

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 3287 OF 2018

Anand Ashok Kamble,
age 40 years, Occ. Service,
R/o. Raigad Colony,
Canal Road, Beed, Dist. Beed.
At present R/o. Panchayat Samiti Office,
Pen, Tq. Pen, Dist. Raigad.

... Applicants

Versus

- 1] The State of Maharashtra
through Police Station Shivaji Nagar,
Beed, Dist. Beed.
- 2] Surekha Nandkumar Chavan,
Age 46 years, Occ. Service,
R/o. Ganesh Nagar, Old S.P. Office Road,
Beed, Dist. Beed.

... Respondents

Mr. S.J. Salunke, Advocate for the applicant.
Mr. R.D. Sanap, APP for respondent No.1
Mr. U.D. Dalvi, Advocate (appointed) for respondent No.2.

**CORAM : T. V. NALAWADE &
K.K. SONAWANE, JJ
DATE : 8th July, 2019.**

ORAL JUDGMENT : [PER K.K. SONAWANE,J] :-

1. Heard. Rule. Rule is made returnable forthwith. Matter is taken up for finality with the consent of learned counsel for parties.

2. The applicant, taking recourse to remedy under Section 482 of the Code of Criminal Procedure (“Cr.P.C.”) preferred present application seeking relief to quash and set aside the First Information Report (“FIR”) bearing No. 154/2013 registered at Police Station, Shivaji Nagar Police Station, Dist. Beed for the offence punishable under Sections 498-A, 304-B, 306 r/w. 34 of the Indian Penal Code (“IPC”), as well as the consequential proceeding of RCC No. 70 of 2014 pending before the learned Magistrate at Beed.

3. The genesis of the prosecution case, culled out in brief is as under :-

That the first informant – Surekha Nandkumar Chavan, R/o. Beed, on 22/9/2013, approached to the Police of Shivaji Nagar Police Station, Beed and ventilated the grievance that marriage of her daughter – Jyoti was solemnized with the applicant Anand on 11th May, 2009 as per Budda Religion. The deceased Jyoti was in employment as Gram Sevak in Panchayat Samiti, Beed, whereas, the applicant – Anand was also working as a clerk in the Panchayat Samit at Shrivardhan, Dist. Raigad. After the marriage, deceased Jyoti joined the company of husband at matrimonial home. Initially, for about 10-12 days, all the things were normal. But, thereafter, she was subjected to cruelty by the in-laws, brother in law, sister in law and other inmates of the matrimonial home, on the ground that she is of black complexion. They used to scold deceased Jyoti that applicant Anand performed marriage with her, only because of her employment. The members of the matrimonial home, mentally and physically tortured the deceased Jyoti and on some occasions kept her

unfed. It has been alleged that in the month of August, 2009, when the applicant husband had been to Beed, for birth day of niece, that time, the wife deceased Jyoti asked the husband to get herself transferred to Shrivardhan, District Raigad and thereafter, by obtaining the house loan, they would construct/purchase the house for joint residence of the spouses. But, the applicant and in-laws disclosed the wife deceased Jyoti to bring Rs. 5 Lakhs from her parents for purchasing the house at Shrivardhan. According to first informant, the applicant and other inmates of the matrimonial home, used to abuse and assault the deceased Jyoti. Whenever the deceased Jyoti visited to parents, she used to disclose about her persecution to them. There was demand of Rs. 5 Lakhs for purchase of house at Shrivardhan. Eventually, fed up with the continuous torture, the deceased Jyoti on 21.9.2013, committed suicide by hanging herself to the ceiling fan in the room at matrimonial home.

4. Pursuant to FIR, Police of Shivai Nagar Police Station registered the crime under Section 498-A, 304-B, 306 r/w. 34 of IPC and set the penal law in motion. Pending the investigation, applicants moved present application by invoking remedy under Section 482 of the Cr.P.C. for relief to quash and set aside the penal proceeding initiated against them. I.O. recorded the statement of witnesses acquainted with the facts of the case. I.O. collected the relevant document of post mortem findings etc. I.O. recovered the suicide note of the deceased under Panchanama and forwarded the same to the Handwriting expert. After due verification, the handwriting expert opined that the alleged

suicide note was scribed by the deceased Jyoti herself. After compliance of procedural formalities, I.O. filed the charge sheet against the applicant and other co-accused bearing RCC No. 70 of 2014 before the learned Chief Judicial Magistrate, Beed. Pending the proceeding, the co-accused comprising of brother-in-law, sister-in-law preferred Criminal Application No. 4615 of 2015 and 1540 of 2014 to quash and set aside the criminal proceeding filed against them. This court under order dated 8th October, 2018, was pleased to absolve all the co-accused except the present applicant, for the charges of cruelty under Section 498A, 304-B, 306 r/w. 34 of IPC. Thereafter, the applicant-accused, being husband of the deceased moved the present application to exonerate him from the charges levelled on behalf of prosecution in this case.

5. Admittedly, the applicant/accused is arraigned for the charges of cruelty and unnatural death i.e. suicidal death of his wife Jyoti at her matrimonial home. It has been alleged that the applicant husband subjected her to ill-treatment and harassment which goaded her to commit suicide by hanging herself to the ceiling fan. According to prosecution, applicant-accused abetted the commission of suicide by the deceased Jyoti. It is not in dispute that the death of deceased Jyoti was caused due to hanging and it was a suicidal death.

6. The learned counsel for the applicant vehemently submits that the applicant/husband is innocent of the charges pitted against him. He has not committed any crime. The deceased Jyoti was residing at Beed for the sake of her employment, whereas, the applicant husband was residing at Shrivardhan,

District Raigad for his service in the Panchayat Samiti as a clerk. The applicant husband used to visit Beed on the day of holiday or on some occasions. There was no unlawful demand of money for purchasing the house property at Shrivardhan, Raigad. The in-laws and other members of the matrimonial home were exonerated by this court, for the charges of cruelty and abatement of suicide etc. The learned counsel for the applicant drawn attention of this court towards the documents placed on record in regard to service career of deceased Jyoti. He submits that the deceased Jyoti was employed as Gram Sevak and a departmental proceeding was initiated against her for dereliction and misconduct while discharging duties being a public servant. Moreover, prior to the incident, a show cause notice was issued to the deceased Jyoti for her suspension from the service. It has also been alleged that the deceased Jyoti used forged MS-CIT certificate to get Government employment. Due to complications in her service career, she made endeavour to get herself transferred from Beed to Shrivardhan. But, she did not succeed and she was under mental stress and trauma. Therefore, in view of complications in her service career, she might have committed suicide by hanging herself to the ceiling fan.

7. The intense scrutiny of the factual aspects of matter and the statements of prosecution witnesses recorded in this case reflects that the arguments advanced on behalf of learned counsel for the applicant, appears sustainable and considerable one. The documents produced on record in regard to service career of deceased Jyoti demonstrates that she was being charged for

dereliction and misconduct while discharging official duty as Gram Sevak. The show cause notice was also issued to deceased Jyoti for departmental enquiry against her. It has been brought on record that since last two months of the incident, the office of the Zilla Parishad Beed withheld her salary. Obviously, the circumstances are sufficient to draw the inference that she must have mental stress during the relevant period.

8. Moreover, it is essential to take into consideration that the I.O. recovered suicidal note of deceased Jyoti, wherein, she verbalized that she committed suicide on her own volition and nobody should be held responsible for the same. In the suicidal note, she advised her husband i.e. present applicant, to marry with her sister Piyu, being her last wish. Admittedly, the suicidal note was referred to the handwriting expert and he opined that the alleged suicidal note was scribed by the deceased Jyoti herself. It is to be seen that, had there been any cruelty to the deceased Jyoti on the part of applicant-husband, which goaded her to commit suicide, she would have not advice for marriage of her sister with her cruel husband. But, surprisingly, the deceased Jyoti did not blame her husband. In contrast, she advised her husband to perform marriage with her sister Piyu. This kind of suicidal note of the deceased conjures up an image that upto her death, she had an love and affection with the husband and as there were no grievances against husband, she did not take drastic step of committing suicide because of cruelty and abetment on the part of husband. The circumstances are sufficient to perceive that she put an end to her life for some other reason, may be due to

complications in her service career in the office. In such circumstances, we are of the opinion that there would not be any propriety to allow the prosecution to proceed further for trial of the accused in this case.

9. At this juncture, it would be profitable to make reference to observations made by Their Lordships in the case of ***Bhagwandas vs. Kartar Singh and others reported in AIR 2007 SC 2045***, wherein, it has been observed in para.13, 14 and 15 as under :-

“13. *In Randhir Singh & Anr. vs. State of Punjab* 2004(13) SCC 129, it was observed that "more active role which can be described as instigating or aiding the doing of a thing is required before a person can be said to be abetting the commission of offence under Section 306 IPC.

14. In the same decision it was observed following the decision in *State of West Bengal vs. Orilal Jaiswal* 1994(1) SCC 73 that :

"the courts should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end the life by committing suicide. If it transpires to the court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty."

15. In our opinion the view taken by the High Court is correct. It often happens that there are disputes and discords in the matrimonial home and a wife is often harassed by the husband or her in-laws. This, however, in our opinion would not by itself and without something more attract Section 306 IPC read with Section 107 IPC."

10. In another case of *Anand Kumar Mohatta Vs. State (Govt. of NCT of Delhi)* reported in 2018 SCC OnLine SC 2447 In Criminal Appeal No. 1395 of 2018, the Honourable Apex Court in para.34 enunciated as follows :-

“34. It is necessary here to remember the words of this Court in State of Karnataka v. L. Muniswamy which read as follows :-

“7. In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice”

11. In view of aforesaid discussion, we are of the considered opinion that this is a fit case in which criminal proceeding initiated against the applicant- husband for the offence punishable under Sections 498-A, 304B, 34 of IPC is required to be quashed and set aside in the interest of justice. It would be an futile efforts and would cause injustice to him. It would also dissipate the precious time of Court of law as the possibility of his ultimate conviction is totally bleak. The ends of justice would be served by ensuring that the applicant may not be forced unnecessarily to go on litigations before the Criminal Court. Hence, the following order.

ORDER

1. The Criminal Application is allowed.
2. The penal proceeding initiated against applicant bearing FIR No. 154/2013, for the offences punishable under Sections 498-A, 304B,306, read with Section 34 of IPC registered with Police Station, Shivaji Nagar, Beed is hereby quashed and set aside, so also, the RCC No. 70/2014 pending before the CJM, Beed filed pursuant to aforesaid FIR is also quashed and set aside.
4. Fees of the counsel appointed is quantified at Rs. 3,000/- to be paid through the High Court Legal Services Sub-Committee, Aurangabad.
5. Rule is made absolute in terms of prayer clause "C" to "E".
6. Criminal Application is disposed of in above terms.
7. No order as to costs.

[K.K. SONAWANE]
JUDGE.

[T. V. NALAWADE]
JUDGE

grt/-