

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (APL) NO.231/2019

Narayan s/o Shankar Ghorai,
Aged about 38 years, Occ.-Private Job,
R/o. At Post Mondha, Tah. Hingna, Distt.Nagpur. ... Applicant

VERSUS

1. The State of Maharashtra,
through its Police Station Officer, Hingna
Tahsil Hingna, District Nagpur.
2. Bhaurao Namdeo Khandare,
Aged about 57 years, Occ.Nil,
R/o. Isasani, Nagpur, Tah. and Distt. Nagpur. ... Non-applicants

Mr. Manoj Kariya, Adv for applicant.
Mr. S.S. Doifode, APP for State.
Mr. Gaurav C. Khond, Adv (appointed) for non-applicant no.2.

CORAM : M.S. SONAK & PUSHPA V. GANEDIWALA, JJ.
DATE : 24-11-2021.

ORAL JUDGMENT : (Per : Pushpa V. Ganediwala, J.)

By this application under Section 482 of the Code of Criminal Procedure, 1973, the applicant/accused is seeking quashing of the First Information Report No.409/2018 (for short, 'FIR') dated 25-12-2018 for the offence punishable under Section 306 r/w 34 of Indian Penal Code, registered with the non-applicant no.1 Police Station.

2. In the impugned FIR it is alleged that the wife of deceased namely Sunita Khandare used to pick up quarrel with the deceased Amol Bhaurao Khandare. The deceased was son of the complainant. It is further alleged that the wife of the deceased was having illicit relationship with the present applicant. Therefore, the deceased was under depression which culminated in the commission of suicide by the deceased. On these allegations, the impugned FIR came to be registered against the present applicant and the wife of the deceased for the offence punishable under Section 306 read with Section 109 of the Indian Penal Code (for short, 'IPC').

3. The applicant states that he never met the deceased. The applicant has no concern with the family affairs of the complainant. He says that he is working in a factory where the wife of the deceased is also working. The applicant urged to quash and set aside the impugned FIR.

4. The non-applicant no.1 State in its affidavit in reply states that during investigation it is transpired that there used to be frequent quarrel between the deceased and his wife Sunita and once non cognizable complaint at MIDC Police Station vide NC No.122/0018 dated 10-10-2018 was also registered. It is further stated that the

Investigation Agencies have collected ample material against the present applicant to show his involvement in instigating the deceased Amol in committing suicide.

5. The non-applicant no.2 has not filed any reply.

6. We have considered the rival submissions put forth by the learned Counsel on behalf of both the sides. At the outset, it is well settled position of law that the High Court has to sparingly and consciously exercise the power under Section 482 of the Code of Criminal Procedure, to prevent miscarriage of justice.

7. A perusal of the impugned FIR with the assistance of the learned counsel for the applicant, it would only reveal that due to illicit relationship of wife of the deceased with the present applicant, the deceased was in depression. It is alleged that the wife of the deceased used to have conversation with the present applicant on mobile. Once, the deceased had seen his wife in compromising position with the present applicant.

8. At this juncture, in order to examine the issue whether the allegations in the FIR, prima facie, are sufficient to make out a case for the offence of abetment of suicide, it would be advantageous to refer to

Section 306 of the IPC which provides that if any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment. The ingredients of abetment are set out in Section 107 of the IPC which reads as under :

"107. Abetment of a thing. -A person abets the doing of a thing, who—

(First) — Instigates any person to do that thing; or

(Secondly) —Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

(Thirdly) — Intentionally aids, by any act or illegal omission, the doing of that thing.

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9. In the case of Ramesh Kumar vs State of Chhattisgarh, reported in (2001) 9 SCC 618, three Judges Bench of the Hon'ble Apex Court interpreted the word 'instigation' in paragraph 20 which reads thus :-

"20. Instigation is to goad, urge forward, provoke, incite or encourage to do "an act". To satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be

capable of being spelt out. The present one is not a case where the accused had by his acts or omission or by a continued course of conduct created such circumstances that the deceased was left with no other option except to commit suicide in which case an instigation may have been inferred. A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation."

10. Keeping in mind the aforesaid ratio of the Hon'ble Apex Court, now we propose to examine the case before us. Admittedly, the direct or positive act of instigation on the part of the applicant to commit suicide by the deceased is conspicuously absent in the FIR. The standalone allegation is that the applicant was having illicit relationship with the wife of the deceased and once the deceased noticed his wife with the present applicant in a compromising position.

11. By no stretch of imagination, the applicant can be fastened with the offence of commission of abetment of suicide. There is no specific role attributed to the present applicant in instigating the deceased to commit suicide. We do not see any direct or indirect involvement of the applicant in the commission of suicide by the deceased. The present case is not a case where the applicant by his acts or omissions or by a continued course of conduct created such circumstances that the deceased was left with no other option except to commit suicide. The allegations in the FIR only indicate that the

deceased could not withstand the trauma of the illicit relationship of his wife with the present applicant. The alleged illicit relationship of the applicant with the wife of the deceased, in the absence of any other material, can not be said to be an act or omission on the part of the applicant that the deceased was left with no other option except to commit suicide.

12. In this context, the Constitution Bench of Hon'ble Apex Court in *Joseph Shine V. Union of India* 2018 All M R (Cri) 4065 SC in para 50 and 51, quoted with approval *Pinakin Mahipatray Raval V State of Gujrat* (2013 All SCR 3134) and *Ghusabhai Raisangbhai Chorsiya V. State of Gujrat* (2015 All MR (Cri.)1188 SC) observed that the extramarital relationship can not be treated as an act for commission of an offence under Section 306 of IPC unless the prosecution brings some evidence to show that the accused had conducted in such a manner to drive the wife to commit suicide.

13. On overall consideration of the allegations in the FIR, we are satisfied that the continuance of proceedings against the applicant would amount to abuse of process of Court. We, therefore, pass the following order :-

- (i) The Criminal Application (APL) No.231/2019 is allowed.
- (ii) The First Information Report No.409/2018 registered on 25-12-2018 against the applicant with the non applicant-Police Station Hingna for the offence publishable under Section 306 r/w 109 of the IPC is quashed and set aside.
- (iii) Rule is made absolute in the above terms. Pending application(s), if any, stand(s) disposed of.
- (iv) Fees of appointed Counsel for non-applicant no.2 shall be quantified as per rule.

(Pushpa V. Ganediwala, J.)

(M.S. Sonak, J.)