

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

CRIMINAL WRIT PETITION NO. 1334 OF 2016

1. Suresh s/o Gondu Tayde
Age : 66 years, Occ. Nil
 2. Shadubai w/o Suresh Tayde
Age : 61 years, Occ. Household
Both R/o Padalse village,
Tal. Yawal, Dist. Jalgaon.
- ...APPELLANT

versus

1. The State of Maharashtra,
Through,
Police Inspector, Faizpur police
station, Faizpur, Tal. Yawal, Dist. Jalgaon
 2. Haribhau Arjun Salwe,
Age : 52 years, Occ. Driver,
R/o Nimbhora Budruk,
Police Station Fekri, Bhusawal,
Tal. Bhusawal, Dist. Jalgaon.
- ...RESPONDENTS

.....
Mr. G.R. Syed, Advocate h/f Mr. Girish Nagori, Advocate for petitioner
Mr. S.G. Karlekar APP for Respondent-State
Mr. G.M. More, Advocate for Respondent No. 2
.....

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

RESERVED ON : 23RD MARCH, 2017.

PRONOUNCED ON : 31st MARCH, 2017.

JUDGMENT : (Per : K.K. Sonawane, J.)

1] Rule. Rule made returnable forthwith. Heard finally by consent of parties.

2] This writ petition is preferred by the petitioners invoking the remedy under Article 226 of the Constitution of India r/w. Section 482 of Cr.P.C. to quash and set aside the impugned FIR bearing Crime No. 49 of 2016 registered at Police Station, Faijpur, District Jalgaon against the petitioners under Section 498-A, 306 r/w. 34 of IPC on the accusations that the petitioners maltreated and harassed their daughter in law - victim Kavita during her cohabitation at matrimonial home and fed up with the mental and physical torture, the victim Kavita committed suicide by hanging to the ceiling hook of the house.

3] It has been alleged on behalf of prosecution that the first informant Shri Haribhau Arjun Salve approached to the Faijpur Police station and alleged that his daughter Kavita was married to Yogesh - son of petitioner Suresh Tayde. After the marriage, the victim Kavita joined the company of husband for cohabitation at village Padalsa. She begotten one son and daughter during the wedlock from husband Yogesh. All the things were normal up till the year 2011 and both spouses were leading happy married life. But, the petitioner No.1 Suresh retired from Indian Military service in the year 2011, and returned at village Padalsa. He started residing with the Joint family members. According to the first informant, the petitioners maltreated and harassed the victim Kavita on account of domestic reasons. They also insisted victim Kavita to bring Rs. 50,000/- from the parents for purchasing the auto-rickshaw for her husband. Whenever

victim Kavita received opportunity to see the parents and other relatives, she used to disclose about her sordid tells to them. Fed up with the extreme cruelty on the part of petitioners, the victim Kavita took the drastic step to snuff out her own life by hanging in the matrimonial home. The parents received the message about the death of victim Kavita in the noon hours on 9th September, 2016. They immediately rushed to the matrimonial home of daughter Kavita. They saw the plight of the deceased Kavita who was no more. The parents were in grief due to the sudden death of daughter Kavita. They attended the funeral and returned to their village.

4] On receipt of information about the death of deceased Kavita owing to hanging, the police of Faijpur police station registered the A.D. No. 24 of 2016, and visited to the scene of occurrence. Police dealt with the mortal remains of victim Kavita and drawn the inquest panchanama. The I.O. referred corpus of the victim Kativa to Rural Hospital Yaval for autopsy to determine the cause of death. The I.O. also drawn panchanama of scene of occurrence and seized the incriminating articles from the spot under panchanama.

5] Meanwhile, after regaining from the grief, the first informant rushed to the police and filed FIR. Pursuant to FIR, police of Faijpur police station, registered the Crime No. 49 of 2016 against the petitioners for the offence punishable under sections 498A, 306 r/w. 34 of IPC and set the criminal law in motion. The I.O. recorded statements of witnesses acquainted with the facts of the case. The I.O. collected certificate

regarding the cause of death of deceased from the concerned Doctor. It was opined that the deceased died due to **asphyxia** owing to hanging. The investigation is in progress. Pending investigation, petitioners preferred the present writ petition, availing remedy to quash and set aside the impugned FIR, bearing Crime No. 49 of 2016 registered at Faijpur police station for the offences punishable under sections 498-A, 306 r/w. 34 of IPC against them.

6] The learned counsel for the petitioners vehemently submitted that the entire allegations nurtured against the petitioners in the FIR are false, baseless and not sustainable at all. The ingredients of Section 107 for abatement to suicide are not attracted. In this case, the marriage of victim Kavita was solemnized with the son of petitioners in the year 2008 and since then there was no complaint of maltreatment or harassment to the deceased at the hands of members of her matrimonial home. There was no medical evidence about the physical assault to deceased Kavita. According to learned counsel for petitioners, the First Informant, Shri Haribhau Savale embroiled them by making false allegations in the FIR only due to grave anger and grudge towards petitioners owing to sudden death of his daughter Kavita. The respondent No.2, first informant, filed an affidavit before the learned Sessions Court, at the time of bail applications of petitioners that the FIR lodged by him was out of revengeful attitude and under such influence. He has no grudge or complaint against the petitioners. It has been contended that the respondent No.2 withdrawn all the allegations

made in the FIR due to misunderstanding and grave anger. The learned counsel for the petitioners laid much more emphasis on the affidavit in reply filed by the respondent No.2 in this petition. He submitted that the first informant Haribhau has categorically withdrawn all the allegations and deposed that he has no objection to quash and set aside the impugned FIR registered against the petitioners. The learned counsel for petitioners also submitted that the petitioners are the senior citizens. The petitioner No.1 is the ex-military man and FIR came to be filed due to misunderstanding and revengeful advice to the first informant. Hence, they knocked the door of this Court and preferred the present application to absolve from the criminal proceeding initiated against them. Learned counsel for petitioners vehemently contended that in view of the settlement of matter in between the petitioner and first informant Haribhau Savale, the impugned FIR be quashed and set aside by exercising the inherent jurisdiction under Article 226 of the Constitution of India r/w. Section 482 of the Cr.P.C.

7] The learned counsel for first informant - respondent No.2 herein, also stepped into the shoe of learned counsel for the petitioners and supported the contention about amicable settlement of the controversy in between the parties. Learned counsel submitted that the first informant - respondent No.2 has withdrawn the entire allegations nurtured in the FIR on his behalf against the petitioners and, therefore, there would not be any impediment to quash and set aside the impugned FIR filed against the petitioners.

8] In refutal, learned APP raised the objection to the contentions put forth on behalf of petitioners and asserted that the allegations against the petitioners are serious in nature. The petitioners maltreated and harassed the daughter in law, which constrained her to commit suicide. The offence is of serious in nature. Therefore, it would unjust and improper to quash and set aside the impugned FIR on the ground of settlement in between the accused and the first informant. The act of withdrawing the allegations on the part of the first informant is objectionable and cannot be considered. The learned APP contended that the victim of the crime i.e. Kavita is no more. Therefore, it would not desirable to quash and set aside the FIR for the alleged offence of cruelty and abatement to commit suicide as envisaged under Section 306 of IPC. Therefore, the learned APP prayed to dismiss the petition.

9] We have given anxious considerations to the arguments advanced on behalf of both sides. We have also delved into the relevant documents produced on record including investigation papers of the Crime No. 49 of 2016. Admittedly, the petitioners are arraigned for the offence punishable under Sections 498-A, 306 r/w. 34 of IPC, on the allegations that the petitioners subjected their daughter in law victim Kativa to mental and physical cruelty which goaded her to commit suicide by hanging herself at the matrimonial home. The First informant Haribhau Salve in his FIR alleged that his daughter Kavita was ill-treated and harassed on account of domestic reasons. The petitioners used to scold and maltreated her for demand of Rs. 50,000/- to purchase auto-rickshaw for their son. It is worth to mention that

the first informant, Haribhau Salve casted the aspersions only against the in-laws of daughter Kavita. There are no any allegations against the husband of victim Kavita, i.e. son of petitioners, or any other inmates of the matrimonial home except the petitioners. It cannot be ignored that the victim Kavita was the mother of two teen aged children. She was cohabiting with the husband at matrimonial home since marriage in the year 2008. It has been alleged in the FIR that the petitioner No.1 Suresh retired from military service and returned to his home in the year 2011 and since then there was hostile atmosphere for the deceased in the matrimonial home. Obviously, these circumstances, if taken into consideration at its face value and in its entirety, it transpired that there are prima facie circumstances to constitute a cognizable offence, as alleged against the petitioners. Therefore, in view of the guidelines delineated by the Apex Court in the matter of *Gian singh Vs. State of Pubjab and others, AIR 1992 SC 604* and particularly, the 7 categories enumerated therein, it would improper and unjustifiable to exercise the inherent powers under Section 482 of Cr.PC. to quash and set aside the impugned FIR registered against the petitioners.

10] Now, in regard to another aspect of the petition, pertains to settlement of controversy in between first informant and the petitioners, we find that the arguments advanced on behalf of learned counsel for the petitioners, as well as learned counsel for the respondent No.2 first informant Haribhau, appears much more attractive but not sustainable and appreciable to favour the petitioners. Obviously, the offences under

Sections 306 and 498-A are serious and social in nature. Both the offences are non-compoundable offences, as prescribed under Section 320 of Cr.P.C. However, the Supreme Court, in series of cases, has delineated that the High Court has wide powers to quash and set aside the proceedings, even in non compoundable offences notwithstanding the bar contained under Section 320 of Cr.P.C. to prevent the abuse of process of law and to secure ends of justice. In serious nature of offences, the quashing of criminal proceeding on the basis of compromise is within the discretionary powers of the High Court under Section 482 of Cr.P.C. Albeit, the powers of quashing the criminal proceeding is required to be exercised taking into consideration the material on record to ascertain as to whether ends of justice would justify such exercise of power although the ultimate consequence may be acquittal or dismissal of the accusations. In the case of ***Gian Singh Vs. State of Punjab and others reported in (2012)10 SCC 303***, in para 57, the Honourable Court has enunciated the principle as under :-

57. Quashing of offence or criminal proceedings on the ground of settlement between an offender and victim is not the same thing as compounding of offence. They are different and not interchangeable. Strictly speaking, the power of compounding of offences given to a court under Section 320 is materially different from the quashing of criminal proceedings by the High Court in exercise of its inherent jurisdiction. In compounding of offences, power of criminal court is circumscribed by the provisions contained in Section 320 and the court is guided solely and squarely thereby while, on the other hand, the formation of opinion by the High Court for quashing a criminal offence or criminal proceeding or criminal complaint is guided by the material on record as to whether the ends of justice would justify such exercise of power although the ultimate consequence may be acquittal or dismissal of indictment.”

11] The Full Bench of this Court in the matter of ***Abasaheb Yadav Hanumane Vs. State of Maharashtra***, reported in ***2008(2)Mh.L.J.856*** has referred various judicial pronouncements and held in para.14 as under :-

“14. The power of compounding on one hand and quashing of criminal proceedings in exercise of inherent powers on the other, are incapable of being treated as synonymous or even inter-changeable in law. The conditions precedent and satisfaction of criteria in each of these cases are distinct and different. May be, the only aspect where they have any commonality is the result of exercise of such power in favour of the accused, as acquittal is the end result in both these cases. Both these powers are to be exercised for valid grounds and with some element of objectivity. Particularly, the power of quashing the FIR or criminal proceedings by the Court by taking recourse to inherent powers is expected to be used sparingly and that too without losing sight of impact of such order on the criminal justice delivery system. It may be obligatory upon the Court to strike a balance between the nature of the offence and the need to pass an order in exercise of inherent powers, as the object of criminal law is protection of public by maintenance of law and order. Edmund Davies, J. (Smith and Hogan Criminal Law, 5th Edition) has said :

“It seems to me that accordingly every Court sentence should primarily be surveyed in the light of one test : is that the best thing to do in the interest of the community ? Always remembering, of course, that the convicted person, despite his wrongdoing remains a member of the community.”

This Court at its principal seat, in case of Mohd. Asgar Choudhari and others Vs. State of Maharashtra and another, (Writ Petition No. 31 of 2017 decided on 2nd March, 2017) had an opportunity to deal with the circumstance of settlement between the parties and quashing the FIR on the basis of said settlement and it has been observed that as the victim of the alleged offences is no more, the settlement in between the petitioner and first informant cannot be entertained for quashing the FIR registered under Section 306 of IPC.

12] In the light of aforesaid legal guidelines, it is imperative that the powers under Section 482 are to be exercised for valid grounds and for genuine reasons as well as with some element of objectivity and its impact on the social justice delivery system. It is incumbent on the part of Court to strike a balance in between the nature of offences and need to pass such order by exercising inherent powers under Section 482 of Cr.P.C. as the object of criminal law is to protect the members of the society at large and to maintain law and order in the society.

13] In the present case, much more emphasis is laid on the circumstance that the first informant Haribhau Salve ventured to withdraw the entire allegations of mental and physical cruelty to his daughter at the hands of petitioners, which goaded the victim Kavita to take drastic step of committing suicide by hanging. No doubt, the first informant has filed affidavit about the innocence of petitioner in the Sessions Court at the time of their bail applications. Moreover, he has also filed such nature of affidavit in reply in the present petition and specifically deposed that the petitioners are innocent of the charges pitted against them. Therefore, he has no objection for quashing the impugned FIR registered on his behalf with Faijpur police station, District Jalgoan.

14] It is true that the first informant came forward in support of petitioners and made a bold statement in his affidavit filed before the Sessions Court, Bhusawal as well as in this petition that the petitioners are innocent and they have not committed any crime of cruelty or demand of

money etc. His daughter Kavita was leading happy married life with her family members. The relevant portion of the affidavit in reply filed in the present petition is reproduced hereinbelow :-

“1] xxxxxx xxxxx xxxxx

2] I say and submit that, the present complainant was called by Faizpur Police on 12.9.2016 and has asked about the reason of death of her daughter, at that time the complainant said that, there was minor discrepancies over the issue of cleanliness and cooking etc. and nothing beyond that, there was love and affection with entire family and all were residing together since last 8-9 years, even two child were begotten out of the said wedlock of Kavita and Yogesh Suresh Tayde and were living happily.

3] I say and submit, that the Police has took signatures on some papers from me and has not read it over to me, as I was in depression due to death of my daughter I simply signed it under sadness of demise of my daughter Kavita.

4] I say and submit, that later on I came to know through my relatives that the FIR has been registered under section 306, 498-A of Indian Penal Code and above petitioner have applied for bail before the Session Court at Jalgaon bearing number 405/2016 and I appeared before the session court and has given my affidavit that the said FIR and its ingredients are absolutely not as per my version to the Police and are completely baseless, there was no any demand of 50,000/- nor any torture to my daughter Kavita, she was living happily with all family members.

5] I say and Submit that, I am also annexing the copy may earlier affidavit I have made and submitted before the Session court Jalgaon which are the real facts of the case and again I am adopting the same version before this Hon'ble High Court by filling my affidavit in present writ petition.

6] I say and submit that I have no objection if the above mentioned FIR bearing number 49/2016 registered with Faizpur Police Station Faizpur, Tal. Yawal, Dist. Jalgaon under section 306, 498-A of Indian Penal Code.”

15] In view of the aforesaid affidavit in reply, it seems that the first informant attempted to blame the police of Faijpur police station and stated that he had verbalized only about trifle instances of squabble in between the petitioners and his daughter on account of domestic reasons, of not cooking properly, not keeping the house clean etc. According to first informant, there was no torture or harassment of any kind to his daughter at the matrimonial home. He further casted aspersions on the police that on 12.9.2016, the police of Faijpur police station called him in the police station and made enquiry about his complaint in regard to death of his daughter. He narrated some trifle instances. Thereafter, the police reduced into writing some matter on the paper and obtained his signature. He had not verified its contents as he was in grief and mourning due to sudden death of his daughter. He affirmed that there was no complaint against the petitioners and he has no objection to quash and set aside the impugned FIR.

16] In the pleadings of present petition, there are assertions on behalf of petitioners that they are embroiled in this case falsely by the first informant, under the influence of grave anger. The averments in Para.V of the grounds of petition are reproduced hereinbelow :-

“V. That, the respondent No.2 has made an affidavit and submitted it before the learned lower court where he has clearly stated that the FIR lodged by him is out of revengeful attitude and under influence and now has no grudge against the present petitioners Dated 20.9.2016.”

17] The scrutiny of pleadings mentioned above and the contentions propounded in the affidavit in rely of the respondent No.2 i.e. First

informant Haribhau Salve, filed on record as referred supra, reflects that there is dichotomy in between the pleadings of the petitioners and contentions put forth on behalf of respondent No.2 first informant, in regard to cause of filing FIR and innocence of the petitioners. The pleadings are totally inconsistent with the affidavit in reply of respondent No.2. The petitioners stated that respondent No.2 filed FIR due to revengeful attitude and under influence of anger whereas the first informant shown ignorance of contents of FIR and he put signatures on written paper given by police. It creates doubt about its veracity and truthfulness.

18] The version of respondent No.2 contained in the affidavit in reply filed in the present petition as well as before the Sessions Court at the time of bail petitions, demonstrates that the first informant did not support for quashing the FIR on the basis of amicable settlement of controversy in between himself and the petitioners. But, he categorically denied the recitals of the FIR relating to allegations nurtured against the petitioners. According to first informant, he had not verbalized to the police the allegations as mentioned in the FIR against the petitioners. But, the police obtained his signatures on the papers, the contents of which were not read over to him, nor he had verified it as he was under depression and mourning on account of death of his daughter. In short, the first informant, refused to budge for quashing the FIR on the basis of settlement of controversy in between them. But, he attempted to pass the buck and blamed the police to facilitate petitioners to escape from the clutches of law. We can

understand that if there was any fair and just compromise in between the petitioners and first informant and prayed to exercise inherent powers under Section 482 of Cr.P.C., there may be an possibility to appreciate the circumstances in favour of petitioners. While quashing the FIR on the basis of compromise it is necessary to consider that no party is taking undue benefit and there was sincere efforts to restore the relationship by bringing peace and harmony in the families.

19] In the instant case, it appears that there was no settlement of controversy in between the first informant and petitioners but the relief to quash the FIR under Section 482 Cr.P.C. is prayed on the solitary ground that the police played the mischief to fabricate the FIR by making false and spurious allegations against the petitioners which were not at all verbalized by the first informant in his impugned FIR. Obviously, these allegations against the police of Faijpur Police Station are serious in nature. It casted doubt about the integrity and performance of the police of Faijpur police station, while registration of impugned crime against the petitioners. In case, the police of Faijpur police station has really committed any mischief, action is required to be initiated against them. But, for that purpose, the version of the first informant is essential to be tested on the anvil of merit. Definitely, the appreciation of imputations against the police about the blemish integrity and performance is subject to cross-examination of first informant, by the prosecution agency during the course of detail trial. In case, it is found that the first informant has made fake and false allegation

against the police only to favour the petitioners, then his prosecution for the offence of perjury could not be ruled out; and in case he succeed in his attempt to show that the police of Faijpur police station committed mischief as alleged, the action will have to be initiated against them.

In such circumstances, we are of the considered opinion that there is no settlement or compromise in between the petitioners and first informant, for exercising inherent powers under Article 226 of the Constitution of India and Section 482 of Cr.P.C. But, the first informant pointed out needle of suspicion towards integrity and performance of police, and attempted to shield himself while facilitating the petitioners to get scot-free from the allegations nurtured against them. These circumstances on record do not permit us to act upon the version of petitioners as well as respondent No.2 to utilize the discretion for exercise of powers under Section 482 of Cr.P.C. The version of the respondent No.2 supporting to quash the FIR registered against the petitioners would not satisfy the conscious of this Court. It would not be considered as settlement for valid reasons to meet the ends of justice. In contrast, the petitioners and respondent No.2 attempted to misuse the provisions of law for personal gain, which is nothing but an abuse of process of law. Therefore, the petition being devoid of merit deserves to be dismissed. In sequel, the petition is dismissed. Rule is discharged.

[K.K.SONAWANE]
JUDGE

[S.S. SHINDE]
JUDGE

grt/-