

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.

912 CRIMINAL APPLICATION NO.69 OF 2022

ANIL VISHWANATH BANDE AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicants : Mr. J. M. Murkute
APP for Respondent/State : Mr. S. D. Ghayal
Advocate for respondent no. 2 : Mr. Pratap B. Vikhe

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CORAM : SMT. VIBHA KANKANWADI
AND
RAJESH S. PATIL, JJ.
DATE : SEPTEMBER 15, 2022

PER COURT : -

1. Present applicants are the original accused nos. 2 and 3, who seek quashment of the FIR as well as the entire proceedings against them in view of the inherent powers of this Court under Section 482 of the Code of Criminal Procedure.

2. Heard Mr. J. M. Murkute for the applicants and Mr. S. D. Ghayal for the respondent no. 1/State.

3. Present respondent no. 2 - original informant has lodged FIR on 18.11.2020 with Udgir Rural Police Station, Tal. Udgir, Dist. Latur, vide C.R. No. 0431/2020 for the offences punishable under Sections 302, 304B r/w 34 of the Indian Penal Code.

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4. It has been contended that the informant's daughter deceased Rahu got married to one Rajkumar Gaikwad on 21.04.2015, who is the brother of applicant no. 2. Applicant no. 1 is the husband of applicant no. 2. Deceased Rahu has daughter aged five years and son aged two years. As stated by the informant that, there is an agricultural land in the name of father of Rajkumar i.e. husband of the deceased and it was decided that the said land would be mutated in the name of son of the deceased, namely, Harshavardhan. Informant says that this move was opposed by Rajkumar, present applicants, Dhammapali Babasaheb Gaikwad, Babasaheb Gaikwad and grand mother of Rajkumar. It is then stated that, deceased Rahu was also subjected to cruelty in the nature of physical as well as mental cruelty by the accused persons for purchase of centring articles worth Rs. 1,50,000/-. Rahu used to inform about the same to the informant on phone or at the time of her visits to the informant's house. Rahu was assaulted by Rajkumar about a year prior to the FIR and then the informant had gone to her matrimonial home at Haibatpur and had arranged a meeting of Sarpanch, Police Patil, President of Tantamukti and other respectable persons from the village. Rajkumar promised in presence of all of them that he would not assault his wife henceforth and, therefore, deceased Rahu was allowed to cohabit with Rajkumar. Informant then states that at about 06:30 a.m. on 18.11.2020, he was informed by his elder daughter that deceased Rahu has been murdered by Rajkumar. Informant went to Udgir Rural Police Station to lodge a report, however, it was found by him that the police officer and other staff had already gone to

Haibatpur at night time and, therefore, he got confirmed about the fact of murder of his daughter and then he lodged the said FIR.

5. The investigation has been completed and the charge-sheet has also been filed and it appears that it has been filed under Section 302, 304B and 498A (wrongly mentioned as 498 only), 309 r/w 34 of the IPC. It is against in all six persons and it is numbered as R.C.C. No. 19/2021 pending before the learned Judicial Magistrate First Class, Udgir.

6. It has been vehemently submitted on behalf of the applicants that perusal of the FIR as well as entire charge-sheet would show that no overt act has been attributed to the present applicants. The applicants are not disputing that the death of deceased Rahu is homicidal in nature in view of the fact that the probable cause of death stated to be 'Heamorrhagic shock due to multiple injuries'. However, on the day of incident the applicants were not present at Haibatpur and from the statement of the witnesses, especially Narsing Bapurao Gaikwad and Vaishali Narsing Gaikwad, it can be seen that they had gone to the house of Rajkumar on 18.11.2020 around 01:30 a.m. after hearing the noise of quarrel and gathering of people. They could find that the room was locked from inside in which Rajkumar and deceased Rahu were there. Witness Narsing has stated that when it was found by him that Rajkumar was not opening the door, he and his wife went to the backside of the house and knocked the window. According to them, Rajkumar disclosed to them that he has committed the

murder of Rahu with the help of axe and sickle and then he has consumed poisonous medicine. They say that, in the meantime, police arrived and took the dead body for post-mortem. These two witnesses have not stated that the present applicants were present in the said house at that time. The father of Rajkumar also says that his son has committed the murder. Therefore, the ingredients of Section 302 and 304B of the IPC cannot be said to be attracted towards the present applicants. The other contents of the FIR as well as statement of witnesses will not attract ingredients of Section 498A of IPC. It would be futile exercise to ask the applicants to face the trial and, therefore, the FIR as well as the entire proceedings deserve to be quashed and set aside as against the present applicants.

7. Per contra, learned APP as well as learned counsel for respondent no. 2 strongly opposed the application and submitted that there is ample evidence against the present applicants to show that they were subjecting deceased Rahu to cruelty. They had taken objection for transfer of the land in the name of son of the deceased and also they were insisting that Rahu should bring an amount of Rs. 1.5 lakhs for purchase of centring articles. Even the meeting was arranged to resolve the dispute. The fact is then supported by the Sarpanch and President of Tantamukti Samittee. The trial Court at the time of trial would decide which offence is proved or not but this will not be a fit case to exercise the inherent powers of this Court under Section 482 of the Code of Criminal Procedure.

8. In view of the fact that the investigation is complete and charge-sheet is filed. It is required to be seen as to whether there is any *prima facie* evidence collected against the present applicants. As the contents of the FIR are already narrated, they are not reproduced. The informant says that the present applicants were opposing the move to mutate the land which is standing in the name of father of Rajkumar, in the name of Rajkumar's son. However, it is to be noted that in the FIR it is not clarified as to exactly when that demand was made or that move was opposed. Mere opposition cannot be said to be a cruelty unless it is followed by some positive act as against deceased Rahu. Important point is to be noted is that when that move was to mutate the land in the name of the son of Rajkumar, he was the son of deceased also and then why Rajkumar was opposing, has not been clarified. Whether he wanted the land to be mutated in his name is also not clarified. If we consider the statement of Laxman Narsing Gaikwad, who is the father of accused no. 1 – Rajkumar, then it is to be noted that he has become blind about 10 years ago and he says that Rajkumar and two daughters i.e. including the present applicant no. 2 are the issues to him from his second wife. He has not stated that there was any such move by him to transfer the agricultural land standing in his name in the name of deceased Rahu's son. It is also to be noted that Laxman has not been made an accused in this case though it appears that he was also residing with Rajkumar.

9. Now turning towards the second limb of alleged demand of Rs. 1.5 lakhs, which is not clear from the FIR since when that demand was made and it is stated that for insistence of the said demand the daughter of the informant was mentally and physically harassed. Here, we want to insist upon that, mere use of the word 'mental and physical harassment', ingredients of offence under Section 498A of the IPC cannot be said to be attracted or proved. In order to attract those ingredients, the specific acts of harassment will have to be stated. Further, in the FIR, it has been stated that about a year prior to the FIR the meeting was held and when Rajkumar gave a promise that he will not assault Rahu, the informant had permitted the Rahu to cohabit with Rajkumar. Thereafter, his FIR is silent as to what had happened between the said period of one year after that meeting till the FIR. Informant is also not saying that the present applicants were present at the time of that meeting and they had also made some promises. When the further period of one year has gone peacefully, it cannot be said that the demand or the harassment if it is to be restricted to the present applicants had continued so as to attract Section 498A of the Indian penal Code against the applicants.

10. As aforesaid, the statement of Narsing Bapurao Gaikwad, his wife Vaishali Narsing Gaikwad, witness Waman Bapurao Gaikwad, Pushpa Waman Gaikwad, Vijaykumar Laxman Gaikwad would show that they came to know that Rajkumar had murdered Rahu in his room and the said room was locked from inside. Further, the statement of Madhav Narsing Gaikwad would

show that when he had tried to call Rajkumar outside, there was no response. He along with one Kiran Gaikwad, Tanaji Phule, Maroti Laxman Biradar, Santosh Biradar had climbed over the house by removing the tin-sheets on the room and they saw that Rajkumar was sleeping on the cot near the son and his wife was lying on the ground near the cot in a pool of blood. All these witnesses haven't stated about the presence of the present applicants at the spot. Therefore, definitely, ingredients of Section 302, 304B r/w 34 of the IPC are not attracted to the applicants. Section 309 would be against Rajkumar and as aforesaid, at the most the Section which police/prosecution could have thought to level against the applicants would be Section 498A of the IPC. However, for the aforesaid reasons, it can be certainly said that the facts are not attracting the ingredients of Section 498A of IPC also.

11. Under such circumstances, it would be unjust to ask the applicants to face the trial. The case is falling within the parameters laid down in the case of **State of Haryana and others vs. Bhajan Lal and others** reported in [1992 Supp (1) SCC 335] and, therefore, it deserves to be allowed.

12. Accordingly, Criminal Application stands allowed in terms of prayer clause 'B' of the application.

[RAJESH S. PATIL]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE