

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 3594 OF 2022

1. Tehalsingh S/o Lachmarsingh Shahu
Age : 52 years, Occ : Business,
R/o Lachmarsingh Marg, Old Mondha,
Tq. & Dist. Nanded.
2. Amarsingh S/o Shersingh Kamthekar
Age : 64 years, Occ : Retired/Agri.,
R/o H. No.1-15-199, Bapuji Niwas,
Mobile Tower, Geeta Nagar,
Tq. & Dist. Nanded.

..APPLICANTS

-VERSUS-

1. The State of Maharashtra
Through its Investigation Officer,
Police Station, Vazirabad,
Tq. & Dist. Nanded.
2. Manjubai W/o Bholasingh Parmar
Age : 55 years, Occ : Private Service,
R/o Gurudwara Gate No.1, Near Murmura
Galli, Tq. & Dist. Nanded.

..RESPONDENTS

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Advocate for Applicants : Mr.A.D. Hande
APP for the Respondent/State : Mr.R.B. Bagul
Advocate for respondent no.2 : Mr.G.G. Suryawanshi

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**CORAM : R.G. AVACHAT AND
SANJAY A. DESHMUKH, JJ.**

DATED : 5th JULY, 2023.

ORDER (PER Sanjay A. Deshmukh, J.) :-

1. This is an application filed under section 482 of the Criminal Procedure Code, 1973 (for short, "Cr.P.C.") for quashing of FIR bearing C.R. No.266 of 2022 dated 01.08.2022 registered with

Vazirabad Police Station, Nanded under sections 306 and 34 of the Indian Penal Code and under sections 3(1)(f) and 3(1)(g) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and consequential charge-sheet in Special Case No.113 of 2022 pending before Special Judge/Sessions Judge at Nanded.

2. The brief facts of the case are as under :-

The informant Manjubai Bholasingh Parmar lodged report that her husband was auto-rickshaw driver and he committed suicide on account of instigation on the part of the applicants. It is averred in the report that applicant no.1 – Tehalsingh and applicant no.2 – Amarsingh are brother-in-laws of each other. They tried to dispossess the husband of the informant, therefore, her husband continuously remained under pressure and he committed suicide. It is further averred in the FIR that elder daughter of the informant took away the clothes of the deceased Bholasingh from the hospital at the time of his treatment. Eight days after his death, the chit or dying declaration was found in the pocket of shirt of deceased, wherein it is mentioned that because of the harassment of the applicants, he is committing suicide. Therefore, report was lodged on 01.08.2022 after one month of the incident.

3. During the arguments learned counsel for the applicants argued that the report is lodged after one month of death of husband of the informant. It is highly impossible to keep clothes of dead person as it is for about 8 days, after the death. Thus false story is hatched by the informant. He lastly argued that even if the case of the prosecution is accepted as it is, it is not making out the case punishable under section 306 of the Indian Penal Code. It is because ingredients of section 107 of the IPC to prove the abetment by instigation are not establishing from the alleged dying declaration as well as the FIR or the charge-sheet. He lastly prayed to quash the report and the charge-sheet.

4. The learned APP and learned advocate for respondent no.2 argued that admittedly, there is civil dispute on account of house property. Therefore, there was stress in the mind of the husband of the informant and because of that stress, he committed suicide. The learned advocate for respondent no.2 relied upon the judgment of Hon'ble Supreme Court in the case of ***Shantaben Bhurabhai Bhuriya Vs. Anand Athabhai Chaudhari and others*** reported in ***2021(4) R.C.R. (Criminal) 559***, more particularly, the paragraph no.8.2 (64), which reads as under :-

“64. Be it noted, one cannot afford to treat the victim as an alien or a total stranger to the criminal trial. The criminal jurisprudence, with the passage of time, has laid emphasis on victimology which fundamentally is a perception of a trial from the view point of the criminal as well as the victim. Both are viewed in the social context. The view of the victim is given due regard and respect in certain countries. In respect of certain offences in our existing criminal jurisprudence, the testimony of the victim is given paramount importance. Sometimes, it is perceived that it is the duty of the court to see that the victim's right is protected. A direction for retrial is to put the clock back and it would be a travesty of justice to so direct if the trial really has not been unfair and there has been no miscarriage of justice or failure of justice.”

5. The learned APP and the learned counsel for respondent no.2 lastly prayed to reject the application.

6. On perusal of charge-sheet and particularly report as well as the dying declaration, it does not indicate that there is element of instigation on the part of the applicants. Merely because of stress/pressure was created in the mind of the husband of the informant, he committed suicide, it can not be held that on account of civil dispute, the applicants have instigated him to commit suicide. Thus, there is no evidence of abetment by instigation to commit suicide on the part of these applicants. It will be unjustifiable to face the trial in such facts situation. It would be an abuse of process of the

Court. Therefore, the FIR and the charge-sheet in question deserve to be quashed in the interest of justice.

7. For the reasons discussed above, the argument of the learned APP and learned counsel for respondent no.2 is not acceptable in this regard. The application is allowed in terms of prayer clauses "B" and "B-1". No costs.

(SANJAY A. DESHMUKH, J.)

(R.G. AVACHAT, J.)

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