

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

CRIMINAL APPLICATION NO. 3968 OF 2019

Shyam s/o Eknath Dusing

Applicant

Versus

01 The State of Maharashtra

02 Navnath s/o Mogal Pawar

Respondents

Mr. N. S. Ghanekar, advocate for the applicant

Mr. R. V. Dasalkar, APP for Respondent No.1.

Mr. Rajesh S. Jangam with Mr. P. S. Magar, advocates for
Respondent No.2.

**CORAM : V.K.JADHAV AND
SANDIPKUMAR C. MORE, JJ.**

DATE : 01st March, 2022.

ORDER (Per Sandipkumar C. More) :

1 Heard finally, at the stage of admission, by consent
of learned Counsels for respective parties.

2 The applicant-original accused is seeking
quashing of the First Information Report No. 342/2019,
registered with Cantonment Police Station, Aurangabad, for
the offence punishable under Section 306 of the Indian Penal

Code. During the pendency of this Criminal Application, charge sheet is filed and, therefore, the applicant has also sought quashing of criminal proceedings arising out of the aforesaid First Information Report, bearing RCC No. 2056/2020, pending before the Chief Judicial Magistrate, Aurangabad.

3 On perusal of the complaint, it appears that the applicant-accused got married with one Kiran Shyam Dusing i.e. the deceased in the instant case, in the year 2013. However, even after two years of the said marriage, Kiran could not conceive and, therefore, the applicant started harassing her on that count. Ultimately, in the month of May 2019, deceased Kiran had called complainant Navnath Mogal Pawar i.e. her father and insisted him to escort her to parental house. Accordingly, complainant brought Kiran to his house. Thereafter a meeting was held between the relatives of both the sides and it was agreed between the parties to end the said marriage between applicant and Kiran. Accordingly, a Petition for the purposes of taking divorce by

consent was also filed. However, on 23.10.2019, Kiran had gone to Reliable Classes at Aurangabad as usual and returned at about 4.00 p.m. and went to her room. When her brother Manish had gone to call her, she told him that she wanted to study and closed the door of her room from inside. At about 06.30 p.m., Manish had again gone to call her, but could not seek her response. Thereafter when the door of room of Kiran was broke opened, it was found that Kiran had committed suicide with the help of her scarf. It has been alleged in the complaint that when Kiran was residing at her parental house, present applicant has repeatedly called her maternal uncle and cousin brother, namely Rahul Divekar and Aniket Tupe, respectively, on their mobile phones and told them to send Kiran to him for cohabitation otherwise, he would commit suicide. Due to such mental harassment, Kiran ultimately committed suicide.

4 Learned Counsel for the applicant submits that the complaint itself is frivolous since it was already decided between the parties to take divorce and a petition, to that

effect, was also filed. He further submits that it is highly difficult to believe that merely because of the phone calls of applicant, Kiran committed suicide. According to the learned Counsel, the allegations in the complaint are so absurd that by any stretch of imagination, it could not be held that the act of making repeated phone calls to the relatives of Kiran would abet commission of her suicide.

5 On the contrary, learned A. P. P. as well as learned Counsel for Respondent No.2-informant have strongly opposed the application and submitted that even if it was agreed between the applicant and deceased Kiran to take divorce, the applicant still insisted to meet Kiran for pursuing her to cohabit with him by making various calls, as mentioned above. Learned Counsel for Respondent No.2-informant has brought our attention to the conversation between the applicant and Kiran on whatsapp, which is filed on record, wherein there was repeated insistence of the applicant for calling Kiran for cohabitation. He also pointed out that the maternal uncle of Kiran – Rahul Divekar and

cousin brother – Aniket Tupe have also stated in their statements recorded during the course of investigation that as to how the applicant used to tell them to send Kiran to him. As such, learned A. P. P. as well as learned Counsel for Respondent No2-informant have submitted that present application is liable to be dismissed.

6 Admittedly, maternal uncle and cousin brother of deceased Kiran have stated in their statements that the applicant repeatedly called them for sending Kiran to him for cohabitation. Moreover, the applicant himself has filed on record whatsapp conversation between himself and deceased Kiran. On perusal of the same, it appears that even after filing divorce petition, the applicant was insisting that Kiran should come to him for cohabitation. It is alleged by the Respondent No.2-informant that the applicant was giving threats of committing suicide if Kiran was not sent to him. As such, the prosecution is claiming that such threatening on the part of the applicant has in fact resulted into commission of suicide by Kiran.

7 Learned Counsel for the applicant has strongly submitted that such type of cause or allegation does not come under the definition of abetment as contemplated in Section 306 of the Indian Penal Code and, therefore, when the allegations are absurd in nature, then the criminal proceedings are liable to be quashed.

8 So far as quashing of First Information Report, involving Crime under Section 306 of the Indian Penal Code is concerned, the Hon'ble Supreme Court, in the case of **M. Mohan Vs. State**, AIR 2011 SC 1238, has observed that, in considering the abetment, as contemplated in Section 107 of the Indian Penal Code, there has to be clear *mens rea* to commit the offence and the conviction cannot be sustained without positive act on the part of the accused to instigate or aid in committing suicide. It has been observed by the Hon'ble Supreme Court, in paragraphs no. 45 & 46, as under:

“45. 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.

46. The intention of the Legislature and the ratio of the cases decided by this court are 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 this act must have been intended to push the deceased into such a position that he/she committed suicide.”

9 In the case of **State of Haryana & others Vs. Bhajanlal & others**, AIR 1992 (SC) 604, the Hon’ble Supreme Court has given reference to the guidelines as to when and in what circumstances powers under Section 482 of the Code of Criminal Procedure can be invoked. We reproduce those guidelines herein below:

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;

(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. 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;

(c) 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;

(d) 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;

(e) 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;

(f) 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;

(g) 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 On perusal of the aforesaid guidelines, we find that guideline no.1 is relevant so far as present case is concerned. It has been held that powers under Section 482 of the Code of Criminal Procedure for quashing the

proceedings are to be used sparingly either to prevent abuse of process of Court or to secure ends of justice. The main condition for quashing appears to be that where the allegations made in the complaint, even if they are taken as true and accepted entirely, do not *prima facie* constitute an offence or make out a case against the accused.

11 Considering the ratio laid down by the Hon'ble Supreme Court in the case of **M. Mohan** (*supra*), abetment under Section 107 of the Indian Penal Code has to be established with clear *mens rea* to commit the offence and the conviction cannot be sustained under Section 306 of the Indian Penal Code without any positive act on the part of the accused to instigate or aid in committing suicide. Here, the prosecution is claiming that the applicant herein made repeated phone calls to the close relatives of deceased Kiran for sending her to him for cohabitation. Such allegation, *prima facie*, appears to be absurd in nature since there was no overt act on the part of the applicant to bring Kiran to his house. Merely making phone calls to the close relatives of the

deceased cannot be considered to be a reason for commission of suicide by Kiran. Even there is no reference that after filing the divorce petition, the applicant personally met with Kiran or forced her, in any manner, to come with him. As such, even though the allegations in the complaint, made against the applicant in the present case, are taken as true, then also offence under Section 306 of the Indian Penal Code is not made out.

12 In view of the same and in the light of the observations of the Hon'ble Apex Court in the above mentioned case, we find that no triable case is made out against the applicant and *prima facie* the allegation against applicant appears to be absurd and as such, criminal proceedings can be quashed by invoking powers under Section 482 of the Code of Criminal Procedure.

13 In the result, we pass the following order:

(i) Criminal Application is allowed in terms of prayer clause "B".

14 Criminal Application is accordingly disposed of.

(SANDIPKUMAR C. MORE)
JUDGE

(V.K.JADHAV)
JUDGE

adb