

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

CRIMINAL APPLICATION NO.2337 OF 2020

**GAURI @ SARLA SURYAKANT DESHMUKH
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

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Advocate for Applicant : Ms. Ashwini Lomte h/f. Mr. Sudarshan J. Salunke
APP for Respondent No.1 - State : Mr. S. D. Ghayal
Advocate for Respondent No.2 : Mr. Pramod P. Dhorde

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

DATED : 06th DECEMBER 2022

PER COURT :

1. Present application has been filed under section 482 of Cr.P.C. by original accused No.6 for quashment of the FIR as well as the proceeding.
2. Heard learned advocate Ms. Ashwini Lomte holding for Mr. Sudarshan Salunke for applicant, learned APP Mr. Ghayal for State and learned advocate Mr. Dhorde for Respondent No.2.
3. The deceased was the sister-in-law of present applicant and she was the daughter of respondent No.2. Deceased Sonali got married to original accused No.1 (brother of present applicant) on 07.05.2017. She has a daughter out of the wedlock. The applicant has contended that she is a married woman and her marriage took place prior to the marriage of the

deceased with accused No.1. She states that she is residing in her matrimonial home. In nutshell, she wants to state that she is not interfering in the marital life or domestic affairs of the deceased and other accused. The other accused are her parents, brothers and one sister-in-law. The other accused persons are residing at Jalgaon, whereas the applicant is residing at Parbhani.

4. Learned advocate for the applicant has taken us through the contents of the FIR and the charge-sheet and submitted that the statements of many witnesses, especially alleged independent eye witnesses, who are residing in the neighbourhood, do not disclose presence of the applicant on the day of incident i.e. on 09.07.2020. It is also stated by those persons that deceased used to talk with them and tell them about the harassment to her. However, even in that narration, name of the present applicant was not disclosed. Name of the applicant has been disclosed by the relatives of the deceased, but it appears that it is on the basis of alleged statement that the deceased had disclosed the said fact to them. When the applicant was not even present on the day of incident as well as there are no specific allegations against her, the FIR and the proceeding deserve to be quashed and set aside as against her.

5. Per contra, learned APP and learned advocate appearing for respondent No.2 strongly opposed the application and submitted that entire material is required to be considered which is collected during the course of

the investigation. The statements of witnesses under section 164 of Cr.P.C. are also required to be considered, wherein, it has been stated that the present applicant had taken active part in communicating it to the mother of the deceased that deceased is unable to do proper work.

6. At the outset, it is to be noted that deceased Sonali appears to have received 60% burns and the post mortem report gives cause of the death as “death due to CRA due to 60% burns over body”. Statements of witnesses would also show that she had received those burn injuries at her matrimonial home. The statements of the witnesses, especially eye witnesses in the form of neighbours would show that the quarrels were going on since 3.30 p.m. on 09.07.2020 and Sonali received burn injuries at around 11.30 p.m. As regards statements of those neighbours, who are not related to Sonali from her parental side, would show that Sonali was on talking terms with them and those neighbours had seen the quarrels between Sonali and accused Nos.1 to 5. No doubt in their statements under section 161 of Cr.P.C., they have not stated much about the present applicant i.e. accused no.6, except having the relationship, however, it is to be noted that in their statements under section 164 of Cr.P.C., witness Vimalbai Mahajan as well as witness Soni Sapkale have stated about the present applicant. It is stated by witness Vimalbai that present applicant had given a phone call at around 3.30 p.m. on 09.07.2020 to the mother of the deceased and informed her that the deceased is not doing work

properly. It is then stated that applicant had given a phone call to accused No.1 and instigated that he should assault deceased. Further witness Soni Sapkale has stated that present applicant had come to Jalgaon on 09.07.2020 and the quarrel was going on since morning.

7. Learned advocate for the applicant states that the statements are contrary to the statements with each other as well as their own statements under section 161 of Cr.PC. Learned APP then points out that both the witnesses, at the end of their statements under section 161 of Cr.PC., stated that the present applicant used to give phone calls frequently, used to abuse deceased and instigate accused Nos.1 and 2.

8. We are making it very clear that we cannot appreciate the evidence at this stage. We are supposed to take into consideration what is the evidence on record and whether on the face of the record, the ingredients of the offence have been made out or not. One thing can be observed from the evidence on record that there may not be a case made out against the applicant under sections 306 and 302 of IPC, but it is for the trial court to further decide about the same. However, certainly there appears some material for proceeding the matter further under section 498-A of IPC against the applicant and therefore, this is not a fit case where we should exercise our inherent powers under section 482 of Cr.PC. Application, therefore, stands rejected.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)