

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

CRIMINAL WRIT PETITION NO. 314 OF 2021

1. Arjun Keshav Sanap
Aged about – 61 years, Occ. Retired A.S.I.
2. Sujata Arjun Sanap
Aged about – 59 years, Occ. Housewife
3. Sneha Tushar Avhad
Aged about – 27 years, Occ. Service

All resident of :

Building No. 49, A-Wing Room No. 502, Nehru
Nagar, Kurla East, Mumbai.

... Petitioners.

Versus

1. The State Of Maharashtra
 2. Kiran Bhaskar Sangle
Age – 32 years, Occ. Agri.,
R/o. Hangewadi, Tq. Sangamner,
Dist. Ahmednagar.
- ...Respondents.

Advocate for Petitioners : Mr. Shaikh M.A. Jahagirdar
h/f. Mr. Ajay H. Saravde

APP for Respondent No. 1 : Mr. S.J. Salgare

Advocate for Respondent No. 2 : Mr. S.S. Dixit

**CORAM : SMT. VIBHA KANKANWADI
& RAJESH S. PATIL, JJ.**

DATE : 27.09.2022.

JUDGMENT [PER : RAJESH S. PATIL, J.] :-

1. The Petitioners have filed Writ Petition under Article 226 & 227 of Constitution of India and under Section 482 of the Code of Criminal Procedure for quashing of FIR No. I-431 of 2020 Dt. 05/11/2020, U/s. 306 ,406, 504 r/w 34 pf I.P.C. registered with Ashwi Police Station, Sangamner, Dist. Ahmednagar, and charge sheet No. 36/2021.

A. FACTS AS STATED IN F.I.R. BY THE INFORMANT :

2.A. The son of the petitioners Nos. 1 and 2 named Sagar i.e. petitioner no. 4 got engaged with his deceased sister named Bharti on 30/06/2020 at his parental home at village – Hingewadi Tal. Sangamner, Dist – Ahmednagar, in the presence of relatives from both sides. It is further alleged that petitioner No.4 was given 1 tolas of gold ring in the engagement along with Rupees Two Lakhs cash in the presence of mediator Ankush Jaggannath Sanap. Petitioner No.4 and parents also gave deceased Bharti 2 tolas of gold necklace and a pair of gold earrings in the said engagement ceremony.

2.B. It is further alleged that after engagement deceased Bharti and Petitioner No.4 used to talk over mobile phones. On 15th July, 2020, deceased Bharti on the request of Petitioner No.2 and 4 went to stay with them, at their residence at Nashik, for 15 days. Thereafter, Petitioner No.4 came to drop deceased Bharti at her parental house, and stayed at her parental house for eight days

and took away the gold ornaments given in the engagement to deceased Bharti along with engagement photo album on the pretext of making addition to the said gold ornament. It is further alleged that Petitioner No.2 and 3 were not happy with arrangements at the engagement Dt. 30/06/2020 as they were not honored properly and it has caused insult to them. Therefore, they used to complain to deceased Bharti, her parents and mediator Ankush Sanap that she dose not deserve to be their daughter-in-law and her family was not up to their standards. So the family of the informant apologized and assured them of grand wedding of deceased Bharti and petitioner No. 4 at Sangamner.

2.C. It is further alleged that the father of the deceased, Mr. Bhaskar had sold his land at Village Hangewadi, Gat No. 85 to Smt. Jyotsna Ravindra Kangane Village-Hangewadi Tal- Sangamner for about Rs 11 lakh 85 thousand to incur the expenses of the marriage ceremony. It is further alleged that on 01/11/2020, Shivam son of mediator Ankush Sanap, came to house of the Complainant and informed his parents that Petitioner No.4 and his family members had come to their house and they have called a meeting. Therefore, around 6.00 p.m Complainant's father, mother and deceased sister Bharti went to the house of Ankush Sanap, and returned upset at around 10.30 p.m.

2.D. Then the Complainant enquired with his father, and his father briefed him about the meeting that they went to the house of Ankush Sanap, where mother of Ankush Sanap named Sakubai

Sanap, son Shivam Sanap and Petitioner No.4 and his family were present and they broke the engagement between deceased Bharti and Petitioner No.4 by blaming and uttering words that Bharti is of bad omen/unlucky, since engagement, three members of their family have died and, thereby, abused them with filthy language and called them rustic villager and incompetent to their standards and prohibited them from establishing any contact with them and left the house of Ankush Sanap.

2.E. It is further alleged that deceased Bharti was constantly upset and crying since the day of the said incident and whenever they asked her about it, she used to curse Petitioner No.4 for cheating and ruining her life. On 04/11/2020 at around 9:45 pm deceased Bharti left the house of the complainant without informing anyone. They searched for her everywhere and on 05/11/2020 at around 07.00 a.m. they found her in drowning state in the well situated in the fields of his uncle Pandurang Laxman Sangle. Therefore, they informed the police about the said incident and Bharti was removed out of the well and was taken to the hospital Ghulewadi, Tal. Sangamner Dist. Ahmednagar. The doctors at the hospital declared Bharti dead before arrival. Thereafter, postmortem was conducted on the deceased and thereafter, they took the body into their custody and cremated her as per their customs.

2.F. Hence, the Informant lodged the present F.I.R No. 1-431 of 2020 Dt. 05/11/2020 registered at Ashwi Police Station

U/s.306, 406, 504 r/w 34 of I.P.C. alleging that his sister Bharti was abetted to commit suicide on 05/11/2020, after the petitioners broke the engagement Dt.30/06/2020 on 01/11/2020, between the petitioner No.4 and the deceased girl Bharti, by blaming and uttering words that "she was unlucky/of bad omen for their family and since the engagement with her, three members of their family have died and thereby, abused them with filthy language on called them rustic villager and incompetent to their standards and prohibited them from establishing any contact with them. It is further alleged that the petitioners have committed breach of trust by illegally retaining 1 tolas of gold ornaments and two lakhs cash amount given to petitioner No.4 at the time of the engagement along with the gold ornaments given to the deceased in the engagement taken by petitioner No.4 on the pretext of making addition to it.

3.A. All the accused have filed the Criminal Writ Petition and have stated that the marriage between the petitioner No.4 was fixed with the deceased Bharti and engagement ceremony was performed on 30/05/2020 at her parental home at Village-Hingewadi, in the presence of relatives from both sides.

3.B. That, at the time of fixing the said marriage the false information about health of the deceased and fabricated horoscope was supplied to the petitioner No.4 and his family, by the complainant and his family/relatives and after matching said fabricated horoscope the engagement was performed. Later on

deceased supplied original horoscope and even stated the suppressed facts about her health conditions to the petitioner No.4 and his family.

3.C. Thereafter the Respondent no.2 has registered the FIR No. I-431 of 2020 Dt. 05/11/2020, at the instance of one Kiran Bhaskar Sangale, brother of the deceased, at Ashwi Police Station, Sangamner, Dist. Ahmednagar, Maharashtra. The petitioners have been wrongfully, mischievously and with ulterior motives are named in the impugned F.I.R. for abetting the deceased to commit suicide and criminal breach of trust. Therefore, the criminal writ petition should be allowed and the F.I.R. be quashed and set aside.

B. Submissions :

4.A. Heard learned Advocate Mr. Shaikh M.A. Jahagirdar h/f. Mr. Ajay H. Saravde on behalf of the petitioners and learned APP Mr. S.J. Salgare for State/respondent No. 1 and learned Advocate Mr. S.S. Dixit, on behalf of respondent No. 2.

4.B. Learned Advocate Mr. Jahagirdar argued that petitioner had no involvement in the incident in question and further submit that they have nothing to do with the alleged incident in question. They were never present at the time of said incident. At the time of incident, the present petitioners were in Mumbai. Therefore, the complaint lodged by the original Complainant is false and frivolous;

4.C. He further added that continuance of criminal proceedings against the petitioners in F.I.R No. 1-431 of 2020 Dt. 05/11/2020 registered at Ashwi Police Station U/s.306, 406, 504 r/w 34 of I.P.C., would not serve any purpose, other than to cause unnecessary hardship to the petitioners in the above mentioned matter and will have to face the procedure of facing the trial unnecessarily. The Complaint filed by the respondent does not disclose the commission of any offence by the petitioners, and does not make out a case against them.

5. On hearing the parties for considerable time and after showing disinclination to entertain the Criminal Writ Petition in respect of petitioner Nos. 1, 2 and 4, learned Advocate for petitioners sought leave to withdraw the Criminal Writ Petition to the extent of applicant Nos. 1, 2 and 4, on instructions of his clients. Hence, the criminal application so far as applicant Nos. 1, 2 and 4 are concerned, stands disposed of as withdrawn. He, therefore, prayed for quashing the FIR and the proceedings arising therefrom to the extent of applicant No. 3 only.

6. Thereafter Petitioner Nos. 1, 2 and 3 moved their Anticipatory Bail Application before Additional Sessions Judge, Sangamner, and interim protection was only granted to Petitioner No.3.

7. Per contra, the learned APP as well as learned Advocate for respondent No. 2 strongly opposed the application and

submitted that perusal of the entire charge-sheet would show that there is evidence against the present applicants.

C. ANALYSIS :

8. It would be pertinent to note that the petitioner No. 3 Sneha is married and is residing separately from the petitioner Nos. 1 and 2 since her marriage. Except a sentence that petitioner No. 3, along with other petitioners, informed the deceased and her family members, that they were not treated well in the engagement ceremony, there is no whisper in the entire FIR of any role played by the petitioner No. 3 – Sneha Tushar Avhad. We also did not find any allegation of any nature against her regarding instigation or aiding in commission of suicide by the deceased Bharati. It appears that her name is implicated in the crime simply because she is the daughter of accused Nos. 1 and 2.

9. It can be useful to refer the decision in *M. Arjunan vs. State*, [(2019) 3 SCC 315], wherein in Paragraph No.7 of the judgment the Hon'ble Apex Court held thus :-

“7. The essential ingredients of the offence under Section 306 IPC are : (i) the abetment; (ii) the intention of the accused to aid or instigate or abet the deceased by using abusive language will not, by itself, constitute the abetment of suicide. There should be evidence capable of suggesting that the accused intended by such act to instigate the deceased to commit suicide. Unless the ingredients

of instigation/abetment to commit suicide are satisfied the accused cannot be convicted under Section 306 IPC.”

10. Further, in *S. S. Chheena vs. Vijay Kumar Mahajan*, (2010) 12 SCC 190, the Hon’ble Apex Court in Paragraph No.25 of the judgment held thus :-

“25. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. The intention of the legislature and the ratio of the cases decided by this Court is clear that in order to convict a person under Section 306 IPC there has to be a clear mens rea to commit the offence. It also 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.”

11. In *Rajesh vs. State of Haryana*, (2020) 15 SCC 359, the Hon’ble Apex Court, in Paragraph No.9 of the judgment, has held thus :-

“9. Conviction under Section 306 IPC is not

sustainable on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the accused, which led or compelled the person to commit suicide. In order to bring a case within the purview of Section 306 IPC, there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide. Therefore, the act of abetment by the person charged with the said offence must be proved and established by the prosecution before he could be convicted under Section 306 IPC.”

12. Therefore, taking into consideration the facts of the case as well as the law point as aforesaid, we arrived at a conclusion that ingredients of instigation/abetment to commit suicide by the petitioner No. 3 are not satisfied from the contents of the FIR as well as the contents of the charge-sheet. Hence, this is a fit case where we should exercise our powers under Section 482 of Cr.P.C. The case squarely falls within the parameters laid down in *State of Haryana and others vs. Ch. Bhajanlal and others*, [AIR 1992 SC 604]. Hence, the following order :

ORDER

1. The Criminal Writ Petition insofar as petitioner Nos. 1, 2 and 4 are concerned, stands disposed of as withdrawn.
2. The Criminal Writ Petition so far as the petitioner No.3 is concerned, stands allowed in terms of prayer clause 'B'.
3. FIR No. I-431/2020 registered with Ashwi Police Station, Aurangabad, for the offences punishable under Sections 306, 406, 504 read with 34 of IPC and Charge sheet No. 36/2021 are quashed and set aside as against the petitioner No. 3 namely Sneha Tushar Avhad.
4. Criminal Writ Petition stands disposed of.

[RAJESH S. PATIL, J.]

[SMT. VIBHA KANKANWADI, J.]