

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

CRIMINAL APPLICATION (APL) NO. 923 OF 2019

Anurag s/o Laxminarayan Shivhare,
aged about 43 years, Occ. Business,
R/o Venus Plaza, Shegaon Naka, Amravati.

...APPLICANT

Versus

1. The State of Maharashtra,
through Police Station Officer,
Police Station, Nandgaon – Peth,
District Amravati.
2. Smt. Archana wd/o Gajanan Gedam,
aged about 40 years,
R/o Laxminagar, Near Gadge Nagar,
Amravati.

...RESPONDENTS.

Shri R.M. Daga, Advocate for the applicant.
Shri S.A. Ashirgade, A.P.P. for respondent No.1.
None for respondent No.2.

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**CORAM : SUNIL B. SHUKRE AND
PUSHPA V. GANEDIWALA, JJ.**

DATE OF RESERVE : NOVEMBER 11, 2020.

DATE OF PRONOUNCEMENT : JANUARY 05, 2021.

JUDGMENT : (PER : PUSHPA V. GANEDIWALA, J.)

Rule. Rule is made returnable forthwith. Heard
finally by consent of learned counsel appearing for the parties.

2. This is an application filed under Section 482 of the Code of Criminal Procedure, 1973, seeking quashment of the First Information Report No.167/2019 dated 03/06/2019 registered at Police Station Nandgaon Peth, District – Amravati for the offence punishable under Section 306 of the Indian Penal Code, 1860 (for short “IPC”).

3. It is the case of the prosecution that on 03/06/2019, the informant Archana - wife of the deceased Gajanan, lodged a report with the respondent No.1 stating therein that on 03/06/2019, at around 5.00 pm, the present applicant informed her on her mobile that her husband had consumed mosquito insecticide, and he was admitted to Panjabrao Deshmukh Hospital. That when she was going to the said Hospital, she again received a phone call and was asked to come to the Irwin Hospital. That at around 5.30 pm, when she reached to the Irwin Hospital, she found her husband died of poisoning. It is further stated that the deceased was working in a Hotel, and used to come to the house in every 8-10 days and used to make a call to her in every 2-3 days. That on 23/05/2019, the

deceased had been to the house. At that time, he informed the complainant that he has to work till late night and therefore, he does not wish to go there again. It is further stated that thereafter, the deceased called her from the mobile of another person informing her that his mobile was kept by the present applicant. It is her contention that the deceased, being fed-up with the harassment by the applicant, committed suicide.

4. Shri Daga, learned counsel for the applicant, submitted that a bare perusal of the FIR does not make out a case of abetment to commit suicide.

5. Shri Ashirgade, learned A.P.P., strongly opposed the application through the reply affidavit filed on record.

6. We have considered the submissions put forth on behalf of both the sides and perused the record.

7. At the outset, the reply, filed on behalf of the State, does not reflect any other material against the present applicant

except what is stated in the FIR. We have perused the statement of the witnesses, specially, the waiters, who were working in the Gauri Hotel at Nandgaon Peth, Amravati, at the relevant time. However, they did not say anything which supports the case of suicide at the instigation of the present applicant.

8. Furthermore, though the FIR came to be registered on 03/06/2019, till date, the prosecution could not file chargesheet before the Court below, which indicates absence of material against the present applicant to make out an offence punishable under Section 306 of IPC. On a query being put to the learned A.P.P. as to whether any part of investigation is remained to be done, he answered in negative.

9. The law by now stands well settled on the offence punishable under Section 306 of IPC. The co-ordinate Bench of this Court in the case of *Dilip s/o Ramrao Shirasao & Ors. Vs. State of Maharashtra & Anr.*, reported in *2016 ALL MR (Cri) 4328*, relying on a catena of judgments of the Hon'ble Supreme Court, in para No.20 has observed as under :

“20. XXXX it is necessary for the prosecution to at least prima facie establish that the accused had an intention to aid or instigate or abet the deceased to commit suicide. In the absence of availability of such material, the accused cannot be compelled to face trial for the offence punishable under Section 306 of the Indian Penal Code. XXXX Unless there is clear mens rea to commit an offence or active act or direct act, which led the deceased to commit suicide seeing no option or the act intending to push the deceased into such a position, the trial against the accused under Section 306 of the Indian Penal Code, in our considered view, would be an abuse of process of law.”

10. Coming to the facts of the present case, we could not notice from the case diary the kind of abetment as is contemplated under Section 107 of IPC to the deceased at the hands of the present applicant. General allegations of harassment, without any specific details, cannot be understood

by no stretch of imagination that the applicant abetted the suicide of the deceased as contemplated under Section 107 of the IPC. Insufficient and vague allegations of harassment, in absence of further detailing, cannot lead to the prosecution for the offence punishable under Section 306 of the IPC.

11. In such circumstances, we are of the firm view that the application needs to be allowed and it is accordingly allowed. First Information Report No.167/2019 dated 03/06/2019 registered at Police Station Nandgaon Peth, District – Amravati for the offence punishable under Section 306 of the IPC is quashed and set aside.

12. Rule is made absolute in the aforesaid terms.

JUDGE

JUDGE
