

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

CRIMINAL WRIT PETITION NO. 1319 OF 2019

1. Ram Vishwnath Bhande,
Age : 35 years, Occ – Business
R/o. Maharana Pratap Nagar,
Behind Reliance Office, Tq. and Dist. Latur.
2. Hanmant @ Nilesh Vishwnath Bhande,
Age : 39 years, Occ – Business
R/o. Bansavargaon, Tq. Chakur, Dist. Latur.
3. Bharat Vishwnath Bhande,
Age : 31 years, Occ – Business,
R/o. Maharana Pratap Nagar,
Behind Reliance Officer, Tq. and Dist. Latur.
4. Padmja Nandkumar @ Nandkishor Tivghale,
Age : 42 years, Occ – Household
R/o. Nath Nagar, Latur, Tq. and Dist. Latur.
5. Nandkumar @ Nandkishor Tivghale,
Age : 53 years, Occ – Agri.
R/o. Nath Nagar, Latur, Tq. and Latur.
6. Shantabai Vishwnath Bhande,
Age : 79 years, Occ- Household
R/o. Maharana Pratap Nagar,
Behind Reliance Office, Tq. and Dist. Latur.

...PETITIONERS

VERSUS

1. The State of Maharashtra
Through Police Station Officer,
Vivekanand Chowk Police Station,
Latur, Dist – Latur.
2. Mahesh Madhavrao Poul,

Age – 28, Occ – Agri.

R/o. Khandali, Tq. Ahmedpur, Dist. Latur

... **RESPONDENTS**

Mr. D. J. Patil, Advocate for the petitioners
Mrs. V. S. Choudhary, APP for respondent/State.
Mr. R. S. Patil, Advocate for respondent No. 2.

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

DATED : 11-11-2019

ORAL JUDGMENT (PER :- S.M. GAVHANE, J.)

. Rule. Rule made returnable forthwith, heard finally with the consent of the parties for final disposal.

2. By this petition under Article 226 and 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure the applicants-accused Nos. 1 to 6 against whom crime No. 293/2017 has been registered in Vivekanand Chowk Police Station, Latur for the offences under Sections 306, 498(A), 323, 504 read with Section 34 of the Indian Penal Code, on the complaint of respondent No. 2- the informant Mahesh Madhavrao Poul, have requested to quash and set aside the said FIR as well as the charge sheet bearing No. 120/2019 filed in the Court of JMFC, Latur for the said offences except under Section 306 of IPC, respectively in terms of prayer clauses (B) and (C)

of the petition.

3. Mr. Patil, learned Advocate for the petitioners on instructions submitted that petitioner No. 1 is withdrawing the petition when this Court was not inclined to grant relief to the said petitioner.

4. Mr. Patil, learned Advocate for the petitioners submitted that deceased Namrata was the sister of respondent No. 2-informant. She was married to petitioner No. 1 on 21/05/2010. After marriage she went to the house of petitioner No. 1 for cohabitation. Petitioners No. 2 and 3 are brothers, petitioner No. 6 is mother and petitioner No. 4 is married sister of petitioner No. 1 and petitioner No. 5 is husband of petitioner No. 4. While the deceased was cohabiting with petitioner No. 1 at Latur she was admitted in the hospital on 16/06/2017 and she was declared dead. After receiving the message of petitioner No. 1 respondent No. 2 alongwith his father went to Latur and came to know about the same. Thereafter respondent No. 2 on 20/06/2019 lodged the aforesaid FIR and crime was registered.

5. Mr. Patil, learned Advocate further submitted that the petitioners No. 2 to 6 were not residing with petitioner No. 1 and his

wife the deceased. Petitioner No. 2 was residing at Bansavargaon, Tq. Chakur, Dist. Latur, petitioner No. 4 married sister of petitioner No. 1 was residing at Nath Nagar, Latur alongwith her husband the petitioner No. 5. Further it is submitted that as per the statement of Sau. Manisha Kendre recorded by police on the date of incident i.e. 16/06/2017 since 6 months prior to the incident the petitioner No. 1, his wife the deceased and their daughter were residing in the two rooms on monthly rent of Rs. 3600/- of said Manisha Kendre. So also as per statement of said Manisha in the night on 16/06/2017, the petitioner No. 1 knocked the door of said Manisha and told that the deceased was not feeling well. Thereafter, said Manisha and her husband went to the room in which the petitioner No. 1 and deceased were residing and they noticed that the deceased was not talking. Thereafter, deceased was taken in the Lokmanya Hospital, Latur. Mr. Patil, learned Advocate further submitted that as per the letter of medical officer dated 30/10/2018 death of the deceased was caused due to Cerebral Oedema with Intra alveolar hemorrhages in lungs. No cause of death is a given in the post mortem report. Therefore, the police have stated in the final report/ charge sheet that no offence under Section 306 of abetment to suicide is committed and therefore police filed final report only under Sections 498(A), 323, 504 read with Section 34 of the IPC. It is further

submitted that as the petitioner No. 1 and the deceased were residing in the rented room since 6 months prior to the incident and they were not residing with petitioners No. 2 to 6 the allegations in the FIR against the petitioners regarding demand of Rs. 5,00,000/- by the petitioners are not correct. Since the deceased was married to petitioner No. 1 for more than 7 years on the date of incident no presumption of abetting the deceased to commit suicide can be raised. It is submitted that the impugned FIR and charge sheet are nothing but amounting to abuse of process of law and therefore they are required to be set aside against petitioners No. 2 to 6 by allowing the petition.

6. Mr. Patil, learned Advocate for respondent No. 2 and learned APP for respondent No. 1-State have submitted that the the offences alleged against the petitioners are prima-facie made out on the basis of FIR and therefore FIR and charge sheet cannot be quashed against the petitioners as submitted by the learned Advocate for the petitioners.

7. We have carefully considered the submissions made by the learned Advocates for the petitioners, respondent No. 2 and learned APP and we have perused the copies of documents produced on record by the petitioners.

8. There is no dispute that the deceased was sister of respondent No. 2. She was married to petitioner No. 1 on 21/05/2010. After marriage she went to the house of petitioner No. 1 for cohabitation. Petitioners No. 2, 3 and 6 are respectively brothers and mother of the petitioner No. 1 while petitioner No. 4 is married sister of petitioner No. 1 and petitioner No. 5 is husband of petitioner No. 4. There is also no dispute that petitioner No. 2 was residing at Bansavargaon, Tq. Chakur, Dist. Latur, petitioner No. 4 was residing at Nath Nagar, Latur and petitioner No. 5 was residing at Nath Nagar, Latur at the material time of incident. Admittedly the deceased has one daughter from the petitioner No. 1.

9. On perusal of the FIR it is seen that it was lodged by respondent No. 2 on 19/06/2017. It is alleged in the FIR that the deceased was cohabiting properly at her in-laws house during initial 6 months and thereafter petitioners No. 1, 2, 3 and 4 started assaulting the deceased saying her to bring Rs.5,00,000/- from her parental house for constructing house and business of finance and they were starving and abusing her. Deceased used to disclose the same to her parents and respondent No. 2 whenever she used to come to her parents house.

Thereafter, people from her in-laws house were convinced that respondent No. 2 and others cannot give money to them and they were told not to harass her. It is further alleged that on 02/06/2017 the deceased was driven out of house by the people from her in-laws house saying her to bring money and again she was sent to her in-laws house for cohabitation. Thereafter the incident dated 16/06/2017 took place and that the petitioner No. 1-husband of the deceased informed respondent No. 2 that the deceased was not feeling well.

10. From the above referred allegations in the FIR the allegations made against the petitioners No. 2 to 4 regarding demand of money are vague and allegedly said demand was made in 2010 after 6 months of marriage of the deceased with petitioner No. 1. No specific instance is quoted in the FIR in respect of demand made by petitioners No. 2 to 4. The petitioner No. 4 married sister of petitioner No. 1 is residing with her husband-petitioner No. 5. So also, as stated earlier it is the statement of land lady Manisha Kendre that since 6 months prior to the incident dated 16/06/2017 petitioner No. 1 and the deceased were residing on rent in her house. Therefore it cannot be said that petitioners No. 2 to 6 had in any manner abetted the deceased to commit suicide or caused cruelty for demand of money. Death of the

deceased was caused due to hemorrhages in lungs as referred earlier. For the above reasons nothing will be achieved by putting the petitioners No. 2 to 4 on trial for the offences alleged against them and continuation of the FIR and charge sheet against petitioners No. 2 to 6 would amount to abuse of process of law. Therefore both FIR and charge sheet are required to be set aside as against petitioners No. 2 to 6 by allowing their petition in terms of prayer clauses (B and (C). Therefore following order is passed.

ORDER

1. The petition to the extent of petitioner No. 1 Ram Vishwnath Bhande is disposed of as withdrawn.
2. The petition of petitioners No. 2 to 6 is allowed.
3. Relief is granted to petitioners No. 2 to 6 in terms of prayer clauses (B) and (C).
4. Rule is made absolute in those terms.

[S.M. GAVHANE, J.]

[T. V. NALAWADE, J.]