

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 3053 OF 2017

Shri Babasaheb Yadavrao Gaikwad,

Age : 62 Years; Occu : Retired Police

Patil,

R/o Yesgaon, Taluka : Kopargaon,

Dist. Ahmednagar.

...Applicant.

Versus

1] State of Maharashtra

Through Kopargaon Taluka Police
Station,

Taluka : Kopargaon, Dist.

Ahmednagar.

2] Sachin Bhausahab Dange,

Age : 22 Years; Occu :

Agriculture;

R/o Dahegaon-Korhale;

Taluka : Rahata;

District : Ahmednagar.

...Respondents.

Ms. Rashmi S. Kulkarni, Advocate for applicant.

Mr. S. B. Pulkundwar, Addl. Public Prosecutor, for
Respondent No. 1 / State.

Mr. K. B. Jadhav H/F Mr. A. D. Shinde, Advocate for
Respondent No. 2.

**CORAM : PRASANNA B. VARALE &
SMT.VIBHA KANKANWADI. JJ.**
DATE : 20-04-2018.

JUDGMENT : [Per Smt. Vibha Kankanwadi, J]

The applicant who is original accused No. 3 has prayed for quashing of first information report bearing C. R. No. I-58 of 2017, registered with Kopargaon Taluka Police Station, Kopargaon, Dist. Ahmednagar at the instance of respondent No. 2, by invoking powers of this Court under Section 482 of Code of Criminal Procedure.

02. Rule. With consent of the parties, matter is taken up for final hearing at the admission stage.

03. Respondent No. 2 has lodged the said report against the present applicant and others contending that an offence punishable under Sections 498A, 306, 323, 504, 506 and 304B read with Section 34 of Indian Penal Code has been committed by the accused persons. Respondent No. 2 is the brother of deceased Kalpana Vasant Kalaskar. Marriage between Kalpana and Vasant

was performed on 5.2.2012. Accused No. 2 is stated to be a step sister of Vasant. Kalpana was treated properly by her husband and in-laws for about 5 to 6 months after marriage. Thereafter, the accused persons started harassing her on the ground that dowry has not been given. Husband and step sister used to demand amount on some or the other pretext to Kalpana to be brought by her from her parents. It is alleged that since Kalpana came to know that there are illicit relations between step sister of her husband and present applicant, said step sister started harassing Kalpana more. The fact was periodically informed to the informant by Kalpana. After about a year Kalpana gave birth to a girl who was named as Vishwanjali. On that count also the step sister in law started harassing Kalpana. Thereafter, husband and his step sister started demanding amount of Rs. 2,00,000/- for buying tractor. Harassment got intensified when she did not fulfill the illegal demand. It is alleged that present applicant used to visit the house of Kalpana along with her step sister in law and used to demand money. All the efforts of persuasion were in vain.

Step mother in law of deceased Kalpana expired on 7.5.2017. Even for last rites amount to the tune of Rs. 30,000/- was demanded by Kalpana's husband and step sister in law. Informant had promised to give that amount, but, could not make arrangement for the same. On 18.5.2017 Kalpana was beaten and was asked to bring amount and was driven out of the house, so that she should bring that amount. On the earlier day, therefore, Kalpana gave phone call to her mother and told that she is unable to sustain ill-treatment now and she would commit some untoward incident. Thereafter, at about 9.30 PM, informant received phone call stating that Kalpana has hanged herself. Thereafter, on 20.5.2017 respondent No. 2 lodged report with police.

04. Heard learned Advocate Ms. Kulkarni for the applicant, learned Addl. Public Prosecutor Mr. Pulkundwar for respondent No. 1 / State and learned Advocate Mr. Jadhav, holding for Mr. Shinde for respondent No. 2.

05. It has been submitted on behalf of the

applicant that the applicant was not at all related to the husband of the deceased and therefore, Section 498A of Indian Penal Code can not be invoked against him. So also he had not at all instigated or caused abetment of suicide of the deceased. Therefore, none of the ingredients of the offence have been made out against the applicant.

06. Application has been objected by the respondents on the ground that the present applicant had harassed deceased by demanding the amount and therefore, offence has been made out against him also.

07. It is to be noted from the contents of the first information report that the applicant is stated to be the paramour of step sister in law of the deceased. Therefore, he can not be said to be "relative of husband". In order to attract ingredients of Section 498A of Indian Penal Code, the accused must be husband or his relative. Another fact to be noted is that only an omnibus statement has been made against the present applicant saying

that he also used to go to the house of deceased and as per the say of the sister in law he used to demand money. It is not alleged that said demand was followed by any act of ill-treatment by the present applicant. Neither Section 306 nor 304B of Indian Penal Code can be attracted against the applicant / accused. There is no averment in the report regarding abetment or causing any such act which had caused un-natural death of deceased Kalpana. Further even Sections 323, 504 and 506 of Indian Penal Code can not be attracted because no other act covered under these Sections is alleged against present applicant. There can not be a common intention of the applicant with the other accused persons because he was not at all related to the husband of the deceased. Under such circumstance, we find much substance in the arguments advanced on behalf of the applicant. This is a fit case where we should exercise our powers under Section 482 of Code of Criminal Procedure. The fact is also befitted in the ratio laid down in **State of Haryana and Ors. V/s Bhajanlal and Ors., 1992 Supplement -1 Supreme Court**

Cases, 335, wherein it is held that :

"The following categories of cases can be stated by way of illustration wherein the extraordinary power under Article 226 or the inherent powers under Section 482 CrPC can be exercised by the High Court either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulate and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised :

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a

Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can even reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and / or where there is a specific provision in the Code or the concerned Act, providing

efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and / or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

08. Hence, we proceed to pass following order;

ORDER

(i) Application is hereby allowed.

(ii) The first information report bearing C. R. No. I-58 of 2017 dated 20.5.2017, registered with Kopargaon Taluka Police Station, Kopargaon, Dist. Ahmednagar at the instance of present respondent No. 2 for the offences punishable under Sections 498A, 306, 323, 504, 506 and 304B read with Section 34 of Indian Penal Code,

is hereby quashed and set aside as
against the present applicant.

(iii) Rule is made absolute in above
terms.

(SMT. VIBHA KANKANWADI)
JUDGE

(PRASANNA B. VARALE)
JUDGE

ggd/-.