

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

Criminal Application (APL) No. 846/2019

1. Baburao s/o Manikrao Ghuge,
Age 85 years, Occ.-Pensioner,
R/o Civil Lines, Washim, Tq and Dist. Washim.
2. Jayshree w/o Baburao Ghuge,
Age 75 years, Occ.-Household work,
R/o Civil Lines, Washim, Tq and Dist. Washim.
3. Nitin s/o Baburao Ghuge,
Age 57 years, Occ.-Business,
R/o.-Parmar Park, Pune, Tq. and Dist. Pune. ... Applicants.

VERSUS

1. State of Maharashtra
through Police Station Officer,
Police Station, Washim (City), Tq.and Dist Washim.
2. Yogita Kashinath Bhardwaj,
Age adult, Police Inspector,
Police Station, Washim (Rural) Tq and Dist. Washim.
3. Chanda wd/o Shivram Sanap,
age 50 years, Occ.-household,
R/o. Plot No.23-S.T. Colony N-2, Cydco,
Aurangabad, Tq and Dist Aurangabad. ...Non-applicants.

Criminal Application (APL) No.1168/2021

1. Abhishek Jagdish Ghuge,
Aged 37 years, Occ.-Business and Agriculturist,
R/o.-Civil Lines, Washim, Tq.and Dist.Washim.

2. Chanda wd/o Shivram Sanap,
Age 50 years, Occ. Household,
R/o Plot No.23-S.T. Coloney N-2, Cydco,
Aurangabad, Tq. and Dist.Aurangabad. ... Applicants.

VERSUS

State of Maharashtra
through Police Station Officer,
Police Station, Washim (City),
Tq and Dist. Washim. ... Non-applicant.

Mr. Anil S. Mardikar, Senior Advocate assisted by
Mr. Ved R. Deshpande for applicants in both applications.
Mrs. M.A. Barabde, APP for State in both applications.
Mr. Palash Mohta, Adv (appointed) for non-applicant no.3 in
(APL 846/19 and complainant in APL 1168/21)

CORAM: M.S. SONAK & PUSHPA V. GANEDIWALA, JJ.
Reserved on : 30-11-2021.
Pronounced on : 13-12-2021.

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

Rule. The rule is made returnable forthwith. Heard finally
with the consent of learned Counsel appearing for both sides.

2. The applicants in both these applications are seeking
quashing of First Information Report (FIR) No.47/2019 dated
25-01-2019 registered at Police Station Washim, District Washim, for
the offences punishable under Sections 498-A, 306, 323, 504, and 506
of the Indian Penal Code (IPC). This Court issued notice on 28-08-2019
to the non-applicants and by way of interim relief directed that though

the investigation shall be carried on, no chargesheet shall be filed without obtaining leave of this Court.

3. Application (APL) No.1168/2021 is the joint application filed by the applicant No.1/accused/Abhishek Ghuge/husband and applicant no.2 Chanda Sanap/mother of the deceased Neeta Abhishek Ghuge for quashing of the aforesaid FIR on the ground of settlement between the parties.

4. Applicant nos. 1 to 3 in Criminal Application (APL) No.846/2019 are the relatives of applicant-husband Abhishek Ghuge. The allegations against these applicants in the FIR are that these persons were supporting the applicant husband. There are absolutely no specific allegations against these applicants about their role in the abetment of suicide by the deceased.

5. The applicant no.2 in Criminal Application (APL) No.1168/2021, the mother of deceased on whose complaint the aforesaid crime came to be registered now states that she had lodged the report under rage and without giving a proper thought to the factual situation. It is stated that she was unable to take a balanced decision and was driven by the sorrow of the loss of her daughter who

was suffering from mental disorder and committed suicide due to a vulnerable mental condition. Finally, applicant no.2 states that she does not want to pursue further the prosecution against the applicant no.1-Abhishek Ghuge and the other applicants/accused.

6. In the FIR, it is alleged that the applicant Abhishek, the husband of the deceased Neeta was having extra-marital affair with some other girl, due to which the deceased was undergoing physical and mental harassment at the hands of her husband and relatives, which culminated in her suicide.

7. Learned Senior Counsel Mr. Mardikar urged for quashing of the FIR as this is not a case of abetment of suicide of the deceased at the hands of the applicants as there are no direct allegations against the applicants with regard to their willful conduct which is of such a nature which drove the deceased to commit suicide. Mr. Mardikar further stated that the mental condition of Neeta was not good as she was undergoing psychiatry treatment since the year 2016. On earlier occasion also in 2011 she attempted to commit suicide. Learned Sr. Counsel urged that in similar facts situations this court and other High Courts have quashed the FIR on the ground of compromise between the parties. Mr. Mardikar in support of his submissions relied on the

judgment of the Division Bench of this Court in **Rajik Ahmad Anwar Ahmad vs State of Maharashtra and another** in Criminal Application (APL) No.36/2018 dated 22-06-2018 (Coram -R.K. Deshpande and Arun D. Upadhye, JJ.) wherein this Court based on the judgment in the case of **Dilip s/o Ramrao Shirasao and Ors. vs State of Maharashtra and another**, reported in **2016 ALL MR (Cri) 4328** quashed the FIR registered for the offence punishable under Section 306 of the IPC on the ground that the complainant/informant has settled her score with the applicants.

8. Learned Senior Counsel Mr. Mardikar also relied on the judgment in the case of **Harmesh Singh and another vs State of Punjab and another**, reported in **CRM-M-37957-2015** date 09-02-2017. In the said judgment the High Court of Punjab and Haryana at Chandigarh placed reliance on the series of judgments of other High Courts and quashed the FIR for the offence punishable under Section 306 of the IPC, on the basis of compromise arrived at between the parties.

9. Learned Senior Counsel Mr. Mardikar also relied on the judgment of the Hon'ble Supreme Court in the case of **Narinder Singh and others vs State of Punjab and another** reported in **(2014) 6 SCC 466** and emphasised that since the parties have settled the matter

between themselves and considering the mental condition of the deceased, no purpose would be served to compel the applicants to face the criminal trial and the ends of justice would require that the FIR registered against the applicants shall be quashed.

10. The learned APP appearing on behalf of the State by filing an affidavit in reply opposed the application and submitted that suicide note clearly shows that the deceased was being illtreated by her husband Abhishek. In paragraph 6 of the reply it is stated that in the diary seized by the investigation agency the victim has mentioned that she had tried to commit suicide in the year 2011 as there was loan on the family as well as victim was under stress about her marriage that how her mother will bare the expenses of the marriage and her father had expired and there was a younger brother to take care and therefore tried to commit suicide. Finally, the learned APP requests this Court to pass an appropriate order.

11. We have considered the rival submissions put forth on behalf of the parties. We have minutely perused the police case papers/ proposed chargesheet. We have personally interviewed the informant who is present before this Court.

12. Because the offence punishable under Section 306 of the

IPC has been invoked against the applicants/accused, which is a serious offence punishable with imprisonment for a term which may extend to 10 years and considering the fact that the deceased had to undergo physical and mental trauma due to the alleged extra marital affair of her husband Abhishek, initially, we were reluctant to quash the FIR despite there was a compromise between the parties. To satisfy ourselves about the nature of allegations, we called upon the police investigation papers/chargesheet for our perusal.

13. A perusal of the chargesheet, which is proposed to be filed against the applicants, it is revealed that deceased Neeta had written in one diary about the illicit relations of applicant Abhishek with one girl due to which she was undergoing physical and mental trauma. The chargesheet also reveals that during the period between 2016 and November 2018 the deceased was under the treatment of psychiatrists namely Dr. Prabhakar Rathod, Psychiatrist, Washim, Dr. Sanjeev Saoji, Psychiatrist, Aurangabad, Dr. Ulhas Luktuke, Psychiatrist, Pune and Dr. Deole, Washim.

14. The report of her psychological testing dated 05-05-2016 reveals the following history of complaint about the deceased Neeta :-

"The applicant was admitted by mother because two days before this is 2nd episode of fainting, depressive feelings, isolated behavior, irritability, ant sensations in body, lack of concentration in work, 1st episode - 4 yrs before after death of father she was fainted had taken treatment at our hospital for the same. Mother has psychopathology. "

15. The results of the report are stated as under :-

"This test was administered to understand the personality traits of the client.

On Axis II, the elevated scale in 8A (Negativistic) =80 show the may have fear of rejection, feelings of inadequacy and a tendency to have mood changes, may assume that people will eventually develop uncomplimentary opinions about her and will get reject.

On Axis I, elevated scales are CC(Major Depression) = 84, D(Dysthymia)=77 and A(Anxiety Disorder)=75.

Overall, test profile suggests that client may be benefited from psychotherapy and pharmacotherapy."

16. The report of psychological testing further reveals that in the year 2011 Neeta was admitted to his hospital as she was under mental trauma and attempted suicide on the death of her father as she had an anxiety as to how her single mother would repay bank loan so also arrange finance for her marriage and maintain her brother Amol.

17. The mother of the deceased conceded that the mental

condition of the deceased was not stable. It appears that the deceased Neeta was not mentally fit to withstand the shock of the illicit relations of her husband with some other girl. The incident of suicide is in January 2019 and her last check-up with Dr. Luktuke, the Psychiatrist, is of November 2018.

18. In the joint application, the applicant no.2/mother of the deceased, in paragraphs 3, 4, 5 and 6 has mentioned about the mental condition of the deceased and about her regular treatment. In the said application she has stated that it was advised by Dr. Luktuke in November 2018 that care of Neeta should be taken and she should not be left alone in the house and therefore, she stayed with her house at Washim for her safety and as soon as she left Washim and on the way to Aurangabad she received the information about the commission of suicide by the deceased. Applicant no.2, the mother of the deceased, further stated that due to her vulnerable mental condition on the death of her daughter she lodged the report. Now she does not want to prosecute further against the applicants.

19. In this context, the judgment of the Constitution Bench of Hon'ble Apex Court in **Joseph Shine V. Union of India** 2018 ALL M R (Cri.) 4065(S.C) as relied on by Mr. Mardikar would be worth seeing.

In this judgment, their Lordships while considering the question of constitutionality of Section 497 of IPC , in para 50, endorsed the view taken by Division Bench of the Apex Court in **Pinakin Mahipatray Rawal V. State of Gujrat (2013)10SCC 48**) and held that mere extra-marital relationship, without anything more cannot be treated as sufficient to invoke the provisions of Section 306 IPC. In **Pinakin Rawal**, the Apex Court observed that mental cruelty varies from individual to individual also depending upon the intensity and the degree of endurance, some may meet with courage and some other suffers in silence, to some it may be unbearable and a weak person may think of ending one's life. Their Lordships in **Joseph Shine** have quoted with approval a part of para 21 from the judgment in **Ghusabhai Raisangbhai Chorasiya V. State of Gujrat, (2015)11 SCC 753** wherein it is held that unless some other acceptable evidence is brought on record to establish such high degree of mental cruelty, the Explanation (a) to Section 498-A IPC, which includes cruelty to drive the woman to commit suicide, would not be attracted.

20. In the above conspectus and considering the material in the chargesheet and the settlement between the parties and in view of the ratios in the judgments in the case of **Narindersingh (supra)** and **B. S. Joshi v. State of Haryana, 2003 (4) SCC 576**, in our view, the interest

of justice would demand that no purpose would be served in continuing the criminal proceedings against the applicants. At this stage we also note that there is absolutely no case made out to proceed against the relatives of the husband. The allegations, even if taken at their face value do not make out any offences as alleged. In the circumstances, we allow both the applications.

21. At this stage, learned APP urges that the applicants should deposit some amount towards costs for using police machineries and precious time of this Court. On this, the learned Senior Counsel Mr. Mardikar spontaneously showed willingness to deposit Rs. 50,000/- in the account of the High Court Legal Aid Services Sub-Committee, Bench at Nagpur within a period of one week. The statement is accepted as an undertaking to the Court.

22. In this view of the matter, we allow both the applications and pass the following order :

- (i) The Criminal Application (APL) Nos.846/2019 and 1168/2021 are allowed.
- (ii) The First Information Report No.47/2019 registered on 25-01-2019 against the applicants with the non-applicant-Police Station Washim City for the offences

publishable under Sections 306, 498-A, 323, 504 and 506 of the IPC is quashed and set aside.

- (iii) Fees of learned Counsel Mr. Palash Mohta, appointed for the non-applicant no.3-Chanda Sanap in both the applications shall be quantified as per rules.
- (iv) This order shall be effective on depositing the costs of Rs. 50,000/- in terms of this order.

23. Rule is made absolute in the above terms. Pending application(s), if any, stand(s) disposed of.

(Pushpa V. Ganediwala, J.)

(M.S. Sonak, J.)