

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.4152 OF 2016

Somnath s/o Ashok Darekar,
Age-30 years, Occu:Service,
R/o-Shiradhon, Tq-Nagar,
Dist-Ahmednagar.

...APPLICANT

VERSUS

- 1) The State of Maharashtra,
Through Investigation Officer,
Nagar Taluka Police Station,
Tq-Nagar, Dist-Ahmednagar,
- 2) Rahul Balu Gore,
Age-24 years, Occu:Service,
R/o-Ruichattisi, Tq-Nagar,
Dist-Ahmednagar.

...RESPONDENTS

...

Ms. Pradya Talekar Advocate i/b. Talekar &
Associates for Applicant.
Mr.D.R. Kale, A.P.P. for Respondent No.1.
Mr.N.V. Gaware Advocate for Respondent No.2.

...

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

DATE OF RESERVING JUDGMENT : 20TH APRIL, 2017.

DATE OF PRONOUNCING JUDGMENT: 3RD MAY, 2017.

JUDGMENT [PER S.S. SHINDE, J.] :

1. Rule. Rule made returnable forthwith and heard finally with the consent of the learned counsel appearing for the parties.

2. By way of filing the present Application under Section 482 of the Code of Criminal Procedure, the Applicant has prayed that the First Information Report bearing Crime No.0070 of 2016, registered with Nagar Taluka Police Station, at Ahmednagar on 13th March, 2016, for the offences punishable under Section 306, 498-A read with 34 of the Indian Penal Code, may be quashed and set aside.

3. Respondent No.2 herein - Rahul Balu Gore, who is brother of deceased Rupali, lodged First Information Report (for short "FIR") alleging therein that the marriage between Bhausahab Ashok

Darekar, resident of Shiradhon and Rupali was solemnized on 22nd February, 2015. Out of the said wedlock, the couple was blessed with one child, namely Vedant. Husband of Rupali, namely Bhausahab is serving in military and at present he is assigned duties at Secunderabad. His sister Rupali was serving in Postal Department at Ruichattisi. In her matrimonial home, mother-in-law Nanda Ashok Darekar and father-in-law Ashok Gangadhar Darekar were residing, and her husband used to come to the matrimonial home after three months by availing leave. Brother-in-law of Rupali, namely Somnath Ashok Darekar i.e., Applicant herein, is also recruited in military services and at present he is undergoing his training in M.I.R.C. Ahmednagar. He used to visit matrimonial home on holidays.

. After marriage, Rupali was properly treated by the members of matrimonial house for about 3 to 4 months. Thereafter whenever her husband Bhausahab used to visit the matrimonial

home and talk to her on cell phone/mobile, he used to say her that he does not like Rupali and she has some affair with somebody else. An accused Bhausahab used to tell her that, his father has performed his marriage against his wish and used to harass, insult and assault Rupali. He used to tell that Rupali should not visit any relatives, and his parents and brother used to support Bhausahab. When ever Rupali visited her parents house, she used to tell about ill-treatment given to her by the accused.

. Five months prior to lodging of the FIR, father-in-law of Rupali, namely Ashok Darekar asked/demanded Rupees One Lakh through Rupali for securing job to brother-in-law Somnath Ashok Darekar i.e. Applicant herein. Though the informant and his family members were not happy with such demand, however so as to avoid any harassment to Rupali, they paid an amount of Rs.1,00000/- (Rupees One Lakh) to father-in-law of

Rupali. Thereafter father-in-law of Rupali further asked for Rs.50,000/- (Rupees Fifty Thousand). However, since the family of the informant had no money, they could not fulfill the further demand of Rupees Fifty Thousand by the father-in-law of Rupali. By keeping grudge of non-fulfillment of demand of Rupees Fifty Thousand, all the accused used to mentally and physically harass Rupali. When Rupali was admitted in the hospital for her delivery, instead of sending her at her parents house, from the hospital itself Rupali was taken to the matrimonial home. When parents of the informant visited the matrimonial house so as to bring Rupali to their house, they were abused and sent back by the accused. Then one month after delivery, parents brought Rupali to their house and thereafter she stayed there for about two months. On the day of 'Sankrat' festival, her husband and father-in-law visited the house of the informant and abused and assaulted him. On 17th January, 2016 when maternal uncle of the

informant, namely Annasaheb Vithoba Jagtap resident of Watephal, one other relative Goraksh Kondiba Gund and father of the informant when visited the house of accused so as to give them understanding to treat Rupali properly, there was no proper treatment to them.

4. It is further stated that on 12th March, 2016 in between 12.30 to 1.00 p.m. cousin father-in-law of Rupali, namely Mininath Darekar called the informant on his mobile and told that Rupali is having severe stomach pain and therefore she is admitted in Deepak Hospital and informant should immediately come to the said hospital. When the informant and his mother went to Deepak Hospital, they saw that treatment of Rupali was going on in I.C.U. of the said hospital and they were given understanding by the father-in-law of Rupali that, due to stomach ache Rupali is admitted in the hospital. On enquiry with the doctor, they learnt that Rupali had consumed poisonous substance and

therefore the informant with his mother stayed there in the said hospital on the said night. Father of Rupali also came to the hospital. When Rupali was under treatment in the said hospital, she died on 13th March, 2016 at about 00.15 hours. After postmortem, she was cremated at Shiradhon. With the above allegations the FIR was lodged by Respondent No.2 in Nagar Taluka Police Station, Ahmednagar, with grievance that all the accused harassed and ill-treated Rupali by suspecting her chastity and thereby they all abetted and instigated Rupali to commit suicide.

5. Hence this Application is filed by one of the accused i.e. Somnath Ashok Darekar, brother-in-law of Rupali, for quashing the First Information Report.

6. Learned counsel appearing for the Applicant submits that even if the allegations in the FIR are taken at its face value and read in

its entirety, prima facie an alleged offences have not been disclosed against the Applicant. She invited our attention to the allegations in the FIR and submits that, there are general allegations without attributing specific overt act qua Applicant and therefore FIR deserves to be quashed so as to prevent the abuse of process of law. She further submits that, as per the allegations in the FIR, Rupali was properly treated for 3 to 4 months after the marriage, which was solemnized on 22nd February, 2015, and, four months time would get over in the month of June, 2015. She further submits that the Applicant at no point of time had subjected deceased Rupali to cruelty and not caused any abetment for alleged commission of suicide. Since 14th October, 2015 the present Applicant is in training center and the question of visiting the matrimonial house as alleged in the FIR on every holiday, does not arise, and there was no reason for the Applicant to cause any ill-treatment or harassment to

Rupali. It is submitted that since the date of joining his service, the Applicant had not visited the house except on 13th March, 2016, in order to attend funeral of Rupali. Learned counsel invites our attention to the letter issued by Lt. Col./Major, Officiating Commanding Officer, Infantry Training Battalion, M.I.R.C., Ahmednagar, which clearly shows that the Applicant was physically present in the establishment wherein he is undergoing training, from 18th January, 2016 to 13th March, 2016 and on 13th March, 2016 at 02.55 hours he proceeded on an emergency leave. Learned counsel further invites our attention to the contents of out-pass issued by the concerned authority, wherein it is stated that the Applicant was permitted to go to Ahmednagar City from 12.30 hours to 17.00 hours on 20th July, 2016.

7. Learned counsel invited our attention to the additional affidavit filed by the Applicant in continuation of the main Application, and submits

that the Applicant reported to training on 15th October, 2015 at Infantry Training Battalion, M.I.R.C., Pin 900476, C/o-56 APO and still he is undergoing training. All the candidates who are undergoing training at Infantry Training Battalion, M.I.R.C. Pin 900476, C/o-56 APO. No trainee is permitted to leave the campus/headquarter of Infantry Training Battalion, M.I.R.C., Pin 900476, C/o-56 APO unless he obtains out pass from Col. Infantry Training Battalion, M.I.R.C. The Applicant was not allowed to leave the headquarter/premises of training center except on two occasions after the Applicant reported on duty at M.I.R.C., Ahmednagar. He was allowed to leave the headquarter/premises of training center so as to proceed on emergency leave once on 13th March, 2016 at 02.55 hours and again on 20th July, 2016. It is submitted that since the Applicant was under training, he was not allowed to hold mobile or to have an access to telephone during training period and as such it was not possible for him to

hold out threats to deceased Rupali on mobile. The allegation that Applicant used to visit his house at Shiradhon at every week end as well as further allegation that the Applicant used to give threats to deceased on mobile, are far from truth and nothing but foul play. It is submitted that since the Applicant is made accused, he was required to obtain bail, the Major/adjutant, Infantry Training Battalion, M.I.R.C. has called for a fresh character verification report vide communication dated 2nd January, 2017 addressed to District Magistrate, Ahmednagar. It is submitted that Col. Infantry Training Battalion, M.I.R.C. had already received verification roll from the District Magistrate, Ahmednagar on 16th April, 2016, a fresh character verification roll is again called for. The Applicant is apprehending from discharge of services once fresh verification roll is received. It is submitted that in case the FIR is not quashed, it is very likely that the Applicant may loose his job/employment in military.

8. Learned counsel further submitted that the Investigating Officer has already filed charge-sheet in respect of other accused. The Supplementary statement of the informant i.e. Respondent No.2 is recorded on 14th March, 2016. She invites our attention to the contents of the said supplementary statement and submits that even if the said statement is carefully perused, at the highest the allegation is that Rupali was possessing two mobile numbers having SIM Card Nos.9096203304 and 9921670900, and as per allegations, accused used to make her phone call and she used to record the conversation and said conversation was heard by Respondent No.2 one and half month prior to commission of suicide by Rupali. It is submitted that as stated in the affidavit, the Applicant was not allowed to possess mobile or had access to telephone during the training period and as such it was not possible for him to hold out threats against

deceased Rupali on mobile. It is submitted that though the charge-sheet is filed as against other accused, the Investigating Officer has not collected any record or has not included name of any witness from the telephone department so as to prove the allegations made by the informant in the supplementary statement. It is submitted that it is impossible to believe and comprehend that the Applicant was in need of an amount of Rupees One Lakh for securing job in military. It is submitted that on careful perusal of the allegations in the FIR, it is abundantly clear that there was no any demand of Rupees One Lakh by the Applicant. Those allegations are made against the father of the Applicant. It is submitted that once the FIR was registered, there was no need to again record supplementary statements of the informant. It is submitted that the Applicant is no way concerned with such alleged demand of money.

9. Learned counsel submitted that as a

matter of fact the Applicant hardly stayed for 2 to 3 months in his house i.e. matrimonial home, from the month of June, 2015 to October, 2015, before he joined the training in M.I.R.C., Ahmednagar. Our attention is invited to the document placed on record along with the compilation to the Application at page No.23 titled as "Enrollment in the Army". Learned counsel invites our attention to the contents of the said letter and submits that, as a matter of fact the Applicant was intimated that the Applicant is selected and his name appears in the merit list for enrollment as soldier Tdn (Washerman) in Mechanical Infantry Regiment based on CEE held on 30th August, 2015. Thereafter Applicant was selected for the said post in the month of August, 2015 and he joined the training on 15th October, 2015. It is submitted that, as alleged in the FIR, till June, 2015, Rupali was treated in proper manner. Thereafter the Applicant stayed in the matrimonial home from July, 2015

till he joined training in the month of October, 2015. It is submitted that during the said period the Applicant was busy in preparation of examination for the said post and therefore the allegations in the FIR implicating the Applicant in alleged offences are inherently improbable, unbelievable and absurd.

10. Learned counsel further invites our attention to the second supplementary statement of informant recorded on 19th September, 2016, and submits that when the FIR was registered on 13th March, 2016 and thereafter on 14th March, 2016, supplementary statement of the informant was also recorded, there was no reason for the Investigating Officer to again second time record supplementary statement of the informant on 19th September, 2016, that too after lapse of five months period from registration of the First Information Report and recording of first supplementary statement. It is submitted that the

informant and the Investigating Officer were bent upon and determined to implicate the Applicant by hook or by crook so as to unnecessarily harass him and with a view that the Applicant should loose his job. In the said supplementary statement, it is mentioned that even the Applicant along with other accused demanded an amount of Rupees One Lakh for securing job in military service though there was no such allegation in the First Information Report or in supplementary statement recorded on 14th March, 2016. It clearly shows mala fide intention of the informant and Investigating Officer to unnecessarily implicate/involve the Applicant in alleged commission of offences. It is submitted that the Applicant is no way involved either in the demand of money or acceptance of the same or ill-treating or harassing Rupali. He is innocent and serving in military services with determination and the intention to render services to the Nation, and the allegations in the supplementary statement

recorded on 19th September, 2016, is calculated attempt with a vengeance and malafide intention to ruin/spoil the career of the Applicant and therefore, keeping in view the exposition of law by the Supreme Court in the case of *State of Haryana V/s Bhajan Lal*¹, the First Information Report deserves to be quashed.

11. It is submitted that there is also allegation that along with other accused the Applicant instigated and abetted in commission of suicide by Rupali. Learned counsel invites our attention to the provisions of Section 107 and 306 of the I.P. Code and submits that, since the Applicant was undergoing training after joining the M.I.R.C. from October, 2015, till the alleged incident of suicide had taken place and it is only on 13th March, 2016, one day leave was granted to him as a special circumstance, to attend funeral of Rupali, by any stretch of imagination

1 *AIR 1992 SC 604*

ingredients of Section 107 of the I.P. Code are not attracted, in as much as within the proximity of the alleged commission of suicide, no any specific overt act is attributed to the Applicant to suggest his involvement in an alleged incident of commission of suicide by Rupali either by way of instigation, abetment, or entering into conspiracy with an intention that she should commit suicide. At the cost of repetition, it is submitted that the Applicant was undergoing his training since October 2015, and alleged incident had taken place on 13th March, 2016. During aforementioned period the Applicant had no opportunity to visit house. In support of aforesaid contentions, the learned counsel placed reliance on law laid down by the Supreme Court in the case of Gangula Mohan Reddy vs. State of Andhra Pradesh², Madan Mohan Singh vs. State of Gujarat and another³, S.S. Cheena vs. Vijay Kumar

² (2010) 1 S.C.C. 750

³ (2010) 8 S.C.C. 628

Mahajan and another⁴ and also upon the ratio laid down in the case of Dilip Ramrao Shirasrao and others vs. State of Maharashtra and another (Criminal Application [APL] No.332 of 2016) delivered on 5th August, 2016 by the Bombay High Court, Bench at Nagpur.

12. It is further submitted that Respondent No.2 has filed the affidavit in reply and it is stated in the said affidavit in reply that the Investigating Officer has filed the charge-sheet and now Section 304-B of the I.P. Code is also added. In that respect, she invites our attention to the provisions of Section 304-B of the I.P. Code and submits that if the said provision is carefully perused, so as to attract an ingredients of said Section, it is necessary to show that soon before death deceased was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with any demand for

⁴ (2010) 12 S.C.C. 190

dowry, then only such death can be called "dowry death", and such husband or relative shall be deemed to have caused such death. It is submitted that since October, 2015 till the alleged incident, the Applicant was undergoing continuous training in M.I.R.C., Ahmednagar. It is evident from the certificate issued by the competent authority that except leave granted on 13th March, 2016 to attend the funeral of Rupali and on another occasion on 20th July, 2016, the Applicant continuously attended the training, and therefore he had no occasion to subject Rupali to cruelty or harassment soon before her death or prior to it. In support of her aforesaid contention, learned counsel invites our attention to the reported Judgment in the case of Satvir Singh and others vs. State of Punjab and another⁵.

13. Therefore, relying upon the averments in the Application, grounds taken therein, contents

⁵ (2001) 8 S.C.C. 633

of the short affidavit and all other documents placed on record, learned counsel appearing for the Applicant submits that the Application deserves to be allowed.

14. The learned A.P.P. appearing for the State, relying upon the investigation papers and in particular FIR and supplementary statements of the informant recorded on 14th March, 2016, and 19th September, 2016, submits that an ingredients of alleged offences have been clearly attracted on reading the allegations in its entirety. It is submitted that an allegations in the FIR will have to be taken as it is and can be tested only during trial. It is submitted that the Investigating Officer has recorded statements of various witnesses during the course of investigation and also collected incriminating material on which basis trial can proceed. Therefore, he submits that the Application may be rejected.

15. Learned counsel appearing for Respondent No.2 submits that, in view of the Judgment of the Supreme Court in the case of Bhaskar Lal Sharma and another vs. Monica and others⁶, the allegations in the FIR and also in the supplementary statements of the informant will have to be taken as it is and appreciation of those allegations or statements of the witnesses even in a summary manner is not permissible when there is a prayer for quashing the FIR. It is submitted that while exercising jurisdiction under Section 482 of the Code of Criminal Procedure, this Court is not supposed to undertake exercise of appreciation of the evidence. In support of aforesaid contentions, he placed reliance on the ratio laid down in the case of State of Bihar vs. Murad Ali Khan⁷. Learned counsel further submits that in the present case the charge-sheet as against other co-accused is already filed. The Investigating Officer has collected sufficient incriminating material. The

6 (2014) 3 S.C.C. 383

7 (1988) 4 S.C.C. 655

statements of witnesses have been recorded. He invites our attention to the affidavit in reply filed on behalf of Respondent No.2 and submits that the present Application under Section 482 of the Code of Criminal Procedure is not maintainable. The police authorities on 24th November, 2016 have filed the charge-sheet and during the investigation offence punishable under Section 304-B of the I.P. Code for dowry death is also added. It is submitted that the accused administered poison to Rupali. Upon reading the allegations in the FIR and two supplementary statements of the informant, prima facie those allegations make out case against present Applicant. It is submitted that one of the reason for harassing the deceased was illegal demand of money for securing employment to the Applicant. It is submitted that in breach of rules and discipline in military, the Applicant visited his house and extended threats to deceased Rupali. The accused persons are highly influential persons and

bears major political background. Accused No.1 was not arrested for quite long period. The accused have threatened the witnesses and they have made an attempt to tamper the prosecution evidence. The conduct of the accused persons has adversely affected the investigation and there will be no fair trial. Therefore, relying upon the averments in the said affidavit in reply, annexures thereto and also investigation papers and accompaniments of charge-sheet, learned counsel submits that the Application may be rejected.

16. We have given careful consideration to the submissions of the learned counsel appearing for the Applicant, learned A.P.P. appearing for the State and learned counsel appearing for Respondent No.2, with their able assistance perused the averments in the Application, grounds taken therein, annexures thereto, investigation papers, the copy of the charge-sheet and accompaniments, filed against other co-accused and

also the affidavit filed by the Applicant and reply filed by Respondent No.2 and the Judgments of the Supreme Court and the High Court cited during the course of arguments.

17. At the outset, it would be relevant to reproduce herein below the allegations against the Applicant in the First Information Report:

"रूपाली हिचा दिर सोमनाथ अशोक दरेकर हा पण तिन महिन्यापुर्वी मिलिट्री मध्ये भरती झालेला असून सध्या त्याचे एम.आय.आर.सी. येथे ट्रेनिंग चालू असून तो सुट्टीच्या दिवशी घरी येत जात असतो.

सुमारे पाच महिन्यापुर्वी तिच्या सास-याने आम्हास तिचा दिर सोमनाथ अशोक दरेकर याच्या नोकरीसाठी रूपाली मार्फत एक लाख रुपये मागितले होते आमची इच्छा नसतांना रूपालीला त्रास नको म्हणून आम्ही त्यांना एक लाख रुपये दिलेले आहेत.

अशाप्रकारे माझी बहीण सौ. रूपाली भाऊसाहेब दरेकर

वय - २२ वर्ष, रा. शिराढोण ता. नगर, जि. अ. नगर हि तिच्या सासरी नांदत असताना तिचा नवरा भाऊसाहेब अशोक दरेकर, सासू नंदा अशोक दरेकर, सासरे अशोक गंगाधर दरेकर, दिर सोमनाथ अशोक दरेकर सर्व रा. शिराढोण ता. जि. अ. नगर यांनी तिचा पैशासाठी वेळोवेळी शारिरीक व मानसिक छळ केलेला असून तिच्या नव-याने चारीत्र्यावर संशय घेवून तिचा छळ करून तिस आत्महत्या करणेस प्रवृत्त केले म्हणून माझी बहीण रुपाली हिने दि. ११.०३.२०१६ रोजी रात्री ०९.०० वाजे पुर्वी तिच्या सासरी विषारी औषध पिवुन आत्महत्या केली आहे म्हणून माझे रुपालीचा नवरा, दिर, सासु, सासरे यांचेविरुद्ध कायदेशीर फिर्याद आहे."

18. If the contents of the FIR are carefully perused, the allegations as against the Applicant are general in nature and without attributing any specific overt act qua the Applicant either in relation of demand of money or cruelty, harassment or ill-treatment. There are allegations against father of the Applicant that, he was demanding Rupees One Lakh through Rupali from the informant,

and the informant paid the said amount to him. Even if the allegations in the supplementary statement which was recorded on 14th March, 2016 are taken into consideration, at the highest said allegations would show that the informant managed to collect the amount of Rupees One Lakh and paid it to the father of the Applicant. It is stated in the said supplementary statement that the accused used to extend threats to Rupali through telephonic message on mobile. However, upon careful perusal of the material collected by the Investigating Officer, there is no such record collected or available in the nature of recording of conversation of the accused with Rupali on mobile. It is true that on 19th September, 2016, second supplementary statement of the informant is recorded after about six months from registration of the FIR, and in the said supplementary statement, along with other accused allegation is made against the Applicant that he also demanded Rupees One Lakh. Even in the said supplementary

statement, there is no any specific act attributed qua the Applicant and there is general allegation that along with other accused, Applicant also demanded the said amount.

19. The Applicant has annexed along with the Application, a copy of a letter written by Lt. Col./Major, Officiating Commanding Officer, Infantry Training Battalion, M.I.R.C., Ahmednagar, which clearly mentions that the Applicant was physically present in the establishment of M.I.R.C. for training, from 18th January, 2016 to 13th March, 2016 and only on 13th March, 2016, he proceeded on an emergency leave. During the course of investigation, the Investigation Officer, by letter dated 22nd March, 2016 written to the Commandant, M.I.R.C., Ahmednagar called information about the presence of the Applicant in the training Center. In turn, by letter dated 5th April, 2016, the Lt. Col. Adjt., for Commandant provided following information:

- a) Date of enrolment - 14 October 2015
- b) Date of training commenced - 02 November 2015.
- c) Details of leave availed -
till date 01 day casual leave
on 13 March 2016 as
his brother's wife
expired on 12 March,
2016.

. The contentions of the learned counsel appearing for Respondent No.2 that, even on the holidays the Applicant used to visit his house, has no any basis or there is no specific incident as stated in the FIR or supplementary statements to that effect that on particular date or on holiday the Applicant visited his house and gave ill-treatment or harassment to Rupali. We are not entering into the exercise of appreciation of the evidence collected during the course of investigation, but on the basis of allegations in the FIR and the material collected during the course of investigation by the Investigating Officer, we are of the prima facie opinion that, there are omnibus and general allegations against

the Applicant in the FIR. Upon careful perusal of the contents of the FIR, it appears that there are serious allegations against the co-accused Bhausahab and also about demand against the father of the Applicant. We find considerable force in the argument of the learned counsel appearing for the Applicant that, it is difficult to comprehend the allegation in the FIR that an amount of Rupees One Lakh was demanded to secure job to the Applicant in military services appears to be absurd. Indisputably, and as stated in the FIR by the informant, Rupali was treated nicely for 3-4 months after her marriage. Marriage was solemnized in the month of February, 2015 and 4 months time would get completed in June, 2015. Thereafter the Applicant stayed in the house till he joined the training in the M.I.R.C. in the month of October, 2015. It further appears that in the month of August, 2015 itself result of the examination for the said post was declared and in the first week of September, 2015 the Applicant received

communication from the authorities that his name appeared in the select list. Even if it is assumed for a moment that there was demand by the father of the Applicant, in absence of any demand, much less specific demand by the Applicant, an ingredients of Section 498-A of the I.P. Code so as to constitute alleged offence punishable under said Section as against the Applicant are not attracted.

20. The Supreme Court in the case of G. Sagar Suri and another vs. State of U.P. and others⁸ while explaining the scope of jurisdiction under Section 482 of the Criminal Procedure Code, in Para 8 and 9 held thus:

"8. Jurisdiction under Section 482 of the Code has to be exercised with great care. In exercise of its jurisdiction the High Court is not to examine the matter superficially. It is to be seen if a matter, which is essentially of a civil

⁸ (2000)2 S.C.C. 636

nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which the High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice.

9. In *State of Karnataka v. L.Muniswamy*⁹ this Court said that in the exercise of the wholesome power under Section 482 of the Code the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the court or that the ends of justice require that the proceedings are to be quashed."

(Underlines added)

21. It is also necessary to mention that when there was alleged demand of money for securing job

9 [1977] 2 SCC 699

to the Applicant, nothing is brought on record by the Respondents that the informant or his family members protested against such demand by way of filing any complaint or FIR in the police station. The alleged incident of commission of suicide by Rupali had taken place on 11th - 12th March, 2016, and the FIR came to be registered on 13th March, 2016 itself. By that time the Applicant was already under training in military services. He joined the said training center on 15th October, 2015. Therefore, viewed from any angle if the allegations against the Applicant are taken as it is in the FIR, alleged offence punishable under Section 498-A of the I.P. Code is not disclosed.

22. It is also alleged in the FIR and also in the supplementary statements that Rupali committed suicide due to ill-treatment and harassment and also illegal demand by the accused persons. In the facts of the present case, as already discussed, the Applicant joined the training in M.I.R.C. in

the month of October, 2015 and he was continuously attending the said training except on 13th March, 2016 when he was proceeded on emergency leave so as to attend the funeral of Rupali and therefore the Applicant had no occasion to visit the home. As already observed, there is nothing on record which would suggest that the Applicant was involved in telephonic conversation with Rupali and by way of said conversation there was an attempt to mentally harass and ill-treat Rupali. It is also stated by the Applicant that during the said training he was not allowed to use the mobile or had an access to the telephone. In this background, it will have to be seen whether the ingredients of Section 107 of the I.P. Code are attracted in the facts of the present case confined to the Applicant and then only it is possible to hold that alleged offence under Section 306 of the I.P. Code is disclosed against the Applicant. Upon careful perusal of the allegations in the FIR or in the supplementary

statements or the statements of other witnesses recorded during the course of investigation, none of the witnesses including the informant has stated about visit of the Applicant to his house within proximity of alleged suicide by Rupali. In order to constitute offence under Section 306 of the I.P. Code, the prosecution must show that there was instigation or abetment or intentional aid or conspiracy which is intended the commission of suicide by the person who has committed the suicide.

23. The Supreme Court in the case of S.S. Chheena V/s Vijay Kumar Mahajan and another¹⁰, in para 25 observed that, the abetment involves mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. The intention of

¹⁰ (2010) 12 SCC 190

the legislature and the ratio of the cases decided by this Court is clear that in order to convict a person under Section 306 of the I.P. Code there has to be a clear *mens rea* to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and that act must have been intended to push the deceased into such a position that he committed suicide.

24. At this juncture, it would be useful to make a reference to the Judgment of the Supreme Court in the case of Madan Mohan Singh V. State of Gujarat and another.¹¹ In said case, the deceased therein was working as driver under the Ex.Officer i.e. appellant therein. The said driver allegedly committed suicide due to harassmt and insulting behaviour by the appellant therein. He left the suicide note alleging therein that, the appellant therein asked the driver to keep the keys of the

¹¹ 2010 AIR SCW 5101

vehicle on the table and not to take away them. It was further stated that, "I am going to commit suicide due to his functioning style. Alone M.M. Singh, D.E.T. Microwave Project is responsible for my death. I pray humbly to the officers of the department that you should not cooperate as human being to defend M.M. Singh has acted in breach of discipline disregarding the norms of discipline. I humbly request the Enquiry Officer that my wife and son may not be harassed. My life has been ruined by M.M. Singh."

. The Supreme Court in the facts of aforesaid case, while explaining the scope of Sections 306 and 294 vis-a-vis, the facts of that case in para 9 held thus:-

"It is absurd to even think that a superior officer like the appellant would intend to bring about suicide of his driver and, therefore, abet the offence. In fact, there is no nexus between the so-called suicide (if at all it is one for which also there

is no material on record) and any of the alleged acts on the part of the appellant. There is no proximity either. In the prosecution under Section 306, IPC, much more material is required. The Courts have to be extremely careful as the main person is not available for cross-examination by the appellant/accused. Unless, therefore, there is specific allegation and material of definite nature (not imaginary or inferential one), it would be hazardous to ask the appellant/accused to face the trial. A criminal trial is not exactly a pleasant experience. The person like the appellant in present case who is serving in a responsible post would certainly suffer great prejudice, were he to face prosecution on absurd allegations of irrelevant nature."

. In the facts of the present case also, there is no nexus between so called suicide and any of the alleged acts on the part of the Applicant. There is no proximity either. Even if the allegations in the FIR and also in the supplementary statements are read in its entirety,

the same would not even remotely suggest that, the Applicant abetted, intentionally aided or instigated in an alleged suicide by Rupali.

25. In the case of Tushar s/o Mahadeorao Arsul vs. State of Maharashtra and another (Criminal Application No.3683 of 2012) decided on 26th November, 2012, the Division of the Bombay High Court, Bench at Aurangabad, in para 6 of the Judgment observed that:

"We are of the considered view that the act or acts of accused to insult do not by themselves constitute abetment. It has to be shown from a statement in the complaint that these accused have actually instigated and aided in the victim's act of committing suicide. In absence of any such description, the FIR is liable to be viewed as a text which does not contain the ingredients of offence."

26. In the case of Dilip s/o Ramrao Shirasao

and others vs. State of Maharashtra and another (Criminal Application No.332 of 2016) decided on 5th August, 2016, the Division Bench of the Bombay High Court, Bench at Nagpur considered the various Judgments of the Supreme Court and the High Court and in Para 20 of the Judgment, held thus:

"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 or process of law."

27. The Supreme Court, in recent Judgment in the case of Heera Lal and another vs. State of Rajasthan (Criminal Appeal No.790 of 2017) decided on 24th April, 2017, in Para 6 to 10 held thus:

"6. Having heard the learned

counsel appearing for the parties and having gone through the evidence, we are of the opinion that Section 113A of the Indian Evidence Act requires three ingredients to be satisfied before it can be applied i.e. (i) that a woman has committed suicide, (ii) such suicide has been committed within a period of seven years from the date of her marriage and (iii) the husband or his relatives who are charged had subjected her to cruelty.

7. This Court in an illuminating Judgment in Ramesh Kumar vs. State of Chhattisgarh (2001) 9 SCC 618 has stated the law as follows:-

"This provision was introduced by the Criminal Law (Second) Amendment Act, 1983 with effect from 26-12-1983 to meet a social demand to resolve difficulty of

proof where helpless married women were eliminated by being forced to commit suicide by the husband or in-laws and incriminating evidence was usually available within the four corners of the matrimonial home and hence was not available to anyone outside the occupants of the house. However, still it cannot be lost sight of that the presumption is intended to operate against the accused in the field of criminal law. Before the presumption may be raised, the foundation thereof must exist. A bare reading of Section 113-A shows that to attract applicability of Section 113-A, it must be shown that (i) the woman has committed suicide, (ii) such suicide has been committed within a period of seven years from the date of her marriage, (iii) the husband or his relatives, who are charged had subjected her to cruelty. On existence and availability of the abovesaid circumstances, the Court may presume that such suicide had been abetted by her husband or by such relatives of her husband. Parliament has chosen to sound a note of caution. Firstly, the presumption is not mandatory; it is only permissive as the employment of expression "may presume" suggests. Secondly, the existence and

availability of the abovesaid three circumstances shall not, like a formula, enable the presumption being drawn; before the presumption may be drawn the court shall have to have regard to "all the other circumstances of the case". A consideration of all the other circumstances of the case may strengthen the presumption or may dictate the conscience of the court to abstain from drawing the presumption. The expression - "the other circumstances of the case" used in Section 113-A suggests the need to reach a cause - and - effect. Relationship between the cruelty and the suicide for the purpose of raising a presumption. Last but not the least, the presumption is not an irrebuttable one. In spite of a presumption having been raised the evidence adduced in defence or the facts and circumstances otherwise available on record may destroy the presumption. The phrase "may presume" used in Section 113-A is defined in Section 4 of the Evidence Act, which says - "Whenever it is provided by this Act the court may presume a fact, it may either regard such fact as proved, unless and until it is disproved, or may call for proof of it."

8. We find that having absolved the

appellants of the charge of cruelty, which is the most basic ingredient for the offence made out under Section 498A, the third ingredient for application of Section 113A is missing, namely, that the relatives i.e., the mother-in-law and father-in-law who are charged under Section 306 had subjected the victim to cruelty. No doubt, in the facts of this case, it has been concurrently found that the in-laws did harass her, but harassment is something of a lesser degree than cruelty. Also, we find on the facts, taken as a whole, that assuming the presumption under Section 113A would apply, it has been fully rebutted, for the reason that there is no link or intention on the part of the in-laws to assist the victim to commit suicide.

9. In the absence of this vital link, the mere fact that there is a finding of harassment would not lead to the conclusion that there is "abetment of suicide".

10. On the facts, therefore, we find, especially in view of the fact that the appellants have been acquitted for the crime under Section 498 A of the Code, that abetment of suicide under Section 306 is not made out."

28. Therefore, keeping in view the exposition of law in the afore mentioned Judgments, in the present case in absence of any material suggesting any instigation, abetment or intentional aid on the part of the Applicant in commission of suicide by Rupali, it will have to be held that so far as the Applicant is concerned, the alleged offence under Section 306 of the I.P. Code is not disclosed.

29. It is submitted by the learned counsel appearing for Respondent No.2 during the course of hearing that, Section 304-B of I.P. Code is added during the course of investigation and even the charge-sheet is filed against the other co-accused. The Hon'ble Supreme Court had occasion to consider the scope of Section 304-B of the I.P. Code in the case of Satvir Singh and others vs. State of Punjab and another (supra). In Para 14 of the Judgment, it is held that :-

"14. The essential components of Section 304-B are: (i) Death of a woman occurring otherwise than under normal circumstances, within 7 years of marriage. (ii) Soon before her death she should have been subjected to cruelty and harassment in connection with any demand for dowry. When the above ingredients are fulfilled, the husband or his relative, who subjected her to such cruelty or harassment, can be presumed to be guilty of offence under Section 304-B. To be within the province of the first ingredient the provision stipulates that "where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstance". It may appear that the former limb which is described by the words "death caused by burns or bodily injury" is a redundancy because such death would also fall within the wider province of "death caused otherwise than under normal circumstances". The former limb was inserted for highlighting that by no means death caused by burns or bodily injury should be treated as falling outside the ambit of the offence."

30. The Supreme Court in the case of Rajinder Singh vs. State of Punjab¹², in Para 23 observed as under:

"We endorse what has been said by these two decisions. Days or months are not what is to be seen. What must be borne in mind is that the word "soon" does not mean "immediate". A fair and pragmatic construction keeping in mind the great social evil that has led to the enactment of Section 304B would make it clear that the expression is a relative expression. Time lags may differ from case to case. All that is necessary is that the demand for dowry should not be stale but should be the continuing cause for the death of the married woman under Section 304B."

31. It is true that in the facts of the present case, death of Rupali occurred within seven years from the date of marriage and death occurred otherwise than under normal circumstances. However, on perusal of the

¹² AIR 2015 S.C. 1359

allegations in the FIR or other evidence collected by the Investigating Officer, there is nothing to suggest that soon before the death of Rupali she was subjected to cruelty and harassment in connection with demand for dowry by the Applicant. Since we are considering the case of the Applicant for quashing the FIR, we make it clear that we are not, even by slightest way, discussing or suggesting anything about other co-accused. Since the investigation is proceeded against the co-accused and charge-sheet is filed, the Court can proceed with trial against those accused. But so far as the Applicant is concerned, at the cost of repetition, we reiterate that since he joined the training in the military services, he had no occasion to visit the house except on 13th March, 2016, when he opted for extra ordinary leave to attend the funeral of Rupali. The feeble attempt of the counsel appearing for Respondent No.2 to suggest that Applicant used to come to his house on holidays, has no any basis, in as much as,

there is nothing collected during the course of investigation or suggested or alleged in the FIR that on holidays he visited the house.

32. The Supreme Court in the case of Anita Malhotra vs. Apparel Export Promotion Council and another¹³ observed in Para 20 as under:-

"Though it is not proper for the High Court to consider the defence of the accused or conduct a roving enquiry in respect of merits of the accusation, but if on the face of the documents which is beyond suspicion or doubt, placed on record by the accused and if it is considered that the accusation against her cannot stand, in such a matter, in order to prevent injustice or abuse of process, it is incumbent on the High Court to look into those document/documents which have a bearing on the matter even at the initial stage and grant relief to the person concerned exercising jurisdiction under Section 482 CrPC".

13 (2012)1 S.C.C. 520

. Keeping in view the aforesaid observations, we have considered the contents of the letter written by the superior authority from military services stating therein about the physical presence of the Applicant for continuous period in the training center after he joined the training in M.I.R.C. till 12th March, 2016. It is only on 13th March, 2016, he proceeded on extraordinary leave so as to attend the funeral of Rupali.

33. The argument canvassed on behalf of Respondent No.2 that since Section 34 of the I.P. Code is invoked and therefore Applicant also needs to be tried along with co-accused, deserves no consideration. When we have reached to the conclusion that prima facie alleged offences are not disclosed against the Applicant under Sections 498-A, 306 and 304-B of the I.P. Code, the Applicant cannot be dragged to face the ordeal of trial along with other co-accused, when he is

serving in military.

34. In the light of discussion in the foregoing paragraphs, inevitable conclusion is that the Application of the Applicant deserves to be allowed.

35. Hence the Application is allowed. The First Information Report bearing Crime No.0070 of 2016 registered with Nagar Taluka Police Station, Ahmednagar dated 13th March, 2016 for the offence punishable under Section 306, 498-A read with 34 of the Indian Penal Code is quashed and set aside, confined to the Applicant.

36. Rule made absolute in above terms. Criminal Application stands disposed of, accordingly.

37. We make it clear that other co-accused will not be entitled to derive any benefit from

the observations made herein before. We also make it clear that the observations made herein above are prima facie in nature, confined to the adjudication of the present Application and the trial Court shall not get influenced by the said observations during the course of the trial as against the co-accused.

[K.K. SONAWANE, J.]

asb/APR17

[S.S. SHINDE, J.]