

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

CRIMINAL APPLICATION NO. 2476 OF 2019

1. Sandeep Subhash Tayade
Age: 38 years, Occupation: Insurance Surveyor,
R/o: E-104, Surobhi Township Dashrath Nagar,
Near Sawant Petrol Pump, Vishrantwadi,
Dighi Camp, Pune
2. Mrs. Savita Suresh Paradhe
Age: 42 years, Occupation: Housewife,
R/o: Flat No.A/501, Royale Rahadaki Greens,
Village Rahatani, Tq: Haveli, District: Pune
3. Dr. Suresh Kaduba Paradhe
Age: 47 years, Occupation: Service,
R/o: Flat No.A/501, Royale Rahadaki Greens,
Village Rahatani, Tq. Haveli, District:Pune ...Applicants
[Orig. Accused Nos.4 to 6]

Versus

1. The State of Maharashtra
2. Dr. Pundlik Banduji Salve
Age: 80 years, Occupation: Retired,
R/o: Plot No.88, Flat No.F-12,
Nandanvan Apartment,
Nandanvan Colony, Aurangabad
Mobile No.7709810324 ... Respondents
[Res.No.2 Orig. First Informant]

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Mr. Joydeep Chatterji, Advocate for the applicants
Mr. M. M. Nerlikar, AGP for respondent No.1-State
Ms Satyavati K. Doke, Advocate for respondent No.2

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**CORAM : T. V. NALAWADE AND
R. G. AVACHAT, JJ.**

DATED : 22nd SEPTEMBER, 2020

JUDGMENT : (Per R. G. Avachat, J.)

. The applicants, accused Nos. 4 to 6, respectively in proceedings, being Regular Criminal Case (RCC) No.584/2019, pending on the file of 17th Judicial Magistrate First Class (J.M.F.C.), Aurangabad for offences punishable under Sections 498-A, 323, 504, 506 r/w 34 of the Indian Penal Code, hereby seek quashing of the said proceeding.

2. Rule. Rule made returnable forthwith. By consent, heard finally at the stage of admission itself.

3. First Information Report (FIR) has been lodged by the father of the deceased – Nanda. The applicant Nos. 1 and 2 are the brother and sister-in-laws of the deceased-Nanda. The applicant No.3 is the husband of applicant No.2. Nanda (deceased) married Satyen in January-2001. She was highly qualified. She was serving as Assistant Professor with M.I.T. Engineering College, Aurangabad. Satyen would run engineering workshop. Leelabai and Subhash were parents-in-law of the deceased. The husband and parents-in-law of the deceased treated her well for initial 3-4 years of her marriage. Satyen got addicted to liquor. He developed illicit relationship with a

woman. As a result, he started neglecting his business. His financial position got dwindled. He started beating up Nanda. He would ask her to pay him money for spending on his vices. The deceased would relate her woes to her parents and other relations. It is alleged in the FIR that in the year 2015, Satyen and his mother had administered Nanda some poisonous substance with an intention to eliminate her. The said incidence was given a colour of an attempt to commit suicide by Nanda.

It is further alleged that the informant had six daughters and a son. One of his daughters, namely Vaishali was admitted to a hospital in October-2015 for cardiac problem. Doctor had advised for angioplasty. The family was short of funds. Nanda had promised to provide some funds for the angioplasty. Her husband and in-laws did not like the same. On 11.10.2015, Nanda sent her son to tuition. By 12.00 noon, Nanda was seen lying on bed unconscious. Froth oozed from her mouth. She had bouts of vomiting. Doctor from the neighborhood was summoned. He advised to admit her to a hospital. The maidservants in the house, took Nanda to a bathroom. They poured water on her person. Thereafter, Nanda was admitted to Kamalnayan Bajaj Hospital, Aurangabad. On the following day, Nanda breathed her last. The applicant No.3 is a medical

practitioner. At his instance, Dr. Ekbote, who was attending Nanda, did not perform postmortem on the dead body of Nanda. It has specifically been alleged that Nanda was administered some poisonous substance with a view to eliminate her. As such, all the accused, in furtherance of their common intention, committed murder of Nanda.

4. The FIR was registered pursuant to the order passed under Section 156(3) of the Code of Criminal Procedure. It was the crime registered vide C.R.No.0340/2017, for the offences punishable under Sections 498A, 302, 328, 304B, 120B read with 34 of the Indian Penal Code. The statements of persons acquainted with the facts and circumstances of the case, were recorded. On completion of investigation, the charge-sheet came to be filed only for offences punishable under Sections 498A, 323, 504, 506 r/w 34 of the Indian Penal Code. It appears that the informant did not file any protest petition nor has he challenged the order not taking cognizance of the offences punishable under Sections 302/304B of Indian Penal Code. As such, we are only concerned with the prayer for quashing of the charge-sheet for the offences punishable under Sections 498A, 323, 504, 506 r/w 34 Indian Penal Code.

5. Learned Advocate for the applicants would submit that if the allegations in the charge-sheet taken at face value and even accepted in their entirety, do not disclose any offence. The allegations are utterly false, concocted and vague. Applicant No.1 has been residing permanently in Pune, for little over seven years next before Nanda breathed her last. Applicant Nos. 2 and 3 had also been residing separately initially at Aurangabad itself, and then, shifted to Pune. According to learned Advocate, deceased Nanda was not keeping good health. She was a diabetic and had gynecological problems. She died of 'Cardio respiratory arrest Secondary to Pulmonary embolism'. According to the learned Advocate, FIR has been lodged 1½ years after the alleged incidence. The allegations in the FIR have been drafted by a legal eagle. Since no offence is made out against any of the applicants, the criminal proceedings in R.C.C. No.584/2019, are liable to be quashed.

Shri M. M. Nerlikar, learned APP for the State and Ms Satyavati Doke, learned Advocate representing respondent No.2, would submit that the deceased was killed by the applicants and co-accused. The applicant No.3 is a doctor. He influenced Medical Officers of Kamalnayan Bajaj Hospital, Aurangabad, for not performing postmortem examination on the mortal remains of

Nanda. Learned Advocates took us through statements of mother of the deceased, son of the deceased and their maidservants to ultimately submit that *prima-facie* case for prosecuting the applicants for the alleged offences, is made out. Both of them have further submitted that the deceased would maintain a daily diary. The matters contained in her diary support the prosecution case. They, therefore, urged for rejection of the application.

6. Deceased Nanda had married Satyen way back in 2001. She breathed her last on 12.10.2015. The medical papers of the deceased suggest, she died of 'Cardio respiratory arrest Secondary to Pulmonary embolism'. Admittedly, the dead body of Nanda had been handed over to her brother. The informant and his relations had ample time to have postmortem conducted on the dead body of Nanda, but they did not.

7. FIR came to be registered about 1½ years after Nanda died. The same came to be registered pursuant to an order passed under Section 156(3) of the Code of Criminal Procedure. The same suggests that allegations in the FIR have been drafted by a legal expert. Be that as it may, even though, the FIR alleges the applicants and co-accused to have committed offences punishable under

Sections 302 or 304-B of the Indian Penal Code, the charge-sheet has been filed under Sections 498-A, 323, 504, 506 r/w 34 of the Indian Penal Code. The informant appears to have not filed a protest petition. As such, it is only to be seen whether offences punishable under Sections 498-A, 323, 504, 506 r/w 34 of the Indian Penal Code are *prima-facie* made out against the applicants.

It has been averred in paragraph 4 of the FIR that applicant No.1, non applicants - co-accused used to give false and bad information about deceased Nanda. They abused and assaulted her many a times. The deceased would narrate about her ill-treatment to her parents.

There are no other allegations in the FIR against the applicants.

Deceased Nanda was said to have been writing daily diary. Some pages from the diary under her handwriting, are the part of police papers. The matter therein suggests the deceased to have had some grievance against her husband.

The statement of the brother of the deceased is also silent to attribute anything incriminating to the applicants. His statement indicates to have grievance against the husband and mother-in-law of the deceased. Although, applicant No.3 is alleged

to have influenced the Medical Officers at Kamalnayan Bajaj Hospital to refrain from conducting postmortem examination of the dead body of Nanda, the same is of little consequence for deciding this application. The statement of Aryan – son of the deceased speaks of what he had seen at the material time on the fateful day. It is in his statement that when he returned home from tuition, he saw his mother lying unconscious. A doctor from neighborhood was called. He asked to rush Nanda to hospital. The maidservants took Nanda to bathroom and poured water on her person. It is further in his statement that he saw that the wash basin contained vomit. The statement of Aryan indicates that his father did not behave with him properly at the relevant time. His statement is silent to suggest that the applicants were at home on the fateful day and even there before. The statement of maidservants Manisha and Shashikala do not lead us closer to the prosecution case. Same is the case about the statement of Akanksha, a colleague of the deceased. It is in her statement that the deceased had never related her about her domestic affairs, except about 1½ years before the deceased had told her that her husband was involved with one lady and she was, therefore, not happy.

8. The statement of the mother of the deceased attributes something incriminating against her son-in-law Satyen, his parents, her sister-in-law and her husband, as well. It has been alleged that the applicant Nos. 2 and 3 would visit Nanda's house and both used to instigate husband and parents-in-law of deceased Nanda to ill-treat her. The mother of the deceased do not claim to be an eye witness to these happenings.

9. The statement of the doctor who had visited the house of Nanda, does not take us closer to prosecute the case. The statement of Dr. Ekbote, indicates that it was he, who attended Nanda in Kamalnayan Bajaj Hospital. She was under his treatment. She died of 'Cardio respiratory arrest Secondary to Pulmonary embolism' and therefore, he did not refer the dead body of Nanda, for postmortem examination. Close analysis of the statements of the relations of the deceased and others, on which the prosecution proposes to rely undoubtedly, indicate that there is nothing to attribute the applicants with the alleged offences. Whatever the parents of the deceased have stated in their statements about the role of the applicants in instigating the parents-in-law of the deceased to ill-treat her, is based on hearsay, i.e. what was stated to them by the deceased. Since the

cause of death of the deceased is not in questiond in this proceedings, whatever was allegedly stated by the deceased to her parents would not be admissible under Section 32(1) of the Indian Evidence Act. As such, the material collected during the investigation of the crime against the applicants herein, undoubtedly suggest that it dows *prima-facie* make out any offence against any of the applicants herein. It would be an abuse of process of Court if the applicants are made to stand trial based on such material. The criminal proceedings in Regular Criminal Case No.584/2019 before the learned 17th J.M.F.C., Aurangabad is, therefore, liable to be quashed so far as against the present applicants are concerned.

10. The application deserves to be allowed. The same is, therefore, allowed in terms of prayer clause [B]. Rule is made absolute.

[R. G. AVACHAT, J.]

[T. V. NALAWADE, J.]

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