

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1344 OF 2018

- 1] Satish Tukaram Dake,
Age : about 23 years, Occu. :
Student & Agricultural Labour,
R/o Ghatnandur, Tal. Ambajogai,
Dist. Beed.
- 2] Shailesh Tukaram Dake,
Age : about 23 years, Occu. :
Student & Agricultural Labour,
R/o Ghatnandur, Tal. Ambajogai,
Dist. Beed. ...Applicants

Versus

- 1] The State of Maharashtra,
Through Police Station Officer,
Ambajogai Rural Police Station,
Tq. Ambajogai, Dist. Beed.
- 2] Tukaram Vithoba Vanje,
Age : about 50 years, Occu. :
Agriculture,
R/o At Post Jalkot, Tq. & Dist.
Latur. ...Respondents

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Mr. S. B. Narwade Patil, Advocate for Petitioner.

Mr. M. M. Nerlikar, A. P. P. for Respondent No. 1-
State.

Ms. U. S. Bhosale, Advocate for Respondent No. 2.

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

DATE : 28-11-2018.

JUDGMENT : (Per Smt. Vibha Kankanwadi, J.)

01. Present petition has been filed by original accused persons invoking the powers of this Court under Art. 226 and 227 of Constitution of India as well as under Section 482 of the Code of Criminal Procedure in order to quash the First Information Report vide Crime No. 278 of 2018, registered with Ambajogai Rural Police Station, Ambajogai, Dist. Beed for the offences punishable under Section 306, 498-A, 323 read with 34 of the Indian Penal Code.

02. Rule. Rule made returnable forthwith. By consent, heard finally.

03. Deceased Supriya- daughter of Respondent No. 2 got married to Santosh Tukaram Dake – brother of applicant Nos.1 and 2 on 18-03-2017. Respondent No.2 – informant has contended that, the marriage was performed as per rites. Supriya was treated properly by husband and in-laws for about 3 months after marriage. Santosh was not doing anything to earn. He was insisting that Supriya should bring amount from her parents so that he can start some business. Her father-in-law, mother-in-law and brother-in-laws were harassing her mentally and

physically. Santosh used to ask Supriya as to why she is not listening to the say of his parents, why she is not bringing amount from her father. He used to assault her on that count. She used to disclose the harassment given to her to her parents, whenever she used to visit their house. Informant had advised her husband and in-laws for not harassing his daughter. He had taken her to his house a month prior to incident. He had no financial capacity and therefore did not extend it to son-in-law. Supriya was not taken for cohabitation for about 2 months. Thereafter, she told her father on phone that she is being harassed physically and mentally on the same count and therefore her life is not safe. He also came to know from her that his another daughter Asha is also being harassed by her in-laws. He was then informed by his relative on 20.07.2018 around 3.30 p. m. that he should confirm bad news about Supriya. He therefore, made call to son-in-law and was told that she has expired. Informant and his relatives went to hospital and saw the dead body of Supriya. It was informed that she has committed suicide by hanging. Informant says that Supriya has committed suicide due to the harassment given to her by the husband, in-laws. Therefore, he has lodged the report.

04. The petitioners have contended that, they are

innocent. They are the students and preparing themselves for competitive exams. No specific role is attributed to them. They were not present when the incident took place. The FIR has been lodged with ulterior motive. Details of the events of alleged harassment have not been given and they have been kept as vague as possible. Therefore, they have prayed for quashment of the proceeding.

05. Heard learned Advocate Mr. S. B. Narwade Patil appearing on behalf of petitioners, learned Addl. Public Prosecutor Mr. M. M. Nerlikar and learned Advocate Ms. Uma S. Bhosale, appearing on behalf of respondent No. 2. All of them have argued in support of their respective contentions.

06. The perusal of FIR would show that no specific role has been attributed against petitioners in respect of offence under Section 306 or/ and 498-A of the Indian Penal Code. The allegations are that her husband was demanding amount from Supriya for starting business. Thus, whatever allegations are there, they are against husband. If at all there would have been a demand it would have been mainly by the husband and the father and mother-in-law. The perusal of the entire FIR would show that all of them had made the demand in chorus which is

not possible when elders are there. Further, present petitioners are the brother-in-law of Supriya; when her husband was there why they would have assaulted her? Omnibus statement has been made against present petitioners. Nothing was demanded by petitioners for themselves as per the allegations in the FIR itself. Contents of the FIR only uses words 'harassment'. Details of any incident has not been given. Statements of witnesses would also show the same thing. They have also stated that brother-in-laws were also harassing Supriya. Acts amounting to harassment have not been described. Therefore, no case has been made out in respect of offence punishable under Section 498A of Indian Penal Code.

07. FIR is also filed for the offence punishable under Section 306 of Indian Penal Code. It should be even prima facie shown that there was intention on the part of petitioners to abet the commission of suicide by their sister-in-law. In **Madan Mohan Singh .vs. State of Gujrat and another**, reported in (2010) 8 SCC 628 it has been held that, "In order to bring out an offence under Section 306 IPC specific abetment as contemplated by Section 107 IPC on the part of the accused with an intention to bring about the suicide of the person concerned as a result of that abetment is required. The intention of the accused

to aid or to instigate or to abet the deceased to commit suicide is a must for this particular offence under Section 306 IPC. Further in ***S.S. Chheena v/s. Vijay Kumar Mahajan*** reported in **2010 All MR (Cri) 3298 (S.C.)** it has been observed that, "Abetment involves a 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 the legislature and the ratio of the cases decided by this Court is clear that in order to convict a person under Section 306 IPC 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". Except one line statement there is nothing, either in the FIR or in the statements of witnesses. Applicants are students and they are preparing themselves for competitive exams. It appears that, as a routine all the relatives of the husband have been roped. Under such circumstance, relief is required to be granted to the petitioners by invoking the powers under Art. 226 and 227 of Constitution of India as well as inherent powers of this Court under Section 482

of the Code of Criminal Procedure.

08. Hence, following order;

ORDER

(i)Petition is hereby allowed.

(ii)Relief is granted in terms of prayer clause
"B".

(iii)Rule made absolute in the above terms.

[SMT. VIBHA KANKANWADI]

JUDGE

[T. V. NALWADE]

JUDGE

Dahibhate/-