

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

CRIMINAL APPLICATION NO. 935 OF 2019

- 1 Banti @ Umesh s/o. Shivhar Sakhare,
Age: 32 years, Occu.: Agriculture,
R/o: Hadongri, Taluka Bhoom,
District Osmanabad.
- 2 Nikita w/o. Banti @ Umesh s/o. Shivhar Sakhare,
Age : 26 years, Occ. Household,
R/o: Hadongri, Taluka Bhoom,
District Osmanabad.

.. APPLICANTS

VERSUS

- 1 The State of Maharashtra,
Through The Investigation Officer,
(Crime No. 26/2016, registered with Bhoom
Police Station, Taluka Bhoom,
District Osmanabad.
- 2 Maharudra s/o. Deorao Sakhare,
Age : 70 years, Occ. Agriculture,
R/o: Hadongri, Taluka Bhoom,
District Osmanabad.

RESPONDENT
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Mr. D. M. Pingale, Advocate for applicants.
Ms. D. S. Jape, APP for respondent No. 1-State.
Mr. Nilkanth Pawade, Advocate for Respondent No.2.

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**CORAM : T.V. NALAWADE &
K. K. SONAWANE, JJ.**

DATED : 23rd JULY, 2019.

ORAL JUDGMENT :- (Per: K.K. SONAWANE, J.)

1. Rule. Rule made returnable forthwith. The matter is taken up for finality on merit with the consent of both sides.
2. The applicants, taking recourse of provision of Section 482 of the Code of Criminal Procedure ("Cr.P.C."), seeking relief to quash and set aside the criminal proceeding i.e. First Information Report ("FIR") bearing Crime No. 26 of 2016 (Charge-sheet No. 18 of 2016) initiated

against them, pending before the learned Sessions Judge, Bhoom, District Osmanabad, being an abuse of process of law.

3. The factual matrix of the matter giving rise to the prosecution of applicants, in brief, is that the applicant No. 1 Bantu @ Umesh is the cousin brother-in-law of the deceased Shivkanya, whereas, applicant No.2 is the wife of applicant No.1. It has been alleged that on 21-02-2016, the Mayur - son of deceased Shivkanya, in the noon hours at about 2.00 p.m., started going to hotel of his father to assist him. But, his cousin Aunt Smt. Jyoti w/o. Nagesh gave call and asked him to get the T.V. of her house to start for watching the programme. Accordingly, the boy Mayur – 17 years old, while taking the remote of T.V. from sofa-set, touched to the thigh of cousin Aunt Jyoti. Thereafter, he put on the T.V. for watching the programme and went to his hotel.

4. According to prosecution, in the evening at about 6.00 p.m., both the cousin brother-in-law Nagesh and Bantu @ Umesh and their wives, Jyoti and Nikta came in front of the house of deceased and started giving abuses filthily to the boy Mayur. They assaulted the Mayur for his act of touching to Aunt Jyoti with ill-intention. They have given threats of life to Mayur. The mother- Shivkanya of boy Mayur intervened in the fight. But, her cousin brother-in-law Nagesh and present applicant- Bantu @ Umesh both exhorted that they would ravish her. The deceased Shivkanya became furious owing to insult and humiliation in such filthy manner. The deceased Shivkanya rushed inside her house and in a fit of rage put herself on fire by pouring kerosene. She was immediately escorted to the hospital for medical

treatment. The police personnel on duty in the Government Hospital, attended the deceased Shivkanya and in presence of Doctor, recorded her statement for cause of burns. The deceased blamed both the cousin brother-in-law and their wives including present applicants for her burns. Thereafter, in the wee hours of dawn at about 5.30 a.m. on 22-02-2016, the deceased Shivkanya succumbed to burns.

5. Pursuant to dying declarations of the deceased, the police of Bhoom Police Station, District Osmanabad, registered the Crime No. 26 of 2015, for the offence punishable under Sections 306, 323 and 509 read with Section 34 of Indian Penal Code (IPC) and set the penal law in motion. The investigation Officer carried out the investigation. He recorded statement of witnesses acquainted with the facts of the case. He collected relevant documents, and thereafter, filed the chargesheet No. 18 of 2016 against alleged accused before learned Magistrate at Bhoom. Now, the matter is pending before the concerned Sessions Judge for trial of accused within ambit of law. Pending the trial, applicants moved the present application for relief to exonerate them from the charges levelled on behalf of prosecution.

6. The learned counsel for applicants vehemently submits that the applicants are innocent of the charges pitted against them. They have not committed any crime. The allegation against these applicants does not attract ingredients of Section 306 read with Section 107 of IPC. The applicants did not assault the boy Mayur. But, they attempted to interference in the fight. The applicants are falsely implicated in this case.

7. The learned APP and learned counsel appearing for the respondent No.2 opposed the contentions propounded on behalf of applicants. They submit that the deceased Shivkanya in her dying declaration stated the names of these applicants, who uttered the filthy words of ravishing her.

8. We have given anxious consideration to the arguments advanced on behalf of both sides. We have also perused the investigation papers of the crime produced on record. After appreciation of factual aspect of the matter, this Court arrived at the conclusion that *prima-facie* there are allegations against the applicant No.1 – Bantu @ Umesh to instigate the deceased Shivkanya to put herself ablaze by uttering filthy words relating to her womanhood. Therefore, we do not find it justifiable to exercise powers under Section 482 of Cr.P.C. in favour of applicant No.1. Eventually, the learned counsel for applicant No.1 seeks permission to withdraw the proceeding filed on his behalf. Accordingly, permission was granted and application of applicant No.1 came to be disposed of as withdrawn.

9. We have also considered the allegations nurtured on behalf of prosecution against applicant No.2- Nikita. We noticed that the allegations cast against applicant No.2 are totally vague and general in nature. There are no specific allegations attributing overt-act of the applicant- Nikita in regard to assault or abusing to the boy Mayur. It has been alleged that the accused Nagesh exhorted the applicant Nikita to thrash the boy Mayur with footwear. But, the applicant Nikita did not react nor participate for thrashing Mayur. The applicant No.2 - Nikita also had no involvement to goad or instigate the deceased

Shivkanya for suicidal attempt. The dying declaration of the deceased also did not attribute any overt-act of applicant No.2 Nikita in the alleged incident. In such circumstances, *prima facie*, it would be unsafe to draw adverse inference against the applicant No.2 – Nikita.

10. It is to be borne in mind that the process of *Abetment* involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. There has to be a *mens-rea* on the part of accused to commit offence. It also requires active act or direct participation of the accused, which led the deceased to commit suicide. In the matter-in-hand, there are no specific allegations against the applicant- Nikita to point out her active part or direct involvement into the crime. The alleged dying declaration is also silent on the role played by applicants during the occurrence of incident. She was shown present at the spot. But, without any active part, bare presence of applicant No.2 is not sufficient to draw adverse inference against her. Therefore, there is no propriety to allow the prosecution to proceed further for trial of applicant No.2 for the charges levelled against her.

11. At this juncture, it would be profitable to make a reference of Judgment of Honourable Apex Court in the case of - **Madhavrao Jiwaji Rao Scindia and another Versus Sambhajirao Chandojirao Angre and others**, reported in **AIR 1988 SC 709**, categorically elucidated in paragraph No. 7, as under:

"7. The legal position is well-settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take

into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage."

12. The Honourable Apex Court in the case of **State of Haryana and others Vs. Ch. Bhajan Lal and others** reported in **MANU/SC/0115/1992 : 1991(1) RCR(Cri), 383 (SC)** held that "where the proceedings is instituted with an ulterior motive or were the allegations made in the complaint are absurd and improbable, the Court would be within its power to quash the complaint/FIR". Moreover, if the allegations in the FIR against the applicants are taken at their face value and accepted the same in its entirety would not constitute any offence or make out case against applicants, in such circumstances, there would not be any propriety to allow the prosecution to proceed further into the matter.

13. In the light of aforesaid expositions of law, in the instant case, it would be unjust and improper to allow the prosecution to proceed further against applicant No.2. It would be an futile efforts and would cause injustice to her, if she is compelled to face agony of trial before criminal Court. It would also dissipate the precious time of Court of law

as the possibility of her ultimate conviction is totally bleak. The ends of justice would be served by ensuring that the applicant No.2 may not be forced unnecessarily to go on litigation before the Criminal Court. Hence, penal proceeding initiated against the applicant No.2 deserves to be quashed and set aside. Therefore, we proceed to pass following order :

ORDER

- i. The Criminal Application is partly allowed.
- ii. The Criminal Application in respect of applicant No. 1 stands disposed of as withdrawn.
- iii. The Criminal Application in respect of applicant No. 2 is allowed.
- iv. The penal proceeding initiated bearing FIR/Crime No. 26 of 2016 (Charge-sheet No. 18 of 2016), for the offences punishable under Sections 306, 323 and 509 read with Section 34 of IPC, registered with Police Station, Bhoom, Taluka Bhoom, District Osmanabad, is ordered to be quashed and set aside to the extent of applicant No. 2.
- v. Rule is made absolute in terms of prayer clause "B".
- vi. The Criminal Application is disposed of in above terms.
- vii. No order as to costs.

Sd/-

[K. K. SONAWANE]
JUDGE

Sd/-

[T.V. NALAWADE]
JUDGE