

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

CRIMINAL APPLICATION NO. 5659 OF 2017

Rupali d/o Popatrao Biradar,
Age 32 years, Occu. Household,
R/o Janload, Taluka Nilanga,
District Latur
(In F.I.R. the name of the applicant
has been mentioned as Rupali w/o
Yogesh Mane)

.. Applicant

Versus

1. The State of Maharashtra,
through Police Station,
Hingoli City, Hingoli
2. Anagha w/o Yogesh Mane,
Age 34 years, Occu. Service,
Working as Vyankatesh Primary
School, Papvinash road, Near
Balaji temple, Latur,
Taluka and District Latur

.. Respondents

Mr D.M. Shinde, Advocate for applicant
Mr Shashibhushan P. Deshmukh, A.P.P. for respondent no.1
Mr S.J. Salunke, Advocate for respondent no.2

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

DATE : 11th December 2017

ORAL JUDGMENT (Per A.M. Dhavale, J.)

1. Rule. Rule returnable forthwith. With the consent of learned Counsel for the parties, matter is heard finally at admission stage.
2. The applicant seeks quashing of F.I.R. registered at C.R.No.193/2017 at Hingoli Police Station, for offence punishable under Sections 307, 494 read with Sec.34 of Indian Penal Code.

3. As per F.I.R., the informant Anagha, a teacher serving at Latur was married to accused no.1 Yogesh eleven years back. The couple was blessed with two sons. Since about four years before the incident, Anagha with her children was residing at Latur. On 1.5.2017, she along with her maternal cousin proceeded from Latur to Hingoli and reached at about 1.00 a.m. (2/5/2017). They knocked door several times, but it was not opened till 3.00 a.m. On enquiry, her brother-in-law told her that they suspected that some thieves might be knocking the door. On entering the house, respondent no.2 Anagha found the applicant Rupali inside the house and husband told her that he had married to Rupali and who was she to accost him. In the morning, at 6.00 a.m., her maternal cousin returned to Latur, but she continued to quarrel with her husband and her husband asked her to leave the job and showed willingness to maintain both the wives. The verbal exchange resulted into driving her mother-in-law to instigate her husband and brother-in-law and at her instigation, Yogesh (A-1) and Umesh (A-2) tried to forcibly administer harpic to her. That time, her father-in-law and Rupali were present there. She raised shouts. That time, some workers came to the house for penting work. Taking advantage of the same, she rescued herself and ran out, got a rickshaw and went to Civil Hospital. Thereafter, on her F.I.R., crime was registered under Section 307, 494 read with Sec.34 of the Indian Penal Code against five accused including the applicant.

4. The other four applicants had filed application (Cri.Application No.3055 of 2017) before us for quashing of F.I.R. and by order dated 29.9.2017, we quashed the F.I.R. to the extent of father-in-law Angad

and rejected the application in respect of husband Yogesh, brother-in-law Shailesh and mother-in-law Sunanda holding that there was material against them.

5. We have heard learned Advocate Mr D.M. Shinde for the applicant and Mr S.P. Deshmukh, learned A.P.P. for the State and learned Advocate Mr S.J. Salunke for respondent no.2.

6. Learned Advocate for the applicant has placed reliance on the order of anticipatory bail, which has no relevance for deciding the present application.

7. Learned A.G.P. and learned Advocate for the respondent no.3 have opposed the application.

8. In the present case, the F.I.R. is the most important document, as it was given in the form of dying declaration. It shows material allegations against husband, brother-in-law, mother-in-law. The attempt to administer poison was committed by accused nos.1 and 2, while they were instigated by accused no.4. No role was assigned to father-in-law Angad (A-3) whose application for quashing of F.I.R. has been allowed. There is similar evidence against the present applicant Rupali. She was merely present in the house. No role is assigned to her in the F.I.R. There are allegations that her husband has committed bigamy by marrying to her, however, on going through the F.I.R. and assuming the facts stated therein to be true and correct at the face value, we find that applicant Rupali has not played any role in

the act of attempt to commit murder. Her case stands on parity with the father-in-law Angad. Mere presence will not be sufficient to connect Rupali with the crime under Section 307 of Indian Penal Code, as the crime appears to be not preplanned. It seems to have taken place all of a sudden and there is no overt act attributed to Rupali. Hence, the F.I.R. against Rupali deserves to be quashed to the extent of offence punishable under Section 307 read with Sec.34 of Indian Penal Code. Hence, we pass the following order:

- ORDER -

- (I) The Criminal Application is allowed.
- (II) The F.I.R. No.193/2017 registered at Hingoli City Police Station dated 2.5.2017 is quashed against accused no.5 Rupali Popatrao Biradar to the extent of offence punishable under Section 307 read with Sec.34 of Indian Penal Code.
- (III) Rule made absolute in above terms. No order as to costs.

(A.M. DHAVAL, J.)

(S.S. SHINDE, J.)

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