

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

CRIMINAL APPLICATION NO. 3076 OF 2018

Dr. Vijay s/o Bhujangrao Lad,
Age 37 years, Occ. Medical
Practitioner, R/o. Prashant
Nagar, Ambajogai, Dist. Beed. ... **Applicant.**

VERSUS.

1. The State of Maharashtra,
Through The Police Station officer,
Ambajogai City Police Station,
Dist. Beed.
2. Sau. Chaya w/o Salaj Bhatane,
Age 40 years, Occ. Household,
R/o. Bhatanwadi, Tq. Ambajogai,
Dist. Beed, now at Vivekanand
Nagar, Ambajogai. ... **Respondents.**

...

Mr. Choudhary S.S., Advocate for Applicant.
Mr. M.M. Nerlikar, A.P.P for respondent No. 1.
Mr. Dhumal Dashrath, Advocate for respondent No. 2.

**CORAM : T.V. NALAWADE &
MANGESH S. PATIL, JJ.**

DATE : 25th MARCH, 2019

JUDGMENT (PER MANGESH S. PATIL, J.) :

Heard.

2. Rule. Rule is made returnable forthwith. Learned APP waives service of notice for respondent No. 1 and learned advocate Mr. Dhumal waives service of notice for respondent No. 2. With the consent of both the sides the matter is heard finally at the stage of admission.

3. The applicant is praying quashment of the F.I.R. lodged by the respondent No. 2 on which basis Crime No. 353/2018 is registered against him with Ambajogai City Police Station for the offence punishable under section 306 of the Indian Penal Code.

4. The respondent No. 2 in her F.I.R. dated 11.08.2018 inter alia alleged that the deceased was her daughter who was a trained nurse. She was working as such in the hospital of applicant in the year 2016. A love affair began between the two and they decided to marry. However, he demanded dowry due to which an amount of Rs. 5 lakh was paid to him in the year 2017. However, he refused to marry her and thereby instigated her to commit suicide. She consumed 70 tablets of some medicine on 02.05.2018 and succumbed.

5. The learned advocate for the applicant submits that there is enormous delay in lodging the F.I.R. which clearly shows that it is concocted. If really the deceased was under some mental pressure on account of the applicant refusing to marry her and all her family members were aware of it, the delay becomes vital. He would submit that accepting the allegations in the F.I.R. at their face value no offence of instigation can be made out. Assuming that there was affair between the two, it was in the year 2016. Since thereafter, even according to F.I.R. the deceased had migrated to Talegaon Dabhade and was serving there in a hospital. She committed suicide in the month of May 2018. Therefore apparently there is no nexus

between the alleged affair and the cause of suicide. It would be sheer misuse of process of law if the applicant who is a Medical Practitioner is made to stand to the trial on such allegations.

6. The learned APP and the learned advocate for respondent No. 2 strongly oppose the application. They submit that no scrutiny of material can be resorted to. Going by the allegations in the F.I.R. it is apparent that there was an affair between the deceased and the applicant and inspite of having promised to marry he ditched her and arranged marriage with another girl which constitutes instigation.

7. We have carefully considered the papers of investigation. It is apparent that there is a considerable delay of more than three months in lodging the F.I.R. since the date of death. If at all there was an affair between the applicant and the deceased which began in the year 2016 wherein he had promised to marry her in the year 2017 and when going by the allegations he had arranged marriage with another girl which had led to some kind of frustration to the deceased, one cannot digest as to how and why the respondent No. 2 who is her mother did not lodge any report for more than three months.

8. Besides, the papers of investigation show that a dying declaration was recorded by a Police Constable in presence of the Medical Practitioner on 02.05.2018. In that dying declaration she has not even cursorily whispered about any affair with the applicant much less has attributed any

role to him which had led her to take the final step.

9. The learned advocate for the respondent No. 2 also placed on record some screen shots of the mobile of the deceased which at the most disclose that she was having telephonic conversation with the applicant and even in her last text message she has not attributed any role to him and on the contrary has wished him good luck. Taking into account all these aspects, in our considered view it would be a sheer misuse of process of law if the applicant is made to stand to trial.

10. Apart from the above state of affairs, assuming for the sake of arguments that there was an affair between the applicant and the deceased and he had promised her to marry but had gone back on his words, still it would not constitute instigation within the meaning of Section 107 of the Indian Penal Code.

11. The application is allowed.

12. The rule is made absolute in terms of prayer clause 'B'.

(MANGESH S. PATIL, J.)

(T.V. NALAWADE, J.)

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