

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

922 CRIMINAL APPLICATION NO. 1606 OF 2019

Smt. Jayshri W/o Ratan Uchit
@ Jayshri W/o subhash Bagul
Age : 32 years, Occ : Household,
R/o Shivajinagar, Karmad,
Tq. Kannad, Dist. Aurangabad
At present residing at Jadhavwadi
Aurangabad

..APPLICANT

-VERSUS-

1. The State of Maharashtra
Through Police Inspector,
Kannad (City) Police Station,
Tq. Kannad, Dist. Aurangabad.
2. Shankar Pandurang Uchit
Age : 39 years, Occ : Agri.,
R/o Shivajinagar, Kannad,
Tq. Kannad, Dist. Aurangabad.

..RESPONDENTS

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Mr.Suvidh S. Kulkarni, Advocate for the
applicant.

Mr.S.J. Salgare, APP for respondent no.1/State.

Mr.Yogesh Bolkar, Advocate for respondent no.2.

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CORAM : RAVINDRA V.GHUGE

AND

B.U.DEBADWAR, JJ.

RESERVED ON : 24th March, 2021

PRONOUNCED ON : 06th April, 2021

JUDGMENT (Per B.U. Debadwar, J.):

1. This is an application under section
482 of the Code of Criminal Procedure, 1973

(In short, "the Cr.P.C."), for quashing FIR.

2. The applicant prays to quash the FIR No.0032/2019, registered on the basis of the report lodged by Shankar Pandurang Uchit, on 07.02.2019 under section 306 of the Indian Penal Code (In short, "the I.P.C."), at Kannad City Police Station, Dist.Aurangabad.

3. Heard Mr.Suvidh Kulkarni, the learned Advocate for the applicant, Mr.Yogesh Bolkar, the learned Advocate for respondent No.2 and Mr.S.J. Salgare, the learned Additional Public Prosecutor for respondent no.1-State.

4. The allegations/averments made in the FIR, in short, are that deceased Ratan Pandurang Uchit was elder brother of first informant- Shankar Pandurang Uchit. He was agriculturist by profession. His first wife was a Cancer patient. She had committed suicide, getting depressed with Cancer of which she was suffering. Deceased Ratan has two children born from the first wife. After the death of first wife, Ratan performed second marriage with applicant on 11.09.2018, as per Hindu rites and customs, prevailing in

their community, at Mayur Park area of Aurangabad. The first husband of the applicant had died prior to her marriage with deceased Ratan Uchit. After marriage, the applicant used to pick-up quarrel with deceased Ratan Uchit, frequently on petty reasons. Ratan Uchit used to inform about the same to his younger brother i.e. first informant Shankar Uchit. On 07.02.2019, at about 8.30 a.m., when Shankar Uchit – first informant had been to his field situated within the limits of village Makranpur, so as to bring milk, at that time, his cousin brother Pandit Uchit informed him that Ratan Uchit has committed suicide by hanging himself to the Neem Tree, standing on the dyke of their field. Upon knowing the same, Shankar Uchit rushed to the aforesaid spot and saw his brother Ratan Uchit hanging to the tree. In pursuance of the information received, the Police reached there, removed the dead body of Ratan Uchit from the Neem Tree, to which he was hanging and prepared the inquest panchanama. During the course of drawing inquest panchanama, along with a Cell Phone, one suicide note was found in the pocket of pant worn by deceased Ratan. From the contents of that suicide note, Shankar

Uchit-first informant has realized that his brother Ratan Uchit has committed suicide by getting fed-up with quarrels raised by the applicant constantly. After performing funeral and last rituals on the dead body of Ratan Uchit, one more suicide note left behind by him was found kept near a Speed Meter of motorcycle bearing no.MH-20 DL-1726. The recitals of the said suicide note were identical with the earlier suicide note found in the pocket of pant of Ratan Uchit. According to Shankar Uchit - first informant, his brother Ratan Uchit has committed suicide by getting fed-up with the quarrels being raised by the applicant frequently for petty reasons. Therefore, the applicant is responsible for the suicide death of his brother Ratan Uchit.

5. Mr.Suvidh Kulkarni, the learned Advocate, while taking us through the FIR, annexed to the application, vehemently argued that only after four months and six days of marriage with applicant, Ratan Uchit has committed suicide. FIR sought to be quashed has been registered for the offence of abetment to commit suicide punishable under section 306 of the I.P.C. The allegations

about abetment made in the FIR are very much vague in nature. Details of alleged quarrels do not find place in the FIR. In order to bring home guilt under section 306 of the I.P.C., it is necessary to prove the abetment. Section 107 of the I.P.C. defines 'Abetment'. On the basis of the allegations made in FIR, it cannot be gathered that either the applicant instigated or intentionally aided deceased Ratan Uchit for commission of suicide. Allegations made in FIR that the applicant used to pick-up petty quarrels with deceased Ratan Uchit frequently, in any case, do not satisfy the definition of abetment. When there are no allegations made in the FIR from which it can be gathered that the applicant intentionally instigated her husband Ratan Uchit to commit suicide and in pursuance of the said instigation, Ratan Uchit - her husband committed suicide, there is no propriety in dragging the applicant to face the trial, which would ultimately result into his acquittal.

6. In support of his submissions, Mr.Kulkarni, learned Advocate has placed reliance on the judgment of Coordinate Bench

of this Court delivered in the case of *Dilip and Ors. Vs. State of Maharashtra and Ors. {2016 All MR (Cri.) 4328}*.

7. Per-contra, Mr.Yogesh Bolkar, the learned Advocate strenuously argued that Ratan Uchit had committed suicide only after four months and six days of the marriage performed with the applicant. The applicant is a quarrelsome woman. In a short span of four months and few days of the marriage, she had harassed her husband - Ratan Uchit mentally to a great extent by picking up quarrels with him frequently for petty reasons. The applicant has not seriously disputed genuineness of suicide notes left behind by Ratan Uchit. Both the suicide notes are identical. The suicide notes and recitals of the FIR lodged by the real younger brother of Ratan Uchit show that harassment by the applicant was to such an extent that deceased Ratan Uchit was left with no other alternative but to end his life. Nothing on record indicating that Ratan Uchit was suffering from mental disease. The applicant also does not say so. Ratan Uchit was mentally and physically fit, would not have committed suicide unless harassment,

ill-treatment meted out by the deceased was of such a gravity, which led him to commit suicide. According to Mr.Yogesh Bolkar, learned Advocate, the recitals of FIR are, prima facie, quite sufficient to make out the case under section 306 of the I.P.C. against the applicant. Therefore, the application for quashing FIR is liable to be dismissed.

8. Mr.S.J. Salgare, the learned Additional Public Prosecutor for respondent no.1-State submitted that having regard to the allegations made in the FIR and recitals of both the suicide notes, left behind by Ratan Uchit, it cannot be said that the FIR is wholly imaginary. According to Mr.Salgare, the investigation is almost completed and thus, accordingly prayed for dismissal of application.

9. Practically, in all matters under Section 482 of the Code of Criminal procedure, 1973, the accused approaches the Court on the ground that the First Information Report (FIR), on the face of it, does not disclose ingredients that would constitute a cognizable offence. Thus, the inherent power of the High Court, in it's

jurisdiction under Section 482, is invoked for seeking the quashing of the FIR.

10. In *C.B.I. Vs. Tapan Kumar Singh, (2003) 6 SCC 175 : AIR 2003 SC 4140*, the Honourable supreme court has held in paragraph 22 that, "The law does not require the mentioning of all the ingredients of the offence in the FIR. It is only after completion of the investigation that it may be possible to say whether any offence is made out on the basis of the evidence collected by the investigating agency." It is observed that an FIR is not an encyclopedia which must disclose all the facts and details relating to the offence alleged to have been committed. It requires no debate that an FIR is merely a report by the informant about the commission of a cognizable offence and it cannot be ruled out that minute details may not be mentioned. It cannot be ignored that an FIR pertains to an offence, which is alleged to have been committed and the informant, in a disturbed state of mind and shaken on account of a serious offence committed, approaches a police station for recording an FIR.

11. In the *State of Punjab Vs. Dharam Singh, (1987 SCC (Cri.) 621 : 1987 Supp. SCC 89*, the Honourable Supreme Court held that the High Court had erred in quashing the FIR by going beyond the averments, to consider the merits of the case even before the investigating agency has embarked upon the legal exercise of collecting evidence.

12. In *Kurukshetra University Vs. State of Haryana (1997) 4 SCC 451 : AIR 1977 SCC 2229(a Three Judges bench)*, the Honourable Supreme Court has observed thus:-

"It surprises in the extreme that the High Court thought that in the exercise of its inherent powers under Section 482, Criminal Procedure Code, it could quash and FIR. The Police had not even commenced investigation into the complaint filed by the warden of the University and no proceeding at all was pending in any Court in pursuance of the FIR. It ought to be realized that inherent powers do not confer any arbitrary jurisdiction on the High Court to act according to its whim or caprice."

13. In *Geeta Mehrotra and another Vs.*

State of uttar Pradesh and another, (2012) 10 SCC 741, the Honourable Supreme Court has held that in the absence of any specific allegation and an FIR, prima facie, indicating no case against the co-accused, the Court would have the power to quash an FIR.

14. In ***Parbatbhai Aahir alias Parbatbhai Bhimsinhbhai Karmur and others vs. State of Gujarat and another, (2017) 9 SCC 641***, the Honourable supreme Court has laid down the guiding principles to be considered in determining whether an FIR could be quashed, as under:-

“(1) Section 482 CrPC preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court.

(2) The invocation of the jurisdiction of the High Court to quash a first information report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence.

While compounding an offence, the power of the court is governed by the provisions of Section 320 CrPC. The power to quash under Section 482 is attracted even if the offence is non-compoundable.

(3) In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power.

(4) While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised (i) to secure the ends of justice, or (ii) to prevent an abuse of the process of any court.

(5) The decision as to whether a complaint or first information report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated.

(6) In the exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and

dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences.

(7) As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They stand on a distinct footing insofar as the exercise of the inherent power to quash is concerned.

(8) Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute.

(9) In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and

(10) There is yet an exception to the principle set out in

Propositions (8) and (9) above, Economic offences involving the financial and economic well-being of the State have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance."

15. In the light of the aforesaid submissions made by the learned Advocates of both the sides and the crystalised position of law for invocation of powers under section 482 of the Cr.P.C., we have carefully gone through the FIR. It is pertinent to note that the marriage between Ratan Uchit and the applicant was the second marriage for both of them. It is evident from the record that Ratan Uchit has died due to hanging on the tree only after four months and six days of the marriage with the applicant. The applicant has not seriously disputed the nature of death of her husband Ratan. The dispute is only about abetment. It is settled position of law that intention is the concomitant of the abetment. Merely for the

reason that details of quarrels alleged to have been raised by the applicant with her husband Ratan Uchit, have not been given in the FIR, an inference cannot be drawn that the alleged quarrels had no nexus with the suicide death of Ratan Uchit. The allegations about quarrels being picked-up by the applicant with deceased Ratan Uchit frequently, are supported by two suicide notes left behind by deceased Ratan Uchit. There is nothing on record showing that Ratan Uchit was suffering from any mental disease or chronic ailment. When Ratan was mentally and physically fit, he had no reason to commit suicide, unless harassment meted out by the applicant, was of such nature and extent, which would compel him to commit suicide.

16. In ***Dilip and others (supra)***, the Coordinate Bench of this Court, after considering the various judgments of the Hon'ble Supreme Court, has held as under :-

"unless, there is clear mens rea to commit an offence or active act or direct act, which led the deceased to commit suicide seeing no option or the

act intending to push the deceased into such a position, the trial against the accused under Section 306 of the Indian Penal Code, in our considered view, would be an abuse of process of law."

17. In *Dilip and others (supra)*, a Judicial Officer had committed suicide on his transfer to Taluka place from the district head quarters by his superior Judicial Officer. Except the grievance of transfer, the deceased Judicial officer had no other grievance against his superior Judicial Officer. In suicide note, Junior Judicial Officer, who committed suicide has expressed anguish against the Senior Judicial Officer. Having regard to all these facts, the Coordinate Bench of this Court had quashed the FIR.

18. The facts of the case at hand are altogether different. Ratan Uchit was mentally and physically fit person, has committed suicide only within four months and six days, after the marriage with the applicant, and it is alleged in the FIR and two suicide notes, left behind by deceased Ratan Uchit, that the applicant used to pick-

up quarrels with him frequently. Therefore, he was fed-up and committed suicide. In view of these material allegations made in the FIR and two suicide notes left behind by deceased Ratan Uchit, at this juncture, inference cannot be drawn that the applicant did not instigate her husband Ratan Uchit to commit suicide or there was no intention behind the quarrels, which she used to pick-up with her husband frequently. Only after trial, this material aspect can be decided. Therefore, it is not proper to quash the FIR getting influenced with the submission that the applicant had no intention to drive her husband Ratan Uchit to commit suicide.

19. In view of above, we are not inclined to quash the FIR. Accordingly, the application is rejected.

(B.U.DEBADWAR,J.)

(RAVINDRA V. GHUGE,J.)