

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

CRIMINAL APPLICATION (ABA) NO. 668/2021

(Udebhan Laxman Sahare and others. Vs. State of Maharashtra)

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Shri Imran Deshmukh, Advocate for applicants.
Shri S.D.Sirpurkar, APP for non-applicant/State.

CORAM : VINAY JOSHI, J.
DATE : 15.11. 2021.

Heard.

2. At the instance of report lodged by brother of deceased lady dated 4.9.2021 crime was registered for the offence punishable under Section 306 read with Section 34 of the Indian Penal Code. It was informed that later on Section 304-B of Indian Penal Code has been added by the Police. It is the informant's case that his sister (deceased) got married with co-accused Nitin Sahare on 7.5.2017 and resumed for cohabitation. After initial 4-5 months, she was subjected to ill-treatment to meet monetary demand. Informant

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stated that in the year 2018 husband, parents in law and sister in law of deceased had beaten her. Hence, the deceased informed him accordingly. Then on 3.12.2018, the matter was settled on which the husband gave commitment in writing to treat the deceased nicely. The informant stated that on 1.9.2021 his sister (deceased) telephonically informed that her husband and other relatives beaten her and then on the following day, the deceased was informed to be dead due to burns.

3. Though the police have invoked provisions of Section 304-B of the Indian Penal Code, perusal of FIR prima facie nowhere indicates that there was demand related to dowry. It reveals from the report that in the month of December 2018, the matter was settled and thereafter there was no grievance except the last occasion allegedly occurred one day prior to death.

4. The State in resistance submitted that

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due to harassment meted out by the applicants, the deceased committed suicide. Moreover, it is contended that the Investigating Agency found that the spot of incident was cleaned and therefore, it is the case of causing disappearance of evidence.

5. The husband of deceased namely Nitin was already arrested, however, during statutory period, charge-sheet was not filed, hence, he availed benefit of default bail. The learned counsel for the applicants made statement that on arrest of husband Nitin, police have not sought his custody for investigation. This was submitted with a view that police do not want custodial interrogation either of the applicants for any reason. The investigation papers disclose that after death of victim lady, the police have initially registered accidental death on the very date and then after two days, FIR has come. Naturally, on registration of A.D. the police have already visited the spot. In order to constitute an offence of abatement, there must be material to indicate that

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the act of the accused has instigated the deceased to commit suicide. Live link has to be established to co-relate the things.

6. It is stated that the applicants were residing separately from the deceased and her husband in the same courtyard. According to the applicants, there was trifling quarrel in between husband and wife in which lady took extreme step. Prima facie, the paper indicate that after December 2018 everything was running smooth in between the couple. The allegation that on 1.9.2021 the deceased informed about beating to her brother is seriously doubted by defence. It is a matter of trial whether any isolated instances can be construed as sufficient material to constitute an offence of abatement.

7. Having regard to the nature of material, the applicants liberty can be protected by directing them to join the course of investigation. In view of that, the following order:

- (i) Criminal Application stands allowed.
- (ii) Ad-interim order dated 6.10.2021 is made absolute upon the same terms and conditions.
- (iii) The applicants shall attend concerned Police Station on every Sunday in between 12.00 a.m. to 02.00 p.m. till further order.
- (iv) The applicants shall continue to attend the police station till filing of charge-sheet or for the period of 90 days whichever is earlier.

JUDGE

ambulkar.