

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

CRIMINAL APPLICATION NO.3606 OF 2018

Swati D/o Ashokrao Chowkewar,
Age 26 years, Occu. Service,
Permanent R/o Sarfaraz Nagar,
Near Jadhav Gas Agency,
Jintur Road, Parbhani,
District Parbhani.

... **Applicant**

Versus

1. The State of Maharashtra,
Through Police Station Officer,
Mondha Police Station,
Parbhani, District Parbhani.

2. Nilesh Namdeorao Mitkari,
Age 31 years, Occu. Business,
R/o Sai Corner, Khandoba Bazar Road,
Parbhani, District Parbhani.

... **Respondents**

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Mr. S.S.Rathi, Advocate for Applicant.
Mr. Swapnil Joshi, APP for Respondent-State.
Mr. S.B.Sontakke, Advocate for Respondent No.2.
Mr. S.D.Munde, Advocate for Assisting APP.

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

DATE : 26.04.2019

JUDGMENT : (Per Mangesh S. Patil, J.) :-

Heard. Rule. The Rule is made returnable forthwith. The learned APP waives service for the Respondent-State. The learned advocate Mr. S.B.Sontakke waives service for Respondent No.2. With the consent of both the sides the matter is heard finally at the stage of admission.

2. The applicant is seeking quashment of Crime No.314 of 2018 registered with Mondha Police Station, Parbhani for the offence punishable under Section 306 of the IPC, on the basis of the complaint lodged by Respondent No.2.

3. The deceased was a married man having couple of children and was aged about 34 years. He hanged himself in his house on 14.10.2018, leaving behind a suicide note, mentioning that the applicant has destroyed his life by insisting for maintaining sexual relations with her by blackmailing him of putting him to disrepute, inspite of the knowledge that he was a married man having couple of children. He also alleged that she was having illicit

relations with couple of other persons as well and had also falsely implicated him. Based on such suicide note, respondent No.2 who happens to be his brother lodged the report and the crime has been registered.

4. We have carefully considered the papers of investigation. Since the prosecution has been coming with the suicide note it is indeed a vital document. However, in our considered view, even if the allegations in the suicide note are accepted at their face value, it is difficult to comprehend as to how these allegations would constitute abetment within the meaning of Section 107 of the IPC in the form of instigation, conspiracy or intentional aid. It would appear that she had blackmailed him and had made his life miserable, still, it would certainly fall short of either instigation or intentional aid.

5. In order to constitute an abetment of suicide within the meaning of Section 306 read with Section 107 of the IPC it would be utmost necessary that the person abetting the suicide must be having an intention of reaching the consequences which ensued. Even if it is assumed that

the applicant was blackmailing the deceased, she was only intending to have continuous sexual relations and she cannot be attributed with having an intention that he should end his life instead.

6. Thus there being no other material to show in what manner the applicant had otherwise instigated the deceased to commit suicide, it would be an exercise in futility if she is made to face the investigation and a possible charge.

7. In this regard if it is also equally important to note that the deceased committed suicide on 14.10.2018. However, prior thereto the applicant had lodged the FIR against him on 11.10.2018 in Parbhani Gramin Police Station for the offence punishable under Section 376(2)(n) of the IPC. Perhaps because of this complaint that the deceased in the suicide note has mentioned that she was falsely implicating him. We do not intend to make any comment about veracity or otherwise of the allegations levelled by her against him in the FIR. We only point this fact to demonstrate that perhaps this could have been a

triggering factor for him to save his face.

8. Be that as it may, accepting the allegations in the FIR and the material collected in the form of suicide note, necessary ingredients for constituting the offence punishable under Section 306 cannot be discerned. The application therefore deserves to be allowed.

9. The application is allowed in terms of prayer clause 'C'. The rule is accordingly made absolute.

(MANGESH S. PATIL, J.)

(T.V.NALAWADE, J.)

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vmk/-