

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

CRIMINAL APPLICATION NO. 1176 OF 2021

1. Deepak @ Digambar
Balkrushna Khairnar,
Age 40 years, Occu.Service
 2. Ashabai @ Sushilabai Balkrushna Khairnar,
Age 64 years, Occu. Household,
Both r/o Nikumbh Colony,
Behind Mukbadhir School,
Chalisgaon, Taluka Chalisgaon,
District Jalgaon
- ..Applicants

Versus

1. The State of Maharashtra,
Through its City Police Station,
Chalisgaon, Taluka Chalisgaon,
District Jalgaon
 2. Ishwar Bangar More,
Age 61 years, Occu. Pensioner,
R/o Borole Nagar No.2, Chopda,
Taluka Chopda, District Jalgaon
- ..Respondents

Mr V.B. Patil, Advocate for applicants
Mr Anand S. Shinde, A.P.P. for respondent no.1/State
Mr P.B. Patil, Advocate for respondent no.2

**CORAM : V. K. JADHAV AND
SHRIKANT D. KULKARNI, JJ.**

DATE : 20th August 2021

ORAL JUDGMENT (Per Shrikant D. Kulkarni, J.)

1. Rule. Rule made returnable forthwith. Heard finally with consent of both the sides at admission stage.
2. The applicants are seeking relief of quashing of F.I.R. vide Crime No. 0125 of 2021, registered against them with City Police Station, Chalisgaon, District Jalgaon, for the offences punishable under Sections 306, 498-A, 323, 504, 506 read with Section 34 of the Indian Penal Code.

3. The marriage of applicant no.1 Deepak alias Digambar with Aarti was solemnised on 28.01.2007. Out of the said wedlock, two sons are born. Applicant no.2 is mother of applicant no.1. The applicant no.1 is serving in Ashram School at Pimparkhed, Taluka Chalisgaon, District Jalgaon.

4. According to the prosecution case, Aarti was subjected to harassment at the hands of applicant no.1 by taking doubt on her character since the year 2009. The applicants were demanding retiral benefits received by respondent no.2. In the month of March 2021, Aarti got infection of COVID-19. On 25.3.2021, the first informant went to Chalisgaon and shifted his daughter Aarti to Nasik for further treatment. On 29.3.2021, Aarti was discharged from the hospital. She took rest at Nasik for one week and thereafter, she came to Chalisgaon.

5. On 20.4.2021, the first informant received message informing that Aarti is admitted in Trauma Center at Chalisgaon. The first informant rushed to Chalisgaon and came to know that Aarti has committed suicide. It is alleged by the first informant that Aarti committed suicide due to harassment and cruelty caused by the applicants. He lodged F.I.R. with City Police Station, Chalisgaon and on that basis, Crime No.0125/2021 came to be registered against the applicants for the offences punishable under Sections 306, 498-A, 323, 504, 506 read with Section 34 of the Indian Penal Code.

6. Heard Mr Vijay B. Patil, learned Advocate for the applicants, Mr Anand S. Shinde, learned A.P.P. for respondent no.1/State and Mr P.B. Patil, learned Advocate for respondent no.2/first informant.

7. Mr V.B. Patil, learned Advocate for the applicants strenuously argued that Police have seized the suicide note. There are no allegations against the

applicants in the suicide note. Aarti has committed suicide at her own wish. He submitted that on perusing of the entire contents of the F.I.R., it would reveal that there are vague and general allegations levelled against the applicants. There is delay in lodging of F.I.R., which shows that story narrated in the F.I.R. is after thought. According to Mr Patil, there is no material against the applicants to attract Section 306 read with Section 107 of the Indian Penal Code, which may speak about abetment of suicide. No overt act is attributed to applicants. It would be an abuse of process of the Court, if criminal prosecution is allowed to continue against the applicants. Mr V.B. Patil, learned Advocate for the applicants has placed reliance on the following stock of citations :

1) Gangula Mohan Reddy Vs. State of Andhra Pradesh,
reported in **2010 All M.R. (Cri.) 615;**

2) Madan Mohan Singh Vs. State of Gujarat & Anr.,
(Criminal Appeal No.1291 of 2008 [Supreme Court] decided on
17.08.2010); and

3) Ravindra Bhimrao Khillari and Ors., Vs. State of
Maharashtra and anr., reported in 2017 (3) Bom. C.R. (Cri.) 768

8. Per contra, Mr Anand S. Shinde, learned A.P.P. for respondent no.1/State strongly opposed to allow this application for quashing the F.I.R. He submitted that if allegations levelled in the F.I.R. against the applicants are taken at their face value, cognizable offences are disclosed. He submitted that Aarti has committed suicide because of harassment and cruelty caused by the applicants, as revealed from the F.I.R. Certain incriminating material is recovered during course of investigation. He submitted that it is not a fit case to quash the F.I.R. when investigation is in progress.

9. Mr P.B. Patil, learned Advocate for respondent no.2/first informant echoed the argument advanced by learned A.P.P. and strongly opposed to allow this application for quashing of F.I.R.

10. The law on quashing of F.I.R./proceedings is well settled in view of landmark judgment of Honourable Supreme Court in case of **State Of Haryana and ors. vs Ch. Bhajan Lal and ors.**, reported in **AIR 1992 SC 604**. In the present case, it is evident from the record that marriage of Aarti was solemnised on 28.01.2007. Aarti met with unfortunate death on 20.4.2021 falling in the category of suicide. On perusal of the investigation papers, it is revealed that investigation of abovesaid crime is in progress. According to opinion as to the probable cause of death in this case is, "death due to asphyxia due to hanging." The investigating Officer seems to have collected suicide note during course of investigation. Though suicide note is not incriminating against the applicants, the Investigating Officer has collected one pen drive with regard to conversation between Aarti and her brother. The material discovered by means of pen drive points out clear cut finger towards the applicants. Applicant no.1 alleged to have made allegations against the deceased by suspecting her character. Even though the deceased was blessed with two sons, she was not happy in matrimonial house, as prima facie appears from the material collected by the Investigating Officer.

11. The Investigating Officer is in process of recording statements of adjoining witnesses. The allegations levelled against the applicants in the F.I.R. are specific and attributing role of the applicants making them responsible for the death of daughter of respondent no.2/first informant.

12. In case of **Gangula Mohan Reddy Vs. State of Andhra Pradesh** (supra), it is held by the Honourable Supreme Court, "in order to convict a person under Section 306 IPC there has to be a clear mens rea to commit the offence. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing." The Honourable Supreme Court set aside the conviction of appellant/accused. The case in hand is for quashing of F.I.R. Parameters for quashing of F.I.R. are quite different. The powers of quashing of F.I.R. under Section 482 of Cr.P.C. are to be used very sparingly and that too when allegations levelled in the F.I.R. are found vague and general in nature. Such is not the position as appearing from the facts of the case on hand.

13. In case of **Madan Mohan Singh Vs. State of Gujarat & Anr.**, (supra), the Honourable Supreme Court was pleased to quash the F.I.R. observing that the F.I.R. itself does not have any material or is not capable of being viewed as having material for offence under Section 306 and 294(b) IPC, as per the law laid down in **State of Haryana & Ors. Vs. Ch. Bhajan Lal & Ors.**, reported in **AIR 1992 SC 604**. The facts of the case in hand are quite distinguishable from the facts cited in the abovesaid case, which will hardly be of any assistance to the applicants.

14. In case of **Ravindra Bhimrao Khillari and Ors., Vs. State of Maharashtra and anr.** (supra), the Division Bench of this Court was pleased to quash the criminal proceedings observing that there is no positive act of instigating, abetment or intentional aiding attributed to the applicant. As discussed earlier, the facts of the case on hand are quite distinguishable. The Investigating Officer has recovered pen drive and the material discovered from the pen drive prima facie is against the applicants. The allegations levelled

against the applicants in the F.I.R. and the material discovered during course of investigation is prima facie supporting to the case of the prosecution.

15. In case of the **State of Karnataka Vs. L. Muniswami, reported in (1997) 2 SCC 699**, it is held by the Hon'ble Supreme Court that -

“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.

16. Having regard to the above reasons and discussion, we do not find that it is a fit case to quash the F.I.R. in view of parameters laid down in case of **State Of Haryana and ors vs. Ch. Bhajan Lal and ors.** (supra) by the Hon'ble Supreme Court.

ORDER

(i) Criminal Application moved by the applicants, for quashing the F.I.R. registered against them with City Police Station Chalisgaon, District Jalgaon, for the offences punishable under Sections 306, 498-A, 323, 504, 506 read with Section 34 of the Indian Penal Code, is hereby dismissed.

(ii) Rule discharged.

(SHRIKANT D. KULKARNI, J.)

(V. K. JADHAV , J.)

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