

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

CRIMINAL APPLICATION NO. 4724 OF 2017

Vaijnath Kondiba Khandke
Age : 54 years, Occu. Govt. Servant,
(Dy. Director of Education),
R/o. Vidyaniketan Quarters,
Near Deogiri College, Aurangabad.

... Applicant
(Orig. Accused)

VERSUS

1. The State of Maharashtra
through Investigating Officer,
Crime No. 0268/2017
M.I.D.C. CIDCO Police Station,
Aurangabad.

2. Dipali Kishor Parashar,
Age : 37 years, Occu. Household,
R/o. Flat No. D-14, Gulmohar Colony,
Uttaranagari, Brijwadi, Aurangabad.

... Respondents

.....
Mr Joydeep Chatterji, Advocate h/f Mr S. B. Rajebhosale, Advocate
for the applicant
Mr V. M. Kagne, APP for respondent No.1
Mr S. P. Brahme, Advocate for respondent No. 2
.....

WITH
CRIMINAL APPLICATION NO. 5174 OF 2017

Vidya d/o Shahaji Ghorpade,
Age : 53 years, Occu. Service,
R/o. New Nandanvan Colony,
Bhujbal Nagar, Aurangabad.

... Applicant

VERSUS

1. The State of Maharashtra

2. Deepali Kishor Parashar,
Age : 37 years, Occu. Household,
R/o. Plot No. D-14, Gulmohar Colony,
Uttaranagri, Brijwadi, Aurangabad. ... Respondents

.....
Mr Nilesh S. Ghanekar, Advocate for applicant
Mr V. M. Kagne, APP for respondent No.1
Mr S. P. Brahme, Advocate for respondent No. 2
.....

CORAM : **S. S. SHINDE &
A. M. DHAVAL, JJ.**

RESERVED ON : 11.12.2017.
PRONOUNCED ON : 23.01.2018.

JUDGMENT [PER A. M. DHAVAL, J.] :-

1. Rule. Rule made returnable forthwith. With the consent of the parties, taken up for final disposal at admission stage & heard finally.
2. Both the applications are for quashing of FIR bearing Crime No. 0268/2017 registered with M.I.D.C. CIDCO Police Station, Aurangabad, for the offences punishable u/s 306, 506 r/w 34 of IPC.
3. Heard Shri. Joydeep Chatterji & Shri. Nilesh S. Ghanekar, learned counsel for the applicants, Shri. V. M. Kagne, learned APP for State and Shri. S. P. Brahme, learned counsel for respondent no. 2.

4. The FIR and police papers disclose that, deceased Kishor Parashar, aged 45 years, husband of informant, was serving as a Clerk in the office of Dy. Director of Education, Aurangabad. Accused no. 1 - Vaijnath Khandke was Dy. Director (Education) while accused no. 2 - Vidya Ghorpade is a Clerk in the same department. On 08.08.2017, deceased Kishor along with his wife Deepali left the house at 10:00 a.m. Deceased Kishor left his wife at the house of his sister and went towards the office but the inquiry by Deepali revealed that he had not reached the office. He was not accessible on mobile. At 03:00 p.m. when daughter Ruchika reached the house, she saw two-wheeler of her father at the parking but the house was closed. On breaking open the house, it was revealed that Kishor had committed suicide by hanging himself from a ceiling fan. On the next day, Deepali lodged the FIR that her husband used to be under tremendous mental tension as he was overburdened with the work of four tables and was required to work upto 10:00 p.m. everyday. His salary was stopped by accused no.1 - Vaijnath and he was always threatening and intimidating him. Accused no.2 - Vidya was not efficient and she was getting all her work done from Kishor. Kishor was excellent in his work but due to overburden, stoppage of increment and humiliating treatment in the office, he committed suicide.

5. It is argued that, the allegations against the applicants even if taken at their face value, do not disclose any criminal intention on the part of both the applicants. The allegations do not make out any offence u/s 306 IPC. There was no abetment by the applicants.

6. Per contra, learned APP and advocate Shri. S. P. Brahme argued that, the applicants by their behaviour created situation so as to create unbearable pressure by mental harassment and deceased Kishor was left with no option but to commit suicide.

7. After carefully considering the arguments and the judgments cited and the papers produced, we find that the power of quashing FIR can be exercised in sparing manner where there is a clear case of abuse of process of court and no material to allow the prosecution to be continued. In *State of Haryana V/s Bhajan Lal* [AIR 1992 SC 604], seven criteria are given for exercising powers. Following two are material.

(i) The allegations taken at their face value do not constitute any offence or make out a case against the accused.

(ii) The allegations are absurd and inherently improbable

that no prudent person can ever reach a just conclusion of sufficiency of grounds.

8. We must make it clear that, appreciation of material for sufficiency can be only at cursory level and this Court while invoking powers u/s 482 Cr.P.C. cannot go into minute aspects. It should be left to the trial Judge to decide the merits and demerits of the facts alleged at the time of taking cognizance, framing of charge or final disposal.

9. The facts herein indicate that, there was no direct abetment and the applicants cannot have any intention that the deceased should commit suicide. Even when the accused persons have no such intention, if they create situation causing tremendous mental tension so as to drive the person to commit suicide, they can be said to be instigating the accused to commit suicide. It is akin to act imminently dangerous as described in Section 300(4) of IPC. As held in **Ramesh Kumar v. State of Chhattisgarh** reported in **AIR 2001 SC 3837**, if it transpires to the Court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given

society to commit suicide, the conscience of the Court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty.

10. The applicants relied on **Dadarao Dakore Vs. The State of Maharashtra 2017 ALL MR (Cri) 1538**. In this case, a clerk had committed suicide due to heavy workload which he was unable to carry out. He had left behind a suicide note. There was no proximity of time between alleged instigation and date of incident. The FIR against the superior Executive Engineer was quashed.

11. **State of Maharashtra vs. Ibrahim Pathan 2017 ALL MR(Cri) 1542**. In this case, the accused had abused and abetted the deceased on a petty quarrel and after two days, the deceased committed suicide. It was held that there was no evidence of goading and encouragement. Hence, the acquittal was held proper.

12. **Rajendrakumar v State of Maharashtra 2017 ALL MR (Cri) 1869**. The deceased was a salesman and he was allegedly harassed for not recovering dues from the customers. No specific role was attributed to any of the accused. There was vague evidence about creation of mental tension. Hence, the FIR was quashed.

13. In **Dilip S/o Ramrao Shirasao & Ors. Vs State of Maharashtra & Anr** decided by Division Bench of Nagpur Bench on **05 August, 2016 (Criminal Application (APL) No. 332 of 2016)**, a judicial officer committed suicide leaving behind a note disclosing names of District Judge and other superior colleagues that they were responsible for his suicide as he was harassed by them. On scrutiny of the material, it was found that the allegations were vague and no case was made out for showing instigation or goading. Hence, the accused were acquitted.

14. In **State of Kerala & Ors v Unnikrishnan Nair & Ors. 2015 CJ(SC) 1275**, the deceased had left behind a suicide note alleging that two colleagues from CBI had cheated him and put him in deep trouble. The respondents were junior to the deceased. Considering the vague allegations, it was held that there was no abetment.

15. In **Praveen Pradhan Versus State of Uttaranchal & Anr. (2012) 9 SCC 734**, it was observed that there can be no straight-jacket formula to determine which act amounts to instigation and which does not. It is further observed that in a particular case there may not be direct evidence in regard to instigation which may have

direct nexus with the suicide. Inference has to be drawn from the circumstances to determine whether a situation was created to totally frustrate the person and drive him to commit suicide. It was a case of a qualified graduate engineer subjected to persistent harassment and humiliation and additionally, also had to endure continuous illegal demands made by the appellant, upon non-fulfillment of which, he would be mercilessly harassed by the appellant for a prolonged period of time. He had also been forced to work continuously for a long durations in the factory, vis-a-vis other employees which often even entered to 16-17 hours at a stretch. Such harassment, coupled with the utterance of words to the effect, that, "had there been any other person in his place, he would have certainly committed suicide. It was held that, it amounted to instigation.

16. In **Sunita Wawle v State of Maharashtra (Cri. Appln. No. 2159/2017)** decided on 14.06.2017 by the Division Bench of this Court to which one of us (**A. M. Dhavale, J.**) was a party. The victim had left behind a suicide note that on account of ill-treatment at the instance of the accused she was committing suicide. The applicant Sunita was not performing her duties as a Counselor faithfully. Due to her irresponsible performance, the image of the medical college was damaged. It was held that, it did not amount to instigation.

17. In **Dr. Shivanand v. State 2017 ALL MR (Cri) 1401**, the Division Bench of this Court held that the allegations against Medical Superintendent that he did not allow him to resume duties and he harassed the deceased by non-payment of TA bills and Water bills and expenses for repair of official vehicle were not sufficient to hold that there was instigation to him. It was held that the petitioner was acting in his official capacity.

18. Considering the guidelines and applying them to the facts of the present case before us, we find that the only allegations against Vidya Ghorpade - Clerk, applicant in Criminal Application No. 5174 of 2017 is that she was not good in her work and she was giving all her work to the accused. The material shows that, she was sr. clerk and was also holding additional charge of Asst. Superintendent. Even accepting these allegations at the face value, we find that the act would not amount to abetment for the simple reason that the deceased had no compelling reasons to perform her work and if he would have refused to perform her work, nothing could have happened to him.

19. As far as Vajinath Khandke, the applicant in Criminal Application No. 4724 of 2017 is concerned, he was a Dy. Director of

Education. Though he had issued a circular stating that, every member should complete their work during office hours, the material on the record shows that, there was heavy work given to deceased Kishor. Besides, he was given additional charge of one Shinde from April-2017. The deceased was required to attend the court upto 5:00 p.m. and thereafter he was required to do his office work. In spite of working upto 10:00 pm he was unable to complete his work and was attending the office even on holidays. One circular was issued by the Dy. Director that everybody should produce his report of work done and if no such report would be given, his payment would be stopped. The documents on record show that, for years the work of deceased Kishor was appreciated with highest gradings 'A' or 'A+'. After arrival of Khandke as Dy. Director in October-2016, Kishor was heavily burdened. He could not get time to even write the worksheet. His salary was stopped for the month of July-2017. Besides, there are allegations that Khandke, who was the Dy. Director and could have ruined the service career of Kishor was humiliating him by taunts. Stoppage of salary for the month of July-2017 must have been a big blow to deceased Kishor when he had an excellent career. He was working day and night and taking sincere efforts, still he was awarded with stoppage of increment. One would mentally get completely depressed. In the circumstances, we find that the

allegations made against Vaijnath are capable of description of persistent mental harassment and ill-treatments of such nature that the deceased would find himself in depressing circumstances and would be frustrated. Having said that, we hold that we are not going to assess here whether the said material was sufficient or not for instigating the deceased to commit suicide. We hold that, such material might be sufficient. We make these observations only for the purpose of deciding this application and it should not influence the trial Judge at any stage. In view of this, we hold that, this is not a fit case for invoking powers u/s 482 of Cr.P.C. with respect to Vaijnath Khandke. In the result, we pass the following order.

ORDER

- (i) Criminal Application No. 5174 of 2017 filed by Vidya Ghorpade is hereby allowed. FIR bearing Crime No. 0268/2017 registered with MIDC CIDCO Police Station, Aurangabad for the offence punishable u/s 306, 506 r/w 34 of IPC is quashed to her extent.
- (ii) Criminal Application No. 4724 of 2017 filed by Vaijnath Khandke is dismissed.

[A. M. DHAVALE]
JUDGE

[S. S. SHINDE]
JUDGE