

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

**CRIMINAL WRIT PETITION NO. 1805 OF 2019**

1. Cherry S/o Anilkumar Roy ( Gaikwad)  
Age : 35 Years, Occ. Service
2. Dr. Reshakiran W/o Anilkumar Roy  
( Gaikwad) Age : 60 Years, Occ. Service  
(G.M.C.)

Both Resident of H. No. 405,  
Malkhare Vihar 2, Khadkeshwar,  
Aurangabad.

**Petitioner**

**V E R S U S**

1. The State of Maharashtra  
( Through Police Station,  
Jawaharnagar, Aurangabad)
2. Jagannath S/o Dhondiba Raut,  
Age : 67 Years, Occ. Retired,  
R/o. Near New Railway Gate,  
Shanoorwadi, Zambad Corner,  
Aurangabad.

**Respondent**

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*Advocate for the Petitioners : Mr. S. S. Jadhav*  
*Additional Public Prosecutor : Mr. S. N. Morampalle*  
*Advocate for Respondent No.2 : Mr. M.K. Bhosale*  
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**CORAM : SURENDRA P. TAVADE, J.**

RESERVED ON : 31-08-2021  
PRONOUNCED ON : 07-10-2021

**J U D G M E N T :**

1. Rule. Rule made returnable forthwith, with the consent of both the parties.
2. Being aggrieved and dissatisfied with the order passed by the learned trial Court below Exh. 10 in Special Case No. 59 of 2019, arising out of Crime No. 25/2018, registered with Jawahar nagar Police Stations, Aurangabad for the offences punishable under Section 498-A, 306, 304-B read with Section 34 of the Indian Penal Code and sections 4 and 5 of the Dowry Prohibition Act, the petitioners have filed this petition.
3. The petitioners had filed application (Exh.10) in Special Case No. 59 of 2019 for their discharge along with other accused. The said application was partly allowed, but the prayer of the petitioners for the discharge was rejected by the trial Court. Hence, this petition.
4. It is contended respondent No.2 Jagannath Rahut has lodged FIR on 16.02.2018, with Jawahar Nagar Police Station. In pursuance of the FIR, crime No. 25/2018 came to be registered against the petitioners and others.
5. It is alleged in the First Information Report that the daughter of respondent No.2 i.e. deceased Sadhana was given in marriage to petitioner No.1. It is contended that Sadhana was treated well by petitioner No.1 and others for some days. Thereafter, they

started causing ill-treatment to her. It is alleged that the petitioners and the other accused used to abuse and assault Sadhana, on account of demand of Rs. 10,00,0000/-. It is alleged that on various occasions, she was driven out of the house. It is alleged that petitioner No.1 and others used to insist deceased Sadhana to give divorce to petitioner No.1. It is also alleged that on failure to fulfillment of demand of money, the deceased Sadhana was harassed mentally and physically. It is contended that due to ill-treatment caused to Sadhana, she came to the house of the informant/respondent No.2. She used to remain in mental pressure and, ultimately, she committed suicide by setting herself on fire. Hence, FIR came to be lodged against them.

6. It is contended that all the allegations made in the First Information Report are false and bogus. The Investigating Officer has recorded Dying Declaration of the deceased Sadhana, wherein, she did not allege any ill-treatment caused to her by the petitioners. It is denied that the petitioners used to demand money from the deceased Sadhana. The FIR was filed with ulterior motive. It is contended that the Investigating Officer relied on the whats APP messages sent by the deceased Sadhana to petitioner No.1, but even on going through the said messages, there is no material to establish that the petitioners used to demand money or dowry or any monetary benefit from the deceased.

7. It is contended that the deceased Sadhana was having love affairs with one Anand Khandevkar. She had lodged FIR against said Anand for the offence punishable under Section 376 of the Indian Penal Code on 25.11.2015, alleging that the said Anand had committed rape on her under the pretext of marriage. It is also alleged in the FIR that said Anand had taken Nude photographs of the deceased Sadhana and he refused to marry with her. Due to brake up with Anand Khandevkar, the deceased used to remain in tense. It is contended that Anand Khandevkar had also filed a complaint against the deceased Sadhana about her black mailing conduct to the Commissioner of Police, Pune. It is also contended that Anand Khandevkar had also filed a Civil Suit for damages, in Civil Court, Pune. It is contended that all these facts have been suppressed by the deceased Sadhana and her family members before the settlement of her marriage with petitioner No.1. It is contended that petitioner No.1 came to know about the alleged relations of the deceased Sadhana with said Anand Khandevkar after his marriage. The relationship between the spouses became strain and that was the only reason for the deceased to commit suicide at her parental home. It is contended that there is no prima facie material to prove the offence leveled against the petitioners. It is contended that the petitioners are medical practitioners. They are having noble jobs. They are economically sound persons, therefore, there is no question of demand of dowry

or money from the deceased Sadhana. It is contended that the allegations regarding ill-treatment are false and bogus and, hence, it is prayed that applicants be discharged.

8. It is contended that the trial Court has not considered the FIR, statements of the witnesses viz-a-viz the dying declaration of the deceased Sadhana. It is contended that the trial Court has not properly considered the material placed on record properly and come to the erroneous conclusion. Hence the present petition.

9. Learned A.P.P for the State Respondent No.1 submits that this Court is required to peruse the charge-sheet filed against the petitioners. He also submits that on perusal of the charge-sheet it appears that the offences are prima facie made out against the petitioners. The trial Court has rightly rejected the application. Therefore, there is no need to interfere with the findings of the trial Court.

10. Heard learned counsel for the petitioner and learned A.P.P on behalf of the State. The prosecution is mainly relied on the FIR and the statement of mother of the deceased Sadhana as well as the Whats-app messages sent by the deceased Sadhana to petitioner No.1 and others. Admittedly, the deceased Sadhana was married to petitioner No.1 on 24.11.2016. It is alleged that in the marriage as per demand, the informant had given gold ornaments worth Rupees Five Lakhs to petitioner No.1. Similarly,

the informant spent huge amount in the marriage. It is contended that prior to the marriage the deceased Sadhana was serving in Government Medical College and Hospital, Aurangabad (Ghati). She was treated well for five to six months by petitioner No.1 and her in-laws. It is contended that the deceased Sadhana, after the marriage, had got herself transferred from Ghati Hospital Aurangabad to Sasoon Hospital Pune. She was residing along with petitioners and others. It is alleged that prior to her death, deceased Sadhana was transferred to Ghati Hospital, Aurangabad on promotion. It is alleged that petitioner No.2 was residing at Aurangabad and she was serving in Ghati Hospital. She was residing at Malkhare Apartment, Khadkeshwar, Aurangabad, but petitioner No.2 did not allow the deceased Sadhana to reside with her. It is alleged that there used to conflicts between the deceased Sadhana and her husband and in-laws. It is alleged that the informant and his wife used to pacify Sadhana to stay with petitioner No.1. Hence, she was residing with petitioner No.1. It is alleged that after marriage, the petitioner and others used to demand rupees ten lakh from the deceased Sadhana for purchasing flat, but, the deceased Sadhana could not fulfill the said demand, therefore, she was being ill-treated by the petitioners and others.

11. It is alleged that on 01.01.2018, the deceased Sadhana had been to Pune to meet the petitioner but he did not meet her. She

was not allowed to enter into the matrimonial house. It is alleged that the deceased Sadhana sent Whats App message to her mother that she was assaulted by the petitioners and she expressed fear that she would be killed. Therefore, the mother of the deceased asked her to return back to maternal home. Accordingly, the deceased returned back to Aurangabad. It is alleged that on 03.02.2018, the deceased Sadhana had been to Pune to meet petitioner No.1, but he did not allow her to enter in the house. He locked his house and went out of the house. It is alleged that the deceased waited for her husband but, he did not return back to his house. Hence, she called her father-in-law but, he did not listen to her. It is contended that the deceased had sent message to Dr. Patil who was Head of the Department of Ghati Hospital and disclosed her strain relation with petitioner No.1. It is alleged that the deceased Sadhana used to call petitioner No.1, but ultimately petitioner No.1 blocked the mobile number of the deceased Sadhana, therefore, she used to sent messages to petitioner No.1 but he was not responding to the same. It is contended that the birthday of the deceased Sadhana was on 10.02.2018 but in the evening of 09.02.2018, she was expecting calls from petitioners and others with the hope that she would be invited to Pune for celebrating her birthday but nobody called her. Therefore, she was under mental stress and, in the evening of 09.02.2018, she set herself on fire. She was taken to

hospital but she succumbed to the injuries on 15.02.2018. It is alleged that on 13.02.2018, petitioners No.1 had come to hospital to see the deceased Sadhana and thereafter, went away. It is alleged that due to ill-treatment caused by the petitioner, the deceased Sadhana set herself on fire. The learned counsel for the petitioners submits that the dying declaration of the deceased Sadhana speak otherwise.

12. The Dying Declaration of the deceased Sadhana is part of the charge-sheet. It is mentioned in the Dying Declaration that, her husband had blocked her mobile number, therefore, she could not speak to her. Therefore, she was annoyed and in the outrage of annoyance, she set herself on fire. It is mentioned in the Dying declaration that she has no grievance against anybody. The learned counsel for the petitioner submits that, the alleged incident of self immolation of deceased Sadhana had occurred in the evening of 9<sup>th</sup> February, 2018. Her Dying Declaration was recorded on 13.02.2018, but, till her death, the parents of the deceased did not make any grievance about the ill-treatment alleged to have been caused by the petitioner to the deceased Sadhana. He also submits that, to take revenge of death of his daughter, the informant filed false and bogus report against the petitioners.

13. On going through the FIR, it appears that the deceased

Sadhana was mentally disturbed. It is alleged that petitioner No.1 had blocked the cell number of the deceased Sadhana, therefore, she was not having any conversation with her husband. The said facts appear in the Whats App messages. It appears that Sadhana had sent number of Whats App messages to petitioner No.1 and her head of the department, wherein she has complained that the behaviour of the petitioners was in-different towards her. She was disturbed. In one of the Whats App messages dated 1<sup>st</sup> of January, 2018, Sadhana informed her mother that the petitioners may kill her. She had also informed that petitioner No.1 had taken away her ATM card. She had also expressed her fear that the petitioner and others may take revenge against her hence, she came to Aurangabad. It appears from the Whats App message that, the deceased Sadhana had informed her Head of the Department Dr. Patil that her husband had blocked her Mobile number and he was not responding to her Whats App messages, therefore, she was under mental stress. It appears that since 1<sup>st</sup> January, 2018 till 9<sup>th</sup> January, 2018, the deceased had sent several messages to petitioner No.1. She was trying/pleading for mercy. She had requested petitioner No.1, atleast to speak with her but the petitioner No.1 was not paying any attention to the messages of the deceased. The said act of the petitioner can be called as causing mental ill-treatment to the deceased Sadhana. So, it can be said that there is material against petitioner No.1 that

he caused mental ill-treatment to the deceased Sadhana which drove her to commit suicide.

14. On going through the FIR, it appears that there are allegations of demand of Rupees Ten Lakhs for purchasing a flat. It also appears from the statement of mother of deceased Sadhana that the petitioners were asking her to take loan of Rupees Ten Lakhs or to bring said amount from her parents for purchasing a flat. The said demands were not fulfilled. There is material on record that due to non fulfillment of the demands by the deceased Sadhana, she was being ill-treated by the petitioners.

15. Learned counsel for the petitioners submits that the cause of her suicide is otherwise. According to him, the deceased Sadhana had love & affair with Anand Khandevkar, who deceived her, and, therefore, she had filed FIR against him. He also invited my attention to the Civil Suit filed by Anand Khandevkar against the deceased Sadhana in Civil Court, Pune. He also invited my attention to the written statement filed by the deceased Sadhana in the said civil suit, wherein she has admitted that she had sexual relationship with said Anand Khandevkar twice. It is also alleged by the deceased Sadhana in her written statement that, in spite of sexual relation, Anand Khandevkar refused to marry with her, therefore, she lodged complaint against him. The said documents are not seized by the Investigating Officer. The said

documents are not part and parcel of the charge-sheet. The said documents are relied upon by the petitioners. But the said documents cannot be considered at this stage. Therefore, I am not inclined to consider the documents produced by the petitioners in support of their case. On going through the FIR and statements of witnesses coupled with Whats App messages sent by the deceased, I am of the opinion that there is material against the petitioners for the offence alleged against them.

16. The trial Court has considered the material placed before it and passed the proper order, which need not interference. Accordingly, I am of the opinion that this petition is required to devoid of merit. Hence, I pass the following order :-

**O R D E R**

The petition is dismissed.

Rule is discharged.

**( SURENDRA P. TAVADE )**  
**JUDGE**

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