

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

CRIMINAL APPLICATION NO. 1096 OF 2021

1] Rajendra s/o Daulatrao Wankhede
Age: 59 years, Occu.: Business,
R/o. : K-27/01, Pavan Nagar,
CIDCO, N-9, Aurangabad.

2] Balasaheb s/o Daulatrao Wankhede
Age: 45 years, Occu.: Business,
R/o. K-27/01, Pavan Nagar,
CIDCO, N-9, Aurangabad.

... Applicants.

Versus

1] The State of Maharashtra

2] Ashok s/o Dashrat Khandale
Age: 55 years, Occu.: Agri.,
R/o. Waral Pimpalgaon,
Taluka : Phulambri,
District : Aurangabad.

... Respondents

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Mr.N.S.Ghanekar, Advocate for Applicants.

Mr.R.D.Sanap, APP for Respondent No.1-State.

Ms.Harsha R.Lomate, Advocate for Respondent No.2 (appointed)

...

**CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

DATE : 9th December, 2022

JUDGMENT (PER ABHAY S. WAGHWASE, J.) :

. Applicants accused herein have prayed for following reliefs.

“B] That, proceeding in R.C.C. No.906 of 2021 pending before learned Judicial Magistrate First Class, Aurangabad under section 306, 498-A, 304-B, 323, 504, 506 r/w 34 of Indian Penal Code registered with Harsul Police Station as Crime No.03 of 2021 may kindly be quashed and set aside.

B-1] That, proceeding in session case no.167 of 2021 pending before the learned Session Judge, Aurangabad under section 306, 498-A 304-B, 323, 504, 506 R/w 34 of the Indian Penal Code registered with Harsool Police Station as Crime No.03 of 2021 may kindly be quashed and set aside.”

2. Brief background of the case :

Deceased Ashwini was married to Dhammapal Bhimrao Wankhede on 19-02-2020. Deceased Ashwini committed suicide on 02-01-2021 and therefore, her father i.e. respondent No.2 set law in motion informing that his deceased daughter was treated properly merely for two months after marriage and thereafter, her husband started demanding share in the agricultural land of the informant and also demanded Rs.1,00,000/- and on such count quarreled with her. Informant claims that because of harassment to his daughter, he shifted her temporarily to house of his younger daughter Divya but there also her husband reached, beat his deceased daughter Ashwini and took her away. Hence, he went to meet his daughter but she was not found in the house of husband and so he approached house of present applicants, who are cousin fathers-in-law of his deceased daughter. Allegation is raised that

present applicants quarreled with informant and prevented informant from taking his daughter with him and so he returned back.

On 02-01-2021, informant received a phone call from one Gautam Ghorpade at around 08:00 p.m. informing that Ashwini had hung herself and he was informed that she was taken to hospital. When he reached Aurangabad, he came to know that Ashwini was admitted and treated in Ghati Hospital but she died on 04-01-2021 and Doctor informed him that her death was due to hanging. Hence, the FIR.

3. On the strength of above allegations, crime bearing No.03 of 2021 was registered and after investigation, applicants - accused were arrested. Present applicants – accused Nos.6 and 7, who are cousin fathers-in-law of deceased Ashwini, are now praying to invoke inherent powers under Section 482 of Code of Criminal Procedure (for short ‘Cr.P.C.’) for grant of aforesaid reliefs.

Submissions

4. Learned Advocate for the applicants took us through the FIR and pointed out that impleadment of present applicants is in absence of any material, and no specific role whatsoever is attributed to them with regard to any demand, harassment or abetment to commit suicide. He would strenuously submit that both applicants are in fact cousin fathers-in-law of deceased Ashwini and they had nothing to do with domestic affairs of deceased, her husband and other in-laws. They are residing separately at

different places than the residence of deceased and her husband. He would thus submit that there is an attempt by informant to implicate not only family members but also distant relatives. He also took us through the statements of witnesses recorded by Investigating Officer under Section 161 of Cr.P.C. and urged before us that from the statements of such witnesses also it is clear that there is no role of abetment, incitement or any sought of harassment at the hands of the applicants so as to fix responsibility on them. Lastly, he submitted that even if the allegations in the FIR are *prima facie* examined, no offence under Section 306 of the IPC could at all be attributed or made out against present applicants and thus, it is his submission that initiation of criminal proceedings against applicants, being abuse of process of law, it's nullification and quashment by exercising powers under Section 482 of Cr.P.C. is necessary.

5. In answer to above, learned APP for respondent No.1 submits that applicants are named in the FIR. There are allegations that they quarreled with informant and were also party to the act of preventing deceased being taken away by informant father from their house. Therefore, it his submission that there is direct involvement . Investigation is over. Charge-sheet is filed. According to him, prosecution deserves opportunity to make the applicants face trial.

6. Learned Advocate for respondent 2 also took us through the record and file and pointed out that only because of mal-treatment and harassment at the hands of husband and in-laws including present applicants, deceased appears to have committed suicide. Role of applicants is also reflected in the FIR and as such it is her submission that applicants cannot escape and that they too deserved to be tried alongwith other accused.

7. Here applicants have prayed to invoke inherent powers of this Court under Section 482 of Cr.PC..

As to when powers under Section 482 of Cr.P.C. can be exercised is fairly settled by slew of judgments including ***Inder Mohan Goswami and Anr. Vs. State of Uttaranchal and Ors. ; (2007) 12 SCC 1 and Mahendra K.C. Vs. State of Karnataka and Another ; (2022) 2 Supreme Court Cases 129.***

Summation

8. Bearing in mind legal requirements on the point of exercise of inherent powers under Section 482 of Cr.P.C., we proceed to examine whether both applicants herein have at all made out a *prima facie* case for grant of relief of quashing and FIR and charge-sheet and whether prosecution launched against them is indeed abuse of process of law or not. To reach to such conclusion, we are required to go through the material placed before us.

9. On carefully going through the FIR, it is emerging that informant -

father of deceased Ashwini stated that, his deceased daughter was treated well for two months after marriage but subsequently his daughter informed him that her husband put up a demand of share in agricultural land of informant alongwith cash of Rs.1,00,000/- and when deceased refused to convey such demand, her husband beat her. Informant has alleged that mother-in-law namely Tara and sisters-in-law namely Nita, Shubhangi and Madhuri picked up quarrels on petty grounds and abused her and thereby subjected her to mental cruelty. According to him, in June 2020, when he went to bring his daughter, he was prevented from taking her to his house. It is alleged that in December 2020, as her husband and in-laws raised quarrel on account of demand of money, he shifted his daughter to the house of his younger daughter Divya at Kranti Nagar, Aurangabad. It is alleged that he received a phone call from Divya that husband of Ashwini came there and took away her sister Ashwini after beating her. On receiving such information, he rushed to Aurangabad, and when he went to her in-laws' house, Ashwini was not found there and so he went to house of present applicants, who are cousin fathers-in-law of deceased. He claims that he saw that deceased Ashwini was crying and she was surrounded by her husband and other accused including applicants. It is alleged that present applicants raised quarrel with him telling that he cannot take her daughter back with him and even threatened his daughter to stay properly. Informant claims that he was not allowed to take his daughter with him and so he returned back. Thereafter, he received a message that his

daughter attempted to commit suicide and hospitalized, and she died on 04-01-2021.

10. Thus, from above FIR and it's content, it is clear that main allegations of demand, beating, mental harassment are attributed to husband, mother-in-law and sisters-in-law. Name of present applicants have appeared in the FIR at the time when informant went to see his daughter on learning from his younger daughter Divya about Ashwini being beaten and taken away by her husband from Kranti Nagar house. It seems that only when informant did not find his daughter in the house of her husband, he visited house of present applicants and there he claims that he found his daughter crying. Allegation against present applicants is that they quarreled with him and prevented him from taking his daughter back. As to what transpired during the quarrel and which accused said what, is not reflected in the FIR. Thus, except attributing such role in the incident, which allegedly took place in December 2020, there is no other material against present applicants regarding any continuous acts of harassment at their hands or they to be party to any harassment, demand, ill treatment and even abetting her to commit suicide. It is apparent that deceased Ashwini hanged herself in her own house on 02-01-2021. Present applicants are admittedly residing at different place. As to when exactly quarrel took place is not clear so as to hold any nexus of said quarrel with alleged suicidal hanging by deceased Ashwini. There is no allegation that they

also abetted suicidal death.

11. As regards to statements of witnesses recorded under Section 161 of Cr.P.C. are concerned, it is emerging on scrutiny that only family members of deceased are speaking about both applicants and that too regarding these two applicants supporting husband and in-laws in giving ill treatment to Ashwini. Immediate neighbour Vinod Digambar Pagare does not name both the applicants. Omnibus allegations are raised by Gautam Runjaji Ghorpade, shop owner, whose statement under Section 161 of Cr.P.C. has been recorded by the Investigating Officer on 29-01-2021, stating that present applicants also supported husband and in-laws in ill treating Ashwini. In what manner they supported is not elaborated.

Therefore, on taking audit of statements recorded under Section 161 of Cr.P.C., including the statements of near and dear ones of deceased Ashwini, the only role attributed to applicants is that they too supported husband and in-laws in ill treating deceased. Details are not narrated in their statements as to what was nature of ill treatment at the hands of the applicants.

12. Accused husband and in-laws seem to be residents of Chetana Nagar, Harsul, Aurangabad, whereas present applicants seems to be residents of Pawan Nagar, Cidco, Aurangabad. Thus, as stated by learned Advocate for the applicants, both the applicants herein are residents of different places than

that of husband and in-laws. Even otherwise, in the FIR, allegation against present applicants is of raising quarrel with informant and preventing him from taking his daughter with him. Beyond such allegation, there is no further material either in the FIR or in the statements recorded under Section 161 of the Cr.PC.

13. Here crime seems to be registered for offence under Sections 498-A, 306, 304-B, 323, 504, 506 read with Section 34 of the IPC. As stated above, ingredients of Section 498-A of IPC are not attracted against present applicants as they are not family members of the deceased. As regards Section 304-B of IPC is concerned, there is no material to indicate that soon before death or suicide of deceased, present applicants had made any demand or ill-treated the deceased.

14. As regards offence under Section 306 of IPC is concerned, law is settled as to in what circumstances, said offence gets attracted.

Section 306 of IPC deals with punishment for abetment of suicide. Section 107 of IPC deals with as to what amounts to abetment. By umpteen judgments, time and again Hon'ble Apex Court and High Courts have dealt with and discussed as to when charge of Section 306 of IPC can be said to be brought home. A few landmark judgments on this point which could be referred are as under.

The Hon'ble Apex Court in ***Mahendra K.C.*** (supra) in para 23 to 25, has made the following observations :

“23. Section 306 IPC provides for punishment of the abetment of suicide:

“306. Abetment of suicide. - If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.” Section 107 IPC defines the expression “abetment”:

Section 107 IPC defines the expression “abetment”:

“107. Abetment of a thing- A person abets the doing of a thing, who -

First. - Instigates any person to do that thing; or

Secondly. - Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or
Thirdly. - Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1. - A person who by willful misrepresentation, or by willful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.”

24. The essence of abetment lies in instigating a person to do a thing or the intentional doing of that thing by an act or illegal omission. In Ramesh Kumar v. State of Chhattisgarh ; (2001) 9 SCC 618 : 2002 SCC (Cri) 1088, a three-Judge Bench of this Court, speaking through R.C. Lahoti, J. (as the learned Chief Justice then was), observed: (SCC p. 629, para 20)

“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.”

25. *A two-Judge Bench of this Court in Chitresh Kumar Chopra v. State (NCT of Delhi); (2009) 16 SCC 605 : (2010) 3 SCC (Cri) 367, speaking through D.K. Jain, J., observed: (SCC pp. 611-12, paras 19-20)*

“19. As observed in Ramesh Kumar [(2001) 9 SCC 618 : 2002 SCC (Cri) 1088], where the accused by his acts or by a continued course of conduct creates such circumstances that the deceased was left with no other option except to commit suicide, an “instigation” may be inferred. In other words, in order to prove that the accused abetted commission of suicide by a person, it has to be established that:

(i) the accused kept on irritating or annoying the deceased by words, deeds or wilful omission or conduct which may even be a wilful silence until the deceased reacted or pushed or forced the deceased by his deeds, words or wilful omission or conduct to make the deceased move forward more quickly in a forward direction; and

(ii) that the accused had the intention to provoke, urge or encourage the deceased to commit suicide while acting in the manner noted above. Undoubtedly, presence of mens rea is the necessary concomitant of instigation.

20. In the background of this legal position, we may advert to the case at hand. The question as to what is the cause of a suicide has no easy answers because suicidal ideation and behaviours in human beings are complex and multifaceted. Different individuals in the same situation react and behave differently because of the personal meaning they add to each event, thus accounting for individual vulnerability to suicide. Each individual's suicidality pattern depends on his

inner subjective experience of mental pain, fear and loss of self-respect. Each of these factors are crucial and exacerbating contributor to an individual's vulnerability to end his own life, which may either be an attempt for self-protection or an escapism from intolerable self."

In the case of ***State of Kerala and Ors. Vs. Unnikrishnan Nair and Ors.;***

(2015) 9 SCC 639, the Hon'ble Apex Court has observed as under :

"10. The aforesaid provision was interpreted in *Kishori Lal Vs. State of M.P.; (2007) 10 SCC 797*, by a two-Judge Bench and the discussion therein is to the following effect :

"6. Section 107 IPC defines abetment of a thing. The offence of abetment is a separate and distinct offence provided in IPC. A person, abets the doing of a thing when (1) he instigates any person to do that thing; or (2) engages with one or more other persons in any conspiracy for the doing of that thing; or (3) intentionally aids, by act or illegal omission, the doing of that thing. These things are essential to complete abetment as a crime. The word "instigate" literally means to provoke, incite, urge on or bring about by persuasion to do any thing. The abetment may be by instigation, conspiracy or intentional aid, as provided in the three clauses of Section 107. Section 109 provides that if the act abetted is committed in consequence of abetment and there is no provision for the punishment of such abetment, then the offender is to be punished with the punishment provided for the original offence. "Abetted" in Section 109 means the specific offence abetted. Therefore, the offence for the abetment of which a person is charged with the abetment is normally linked with the proved offence."

11. In *Amalendu Pal Vs. State of W.B.; (2010) 1 SCC 707*, dealing with expression of abetment the Court observed : (SCC pp.712-713 para 14)

"14. The expression "abetment" has been defined under Section 107 IPC which we have already extracted above. A person is said to abet the commission of suicide when a person instigates any person to do that thing as stated in clause Firstly or to do anything as stated in clauses Secondly or Thirdly of Section 107 IPC. Section 109 IPC provides that if

the act abetted is committed pursuant to and in consequence of abetment then the offender is to be punished with the punishment provided for the original offence. Learned counsel for the respondent State, however, clearly stated before us that it would be a case where clause Thirdly of Section 107 IPC only would be attracted. According to him, a case of abetment of suicide is made out as provided for under Section 107 IPC.”

The other landmark rulings on above point are ***Praviee Pradhan v. State of Uttarakhand*** ; (2012) 9 SCC 734, ***Vajnath Kondiba Khandke v. State of Maharashtra*** ; (2018) 7 SCC 781, ***Ude Singh v. State of Haryana*** ; (2019) 17 SCC 301, ***Gurcharan Singh v. State of Punjab*** ; (2020) 10 SCC 200 and ***Rajesh v. State of Haryana*** ; 2020 15 SCC 359.

Conclusion

15. In the backdrop of above legal requirements for offence under Section 306 of IPC to be gravitated, it is essential for prosecution to demonstrate and establish that there was continuous harassment which was of such nature that deceased was left with no other alternative but to end her life, or it has to be shown that harassment and cruelty compelled the deceased to end her life. *Prima-facie* on going through the material before us, we are convinced that essential requirements for attracting offence under Section 306 are apparently missing. Similarly, there is no allegation that present applicants have indulged in beating or threatening the deceased. Resultantly, there is no material for attracting any of the offences with which crime has been registered. In view of above, in our considered opinion, initiation of FIR and consequential charge-

sheet arising out of it, both seem to be misplaced as against present applicants. In absence of any concrete material, making them to face prosecution would render not only hardship but would also render injustice to them. Therefore, continuation of proceedings with such quality of material against present applicants would definitely amount to abuse of process of law. Hence, for ends of justice to meet, we find it a fit case to intervene. Hence, the following order:

ORDER

- (I) Application is allowed in terms of prayer clauses-[B] and [B-1] to the extent of present applicants.
- (II) Fees of appointed Advocate is quantified at Rs.5,000/-. It is to be paid through High Court Legal Services Sub-Committee, Aurangabad.
- (III) Application is accordingly disposed of.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)

SPT