague allegations will be of no use.

13. The physical and mental ill-treatment should be of such nature and magnitude that the deceased would be left with no alternative but to commit suicide. Some vague allegations will not be sufficient.

14. In the present case, one abrasion with contusion was found on the left arm of the deceased having size of 4x2x½ cm. Besides, two

imprint abrasions of circular shape were found over back with abrasions having red coloured margins. The deceased died due to asphyxia due to hanging and there was V shaped ligature mark, oblique and incomplete knot mark present posteriorly over occiput and petechial heamorrhages adjacent to ligature mark.

15. The material on record shows that, deceased-Ashish was cohabiting with his wife in a rented premises belonging to Ganesh Karad. At the material time, deceased was alone in his house while his wife had gone to her office and returned at 9:00 a.m. She called the deceased and also knocked the door but the door was not opened. Then door was broken open and it was found that the deceased was hanging inside.

16. The Police have recorded the statements of relatives of the deceased viz. brother Akash, Cousin Vishal, Maternal Uncle, Maternal Aunt, friend Vishwas, all are resident of Nanded and they have no direct knowledge as to what happened at the house of the deceased at Parbhani. The AD report was lodged by landlord Ganesh Karad, which shows that he was not aware as to why Ashish committed suicide. He did not say anything about suicide note in the room but one of the witnesses stated that Namrata had removed the suicide note. One Santosh was present at the time of the incident when the door was

broken open. He has also not deposed anything about physical and mental harassment to the deceased. Sharlet Taru, resident of Parbhani, known and related to the family of the deceased, had given message to the mother of the deceased about the said incident. She has also not stated anything about physical and mental harassment.

17. Wife of the landlord had given a statement about quarrels between the deceased and Namrata. She has stated that, family members of the maternal relatives of Namrata and Eknath Shinde were interfering in the life of Akash and Namrata. She stated that, Ashish was patiently listening to the talks of the maternal relatives of his wife and she found him in a depressed state. One Neeta has described one incident that, once deceased was knocking the door and Namrata was not opening the door for a long time. Deceased Ashish waited outside for opening the door for one and half hour. Similar is the statement given by one Sonali Kamble.

18. The FIR is lodged on 26.04.2017, since a period of four months had elapsed and the investigation must have been completed. We find only vague allegations against wife and other maternal relatives. The injuries on the person of the deceased-Ashish indicates that, Namrata might have taken a bite to his back.

19. We find that, the relations between Namrata and deceased-Ashish were disturbed. It was a matter of anxiety for Namrata's relatives. Ashish had left the service and was doing nothing. Namrata is having twins. Ashish was addicted to liquor. In such a situation, if parents or other relatives of Namrata attempted to persuade Ashish to behave properly, then same cannot be called as mental or physical harassment. Two injuries found on the dead body of the Ashish are not of such a serious nature that Ashish would be driven to commit suicide. The applicant was serving as a Male Nurse in a Government Medical College at Nanded from March-2013. Eknath Shinde is distantly related to Namrata and was residing separately. It is alleged that, he was having illicit relations with mother of Namrata but there is no material to that effect to substantiate this fact and it has no direct relevance with the alleged offence. If deceased Ashish was subjected to mental and physical ill-treatment, there is no explanation why his parents did not call him back to stay with them at Nanded. In S.S. Chheena's case, in para nos. 29 & 30, it is held as under:

29. *In the instant case, the deceased was undoubtedly hypersensitive to ordinary petulance, discord and differences which happen in our day-today life. Human sensitivity of each individual differs from the other. Different people behave differently in the same situation.*

30. *When we carefully scrutinize and critically examine the facts of this case in the light of the settled legal position the conclusion becomes obvious that no conviction can be legally sustained without any credible evidence or material on*

record against the appellant.

20. We find that, the prosecution case rests on vague allegations against the applicants. The material collected by the prosecution is not at all sufficient even to frame the charge against the applicants. There is no material to show that, the applicants were responsible for creating a situation by way of persistent harassment to drive the deceased - Ashish to commit suicide. Continuation of this proceeding will be abuse of process of the Court. The chances of conviction in this case are obviously bleak. Therefore, the applications deserve to be allowed. Hence, the following order is passed.

ORDER

- (i) Criminal Applications No. 3129 of 2017 and 3130 of 2017 are allowed.
- (ii) The First Information Report bearing No. 144/2017 registered against the applicants with Nanalpeth Police Station, Parbhani, for the offences punishable under Sections 306, 323, 506 r/w 34 of the Indian Penal Code is quashed.

Rule made absolute in the above terms with no order as to costs.

[A. M. DHAVAL]
JUDGE

[S. S. SHINDE]
JUDGE

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