

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

CRIMINAL APPLICATION NO. 2196 OF 2020

- 1] Rohit w/o Kisan Bhujbal,
Age: 32 years, Occu: Medical Practitioner,
R/o: Village Kotul, Taluka: Akole,
District: Ahmednagar.
- 2] Rahul s/o Kisan Bhujbal,
Age: 38 years, Occu: Service,
R/o: As above.
- 3] Kisan s/o Rambhau Bhujbal,
Age: 66 years, Occu.: Retired,
Medical Practitioner, R/o: As above.
- 4] Mangal w/o Rahul Bhujbal,
Age: 35 years, Occu: Homemaker,
R/o: As above.
- 5] Sunanda w/o Kisan Bhujbal
(Sunanda d/o Chiman Kathe),
Age: 58 years, Occu: Zilla Parishad
Employee as Health Worker (Arogya Sevika)
Serving at Primary Health Centre at
Village Kohane, Taluka: Akole,
District Ahmednagar.
R/o. As above.

... Applicants
(Orig. Accused)

Versus

- 1] The State of Maharashtra,
through the Officer Incharge,
Akole Police Station, Akole,
Taluka: Akole, District: Ahmednagar.
- 2] Sunil Labhu Galande,
Age: 45 years, Occu: Driver,
R/o: Nawle Wadi, Taluka Akole,
District Ahmednagar.

... Non-Applicants

.....
Mr. Rajendrraa Deshmukkh, Senior Advocate a/w Mr. Govind Kulkarni i/by
Mr. Devang R. Deshmukkh, Advocate for the Applicants.
Mr. S. J. Salgare, APP for Respondent No.1-State.
Mr.Satyajeet S. Dixit, Advocate for Respondent No.2.
....

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

RESERVED ON : 29.11.2022

PRONOUNCED ON : 09.12.2022

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

1. Husband and in-laws of deceased Ashwini have knocked the doors of this Court by filing instant criminal application praying to exercise powers u/s 482 of the Code of Criminal Procedure (for short, "Cr.PC.") for quashing FIR bearing no. 152 of 2020 registered at Akole Police Station, District Ahmednagar for the offences punishable under Sections 304-A, 306, 498-A, 406, 504, 506, 323 r/w 34 of the Indian Penal Code (for short, "IPC") and the consequential charge-sheet arising out of it.

2. Brother of Ashwini namely Sunil Galande approached Akole Police Station on 18.05.2020 informing that his deceased sister Ashwini was married to applicant no. 1 on 16.04.2016. Informant claims that accused no.1 is a BHMS Doctor and deceased Ashwini, having done course of Diploma in Pharmacy, was looking after the chemist shop adjoining to the dispensary of her husband accused no.1. It is informed that for few months after marriage

everything was smooth and his sister conceived. It is alleged that accused no.1 desired to have a boy and he expressed his such desire to deceased Ashwini and also suggested her to undergo sonography test. It is alleged that he also suggested that if it is not a boy then she should terminate her pregnancy. Informant claims that all this was informed to him by his deceased sister. It is alleged that his sister gave birth to a girl and on such count, her husband accused no.1 started ill-treating her saying that he wanted a boy and not a girl. It is further alleged that two years back accused no.1 undertook construction of house and hospital by raising loan. Six months back Ashwini telephoned informant that there was a meeting in the house between her husband, parents-in-law, brother-in-law and his wife wherein there were talks regarding making more construction of the house. On such count, they all asked deceased Ashwini to bring Rupees twenty lakh and if she failed, she was threatened to be driven out of the house and second marriage of her husband would be performed. They also taunted her for not giving birth to a boy. It is alleged that when his deceased sister told them about their inability to raise the said amount, her husband and brother-in-law beat her and she was abused in filthy language. Mother-in-law stripped her of her *stree dhan* and all this was duly informed by deceased Ashwini to the informant. It is stated in the FIR that deceased Ashwini was upset because of the harassment. Finally on 17.05.2020, deceased Ashwini hanged herself in the house at about 12.00 noon. Hence brother lodged FIR against present applicants for above offence.

3. After investigation, charge-sheet came to be filed and it is made part of papers before us. It is the above FIR and the charge-sheet arising out of it which are now sought to be quashed and nullified by exercising inherent power under Section 482 of Cr.P.C.

SUBMISSIONS

4. In support of the claim of relief, learned counsel for the applicants would submit that the FIR is false and allegations are afterthought. There was no desire for male boy nor there was any demand for any amount for construction activity. Learned counsel emphasized that in fact applicant no. 1 is a doctor and he had applied for home loan. The said loan is duly sanctioned. Document to that extent is on record. From the loan amount, construction activity was completed. Photograph to that extent is placed on record. Loan is also repaid. Thus he submits that above allegations are with malicious intention merely to harass the applicant and his entire family. It is next submitted that even some of the applicants, who had no concern whatsoever with the daily affairs of deceased and accused no.1, are also implicated. He pointed out that investigation is now completed but there is no material in the entire charge-sheet to connect applicants to the alleged suicidal death by Ashwini. Learned counsel sought reliance on the ruling of *Preeti Gupta and another v. State of Jharkhand and another* ; AIR 2010 SC 608. While

concluding, he submitted that *prima facie* essential ingredients for attracting the offences with which applicants are charge-sheeted are apparently not made out and therefore, it is his submission that injustice would be caused to the applicants if they are made to face trial and hence he prayed to allow the application.

5. On behalf of the State, learned APP took us through the FIR and would submit that marriage is of 2016. Immediately after deceased Ashwini conceived, her husband applicant no.1 insisted that she should deliver a boy and that if it turns out to be a girl, then she should go for termination of pregnancy. Deceased Ashwini delivered a girl child and only on such sole count, her husband who had desired for a male boy started ill-treating her. It is stated in the FIR that all accused persons raised demand of Rs. 20 lakh for construction of hospital and bungalow and insisted deceased to arrange for the same from her parents and on such count they harassed her both, physically and mentally. Learned APP pointed out that all this was duly and promptly reported by her to her brother informant. Getting fed up of the maltreatment, deceased Ashwini finally hanged herself. The applicants are solely responsible for her suicide. Investigation which was undertaken has also revealed involvement of applicants in the suicide. Therefore, they are duly charge-sheeted and hence he insisted for trial of accused and prayed to dismiss the application.

6. learned counsel on behalf of respondent no.2-informant also took us through the FIR and charge-sheet and submitted that it is evident that husband and in-laws of deceased Ashwini were continuously ill-treating her both, mentally and physically and they had raised demand of Rs.20 lakh. When she failed to meet their demand, they maltreated her which was of such extent that she was compelled to end her life. Learned counsel for the informant took us through the statements of witnesses and would submit that all of them are unanimously pointing to the guilt of the accused and as such, he submits that applicants do not deserve relief as prayed. Rather they should face the trial and the consequences for their act.

7. Inherent powers of this Court under Section 482 of Cr.P.C. are sought to be exercised. Before touching the case on merits, it would be appropriate to deal with and discuss in brief the settled legal position as regards the scope and exercise of inherent powers under Section 482 of Cr.P.C.. There are various pronouncements on this aspect and it would be fruitful to discuss some of the landmark judgments on this point.

In *State of Orissa v. Saroj Kumar Sahoo* ; (2005) 13 SCC 540, the Hon'ble Apex Court, in para 8, made the following observations :

“8. ... While exercising the powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone the courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers the court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the report, the court may examine the question of fact. When a report is sought to be quashed, it is permissible to look into the materials to assess what the report has alleged and whether any offence is made out even if the allegations are accepted in toto.”

In ***State of M.P. v. Surendra Kori*** ; (2012) 10 SCC 155, in para 14, the Hon’ble Apex Court observed thus :

“14. The High Court in exercise of its powers under Section 482 CrPC does not function as a court of appeal or revision. This Court has, in several judgments, held that the inherent jurisdiction under Section 482 CrPC, though wide, has to be used sparingly, carefully and with caution. The High Court, under Section 482 CrPC, should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of wide magnitude and cannot be seen in their true perspective without sufficient material.”

In *State of Haryana and Ors. Vs. Ch. Bhajan Lal* ; 1992 Supp (1) SCC 335 : 1992 SCC (Cri.) 426, this Court laid down the principles for the exercise of the jurisdiction by the High Court in exercise of its powers under Section 482 of the Cr.P.C. to quash an FIR. Justice Ratnavel Pandian, J. laid down the limits on the exercise of the power under Section 482 Cr.P.C. for quashing the FIR and observed : (SCC pp. 378-79, para 102)

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the CrPC which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) CrPC except under an order of a Magistrate within the purview of Section 155(2) CrPC.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) CrPC.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

Based on above **precedent**, the Hon’ble Apex Court **very recently** in the case of ***Mahendra K.C. v. State of Karnataka and another*** ; (2022) 2 SCC 129 observed that “while exercising powers under Section 482 Cr.P.C., for quashing proceedings, following tests are required to be applied, ***firstly***, whether the allegations made in the complaint, *prima facie* constitute an offence; and ***secondly***, whether the allegations are so improbable that a prudent man would

not arrive at the conclusion that there is sufficient ground to proceed with the complaint.

This is the settled legal position on scope and object of Section 482 of Cr.P.C. that can be culled out from various rulings discussed above.

8. Having discussed the circumstances in which powers under Section 482 of Cr.P.C. can be exercise by the High Court, now let us turn to the penal provision under which applicants herein are facing prosecution. Allegations are of abetment of suicide and therefore charge-sheet is for said offence. Section 306 of IPC deals with punishment for abetment of suicide. Section 107 of IPC deals with as to what amounts to abetment. As to when said charge can be said to be brought home is also time and again dealt and discussed by the Hon'ble Apex Court and High Courts. It would be profitable to discuss few landmark judgments on the settled law as to when charge under Section 306 of IPC can be said to be brought home.

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 Uttaranchal* ; (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.

9. Here, prosecution seems to heavily rely on FIR and the charge-sheet. Therefore we propose to examine such material to find out whether it is a fit case for grant of relief as prayed or not.

On close scrutiny of FIR dated 18.05.2020, which is at the instance of brother of deceased Ashwini, it is seen that marriage of Ashwini and applicant no. 1 was solemnized on 16.04.2016. Applicant no. 1 seems to be a doctor by profession and he runs a dispensary. Deceased had acquired Diploma in Pharmacy and informant himself stated that she was looking after the chemist shop attached to the hospital. Informant claims that everything was smooth for few days but after his sister conceived, accused husband expressed his desire that she should deliver a baby boy and should even get sonography done to get it confirmed and further suggested that if it is not a boy, then, she should

go for abortion. However, his sister flatly denied to do so. He claims that his sister duly informed about this to him. Informant further alleges that deceased delivered a baby girl and therefore her husband started ill-treating her. He claims that six months back i.e. prior to suicide, his sister telephoned him and informed that there was a meeting between her husband and in-laws and they have decided to raise more construction and therefore they asked her to raise the amount of Rs.20 lakh for the said construction from her parents. They even threatened that on her failure to bring the said amount, she would be driven out of house and second marriage of applicant no. 1 would be performed. All this was duly informed to him by his sister and she was upset because of such treatment meted out to her. He stated that they had even intended to sale land and meet the demand to prevent ill-treatment to deceased but because of Covid-19, no such transaction could take place. Finally, on 17.05.2020, Ashwini hanged herself in the house of accused and as such, it is alleged that all accused being responsible, action be initiated against them.

10. The investigating Officer has recorded statements of almost all family members and some of the neighbours. Statement of informant-brother under Section 164 of Cr.P.C. is also finding place in the record before us.

11. On undertaking the exercise of analyzing the material before us i.e. FIR and papers in the charge-sheet, from the above discussed contents of FIR it is seen that informant claims to have learnt from his sister about wish of accused no.1 to have only and only a baby boy, but his sister having delivered baby girl, he was ill-treating her. What was the ill-treatment is not specified or clarified by the informant. It is further alleged that six months prior to the suicide, deceased allegedly informed brother on phone about meeting between husband and in-laws for asking deceased to raise amount for construction. Learned counsel for applicant has strenuously submitted that allegation of demand of money for construction is patently false because home loan was obtained and on the strength of same, construction activity was undertaken and it is already complete and there are photographs on record to that extent. To substantiate the same he invited our attention to the documents. At annexure "C" is a letter of sanction by Union Bank of India dated 28.01.2014 sanctioning loan to the tune of Rs.36 lakh. Apparently, the said sanction is of the year 2014 i.e. two years prior to the marriage of applicant no. 1 with deceased. Photographs of both, house and dispensary in completed condition are also annexed and placed on record. Therefore, with such material on record, the allegation of demand of Rs.20 lakh made six months prior to the suicide is apparently shown to be baseless.

12. Investigating officer has recorded statements of parents of deceased Ashwini. Statement of father under Section **161** of Cr.P.C. is surprisingly noted on 20.05.2020 and not immediately. He also speaks of wish and desire of son-in-law to have only and only a baby boy and on account of his daughter delivering a girl child, she being subjected to ill-treatment. But he has also not clarified manner and nature of ill-treatment. Like his son-informant, he too speaks of receiving phone calls about demand of Rs.20 lakh and on its non-fulfillment, she being threatened to be driven out of the house and ill-treated by her husband and in-laws. Neighbour Vilas Torkade and Dashrath Shinde gave statement about seeing some brisk activity in the house of doctor on 17.05.2020 and these two persons claim that they received information that because of ill-treatment and demand, deceased committing suicide and brother lodging FIR. Therefore, these two persons are in fact hearsay witnesses. Cousin of deceased, namely, Kavita also states about receiving information. Sister-in-law Alka is resident of Akole whereas accused and deceased were residing at Kotul. Statement of mother-in-law Sonabai is also a mirror image of the statement of her husband. Statement of neighbours and these witnesses are recorded after almost 5 to 6 days of the occurrence.

13. As pointed out by learned counsel for applicants, on comparing the contents of the FIR and the statement of informant recorded under Section 164 Cr.P.C., there is variance. In FIR, allegations of ill-treatment on refusal to

undergo sonography by Ashwini are levelled only against husband but in statement under Section 164 Cr.P.C. it is attributed even to in-laws. Likewise, father in his statement under Section 164 Cr.P.C. does not specify about demand of money raised for construction activity.

14. In the light of above discussed material, it is emerging that there are mere allegations of wish and desire of husband to have only and only a baby boy and as deceased delivered girl child, she was harassed. As stated above, details to the nature and manner of harassment is not reflected in the FIR. Contents of the FIR about demand of Rs.20 lakh is said to be informed by deceased to informant on telephone. Details of said telephonic conversation are not gathered by the investigating machinery. On the contrary, from the documents placed on record by the applicants, more particularly annexure "C", it is evident that housing loan was raised way back in 2014 and construction is already over which is demonstrated by way of photographs. Therefore, we fail to understand as to how on such count there could be harassment. Admittedly, deceased has committed suicide on 17.05.2020. There is no material whatsoever as to what occurred on 17.05.2020 or immediately prior thereto. There is no material to show that there was involvement of applicants herein in proximity to suicidal hanging by Ashwini on 17.05.2020. For attracting Section 306 IPC, continuous harassment and abetment has to be demonstrated. This aspect is conspicuously missing from

the papers before us. Even no such circumstances are brought on record which forced deceased to hang herself, nor there is any material to draw inference about *mens rea* which is essential for attracting said offence. No positive role or participation is shown immediately prior to 17.05.2020 so as to hold applicants responsible. Applicant no.5 seems to be resident of a distinct place and on affidavit it is stated that she was on duty however, still FIR finds her name.

15. In our view, as the essential ingredients for attracting Section 306 of IPC not being available in the case in hand, it would be hazardous to make applicants face trial. No fruitful purpose would be served by permitting their prosecution with such quality of material on record. Resultantly we are of the considered opinion that present FIR is an abuse of process of law and seems to be an outcome of anger and annoyance on losing sister. Hence we intervene and accordingly proceed to pass the following order :

ORDER

- I. The application is allowed in terms of prayer clause (C).
- II. The application is accordingly disposed off.

[ABHAY S. WAGHWASE, J.]

[SMT. VIBHA KANKANWADI, J.]