

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

36 CRIMINAL WRIT PETITION NO.1621 OF 2019

BABU S/O BANDU TELI AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Petitioners : Mr. M.V Ghatge h/f M S Taur
APP for Respondent 1 : Ms.V N Patil-Jadhav
Advocate for Respondent 2 : Mr. A S Barlota

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CORAM : SMT. ANUJA PRABHUDESSAI & R. M. JOSHI, JJ.
Dated: February 20, 2023

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PER COURT :-

1. At the outset, learned counsel for the petitioners seeks leave to amend prayer clause 'B' to mention correct FIR number.
2. Leave granted. Amendment to be carried out forthwith.
3. With consent of parties, heard finally at the admission stage.
4. This is a petition under Article 226 of the Constitution of India to quash the FIR No.94 of 2019 registered with Pimpalgaon Police Station and SC No.44 of 2020 pending on the file of the learned 7th Adhoc Sessions Judge, Jalgaon for the offence punishable under section 306 r/w 34 of the IPC.

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5. The petitioner no.2 herein was married to Rajesh Thakare, son of the respondent no.2 herein. They have one child from the said wedlock. Said Rajesh committed suicide on 10.7.2019. Respondent no.2 lodged FIR alleging that his son Rajesh had committed suicide because of the harassment meted out to him by the petitioners herein. He has stated that petitioner no.2 had left the matrimonial home within one and half month from the date of the marriage and that she had refused to cohabit with the husband. He has stated that petitioner no.2 returned due to intervention of the family members, but within a month once again left the matrimonial home returned to her parental home. It is alleged that, about three years prior to the incident, petitioner no.2 had agreed to return to the matrimonial home only on a condition that the deceased would give her a gold ornament. It is alleged that the petitioner no.2 returned to the matrimonial home after her wish was fulfilled. She lived with her husband for about one month and once again returned to her parental home. In January 2019, respondent no.2 once again fulfilled the demand of transferring of half share in the house and plot in the name of petitioner no.2, after which she once again stayed

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in the matrimonial home for about 3 months. It is alleged that petitioner no.2 used to constantly fight with the deceased and returned to her parental home with the daughter. It is alleged that the petitioner no.1, who is the maternal uncle of the petitioner no.2 used to instigate her to quarrel with the deceased.

6. It is stated that, about 5 days prior to the incident, some of the friends of the deceased had requested the petitioner no.2 to return to the matrimonial home, but she refused to return. Respondent no.2 claims that, deceased was upset and on 9.7.2010, he left the house and on 10.7.2010 he learnt that deceased had consumed poison. He was taken to the hospital, where he was declared dead. Respondent no.2 has alleged that his son had committed suicide because of the harassment meted out to him by the petitioner and had thus abetted his suicide.

7. Learned counsel for the petitioners submits that, allegations levelled against the petitioners even if accepted in their entirety, the same would not disclose ingredients of abetment as defined under section 107 of the IPC and thus

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would not constitute an offence u/s 306 of the IPC. He has drawn our attention to the NC complaint. He submits that the petitioner no.2 had lodged a complaint against the deceased for assaulting her. She was referred for medical treatment and that the medical certificate indicates that she had sustained injuries. Learned counsel submits that petitioner no.2 had left the matrimonial home because of the ill-treatment meted out to her by the deceased. He relied upon the decision of the Hon'ble Supreme court in **Geo Varghese Versus State of Rajasthan and another reported in 2021 DGLS (SC) 565.**

8. Per contra, learned counsel for respondent no.2 submits that FIR as well as the other material on record reveals that petitioner no.2 had refused to cohabit with the deceased despite fulfilling her demand of giving gold ornament and transferring the house and property in her name. He submits that the FIR clearly indicates that petitioners herein had harassed the deceased that the deceased was left with no other option but to commit suicide. Learned counsel has relied upon the decision of the Hon'ble Supreme Court in **Rajeev Kourav Vs. Balasaheb reported in AIR 2020 Supreme Court 909** and

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submits that constant harassment would amount to abetment within the meaning of section 107 of IPC.

9. We have perused the record and considered the submissions advanced by the learned counsel for the respective parties. Before advertng to the facts, it would be relevant to refer to the decision of **Geo Varghese** (supra). The appellant in the said case was a physical training teacher who was imparting physical training to the students. One of the students had committed suicide and mother of the deceased student lodged FIR alleging that her son had committed suicide due to mental harassment meted out to her by the appellant in the said case. The High Court dismissed the petition under section 482 of Cr.P.C. Aggrieved by the said decision of the High Court, appellant had approached the Hon'ble Apex Court. The Hon'ble Apex Court while considering the scope and ambit of section 306 of the IPC has observed thus :-

*“17. The scope and ambit of [Section 107](#) IPC and its co-relation with [Section 306](#) IPC has been discussed repeatedly by this Court. In the case of *S.S.Cheena Vs. Vijay Kumar Mahajan and Anr.*, it was observed as under:-*

“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

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be sustained. The intention of the legislature and the ratio of the cases decided by the Supreme 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.”

18. In a recent pronouncement, a two-Judge Bench of this Court in the case of *Arnab Manoranjan Goswami Vs. State of Maharashtra & Ors.* 3, while considering the correlation of [Section 107](#) IPC with [Section 306](#) IPC has observed as under :-

“47. The above decision thus arose in a situation where the High Court had declined to entertain a petition for quashing an FIR under [Section 482](#) of the 14 (2014) 4 SCC 453 PART I 33 [CrPC](#). However, it nonetheless directed the investigating agency not to arrest the accused during the pendency of the investigation. This was held to be impermissible by this Court. On the other hand, this Court clarified that the High Court if it thinks fit, having regard to the parameters for quashing and the self restraint imposed by law, has the jurisdiction to quash the investigation —and may pass appropriate interim orders as thought apposite in law. Clearly therefore, the High Court in the present case has misdirected itself in declining to enquire prima facie on a petition for quashing whether the parameters in the exercise of that jurisdiction have been duly established and if so whether a case for the grant of interim bail has been made out. The settled principles which have been consistently reiterated since the judgment of this Court in [State of Haryana vs Bhajan Lal\(Bhajan Lal\)](#) include a situation where the allegations made in the FIR 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. This legal position was recently reiterated in a decision by a two-judge Bench of this Court in [Kamal Shivaji Pokarnekar vs State of Maharashtra](#).

10. The aforesaid principles have been reiterated in the subsequent judgment in **Mariano Anto Bruno and Another Vs. Inspector of Police reported in 2022 SCC Online SC 1387**. The Hon'ble Supreme Court has held that 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."

11. In the instant case, the record reveals that deceased-son of respondent no.2 was married to petitioner no.2 herein. The FIR itself reveals that there was matrimonial dispute between petitioner no.2 and her husband, due to which she was constantly returning to her parental home. Attempts were made to bring her back and mend the matrimonial ties. The marital discord continued and the petitioner no.2 once again left the matrimonial home and started living with her parents alongwith her minor daughter. The FIR reveals that deceased was under stress and was in a disturbed state of mind due to the refusal of his wife to cohabit with him. The record

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indicates that even on earlier occasion, he had attempted to commit suicide for the same reason. It was only due to the intervention of his friends that the attempt to end his life had failed. The deceased subsequently ended his life by consuming poison and blamed the petitioner no.2, his wife for his condition due to non-joining matrimonial home.

12. The mere fact that the petitioner had refused to cohabit with the husband due to matrimonial dispute, would not constitute abetment. In the case of Rajeev Kourav (supra), there were allegations that respondent in the said case had assaulted the deceased and that she had committed suicide and unable to bear the torture and committed suicide by jumping in front of a moving train. In such circumstances, it was held that there was prima facie material to prove the abetment. Facts of the present case are totally different.

13. In the instant case, the only allegation against petitioner no.2 is that she had refused to join her husband to her matrimonial home. Petitioner no.1, who is maternal uncle is alleged to have instigated her not to join her matrimonial home. As noted above, this does not amount to abetment

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within the meaning of Section 107 of the IPC. In our considered view, the deceased who was apparently of hypersensitive in nature, had committed suicide due to the matrimonial discord and differences between him and his wife. The material on record do not indicate that the petitioners had in any manner instigated or aided the deceased or that they had committed any such act so as to facilitate commission of suicide. Hence, the allegations contained in the FIR and the other material on record even if accepted as true in their entirety, in our considered view, do not disclose offence under section 306 of the IPC.

14. Under the circumstances, the petition is allowed in terms of prayer clause 'B and C-1'. As a consequence thereof, FIR No.94 of 2019 registered with Pimpalgaon Police Station and Sessions Case No.44 of 2020 pending on the file of the learned 7th Adhoc Sessions Judge, Jalgaon for the offence punishable under section 306 r/w 34 of the IPC stands quashed. Writ Petition stands disposed off.

(R. M. JOSHI, J.)

(SMT. ANUJA PRABHUDESSAI, J.)

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