

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

CRIMINAL APPLICATION NO. 2135 OF 2020

1. Gokarna Balaji Mote
 2. Shivaji Manik Langar
- Versus
1. The State of Maharashtra
 2. Seema Vijaykumar Mote

Advocate for Applicants : Mr. Satej S. Jadhav
APP for State : Mr. S.P. Deshmukh
Advocate for Respondent No. 2 : Ms. A.A. Lomte
h/f. Mr. S.J. Salunke

**CORAM : V.K. JADHAV AND
SANDIPKUMAR C. MORE, JJ.**

DATE : 13.12.2021.

Per Court :

1. Heard both the sides. By consent of the parties, the matter is heard finally at the admission stage. Leave granted to amend the prayer clause for mentioning number of sessions case.

2. Applicants are praying for quashing of FIR in Crime No. 210/2020, registered against them with Ausa Police Station, District Latur, for the offence punishable under Section 306 read with Section 34 of the Indian Penal Code. However, during the pendency of this application charge sheet has been submitted

and therefore, the applicants by way of amendment have also prayed for quashing of the proceedings bearing R.C.C. No. 87/2021 and Session Case No. 49/2021.

3. It is alleged by the prosecution that the applicants are having illicit relations with each other and therefore, applicant No. 1 i.e. original accused No. 2 was picking up quarrels with her husband – Balaji Narhari Mote who is the deceased in this crime, on flimsy grounds. Balaji used to consume liquor on account of the said fact. Even, the informant i.e. respondent No. 2 who is wife of brother of deceased Balaji, had seen the applicants in compromising position just four days before the incident. On 25.09.2020 at about 07:00 p.m., the informant heard ongoing quarrel between applicant No. 1 and Balaji near her house. Balaji was complaining as to why applicant No. 1 talks with applicant No. 2. Applicant No. 1 retorted by saying that they have to pay amount of Rs. Two Lakhs which was borrowed by them from brother of applicant No. 2 i.e. Laxman Langar. She also gave her Mangalsutra to Balaji and told that their marital tie came to an end. After half an hour, the informant – Seema i.e. respondent No. 2 heard cries of children at well of one Dnyanoba Mali and when she went to the said well she saw that applicant No. 1 and

her father-in-law had come out from the well and sat in wet condition. She came to know from applicant No. 1 that her brother-in-law Balaji had fallen in the well. As Balaji could not be found due to excess water in the well, his dead body was later taken out. Then the informant - respondent No. 2 lodged the aforesaid FIR.

4. Learned counsel for applicant submits that there was quarrel between deceased Balaji and applicant No. 1 on account of illicit relations between the applicants and therefore, the deceased by embracing applicant No. 1 had in fact jumped into the well for committing suicide jointly. He, further, submits that applicant No. 1 was saved by one Bhagwat i.e. her cousin brother-in-law but Balaji died due to drowning. According to him, there are no ingredients present in the crime in respect of offence under Section 306 of IPC as there involved no abetment either by applicant No. 1 or by applicant No. 2. He, further, submits that no triable case is made out even if the entire FIR is accepted as it is.

5. Learned APP submits that the documents on record are indicative of the fact that there were frequent quarrels between

applicant No. 1 and deceased Balaji. As such, there is every possibility that Balaji might have committed suicide on account of the same as applicant No. 1 threatened him to sever their relations as husband and wife.

6. On the other hand, the learned counsel for respondent No. 2 also strongly submitted that Balaji i.e. husband of applicant No. 1 has committed suicide mainly due to the behavior of applicant No. 1. She further submitted that the informant had seen the applicants in compromising position just four days before the incident behind one tree near her house. As such, she submits that the said fact must have caused abetment to the act of suicide committed by Balaji. Thus, the learned counsel for respondent No. 2 prayed for rejection of the application.

7. We have carefully gone through the FIR as well as the charge sheet in the present crime. On perusal of the same, it appears that the prosecution and respondent No. 2 are claiming that since there were illicit relations between the applicants and there was quarrel between applicant No. 1 and deceased Balaji, Balaji jumped into well for committing suicide and ultimately

died due to drowning. The cause of death of Balaji due to drowning is not disputed. The prosecution claims that the cause of suicide of Balaji was due to quarrel between himself and applicant No. 1 and the illicit relations between the applicants. However, to constitute the offence under Section 306 of IPC, the Hon'ble Supreme Court in many cases has made observations. We would like to produce one such observation of the Hon'ble Apex Court in the case of **M. Mohan Vs. State** in the judgment reported in *AIR 2011 Supreme Court 1238*. In the said judgment, the Hon'ble Supreme Court has observed that :

"45. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained.

46. The intention of the Legislature and the ratio of the cases decided by this Court are clear that in order to convict a person under Section 306, IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the

deceased to commit suicide seeing no option and this act must have been intended to push the deceased into such a position that he/she committed suicide."

8. Thus, as per the above said observation, there has to be a clear *mens rea* to commit the offence under Section 306 of IPC which includes the abetment contemplated in Section 107 of IPC. It is also made clear that conviction under the aforesaid sections cannot be sustained without positive act on the part of the accused to instigate or aid in committing suicide.

9. In the present case, it is alleged by the prosecution that on account of illicit relations between the applicants, quarrel took place between the deceased and his wife - applicant No. 1 just before the incident and Balaji committed suicide by jumping into the well. However, on perusal of the statements of witnesses produced before us by way of charge sheet indicate that the applicant and deceased Balaji both had fallen into the well together. One Narhari Bhimrao Mote i.e. father of deceased Balaji whose statement has been recorded during the investigation has stated that when he saw Balaji, applicant No. 1 and children running towards the well, he followed them and

saw that Balaji as well as her daughter-in-law i.e. applicant No. 1, both had fallen into the well and therefore, to save them he also jumped into the well. He has further stated that his nephew Bhagwat Mote had also come there and jumped into the well and saved him and applicant No. 1. Further, it is stated that Bhagwat had again jumped into the well for saving Balaji but Balaji could not be found. Thus from this statement, it appears that applicant No. 1 and Balaji both had fallen into the well. The statements of other witnesses have also indicated the same story. Further, there is also one statement of one little girl Janvi Vijaykumar Mote who appears to have witnessed the actual incident. According to her, when she was playing at the time of incident, quarrel between Balaji and applicant No. 1 was going on and they both fell into the well. Thus, on perusal of the material on record apparently it is found that only Balaji had not jumped into the well alone but applicant No. 1 had also fallen into the well together with him. It is significant to note that the Investigating Officer during the investigation has also recorded statement of applicant No. 1 wherein she stated that Balaji, at the time of incident, had drunk heavily and started beating her. When her Mangalsutra was broken due to the said beating, she

had in fact went to the well for committing suicide but Balaji followed her to the well and again there was quarrel between them. At that time, Balaji told her that if she wanted to die then he would also give her company and thereafter, by embracing her, jumped into the well together. Though, such statement of applicant No. 1 is not admissible in the evidence but it can be seen that had the applicant No. 1 intended to abet the suicidal act of Balaji then she would not have jumped into the well with him. In normal course she would have insulted Balaji in such a manner that he would commit suicide by jumping into the well alone. There is no explanation on record as to why and how applicant No. 1 also fell into the well. Thus, the allegations about abetment of suicidal act of Balaji are not supported by any positive act from the side of applicant No. 1.

10. So far as involvement of applicant No. 2 i.e. accused No. 1 – Shivaji Manik Langar is concerned, the only allegation against him that he was having illicit relations with applicant No. 1 which was not liked by the deceased and hence, the commission of suicide. However, as per the aforesaid observation of Hon'ble Apex Court there requires an active act or direct act which led the deceased to commit suicide seeing no other option.

However, the allegation against applicant No. 2 are so absurd that it cannot be assumed that the alleged illicit relationship between the applicants could have caused abetment to the suicide of Balaji. Therefore, on careful perusal of the entire material on record, the necessary ingredients for constituting the offence under Section 306 of IPC are definitely missing in this case.

11. The Hon'ble Apex Court in the case of **State of Haryana and others Vs. Bhajanlal and others** reported in *AIR 1992 SC 604* has referred certain guidelines for exercising extraordinary powers under Article 226 or inherent powers under Section 482 of Cr.P.C. We would like to reproduce the said guidelines at serial No. 1, 3 and 5 herein below :

"1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

2.

3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in

support of the same do not disclose the commission of any offence and make out a case against the accused.

4.

5. *Where the allegations made in the F.I.R. or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused."*

12. On going through the aforesaid guidelines, it is made clear that even if the allegations in the FIR are taken as proved, the offence with which the accused is charged, does not constitute. In the light of our aforesaid observation in the instant case, it is apparent that even if the allegations made by respondent No. 2 against the applicants are held to be proved, then also no offence under Section 306 read with 34 of IPC is established. Moreover, those allegations *prima facie* appear absurd. Under such circumstances, if the trial of this crime is allowed to continue against the applicants, it would be an abuse of process of law. Therefore, we find this is a fit case for exercising inherent powers under Section 482 of Cr.P.C. for quashing the

FIR and criminal proceedings arising out of it. Thus, in view of aforesaid discussion and the ratio laid down by the Hon'ble Apex Court in the above cited cases regarding constitution of offence under Section 306 of IPC and exercising powers under Section 482 of Cr.P.C., we pass the following order :

ORDER

- i. Criminal Application No. 2135 of 2020 is hereby allowed in terms of prayer clause 'B' and 'BB'.
- ii. Criminal Application thus stands disposed of.

(SANDIPKUMAR C. MORE, J.)

(V .K. JADHAV, J.)