

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1095 OF 2021

Narhari s/o Achyut Dahiphale
Age: 30 years, Occu.: Service
as Police Constable,
R/o. C/o. Sharda Wagh,
Vyankatesh Colony, Wadali,
Tq. & Dist. Amravati

... Petitioner

Versus

1. The State of Maharashtra
Through its Principal Secretary,
Home Department, Mantralaya,
Mumbai-32.

2. Dnyanoba s/o Nivrutti Chate
Age: 65 years, Occu.: Agri.,
R/o. Anandwadi, At post Pimpaldari,
Tq. Gangakhed, Dist. Parbhani

... Respondents

...

Mr. J. M. Murkute, Advocate for petitioner.

Mr. R. V. Dasalkar, APP for respondent No.1 – State.

Mr. K. D. Mundhe, Advocate for respondent No.2.

...

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

DATE : 27th September, 2022

ORDER :- [Per Smt. Vibha Kankanwadi, J.]

. By invoking the constitutional powers of this Court under Article 14, 21 and 311 read with Article 226 of the Constitution of India as well as inherent powers of this Court under Section 482 of the Code of Criminal Procedure (for short "Cr.P.C."), the petitioner

seeks quashment of the First Information Report (for short "F.I.R.") bearing Crime No.45 of 2021 dated 30.04.2021 registered with Pimpaldari Police Station, Tq. Gangakhed, Dist. Parbhani for the offences punishable under Sections 306, 498-A, 323, 504, 506 read with Section 34 of Indian Penal Code (for short "IPC") as well as the further proceedings in R.C.C. No.120 of 2022 pending before the Judicial Magistrate First Class, Gangakhed.

2. The FIR has been lodged by respondent No.2 stating that his daughter Pooja was married to one Krushna Achyut Dahiphale in the year 2009-2010 as per Hindu rituals. Out of the wedlock, Pooja has given birth to a girl child. After the marriage, for two-three years Pooja was treated well by her husband and in-laws, thereafter, she was subjected to cruelty. There was demand of money for the purchase of four wheeler vehicle by the by the husband and in-laws and for that purpose, she was harassed. She was being taunted for being not possessing good looks. There was an insistence for divorce. She fed up with such persistent ill treatment and she committed suicide by jumping into the Well when she was left at her parental home. It is further stated that the petitioner is serving in Police Department. He was also taking part in threatening the informant and the deceased and thus alleged to have abetted the deceased to commit suicide. Under

such circumstance, the FIR has been lodged against the accused persons including the petitioner.

3. It has been vehemently submitted on behalf of the petitioner that the petitioner resides at Amravati in connection with his service. It is far away from the matrimonial home where the deceased Pooja was staying with the family members of the petitioner. In the FIR, it is stated that whenever the petitioner used to come to his native place by taking holidays, he used to convey it to the informant and his son that they should take the divorce of Pooja, otherwise she would be killed. This statement is very vague statement and it cannot be said to be instigated or abetting commission of suicide by the deceased. The FIR contains allegations against the other accused persons, which is in respect of insult on the looks and demand of golden ring by the husband of the deceased. The marriage between Pooja and brother of the petitioner had taken place in the year 2010 and she has committed suicide on 29.04.2021. Under such circumstance, such vague statement cannot invoke either Section 498-A or Section 306 of IPC against the petitioner. Hence, asking him to face the trial would be unjust. The FIR as well as entire proceedings deserve to be quashed and set aside.

4. Per contra, the learned APP representing respondent No.1 and learned Advocate appearing for respondent No.2 strongly opposed the petition and submitted that the postmortem report would show that the death was due to cardio respiratory failure due to drowning. The consistent statements of the witnesses would show that Pooja committed suicide by jumping into the Well. She was harassed for bringing money for purchase of four wheeler, gold ring as well as she was ridiculed for her looks. She was assaulted and she was being forced to give divorce to her husband. The statements of witnesses are consistent and, therefore, this is not a fit case where the FIR against the petitioner should be quashed and set aside.

5. Here, in this case, now the investigation is complete and charge-sheet is filed. The petitioner is serving in police department and his posting is at Amravati. In fact, the charge-sheet does not disclose as to since when the petitioner is residing at Amravati, what is his year of appointment etc. It is not the case of the prosecution that when Pooja got married to the brother of the petitioner, at that time, the petitioner was still not taken the job in police department. The FIR and the prosecution story tries to cover the married life of deceased Pooja which started from 2010 and unfortunate death is on 29.04.2021. She is blessed with daughter

and on the date of the FIR, the daughter of the deceased was studying in second standard. According to the informant his daughter was treated well for about 2-3 years and thereafter, when the daughter was born to her, the persons in her matrimonial home started demanding amount of Rs.5,00,000/- to be brought for purchase of four wheeler. It is then stated that all the accused persons including the petitioner used to insult deceased by saying that she is not good looking and she should give divorce. She was harassed by abuses and assault. Interesting point to be noted is that the matrimonial home of the deceased is in the same village where her parental house is. That means everything is known and could be conveyed personally and immediately, still the informant says as regards the petitioner is concerned, that whenever he used to come to his native place by taking leave, he used to say it to the informant as well as his son Navnath that they should take divorce of the daughter i.e. Pooja, otherwise she would be killed on one day. Similar statement has been made by Navnath also in his statement under Section 161 of Cr.P.C. However, it is to be noted that both of them have not stated that the petitioner used to say the said fact to Pooja in their presence. Whatever has been stated by the petitioner to the informant and his son Navnath (taken as it is), unless it would have been communicated by them to Pooja will not, in any way, either amount to cruelty as contemplated under

Section 498-A, nor it will amount to abetment under Section 107 of IPC together with Section 306 of IPC. Both of them have not stated that they have told the said fact to deceased Pooja. It can be seen from the contents of the FIR as well as statement of Navnath that those statements have been made by them just to rope the petitioner, who is in fact residing at a far away place. The other witnesses have also stated the same thing, but they have stated that this fact was informed to them by informant and Navnath. It amounts to hearsay and, therefore, no importance can be given to those statements.

6. It can be seen from the contents of the entire prosecution story that the marriage took place after approval and possibility cannot be ruled out that deceased Pooja was knowing her husband since childhood, as they were residing in the same village. When the marriage was performed with approval and she was treated properly for about 2-3 years, she had an issue, then all of a sudden how it is possible that she would be harassed on the count of her looks, is a question. Further, how her looks would have mattered her brother-in-law, is another question. Her husband would be more interested in her looks at the most and then would be interested in claiming divorce. By no stretch of imagination it can be said that, that would be one of the reasons for cruelty by the present

petitioner. Further details have not been given as to when the demand of Rs.5,00,000/- was made and how the informant as well as deceased tackled that problem.

7. If we consider the postmortem report, then the cause of death is due to drowning. The prosecution will have to rule out the possibility of accidental death and admittedly, the petitioner was not present on the day of the incident in the said village. Opinion of the witnesses have stated about the same. When the petitioner had come to village from Amravati prior to the incident has also not been gathered by the Investigating Officer. Therefore, there is no proximity between the visit of the petitioner and the date on which deceased committed suicide. With all these pieces of evidence, it would be unjust for the petitioner to ask him to face the trial.

8. 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."

9. 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."

10. 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.”

11. 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 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 Constitutional powers as well as inherent 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

- I) The writ petition stands allowed.

- II) The FIR bearing Crime No.45 of 2021 dated 30.04.2021 registered with Pimpaldari Police Station, Tq. Gangakhed, Dist. Parbhani for the offence punishable under Sections 306,

498-A, 323, 504, 506 read with Section 34 of IPC as well as the further proceedings in R.C.C. No.120 of 2022 pending before the Judicial Magistrate First Class, Gangakhed stand quashed and set aside.

[RAJESH S. PATIL]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm