

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

CRIMINAL APPLICATION NO. 3022 OF 2021

Pradeep Atmaram Pawar **... Applicant**
Aged 52 years, Occu: Service
R/o Lohata (West), Taluka: Kallam
District: Osmanabad

VERSUS

1. The State of Maharashtra
Through Senior Police Inspector,
Shirdhon Police Station, Taluka: Kallam
District: Osmanabad
2. Ramchandra Kundalik Javle **... Respondents**
R/o Datt Nagar, Kallam, Shirdhon,
District Osmanabad.

Mr. Savrish Shetye i/by Mr. Premkumar Pandey, Advocate for the Applicant
Mr. A. V. Deshmukh, APP for the Respondent-State.

**CORAM : C. V. BHADANG AND
BHARAT P. DESHPANDE, JJ.**

DATE : 8 JUNE 2022

JUDGMENT (PER C. V. BHADANG, J.)

By this application, under section 482 of the Code of Criminal Procedure, the applicant/accused is seeking quashing of the First Information Report (FIR) in Crime No. 97 of 2017 of Police Station Shiradhon, Taluka Kallam, District Osmanabad under

section 306, 498A, 497, 323, 506 read with section 34 of the Indian Penal Code (for short, the IPC) and consequent charge-sheet in Sessions Case No.48 of 2017 pending on the file of the learned Additional Sessions Judge, Osmanabad.

2. The aforesaid crime is registered on the basis of the complaint lodged by the second respondent who is the father of now deceased Pramila, wife of the present applicant. Pramila was married to the applicant on 17 May 1998. According to the first informant, she was physically and mentally ill treated, as a result of which Pramila committed suicide by hanging at village Lohata on 19 April 2017. On the basis of the FIR dated 21 April 2017, the offence as aforesaid came to be registered and after investigation, a charge-sheet is filed.

3. We have heard the learned counsel for the applicant and the learned APP. With the assistance of the learned counsel for the parties, we have gone through the record.

4. It is submitted by the learned Advocate for the applicant that the necessary ingredients of the offence of abetment of suicide are not disclosed during the course of investigation. It is submitted that the act of the deceased committing suicide was her own act and there was no element of abetment by the applicant. It is submitted that there is nothing on record to show that soon before her death, Pramila was subjected to ill-treatment, leading to her suicide and there is no nexus between the alleged act, attributed to the applicant and the incident of commission of suicide by Pramila.

5. The learned counsel for the applicant strenuously urged that offence under section 306 of the IPC essentially involves instigation or abetment or intentional aid or conspiracy as a result of which the deceased was driven to commit suicide. It is submitted that these ingredients are absent in this case. The learned counsel, in order to support the submissions, has taken us through the contents of the charge-sheet and the statement of witnesses.

6. On behalf of the applicant, reliance is placed on the following decisions:

- (1) Amalendu Pal Vs. State of WB, (2010) 1 SCC 707
- (2) M. Arjunan Vs. State, (2019) 3 SCC 315
- (3) Bhagwan Das Vs. Kartar Singh & Ors.(2007) 11 SCC 205
- (4) Jagdishraj Khatta Vs. State of H.P., (2019) 9 SCC 248
- (5) Velladurai Vs. State 2021, SCC OnLine SC 715
- (6) Dilip Vs. State of Maharashtra & Anr. in Cri. Application No. 332 of 2016 decided on 5th August, 2016.
- (7) Madan Mohan Singh Vs. State of Gujrat & Anr., (2010) 8 SCC 628
- (8) Sohan Raj Sharma Vs. State of Haryana, (2008) 11 SCC 215
- (9) Swamy Prahaladas Vs. State of MP and Anr., (1995) Supp. (3) SCC 438.
- (10) Ashok Goyal Vs. State, 2011 SCC Online Del 1931
- (11) Netai Dutta Vs. State of WB (2005) 2 SCC 659

7. Learned APP has submitted that there is enough material collected during the course of investigation to show that the deceased was subjected to mental and physical ill-treatment which led her to

commit suicide. It is submitted that this is not the stage where the prosecution evidence or for the matter of that probable defence, can be appreciated in details. The learned APP has taken us through the statement of witnesses and has pointed out that there is a recovery of suicide note from the person of the deceased Pramila which sufficiently indicates that she was subjected to ill-treatment so as to drive her to commit suicide. The learned APP pointed out that the cases relied upon by the learned counsel for the applicant mostly are arising out of conviction on trial.

8. We have given our anxious consideration to the rival contentions and the submissions made.

9. As rightly submitted on behalf of the State, this is not the stage where the prosecution evidence and/or the probable defence can be appreciated in details so as to preempt a finding, which can essentially be reached after the trial. The Supreme Court, in **State of Haryana Vs. Bhajan Lal and others reported in AIR 1992 SC 604**, has inter alia held that FIR/charge-sheet can be quashed under the following circumstances:-

"(i) 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.

(ii) 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) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(iii) 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 absurd and inherently improbable offence and make out a case against the accused.

(iv) 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) of the Code.

(v) 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.

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

(vii) 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.”

10. Coming to the present case, it is undisputed that deceased Primila met with an unnatural death by hanging at village Lohata on 19 April 2017. The complaint by the father of the deceased as well as statements of some of the witnesses show that there are allegations of the deceased being subjected to ill treatment at the hands of the applicant.

11. Learned counsel for the applicant has produced a summary of suicide note and the written submissions. In particular, a reference was made to the statement of Purushottam Surve who is accused No.2. The learned counsel pointed out that Purushottam Surve claimed that it was the deceased who had sought sexual favour from him and since 2014, there were physical relations between Purushottam Surve and the deceased. Purushottam Surve claimed that he never forced himself on the deceased.

12. A brief reference, at this stage, may be made to the suicide note in which the deceased has stated that she had committed one mistake and she is being victimized for the same. The learned counsel for the applicant submitted that the deceased had herself admitted of having committed mistake for which she was in a disturbed state of mind and it is on account of such mental state that she committed suicide. The contention, in our view, cannot prima facie be accepted at this stage. Perusal of the contents of the suicide note (Page 60 of the compilation) shows that deceased claimed that even after she changed her mobile number, it was the applicant who

was sharing the mobile number to others. She also claimed that unfounded allegations and charges were levelled against her and the applicant was in an attempt to leave her.

13. As noticed earlier, it is neither necessary nor appropriate to appreciate the material in details so as to record any final conclusion, else at the risk of causing prejudice to the prosecution or the defence. We find that for the present, the allegations cannot be said to be absurd or inherently improbable within the meaning of Clause (iii) above, of the decision of the Supreme Court in **Bhajan Lal** (Supra).

14. We have also gone through the decisions cited on behalf of the applicant. We find that except in **Dilip Vs. State of Maharashtra, Madan Mohan Singh Vs. State of Gujrat and Netai Dutta Vs. State of WB**, all other decisions arose out of conviction upon trial. The principles which are germane for quashing of the FIR / charge sheet are too well settled to be restated. The question is about their application to individual facts and circumstances of each case. These decisions turned on their own facts.

15. The gist of the offence under section 306 of the IPC is abetment by accused of the suicide by the victim. Abetment is defined under section 107 of the IPC. The offence of abetment under section 107 of the IPC can be either by (i) instigation (ii) engagement with one or more persons in conspiracy or (iii) intentional aid by any act or illegal omission. The learned APP, in our view, is right that the over all reading of the suicide note may

indicate intentional aid, by any act or illegal omission. We are examining the material in the context of rival submissions and prayer for quashing of the FIR/charge-sheet at the threshold.

16. Considering the over all circumstances, we are unable to accept that this is a fit case where FIR/charge sheet can be quashed.

17. In the result, the application stands dismissed. We, however, make it clear that the learned Sessions Judge shall not be influenced by the observations or the findings herein, at the time of framing of charge and/or trial of the case.

BHARAT P. DESHPANDE, J.

C. V. BHADANG, J.

JPChavan