

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 1662 OF 2018

1. Santosh s/o. Appa Sathe,
Age Major, Occu. Business,
R/o. Khadki, Belpimpalgaon,
Taluka Newasa, District
Ahmednagar.
2. Sonali wd/o. Prabhakar Fasage,
Age 30 years, Occu. Housewife,
R/o. Sainagar, Matan Market,
Bajartal, Ward No. 3, Shrirampur,
Taluka Shrirampur, District
Ahmednagar.

....Applicants.

Versus

1. The State of Maharashtra
2. Vasant s/o. Ratan Fasage,
Age 45 years, Occu. Business,
R/o. New Kaygaon, Taluka
Gangapur, District Aurangabad.

....Respondents.

Mr. Shaikh Joyed I., Advocate for applicants.

Mrs. V.S. Choudhari, APP for respondent No. 1/State.

Mrs. Anita Gadekar, Advocate for respondent No. 2 (appointed)

**CORAM : T.V. NALAWADE AND
S.M. GAVHANE, JJ.**

DATED : 11/11/2019.

ORAL JUDGMENT : [PER T.V. NALAWADE, J.]

1) Rule. Rule made returnable forthwith. By consent, heard both the sides for final disposal.

2) Present proceeding is filed for relief of quashing of F.I.R.

No. 366/2017 registered with Gangapur Police Station, District Aurangabad for the offences punishable under sections 306, 353, 504, 506 of Indian Penal Code. The crime is registered on the basis of report given by respondent No. 2 Vasant. In F.I.R dated 14.9.2017 he has made allegations that deceased Prabhakar was his cousin brother and due to the harassment of the present applicants he committed suicide. Applicant No. 2 is the widow of Prabhakar and applicant No. 1 Santosh is husband of sister of applicant No. 2. The marriage of applicant No. 2 with Prabhakar had taken place prior to 12 years from the date of incident. Applicant No. 2 has three issues who are aged about 5 years, 3 years and 1 year.

3) Applicant No. 2 was living separate from the husband and the issues were with her. It is the contention of informant that the deceased used to say that applicant No. 2 had illicit relations with applicant No. 1 and that is why she was living separate from him. According to him, many attempts were made by the deceased to bring applicant No. 2 back to the matrimonial house, but she had refused to return and she was living separate from him for about one and half years. According to him, the last incident took place on 10.9.2017 when the deceased and Sham had gone to the house of parents of the deceased to bring her back and there, applicant No. 2 had virtually assaulted the deceased and had given threat to finish him. After returning from the house of the parents of the wife, the

deceased was disturbed and ultimately on 12.9.2017 in the noon time, he committed suicide by hanging himself in the house. The F.I.R. came to be given on 14.9.2017 and the crime came to be registered at 7.01 p.m.

4) The applicants have produced the record like copy of the proceeding filed by applicant No. 2 for maintenance under section 125 of Cr.P.C. on 29.5.2017 and her three issues. Copy of proceeding filed under Domestic Violence Act on 22.6.2017 is also produced showing that she had prayed for taking action against husband and she had also prayed for compensation. In the proceeding filed by her, she has made allegations that the husband is addicted to bad vices like liquor and from April 2017 he had started asking her to give divorce and as she had refused to give divorce, he was harassing her. He was also asking her to bring Rs. three lakh from her parents and ultimately, she was driven out of the matrimonial house along with the deceased along with issues and that is why she was living in the house of her parents. The deceased was working as truck driver. The husband had filed proceeding under section 97 of Cr.P.C. for getting the custody of three issues, but he could not succeed in that proceeding and by order dated 20.1.2018 the said proceeding was dismissed by the learned J.M.F.C., Shrirampur (M.A. No. 204/2017).

5) The aforesaid circumstances show that applicant No. 2 had filed proper proceedings in the Court and she had made allegations of aforesaid nature against the deceased. It is clear that the husband wanted to avoid the proceedings. It does not look probable that he had gone to the wife on previous day of the incident when such proceedings were filed and when he had also filed separate proceeding under section 97 of Cr.P.C. He was only interested in getting the custody of the issues if at all he had any intentions. He had not filed any proceeding to bring the wife back to the matrimonial house.

6) If the wife did not want to return to matrimonial house due to the conduct of the husband, inference is not possible that she had intention to abet the suicide. It does not look probable that she had any affair. If she had affair the husband would not have made an attempt to bring her back to the matrimonial house. In a proceeding which was filed under section 97 of Cr.P.C. he had not made any allegation that she had such affair. Due to all these circumstances, this Court holds that it will be abuse of process of law if the present applicants are asked to face the trial for aforesaid offences. In the result, the following order.

ORDER

(I) Application is allowed. Relief is granted in terms of prayer clauses 'B' and 'B-1' as per the amended copy of the application. The

case, if any, filed against the applicants is quashed and set aside.

(II) The fees of the counsel appointed for respondent No. 2 is quantified as Rs.3000/- (Rupees three thousand) and it is to be paid through High Court Legal Services Authority, Aurangabad.

Rule is made absolute in those terms.

[S.M. GAVHANE, J.]

[T.V. NALAWADE, J.]

ssc/