

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

CRIMINAL APPLICATION (APL) NO. 1319 OF 2019

Rachana D/o. Chittaranjan Deshmukh
@ Rachana W/o. Amar Bhongade,
Aged about 35 years, Occu. - Service,
R/o. C/o. Ganesh Baghmar,
Plot No.62, Ambika Nagar, Tapassya Chouk,
Near Shivling Temple, Manewada Ring Road,
Nagpur.

... **APPLICANT**

----VERSUS----

1. State of Maharashtra,
Through Police Station Officer,
Hudkeshwar Police Station,
Hudkeshwar, Dist. - Nagpur.
2. Rekha w/o. Haridas Durugkar,
Aged 52 years, Occu. - Housewife,
R/o. Chandramani Nagar,
Lane No.3, Tah. - Nagpur, Dist.- Nagpur ... **NON-APPLICANTS**

Shri S. N. Nandeshwar, Advocate for Applicant.

Shri V. A. Thakare, Additional Public Prosecutor for Non-applicant/State.

**CORAM : V. M. DESHPANDE AND
AMIT B. BORKAR, JJ.**

DATE : 29.09.2021.

JUDGMENT : (PER AMIT B. BORKAR, J.)

1. Heard.
2. **Rule.** Rule is made returnable forthwith.
3. By this application under Section 482 of the Code of Criminal Procedure, the applicant is challenging registration of the First Information Report bearing No.432/2019 dated 20.09.2019

registered with the non-applicant No.1 – Police Station for the offences punishable under Sections 306 and 498-A of the Indian Penal Code.

4. The First Information Report came to be registered against the applicant with the accusations that due to physical and mental harassment caused by the applicant, the daughter of the non-applicant No.2 has committed suicide. The applicant has therefore filed the present application.

5. This Court on 17.12.2019, issued notice to the non-applicants. Since the non-applicant No.2 in spite of being served, failed to appear, this Court on 12.03.2020 again issued notice for final disposal stating clearly that if the non-applicant No.2 fails to remain present, the application will be decided in her absence. The office remark shows that the fresh notice has been served but today also no one appears for the non-applicant No.2.

6. The Investigating Agency has filed reply stating that the Investigating Agency has recovered a suicide note, wherein it has been stated by the daughter of the non-applicant No.2 that she had taken a step to end her life due to harassment caused by the applicant.

7. Shri V. A. Thakare, learned Additional Public Prosecutor placed on record case diary, which contained suicide note. We

have scrutinized the contents of the suicide note. On perusal of the suicide note, it appears that the daughter of the non-applicant No.2 had committed suicide due to physical and mental harassment caused by her husband. The present applicant is a lady with whom the husband had love affair, which is reflected in the suicide note. It has been stated in the said note that due to the love affair between the applicant and the husband of the deceased, she is committing suicide. Reading of the said suicide note makes it clear that the present applicant who was having love affair with the husband of the deceased cannot be said to have abetted suicide of the deceased.

8. The Hon'ble Apex Court in recent judgment in the case of *Kanchan Sharma Vs. State of Uttar Pradesh and Anr.* in *Criminal Appeal No.1022/2021* (decided on 17.09.2021) has observed that to proceed against any person for the offence under Section 306 I.P.C. it requires an active act or direct act which led the deceased to commit suicide, seeing no option and that act must have been intended to push the deceased into such a position that he committed suicide. It is observed that it would be travesty of justice to compel the accused to face a criminal trial without any credible material whatsoever. The Hon'ble Apex Court has referred earlier judgment of the Hon'ble Apex Court in the case of *Chitresh Kumar Chopra Vs. State (Govt. of NCT of Delhi)*

reported in **(2009) 16 SCC 605**. A useful reference can be made to the decision of the Hon'ble Supreme Court in the case of ***Ramesh Kumar Vs. State of Chhattisgarh*** reported in **(2001) 9 SCC 618**. The Hon'ble Supreme Court in the context of ingredients of offence punishable under Section 306 of the Indian Penal Code has laid down as under :-

“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.

21. In State of W. B. v. Orilal Jaiswal, this Court has cautioned that the Court should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end her life by committing suicide. If it transpires to the Court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the Court should not be satisfied for basing a finding that the accused charged of

abetting the offence of suicide should be found guilty.”

9. In the light of the law laid down by the Hon’ble Apex Court, we have considered the First Information Report and other material on record, we do not find any allegation or material of any active act or direct act by the accused which led the deceased to commit suicide or that deceased had no option but to commit suicide. There is no allegation or material that accused committed any act which intended to push the deceased into such a position that he committed suicide. We are therefore satisfied that continuation of the proceedings against the applicant would amount to abuse of process of Court.

10. Therefore, we pass following order.

The First Information Report bearing No.432/2019 registered with the non-applicant No.1 – Police Station for the offences punishable under Sections 306, 498-A of the Indian Penal Code is quashed and set aside against the applicant only.

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

JUDGE

JUDGE