

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2903 OF 2018

- 1] Mirabai Babasaheb Nagare,
Age : 33 years, Occu. : Tailoring,
- 2] Karbhari Devram Pache,
Age : 56 years, Occu. : Labour Work
& Agri.,
- Both R/o Yashwant Nagar, Sonai Tq.
Newasa, Dist. Ahmednagar. ...Applicants

Versus

- 1] The State of Maharashtra,
Through the Investigation Officer
Sonai Police Station, Tq. Newasa,
Dist. Ahmednagar.
- 2] Ashok Garajam Nagare,
Age : 55 years, Occu. : Private
Service,
R/o Bramhani, in front of Adarsha
Vidyalaya,
Tq. Rahuri, Dist. Ahmednagar. ...Respondents

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Mr. N. B. Narwade, Advocate for Applicants.

Mr. A. A. Jagatkar, A. P. P. for Respondent No. 1-
State.

Mr. S. V. Deshmukh & Mr. V. V. Tarde, Advocates for
Respondent No. 2.

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

DATE : 20-12-2018.

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

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

02. Present application has been filed by the original accused persons invoking the inherent powers of this Court under Section 482 of Cr. P. C. to quash the proceedings of R. C. C. No. 220 of 2018 pending before learned J. M. F. C., Newasa for the offences punishable under Sections 306, 201 read with 34 of I. P. C. arising out of F. I. R. vide C. R. No. 143 of 2017 registered with Sonai Police Station, Tq. Newasa, Dist. Ahmednagar.

03. The applicant No. 1 is the wife of brother of informant / present respondent No. 2. Applicant No. 2 is the father of applicant No. 1. The applicants have come with a case that they have been falsely involved in the case. The contents of the entire charge-sheet does not disclose any commission of crime much less the ingredients of offences punishable under Sections 306, 201 of I. P. C. The statements of the witnesses and the prosecution story does not reveal that there was any kind of instigation or abetment which can be befitted in Section 107 of I. P. C. by the present applicants. In fact, the dispute between

the husband and wife was on the ground of purchase of two wheeler and thereafter, she was residing with her father. Statement of son of deceased and applicant No. 1 has been recorded which shows that applicant No. 1 was demanding scooty and there was quarrel only on that count between father and the mother. However, his statement does not in any words state about abetment to the deceased to commit suicide. The incident had taken place on 10.8.2017 and deceased Babasaheb expired on 12.8.2017. However, the F. I. R. has been lodged after about 2 months i.e. on 10.10.2017. The delay caused in lodging F. I. R. has not been explained. They have therefore prayed for quashment of the entire proceeding.

04. Heard the learned Advocate Mr. N. B. Narwade-Patil for applicants, learned A. P. P. Mr. A. A. Jagatkar for State and learned Advocate Mr. V. V. Tarde for respondent No. 2. It will not be out of place to mention here that when the original informant had not filed any vakalatnama though served, this Court has appointed Advocate Mr. Shivraj Deshmukh to represent the respondent No. 2. However, he was absent on the date of hearing. Perused the charge-sheet. All the learned Advocates have made submissions in support of their respective contentions.

05. At the out set it is required to be seen as to what the informant has stated in the F. I. R. The F. I. R. has been lodged by the respondent No. 2 who is the brother of deceased Babasaheb. He has stated that he resides with his wife, two sons, younger brother Babasaheb, his wife (applicant No. 1) and their two children. He serves at Rahuri Karkhana and brother Babasaheb was also serving with Mula Agro Pvt. Ltd., Bramhani. Applicant No. 1 and Babasaheb got married in 2002. Applicant No. 1 runs a tailoring shop opposite to their house. There used to be quarrels between applicant No. 1 and Babasaheb since about one year prior to the F. I. R. Applicant No. 1 was insisting to her husband that he should purchase scooter for her. Babasaheb was refusing her request on the ground that there is financial constraint and they do not require any two wheeler and she is having her business of tailoring. It is the contention of the informant that by picking up quarrels applicant No. 1 used to give mental harassment to Babasaheb. He had tried to persuade applicant No. 1 twice or thrice by saying that why she is insisting for purchase of vehicle, it can be purchased at a later point of time. Thereafter, on one day in July when informant and his brother went to the place of job, applicant No. 1 went to her parents' place at Sonai,

without informing anything. She and her brother Santosh purchased second hand scooty. When Babasaheb came to know about the same he gave phone call to applicant Nos. 1 and asked as to why she has purchased the vehicle. She told that she has purchased it with her money and he has nothing to say about it. Thereafter, there was quarrel and her husband told that she should reside with her parents and should not come for co-habitation. Babasaheb had informed all these facts to the informant. Thereafter, informant gave a phone call to applicant No. 2 and told that the husband and wife should not dispute and he should send the applicant No. 1 back to matrimonial home. Applicant No. 2 told him that he will not send his daughter for about 2 months and he would teach a lesson to son-in-law. Informant received a phone call on his mobile from Babasaheb on 10.08.2017 at about 12 PM, stating that he had given a phone call to applicants and at that time they told that he should marry second time or consume poison. At that time, Babasaheb's speech was not normal. He made enquiry with Babasaheb, who told that he has consumed "rogour" poison and now he is feeling giddiness. Informant told Babasaheb that he would come to Sonai and on his journey informant was trying to call Babasaheb as well as applicant No. 1. But, nobody was picking up. In

the meantime, his friend Maruti Tarde gave phone call at about 1.30 PM and informed that Babasaheb has been admitted to Civil Hospital after consumption of poison. Informant contacted brother-in-law of Babasaheb, who gave information and then informant went to Civil Hospital. Applicants were present in hospital. Informant had seen the bottle from which the deceased had consumed poisonous substance in the pocket of applicant No. 2 and he had given it to the doctor. Doctor asked Babasaheb to be shifted to the Sonar Hospital. Accordingly, he was shifted there. Babasaheb was unconscious for 2 days, but, then expired at about 11.30 PM on 12.8.2017. The last rites were performed on 13.8.2017 and thereafter, the report has been filed.

06. Perusal of the F. I. R. as well as the statements of the witnesses would show that much prior to the date of incident i.e. 10.8.2017 applicant No. 1 had gone to the house of applicant No. 2 to stay. The dispute was on account of purchase of two wheeler. Though, Babasaheb had opposed the proposal of purchase of vehicle by applicant No. 1, she had purchased it and it is stated that it was from her own savings. She was not coming back for co-habitation. Entire perusal of charge-sheet does not show any record in respect of conversation between

deceased and applicants. There is no evidence to show that a particular number of mobile belongs to the deceased and then the CDR (call details record) of that mobile number has been produced. No doubt, the PM report with final cause of death shows that Babasaheb died due to consumption of poisonous substance called rogour. But, whether the applicants had actually abetted the commission of suicide is required to be considered to attract the ingredients of offence punishable under Section 306 of I. P. C. In order to prove an offence under Section 306 of I. P. C., prosecution should prove the ingredients of Section 107 of I. P. C. The abetment requires a positive act. There is nothing on record to show that on that day the applicants had called the deceased to the house of applicant No. 2. On the contrary, the conversation shows that the applicant No. 1 was refusing to resume co-habitation with Babasaheb and even applicant No. 2 was not helping Babasaheb and sending his daughter for co-habitation. Except the bare words of the informant that there was a conversation between him and the deceased just after the consumption of poison there is nothing on record. Even if for the sake of arguments we accept that such conversation had taken place, yet, what deceased had conveyed was that when he went to applicants, applicants

told that either he should perform second marriage or take poison. It is not the case of the prosecution that the poisonous material / substance was provided by the applicants. Therefore, we will have to presume that it was brought by deceased himself. He had come with preparation and the possibility can not be ruled out that he had come there to take his wife back for co-habitation, she refused and he was giving threat that if she does not resume co-habitation he would consume poison. Therefore, when two views are possible and there is scope for interference, in absence of any further material, it can not be stated that even prima facie case is made out against the applicants under Section 306, 201 of I. P. C. The statements of the witnesses including the son of deceased would show that he is only accepting the fact that there was a dispute between applicant No. 1 and deceased. Existence of dispute *per se* does not amount to abetment. Therefore, case is made out for exercising the inherent powers of this Court under Section 482 of Cr. P. C. for quashment of the entire proceeding. When the entire record does not show that case is made for going ahead with the matter and asking the accused persons to stand the trial, it comes within the parameters laid down in **State of Haryana and Ors. V/s Bhajanlal and Ors., [1992**

Supplement -1 Supreme Court Cases, 335] to exercise the powers of this Court. It would be a futile exercise to ask the applicants to face the trial.

07. Hence, following order;

ORDER

(i)The application is allowed.

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

(iii)The appointed Counsel remained absent.

(iv)Rule is made absolute in those terms.

[SMT. VIBHA KANKANWADI]

JUDGE

[T. V. NALWADE]

JUDGE

Dahibhate/-