

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 3158 OF 2019

Aasif @ Aashiq Gulam Dastgir Qureshi **....Applicant.**

Versus

State of Maharashtra and Anr. **....Respondents.**

Mr. N.R. Shaikh, Advocate for applicant.

Mr. A.V. Deshmukh, APP for respondent No. 1/State.

Mr. P.G. Tambade, Advocate for respondent No. 2 (appointed).

Mr. Yogesh Jadhav h/f. Mr. Girish Nagori, Advocate for respondent No. 2.

**CORAM : T.V. NALAWADE AND
SHRIKANT D. KULKARNI, JJ.**

DATED : 03/11/2020.

ORDER :

1. The application is filed for relief of quashing of F.I.R. No. 245/2019 registered with Bazar Peth Police Station, Taluka Bhusawal, District Jalgaon. The crime is registered for the offences punishable under sections 306, 498-A, 504 r/w. 34 of Indian Penal Code. Heard both the sides.

2. The crime is registered on the basis of report given by present respondent No. 2. The deceased was the wife of the applicant. In the F.I.R., allegations are made by informant, father of the deceased that right from the marriage which took place in the year 2004 there was illtreatment to the deceased from present applicant and his relatives like mother and sister. It is contended that

the deceased could not conceive and due to that there was illtreatment to her. It is contended that the applicant and his three relatives used to say to the deceased that it would be better if she dies as only after her death it will be open to the present applicant to marry another wife. It is contended that the informant and others had tried to convince the husband and his relatives to behave well, but their conduct did not improve. It is contended that on 24.4.2019 at about 11.50 a.m. the informant received phone of the deceased and on phone she informed that on the previous night sister of the husband had quarreled with her on the ground that she was not able to give issue to the present applicant. She informed that again the sister and mother of the present applicant had started saying that it would be better that she dies and she may jump before train to finish herself. She informed that the illtreatment had become unbearable for her. On the same day at about 7.15 p.m. they received the news that Amreen, deceased had committed suicide in the matrimonial house by hanging herself. The burial was over on 25.4.2019 and F.I.R. came to be given on 25.4.2019. It is not disputed that the death took place due to hanging and it was suicide.

3. It is not disputed that no child was born to the deceased though there was cohabitation of around 15 years. The learned counsel for applicant submitted that as there was no issue a decision was taken to adopt a child and accordingly, one child was adopted.

Some record is produced to show that one child was admitted in school in 2015 and to this child the name of applicant is given as father. Photograph of function of adoption is given. Parties are Muslims by religion and in Muslims there is no concept of adoption. In spite of these circumstances, the learned counsel submitted that only to see that everybody is happy the adoption was made. There is no legal record of adoption.

4. The learned counsel for applicant submitted that as the incident took place after about 15 years of marriage, the presumption under section 113-A of Evidence Act will not be available and there are other circumstances due to which it can be said that no prima facie case is made out of abetment of suicide. This submission made for the applicant is not acceptable. The learned counsel for applicant placed reliance on some observations made by the Apex Court in the case of **Rajiv Thapar and Ors. Vs. Madan Lal Kapoor [2013 CRI.L.J. 1272]**. The learned counsel submitted that some steps are given to consider the defence of the accused in a proceeding filed under section 482 of Cr.P.C. He submitted that when there is reliable material like the material which is shown by the applicant of adoption, such material can be relied upon and it can be inferred that there was no harassment from the husband. This submission cannot be accepted at this stage. Admittedly, she committed suicide by hanging in the matrimonial

house and there is allegation of aforesaid nature against the husband and the relatives of the husband. Surprisingly the husband has come to the Court for quashing of the F.I.R. by making the contention of aforesaid nature. Such contention cannot be accepted. The incident took place in the matrimonial house and illtreatment had become unbearable to her and so, she committed suicide. Such circumstances can be considered for drawing inference of intentional instigation as mentioned in section 107 of Indian Penal Code. So, the following order.

ORDER

- A) The application is dismissed.
- B) The fees of the appointed counsel Shri. P.G. Tambade is quantified as Rs.4,000/- (Rupees four thousand). It is to be paid through the High Court Legal Services Sub Committee, Aurangabad.
- C) One Advocate Mr. Yogesh Jadhav holding for Shri. Girish Nagori was present.

[SHRIKANT D. KULKARNI, J.]

[T.V. NALAWADE, J.]

ssc/