

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

CRIMINAL APPLICATION NO.2646 OF 2018

- 1 Laxman Ramrao Vaidya,
 Age 35 yrs., Occ. Agri.,
- 2 Kadubai w/o Babu Vaidya,
 Age 66 yrs., Occ. Household,
- 3 Bhagubai w/o Uttam Vaidya,
 Age 41 yrs., Occ. Household,
- 4 Uttam Baburao Vaidya,
 Age 35 yrs., Occ. Agri.,

All are r/o Rohilagad, Pachod,
Tq. Ambad, Dist. Jalna.

... **Applicants.**

... **Versus** ...

- 1 The State of Maharashtra
 Through Police Station Officer,
 Police Station, Ambad,
 Tq. Ambad, Dist. Jalna.
- 2 Mangal w/o Dilip Chandanshiv,
 Age 40 yrs., Occ. Husehold,
 R/o Rohilagad, Pachod,
 Tq. Ambad, Dist. Jalna.

... **Respondents.**

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Mr. Hanmant V. Patil, Advocate for the applicants

Mrs. D.S. Jape, APP for the respondent No.1/State

Mr. V.R. Autade, Advocate appointed for the respondent No.2

...

**CORAM : T.V. NALAWADE &
SMT. VIBHA KANKANWADI, JJ.**

DATE : 12th DECEMBER, 2018

JUDGMENT : (PER : SMT. VIBHA KANKANWADI, J.)

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

2 Present application has been filed by invoking the inherent powers of this Court under Section 482 of the Code of Criminal Procedure, 1973 to quash and set aside First Information Report bearing Crime No.172/2018 dated 17.07.2018 registered with Ambad Police Station, Dist. Jalna for the offence under Section 306, 323, 506 r.w. 34 of the Indian Penal Code and Section 3(2)(V) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (hereinafter referred to as "Atrocities Act").

3 Respondent No.2 has filed the said report stating that she is

resident of village Rohilagad, Tq. Ambad, Dist. Jalna. She resides with her three sons. All of them are doing labour work. Her son Kailas was working with one Uttam Babu Vaidya i.e. applicant No.4 since last 2 years prior to the First Information Report on the salary of Rs.6,000/- per month. He used to go to work after meals and as usual on 16.07.2018 he had his meal at 9.00 a.m. and went to the field of applicants. She herself went for labour work. However, her husband was at home. Around 5.00 p.m. she was informed by one Nana Chandanshiv that Kailas has sustained injury and therefore she should immediately come. She went to her house along with said Nana and she was informed by her husband that Kailas has committed suicide by strangulating himself to the Neem tree in the field of Vaidya. She went to the field along with her husband and other relatives. She made inquiry and came to know that Kailas had strangulated himself around 4.30 to 5.00 p.m.. The applicants had not called any of the relatives and took out the body of Kailas from tree. When informant saw the dead body she found that Kailas had sustained injury to his head and eyes as well as to his private part. Applicant No.4 had assaulted Kailas about one and half months prior and had also given threat. On that count Kailas had committed the suicide due to the

harassment. It is stated that all the applicants had abated the commission of suicide by Kailas.

4 The applicants have contended that they have been falsely implicated. They have no concern with the suicide committed by Kailas. There are no single allegations that because deceased belongs to Scheduled Castes or Scheduled Tribes he was ill-treated and abetment is given for him to commit suicide. In fact, deceased was working with applicant No.4 since last more than two years. However, no specific date has been given when alleged act of assault and threat was given. On the face of the FIR the ingredients of Section 306 of IPC are not attracted. After the matter was reported to the police, Accidental Death was registered. No objection was taken by the informant and her family members at that time. On these grounds they have prayed for quashment of the report.

5 Respondent No.2 has filed notice in reply and taken objection for the quashment of the report. It is stated that in fact, she had lodged the report on 17.07.2018 for the offence punishable under Section 302, 323, 506 r.w. 34 of IPC. She is poor and uneducated lady. It is thereafter stated that on the day of incident i.e. on 16.07.2018

deceased had left the house in the morning and had not taken tiffin box with him. She had asked her another son Vilas to give tiffin to the deceased. When Vilas had gone to give tiffin, deceased was seen in the company of applicants No.1 to 4 at Ahilyabai Chowk in the village. When Vilas was handing over the tiffin to the deceased, applicant No.4 asked Vilas to take back the tiffin as he would be given meals to the deceased. Immediately after incident was reported to the informant she had gone to the field and had seen a rope lying near deceased. The circumstances suggested that the deceased would have been killed and there was no question of his committing suicide. In spite of written complaint by her for registering offence of murder the police have registered offence under Section 306 of IPC. She has given copy of the written complaint dated 17.07.2018 as well as the photographs of the dead body of Kailas.

6 Heard learned Advocate Mr. Hanmant V. Patil for the applicants, learned APP Mrs. D.S. Jape for the respondent No.1/State and learned appointed Advocate Mr. V.R. Autade for the respondent No.2. Perused the police papers. All of them have argued in support of their respective contentions.

7 At the outset, it is to be noted that at present police authorities have invoked offence under Section 306 of IPC. Though a suspicion has been raised by the informant and it is her contention that it is a case of murder, it is to be noted that from the photographs which have been produced by the informant herself, a case is not made out to show that it is a homicidal death amounting to murder. The informant herself has stated that immediately she was informed that Kailas has committed suicide, but according to her, when she went to the place, she had seen some injury mark to the head, injury to eyes and private part. As regards injury to eyes are concerned, the photograph does not speak anything. When informant saw the dead body it was already on the ground. Possibility of fall of dead body from the tree when it was being taken out cannot be ruled out resulting in the injuries. So also the P.M. report does not show the same. It only mentions the probable cause of death as strangulation. The FIR also does not disclose as to what could have been the reason for murder. If we consider her affidavit-in-reply, she has rather stated that when her son Vilas went to tender tiffin, applicant No.4 asked Vilas to take it back for the reason that he would be given meal to deceased. Even though it is tried to be stated by

respondent No.2 that there was some dispute in the form of assault and threat by applicant No.4 about one and half months prior to the incident, she has not stated that her son Kailas discontinued his service with applicant No.4. On the contrary, when applicant No.4 offered meal to Kailas in presence of Vilas, it presupposes that their relations were good. There is absolutely no role for applicants No.1, 2 and 3 in the FIR, affidavit-in-reply as well as in the written complaint. In written complaint dated 17.07.2018 she has tried to array only applicant No.4 and now in the FIR she has made allegations against all the applicants. Further, from the photographs itself it can be seen that the police persons were present on 16.07.2018 itself and it is stated that the incident had taken place around 4.30 to 5.00 p.m.. However, the FIR came to be lodged at about 1.45 p.m. on 17.07.2018. Respondent No.2 cannot take advantage of her illiteracy for the simple reason that she has husband to support, so also the other two sons of informant are grown up, when from the face of the FIR, ingredients of any of the offences are not made out. Case is made out to quash and set aside the FIR itself by invoking the inherent powers of this Court under Section 482 of Cr.PC..

8 It is to be noted that the applicant No.1 had reported the

Accidental Death and thereafter the police had arrived. The dead body was identified by husband of respondent No.2. He had no raised any kind of objection and had not filed any complaint immediately to the police. On the face of the FIR no offence is made out attracting Atrocities Act. Therefore, the parameters laid down in the case of **State of Haryana and others vs. Ch. Bhajan Lal and others** reported in **AIR 1992 Supreme Court 604** are required to be invoked. Hence, following order.

ORDER

- 1 Application is allowed.
- 2 Relief is granted in terms of prayer clause "B".
- 3 Rule made absolute in those terms.

(Smt. Vibha Kankanwadi)
JUDGE

(T.V. Nalawade)
JUDGE

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