

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

CRIMINAL APPLICATION NO. 124 OF 2009

1 Nisar s/o Azgar Ali Tavar Age 31 years, Occu: Business R/o Sadoba Savli Tq. Aarn, District Yavatmal	...	Applicant (Orig.Accused)
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VERSUS

1. The State of Maharashtra		
2. Rakesh s/o Bhumanna Kuntalwar Age 26 years, Occu: Labour R/o Sathenagar, Tq. Kinwat, Dist. Nanded.	...	Respondents

Mr. Sachin S. Deshmukh, Advocate for the applicant
Mr. S. Salgare, APP for the respondent State.

CORAM	: T. V. NALAWADE AND K. L. WADANE, JJ.
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DATE:	: 17th July, 2018
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JUDGMENT (Per K. L. Wadane,J.):

1. Rule. Rule made returnable forthwith. With the consent of the parties, the application is taken up for final hearing.

2. The applicant has challenged the first information report bearing crime No.104/2008 dated 29.09.2008 registered with Kinwat Police Station, Dist. Nanded for the offence punishable under Section

306 of the Indian Penal Code and consequent charge sheet and prayed for quashing the same.

3. It is alleged by respondent No.2, brother of deceased Geeta that deceased, who was divorced, having one child from her earlier marriage had performed second marriage with the present applicant as per Muslim tradition, which was not disclosed to anybody. It was alleged the applicant had been to his village for two days, the deceased was insisting him to come back and since the applicant did not return, she was eating stale food which was there in the house, due to which the deceased became ill and died. On the basis of such report, offence, as referred above came to be registered against the applicant.

4. Heard Mr. Sachin Deshmukh, learned counsel for the applicant, Mr. S. J. Salgare, learned APP for the State.

5. Mr. Deshmukh, learned counsel for the applicant, during the course of argument, submitted that entire reading of the first information report does not spell out the offence alleged in the complaint nor it satisfies the ingredients of section 306 I.P.C. against the applicant.

6. We have perused the papers of investigation. On perusal of the statements of witnesses, including statement of mother of the

deceased, it appears that at the relevant time, applicant i.e. husband of the deceased went to his village. Deceased was insisting him to come back within two days, however, he did not return. It further reveals that nature of the deceased was short-tempered and stubborn and therefore, for 2/3 days she had taken stale food, due to which she became ill, she was admitted in the Hospital however, she died on 24.09.2008. From the Postmortem report, cause of death reads as follows:

"Opinion reserved. Viscera kept for chemical analysis. organs kept for Histopathology. Blood and swab from stomach and intestine for culture. Final opinion after above report."

7. On scrutiny of the entire record, there is absolutely no evidence to show that applicant No.1 has abetted the deceased for suicide. Therefore, continuation of criminal proceedings against the applicant is nothing but an abuse of process.

8. In view of the above, the criminal application is allowed. Relief is granted in terms of prayer clause (B).

9. Rule is made absolute in the above terms.

(K. L. WADANE, J.)

(T. V. NALAWADE, J.)

JPC