

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 3353 OF 2021

Komal w/o Dattatraya Thitme
Age: 27 years, Occ. Household,
R/o Raitewadi, Tq. Sangamner,
Dist. Ahmednagar.

... Applicant

Versus

1. The State of Maharashtra
Through the Police Inspector,
Sangamner City Police Station,
Tq. Sangamner, Dist. Ahmednagar.

2. Satish S/o Lahanu Thitme,
Age: 41 years, Occ. Private Service,
R/o Raitewadi, Tq. Sangamner,
Dist. Ahmednagar.

... Respondents

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Mr. Vijay S. Wakale and Mr. D. S. Patil, Advocates for the Applicant.
Mr. G. O. Wattamwar, APP for Respondent No.1-State
Mr. Anant Gadekar, Advocate for Respondent No.2 (appointed)

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

DATED : 3 APRIL 2023

ORDER [ABHAY S. WAGHWASE, J.] :

1. Wife of deceased Dattatraya is seeking quashment of crime no.376 of 2021 registered with Sangamner City Police Station, District Ahmednagar for the offence punishable under Section 306 of the Indian Penal Code (IPC) and the incidental charge sheet.

2. Respondent no.2 informant, i.e. brother of deceased Dattatraya, set law into motion alleging that he resided with his family on the upper floor of the house whereas, his mother and younger brother Dattatraya (deceased) resided with his wife Komal (present applicant) along with a child. It is alleged that for some years, everything was smooth between brother Dattatraya and his wife Komal. However, subsequent to that, Komal was always engaged on telephonic conversation and so there used to be quarrels between husband and wife. According to the informant, his brother used to repeatedly inform them that his wife Komal was always talking on mobile with someone and he suspected that she had illicit relations with someone. Informant also learnt about such conduct and behaviour of Komal from his own wife and therefore she was questioned. However, she told that she was talking with her relatives. It is further alleged that because of such behaviour of Komal, his brother Dattatraya was under tension. In spite of understanding being given to Komal to mend her ways, there was no change.

On 12.07.2021, her mobile phone was taken away and deceased Dattatraya dropped her at her parents' house. According to informant, since then, deceased Dattatraya stopped talking to anyone

and he was continuously engrossed in thoughts. On 19.07.2021, deceased Dattatraya said to the informant that he is fed up of life because of infidelity of his wife Komal and he is unable to show his face to anyone. He said that his life has been made miserable and he also requested that his children should be taken care of. Informant claims that he gave understanding to his brother. However, next day morning i.e. on 20.07.2021 at around 6.00 O'clock, deceased Dattatraya was found hanging on a tamarind tree. Hence the complaint.

SUBMISSIONS

3. Learned counsel for the applicant pointed out that involvement of applicant is apparently false. There was no instigation to commit suicide. Even allegations of applicant to be maintaining extramarital affair are baseless and there is no evidence to that extent. He submitted that deceased entertained mere suspicion and for that, applicant cannot be held responsible. Learned counsel pointed out that even taking the contents of FIR at their face value, the allegations made therein would not constitute abetment to commit suicide. That, there is no material to show that accused intended deceased to end up his life and therefore, such FIR and the material therein does not warrant any prosecution and hence he prays for the relief put forth in the instant proceeding.

4. While opposing the above submissions, learned APP would take us through the FIR and would point out that there are allegations about applicant, in spite of being married and having a child, was maintaining extramarital affair. She was continuously engaged in conversation with such person. In spite of giving understanding, she did not improve. Only because of her such behaviour, deceased felt his life to be made miserable and therefore he ended his life. Applicant is solely responsible for the suicide. Investigation has also revealed that she has abetted the suicide. Therefore, it is his submission that prosecution has strong case and deserves a chance to proceed for trial.

5. On behalf of respondent no.2 also, learned counsel pointed out that applicant was solely responsible for the suicidal hanging. There was no other reason for deceased Dattatraya to commit suicide. Shortly after marriage and in spite of having a child, she had illicit relations. In spite of giving understanding to that extent, she did not improve. Only because of her such infidelity, deceased ended up his life. Therefore, with such explicit allegations against her, she deserves to face legal action and therefore, he too prays to dismiss the application.

6. We have carefully considered the rival submissions advanced by each side. We have also carefully gone through the FIR which is now sought to be quashed and the statements recorded during investigation.

7. Here, we are called upon to quash the complaint and the charge sheet by exercising power under Section 482 of the Code of Criminal Procedure (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. Law with regard to above section is dealt in series of landmark judgments viz. ***Inder Mohan Goswami and Anr. Vs. State of Uttaranchal and Ors.***, reported in ***(2007) 12 SCC 1 and Mahendra K.C. Vs. State of Karnataka and Another***; reported in ***(2022) 2 Supreme Court Cases 129***.

8. Equally, it is trite law that powers under Section 482 of Cr.P.C. are to be exercised sparingly and in only exceptional circumstances i.e. only when strong *prima facie* case is made out for interference and there is apparent abuse of process of law. Such powers are expected to be exercised by High Court only upon complete

circumspection. Principles to be borne in mind while exercising such power are succinctly spelt out in the cases of *State of Haryana v. Bhajan Lal* (1992) SCC (Cri) 426; *State of Orissa v. Saroj Kumar Sahoo* (2005) 13 SCC 540; *State of M.P. v. Surendra Kori* (2013) 1 SCC (Cri) 247 and *Praveen Pradhan v. State of Uttaranchal and Another* (2013) 9 SCC 734.

9. Here, as charge is framed under Section 306, we deem it fit to reproduce essentials of the same which are as under.

306. Abetment of suicide. - If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Section 107 IPC defines the expression “abetment”:

107. Abetment of a thing. - A person abets the doing of a thing, who -

First.- Instigates any person to do that thing; or

Secondly.- Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of

that conspiracy, and in order to the doing of that thing; or

Thirdly.- Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1. - A person who by willful misrepresentation, or by willful concealment of a material fact which is is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

10. As to what amounts to instigation and what amounts to abetment has been repeatedly clarified in numerous pronouncements viz. *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; *Madan Mohan Singh v. State of Gujarat* (2010) 8 SCC 628.

11. In the backdrop of above discussed legal position, now we advert to the facts of the case in hand.

On going through the FIR, the sum and substance of which is already dealt in aforesaid paragraph, it is seen that deceased Dattatraya was undisputedly married to the applicant in 2012 and out of said wedlock, Dattatraya and the applicant had one son. Complaint shows that after some years, applicant was always seen to be engaged in telephonic conversation with someone. This was noticed by the deceased and other family members. In the FIR it is stated that for the said reason only, there used to be continuous quarrel between deceased and applicant accused. Deceased suspected that applicant had an affair with someone. It seems that she was also questioned, however, she replied that she was having talks with her relatives. It further seems that on 12.07.2021, in the said background, deceased allegedly said that he was fed up with her such behaviour and thereupon accused requested for being dropped at her parents' house and therefore, deceased went and dropped her. Brother of deceased, i.e. complainant, alleges that since thereafter, deceased was withdrawn and he kept silent and remained ex-communicated. On the night of 19.07.2021, deceased also expressed to his brother that he was fed up with life and he was unable to face the situation and move in the society and also talked to the complainant about taking care of his children and then, the next day morning, he hanged himself.

12. In our opinion, in the light of nature of allegations levelled in the FIR, there is nothing to hold that applicant instigated or induced deceased to end up his life. There is no whisper that she abetted the alleged suicide. No doubt there were quarrels but same were only on the count of telephonic conversation. There is no active role attributable to her for abetting suicide. Apparently, prior to the suicide, applicant was with her parents. Therefore, there is no material proximate to incident of suicidal hanging showing involvement of the applicant. No positive role is attributed in the complaint as against the applicant for abetting the suicide. Even the statements recorded during investigation are on similar lines regarding allegations of quarrel by suspecting infidelity of wife. The requirements for attracting provisions under Section 107 of IPC are patently missing and therefore it would be unreasonable to implicate applicant for alleged suicide by husband. Apparently, it is an abuse of process of law and as such, it would be hazardous to allow continuation of prosecution of applicant with such nature of allegations. Resultantly, in our considered opinion, it is a fit case for exercise of power under Section 482 of Cr.P.C. and hence, we proceed to pass the following order :

ORDER

I. The application is allowed.

II. The FIR No.376 of 2021 registered with Sangamner City Police Station, District Ahmednagar for the offence punishable under Section 306 of IPC and the charge sheet and criminal case arising out of it bearing R.C.C. No. 28 of 2022 pending on the file of Judicial Magistrate First Class, Sangamner, are quashed and set aside.

III. Advocate Mr. Anant Gadekar has been appointed to represent respondent no.2. His fees is quantified at Rs. Rs.3,000/-.

[ABHAY S. WAGHWASE, J.]

[MANGESH S. PATIL, J.]

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