

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

CRIMINAL APPLICATION NO. 1274 OF 2022

1. Chhaya Anil Thorat,
Age : 25 Years, Occu : Household,
R/o. Kittu Adgaon, Tq. Majalgaon,
District Beed at present R/o. Antarwali,
Tq. Ghansavangi, Dist. Jalna.
2. Viju S/o Atmaram Kshirsagar,
Age : 32 Years, Occu. : Agril.,
R/o. Shingarwadi, Tq. Majalgaon,
Dist. Beed.
3. Rahul S/o. Dattatraya Kshirsagar,
Age : 28 years, Occu. : Agril.,
R/o. Shingarwadi, Tq. Majalgaon,
Dist. Beed.
4. Sangita Ankush Bhise,
Age : 45 years, Occu. : Household,
R/o. Antarwali, Tq. Ghansavangi,
Dist. Jalna.

... Applicants.
(Accused Nos.1 to 4)

Versus

1. The State of Maharashtra,
Through Police Station,
Majalgaon (Rural), Dist. Beed.
2. Mahananda W/o. Uttam Thorat,
Age : 55 years, Occu. : Labourer,
R/o. Sathe Nagar, Kittu Adgaon,
Tq. Majalgaon, Dist. Beed.

... Respondents
(Resp. No.2 is Orig.
Informant)

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Mr. M. P. Kale, Advocate for Applicants.
Mr. G. O. Wattamwar, APP for Respondent No.1 – State.
Mr. Amar. V. Lavte, Advocate for Respondent No.2

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**CORAM : MANGESH S. PATIL AND
ABHAY S. WAGHWASE, JJ.**

DATED : 5 APRIL 2023

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

In the instant application wife of deceased Anil Thorat, her mother and other relatives are seeking quashment of FIR No. 13 of 2022, dated 15.01.2022 registered at Majalgaon Rural Police Station, Dist. Beed for the offence punishable under section 306 read with section 34 of Indian Penal Code and the consequential charge-sheet arising out of it vide RCC No. 39 of 2022 pending on the file of Judicial Magistrate First Class, Majalgaon, District Beed.

BRIEF BACKGROUND OF THE CASE

2. According to respondent no.2, mother-in-law of deceased had borrowed Rs. 4000/-. When deceased suffered from jaundice, he demanded the amount back. That time, applicant no.1 wife and her mother applicant no.4 abandoned deceased in the hospital and went away. Applicant no.1 wife returned only after a year or so. Respondent no.2 has alleged that applicant no.1 used to beat, insult deceased. Once when deceased beat her for fighting with sugarcane contractor, applicant no.1 informed her relatives, who came

and thrashed deceased. Relatives of applicant no.1 also lodged complaint against deceased at Majalgaon police station and she parted company from deceased. Deceased took several attempts to resolve the matter and bring her back, but she refused. Therefore, deceased informed applicant no.1 wife on phone that if she does not return, he would hang himself. Wife asked him proceed to do so if he so desires. According to respondent no.2, since then deceased was upset. On 14.01.2022, there was heated exchange of words between deceased and applicant no.4 over phone. She too said that, even if deceased hanged himself, she would not sent applicant no.1 back to cohabit. According to respondent no.2, thereafter deceased hanged himself and she lodged above complaint. On the strength of which initially crime was registered against applicants and they were duly charge-sheeted.

The said crime and consequential charge-sheet are now sought to be quashed and set aside by way of instant proceedings.

SUBMISSIONS

3. Inviting our attention to the contents of the FIR, learned counsel for the applicants submits that instant complaint is apparently an abuse of process of law. There was only marital discord and quarrels resulting out of it. There was no abetment to commit suicide. It is his submission that even taking the allegations as it is, offence of 306 of IPC is not at all made out.

That, infact because of said quarrels applicant no.1 had left the company of deceased and she was at her parents' place. Therefore, there was no occasion for her to indulge in any act, as a result of which deceased decided to hang himself. Therefore, according to learned counsel, instant proceeding is mere abuse of process of law and its continuation would render injustice to the applicants.

4. While opposing the above, learned APP submitted that there are direct allegations about deceased being subjected to harassment. There are allegations of beating to him by applicant no.1. Only because of her bahaviour and conduct, there were quarrels. Deceased was under continuous pressure and tension. She had abandoned his company and in spite of requesting her to come for cohabitation, she flatly refused. Only because of above behaviour of applicant no.1, deceased was compelled to end up his life. According to learned APP, investigation has revealed involvement of all the applicants. That, there is sufficient material to proceed for trial.

5. On behalf of learned counsel for respondent no.2, submissions are advanced that applicants are named. Their roles are defined. There was no other reason for deceased to commit suicide. Because of continuous harassment, deceased took the extreme step of ending his life. Therefore, when the investigation has revealed complicity of all the applicants, they

deserve to face trial and hence prays for dismissal of application.

6. Here, applicants have invoked inherent jurisdiction of this Court under section 482 of Cr.P.C. In catena of judgments the Hon'ble Apex Court has time and again reiterated that inherent powers under section 482 of Cr.P.C. can be exercised by the High Court; *firstly*, to give effect to an order under Cr.P.C., *secondly*, to prevent abuse of process of court and *thirdly*, to secure ends of justice.

As to when powers under Section 482 of Cr.P.C. can be exercised is fairly settled by slew of judgments including ***Inder Mohan Goswami and Anr. Vs. State of Uttaranchal and Ors. ; (2007) 12 SCC 1 and Mahendra K.C. Vs. State of Karnataka and Another ; (2022) 2 Supreme Court Cases 129.***

7. Bearing the above settled legal position in mind, if we scan the FIR in hand, it is clear that applicant no.1 is wife of deceased Anil, applicant no.2 Viju is maternal uncle, applicant no.3 is cousin brother and applicant no.4 is mother of applicant no.1. It seems that deceased and applicant no.1 got married in 2012 and out of their wedlock they also have children. The entire tenor of complaint at the instance of mother of deceased goes to show that relations between deceased and accused were strained. Instances of abandoning during ill health are levelled. Secondly, there are allegation of

being beaten by applicant no.2. It also seems that applicant no.1 left the company of deceased and went to stay at her parents' house. According to mother of deceased, deceased repeatedly requested applicant no.1 to return back to cohabit with him. It is stated in the complaint that as she was not returning, deceased also threatened to hang himself, upon which she asked him to proceed to do so. Thereafter, it seems that deceased hanged himself in his house. Apparently at that time, applicants were not around deceased nor they were in immediate contact with him. There is no allegation about any instigation or inducement or abetment at their hands.

8. As to what amounts to “abetment” and “instigation” has been time and again clarified by the Hon’ble Supreme Court in various judgments like *Chitresh Kumar Chopra v. State (NCT of Delhi)* (2009) 16 SCC 605; *Ramesh Kumar v. State of Chhattisgarh* (2001) 9 SCC 618; *State of Punjab v. Iqbal Singh* (1991) 3 SCC 1; *Amalendu Pal v. State of W.B.* (2010) 1 SCC 707.

But here, it would be profitable to specifically rely on the ruling of the Hon’ble Supreme Court in the case of *Sanju Vs. State of M.P* 2002 SCC (Cri.)1141, wherein facts are very much identical like the facts in the case in hand. In above referred case, deceased had explicitly declared his intention to die upon which, accused therein, asked the deceased to proceed to do so and thereupon suicide was committed. In this case Hon’ble Apex Court held that

“even if one accepts the prosecution story that the applicant did tell the deceased 'to go and die', that itself does not constitute the ingredient of 'instigation'. The word 'instigate' denotes incitement or urging to do some drastic or unadvisable action or to stimulate or incite.” Presence of *mens rea*, therefore, is the necessary concomitant of instigation. That, it is common knowledge that the words uttered in a quarrel or in a spur of the moment cannot be taken to be uttered with *mens rea*. In the said ruling finally the Hon’ble Apex Court took a view that offence under section 306 of IPC cannot be attracted.

9. Here FIR shows that because of quarrel and strained relations, applicant wife had left the company of her husband and she was at her mother’s place. This signifies that at that point of time their relations were bitter.

10. As like in above referred ruling, here also, it is alleged in the FIR, that deceased allegedly told applicant on phone that if she does not return, he would end up his life. Upon which it is alleged that she asked him to duly proceed to do so and thereafter deceased committed suicide. Therefore, applicants had infact never intended that deceased should end up his life. There is no positive role or overt act played by applicants in inducing, abetment, instigating deceased to commit suicide. Therefore, FIR against them

definitely amounts to abuse of process of law. Essentials for directing sections 306 and 107 of IPC are patently missing in the case in hand, and therefore, continuation of prosecution with such nature of allegations would yield no results, and therefore maintaining proceeding against applicant, as would amount to abuse of process of law, are required to be stalled. Therefore, taking overall view of the above facts and circumstance and the legal position, we are inclined to grant relief as prayed. Hence, we proceed to pass following order:-

ORDER

(i) Criminal Application is allowed.

(ii) FIR No. 13 of 2022, dated 15.01.2022 registered with Majalgaon Rural Police Station, Dist. Beed for the offence punishable under section 306 read with section 34 of Indian Penal Code and the consequential charge-sheet arising out of it vide RCC No. 39 of 2022 pending on the file of Judicial Magistrate First Class, Majalgaon, District Beed are hereby quashed and set aside.

(ABHAY S. WAGHWASE, J.)

(MANGESH S. PATIL, J.)