

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

CRIMINAL REVISION APPLICATION NO. 289 OF 2018

1. Ansar Abdul Bari Mansuri,
Age 30 years, Occ. Labour,
R/o. Near Old Bus Stand
Thesil Road, Tq. Kannad
Dist. Aurangabad.
 2. Nisar Abdul Bari Mansuri,
Age 30 years, Occ. Labour,
R/o. as above.
- ... **Applicants.**

VERSUS.

1. The State of Maharashtra.
 2. Vandana w/o Prakash Tribhuvan,
Age 44 years, Occ. Labour,
R/o. Samarth Nagar, Kannad, Dist.
Aurangabad.
- ... **Respondents.**

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Advocate for the Applicants : Mr. S.G. Ladda.
A.P.P. for the respondent No. 1 : Mr. P. K. Lakhotiya.
Advocate for respondent No. 2 : Mr. P. P. Dawalkar (appointed).

CORAM : MANGESH S. PATIL, J.

DATE : 06/09/2019

JUDGMENT :

Heard.

2. Rule. Rule is made returnable forthwith. Learned A.P.P.
waives notice for respondent No. 1/State. At the request of both sides

the matter is heard finally at the stage of admission.

3. The applicants who are the accused in Sessions Case No. 418/2012 pending in the Court of Additional Sessions Judge, Aurangabad, by the applications (Exhibits 28 & 31) sought modification/alteration of the charge and also claimed to be discharged of the offence punishable under section 306 read with section 34 of the Indian Penal Code. The learned Additional Sessions having rejected both these applications they have approached this Court.

4. The learned advocate for the applicants vehemently submitted that the offence has been registered inter alia under section 306 of the Indian Penal Code with the allegations inter alia about they having instigated the deceased who was the daughter of the respondent No. 2 to commit suicide by persistently stalking and harassing her. The learned advocate would point out that during the postmortem examination the viscera was preserved and got chemically analysed. However no poison was found in the viscera as per the report of the Forensic Lab. Therefore, there is no material to show that the deceased has committed suicide and in the absence of which there would be no question of any abetment of suicide which is punishable under section 306 of the Indian Penal Code.

5. The learned A.P.P. strongly opposes the application. He submits that going by the F.I.R. lodged by the respondent No. 2 who is the mother of the victim, prima facie the accused persons were stalking and harassing the deceased who was an unmarried girl. On the date of the incident, when she had gone for answering nature's call the respondent No. 2 and her family members had heard commotion and when she rushed there along with other witnesses the present applicants-accused were found assaulting her. She was rescued and was brought home but immediately the deceased consumed something poisonous. Froth was coming out and on enquiry the deceased disclosed that the accused persons were harassing her frequently and had defamed her and that is why she has consumed some poison. Therefore at this juncture there is no reason to discard such a version and oral dying declaration. Merely because the Investigating Officer has not yet apparently got any final opinion as to the cause of death that is immaterial and cannot be a ground to discharge the applicants.

6. I have carefully gone through the papers. The applicants are apparently trying to take advantage of the negative report of the chemical analysis. However, as is correctly noticed by the learned Additional Sessions Judge, merely on the basis of this isolated circumstance one cannot discharge the applicants. Obviously these

would be the factors which will have to be gone into during the course of trial. When there is an oral dying declaration coupled with the circumstances which apparently led the deceased to end her life, this much of material is sufficient to frame the charge and the applicants cannot claim to be discharged.

7. It is also important to note that the applicants had initially filed the application (Exhibit 28) on 23.11.2017 by styling it as amendment of charge. The contents of this application clearly show that based on the very same grounds regarding negative chemical analysis report they had questioned framing of the charge under section 306 of the Indian Penal Code. The learned Additional Sessions Judge by the order dated 12.07.2018 had dispelled the objection to frame the charge under section 306 of the Indian Penal Code.

8. Again, the applicants filed another application (Exhibit 31) styling it as an application under section 227 of the Code of Criminal Procedure seeking discharge. By the impugned order dated 20.10.2018 the learned Additional Sessions Judge rejected that application as well. It is apparently a clear misuse of the process of the Court. By filing successive applications a same prayer was being repeated without challenging the earlier order by which their application (Exhibit 28) was rejected. It is pertinent to note that the sessions case is of the year

2012 and it is apparently at a very belated stage, when the trial is on the verge of commencement that such successive applications have been filed. There is every room to believe that such applications are being made with an oblique motive to protract the trial.

9. For all these reasons, I find no sufficient and cogent ground to interfere in the impugned orders in this revision.

10. The revision is dismissed. The rule is discharged. The trial is expedited.

(MANGESH S. PATIL, J.)

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