

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

CRIMINAL APPLICATION NO.3340 OF 2019

AYESHA W/O. SHAIKH ZAKIR @ BABLU
VERSUS
THE STATE OF MAHARASHTRA AND ANR

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Advocate for the Applicant : Shri N.E. Deshmukh
APP for Respondent 1 : Shri S.J. Salgare
Advocate for Respondent 2 : Shri Shaikh Ashraf Patel (appointed)

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**CORAM : RAVINDRA V. GHUGE
&
R. G. AVACHAT, JJ.**

DATE :- 15th March, 2021

Oral Order:-

1. By this application, the applicant has put forth prayer clauses

A and E as under :-

- “(A) To quash and set aside Crime bearing F.I.R. No.245 of 2019 registered at Bazaarpeth Police Station, Bhusawal, Tal: Bhusawal, Dist: Jalgaon dated 25.04.2019 for alleged offence under Sec. U/s 306, 498-A, 304 r/w 34 of I.P.C. by issuing writ of certiorari or any other writ, order or direction in the like nature.”
- “(E) To quash and set aside charge sheet bearing No.2159/2019 registered as RCC No.318/2019 filed pursuant to Crime bearing F.I.R. No.245 of 2019 registered at Bazaarpeth Police Station, Bhusawal, Tal: Bhusawal, Dist: Jalgaon dated 25.04.2019 for alleged offence under Sec. U/s 306, 498-A, 304 r/w 34 of I.P.C. by issuing writ of certiorari or any other writ, order or direction in the like nature.”

2. We have considered the strenuous submissions of the learned advocate for the applicant, the learned prosecutor on behalf of the State and the learned advocate on behalf of respondent No.2/ original informant.

3. The First Information Report dated 25.04.2019 was registered at 23:18 hours with the Bazaar Peth Police Station, Bhusawal by respondent No.2/Smt.Asma. It was stated that her daughter Amrin was married to accused No.1 (Asif Gulam Dastagir) on 01.05.2004. The FIR details out the alleged physical and mental torture suffered by the deceased Amrin on account of the latter having failed in forebearing a child from her marriage with Asif. The said torture had commenced soon after the marriage when the husband Asif and in-laws of the deceased Amrin noticed that Amrin was unable to bear a child. Various taunts suffered by her and comments like, “it is better that you die so that Asif can remarry and have children”, etc. are set out in the FIR.

4. There are four accused, namely, Asif (husband), Khatija Gulam (mother-in-law of the deceased Amrin), Ayesha Zakir (applicant herein, who is sister-in-law of the deceased) and Parvin Zakir, who is the sister of Asif and resident of Sendhwa, Madhya Pradesh.

5. The FIR further indicates that on 24.04.2019 at around 11:50 AM, respondent No.2/ informant received a call from the deceased Amrin. She was inconsolably weeping and was narrating to the informant that

once again there was severe verbal attack on her on 23.04.2019. Accused No.4 (Parvin)/ sister-in-law from Sendhwa had severely taunted Amrin on the ground that she could not bear a child for the last 15 years. After using filthy and foul language, accused No.4/ Parvin along with accused Nos.1 (Asif) and 2 (Khatija) commented that Amrin should better die and relieve Asif so as to enable him get remarried. After Amrin is said to have narrated her miseries to the informant, the husband of the informant i.e. father of Amrin, received a call at around 07:15 PM on 24.04.2019 vide which, he was informed by his son-in-law Asif (husband of the deceased) that Amrin hung herself inside the house. The informant, along with her husband and four brothers of her husband, reached Bhusawal and found in the early morning that the body of Amrin was laid on a cot. Her husband was the only person found in the house and all other members of the house had disappeared.

6. We clearly find from the FIR that there is no role ascribed to the present applicant (Ayesha). There is not even a whisper that the applicant had, at any point in time, taunted the deceased Amrin or harassed her or caused her any physical or mental agony. Except for the fact that the applicant is the resident of the same house, being the wife of the brother of Asif, that her name appears to have been arraigned in the FIR. It is equally noteworthy that the informant has not whispered of any allegation against the brother of Asif i.e. Zakir @ Bablu, who is the

husband of the present applicant. Zakir @ Bablu is not even an accused.

7. 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 (F.I.R.), on the face of it, does not disclose ingredients that would constitute a cognizable offence. Thus, the inherent power of the High Court, in its jurisdiction under Section 482, is invoked for seeking the quashing of the F.I.R..

8. 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.

9. 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.

10. In ***Kurukshetra University vs. State of Haryana, (1977) 4 SCC 451 : AIR 1977 SC 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 an 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.”

11. 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.

12. 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 of the Code of Criminal Procedure, 1973. 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 in so far 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*
- (9) 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.”*

13. We find that the charge-sheet has been filed bearing No.2159/2019 and registered as RCC No.318/2019. The charge sheet does not bring out any material against the present applicant.

14. In the light of the above, we find that there is absolutely no material against the applicant (Ayesha), contrary to there being several aspersions and allegations against accused Nos.1, 2 and 4 as regards specific acts committed by them which have caused or abetted, prima facie, the deceased in committing suicide in her marital home. In fact, the applicant is similarly situated as the deceased. The deceased was the

daughter-in-law of the family. The applicant also got married to the brother of the husband of the deceased and entered the family as a daughter-in-law. Her husband is not made an accused and no role has been ascribed either to the applicant or her husband.

15. In view of the above, this Criminal Application is allowed in terms of prayer clauses “A” and “E”, which are reproduced above.

16. Since we had appointed Shri Shaikh Ashraf Patel, learned advocate, to represent respondent No.2/ informant, we quantify his fees at Rs.5000/- (Rupees Five Thousand) to be paid by the High Court Legal Services Sub Committee, Aurangabad.

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(R. G. AVACHAT, J.)

(RAVINDRA V. GHUGE, J.)