

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

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WRIT PETITION NO.5327 OF 2019

Neeta Laxmichand Gangar ..Petitioner
Versus
The State of Maharashtra & Ors. ..Respondents

**WITH
WRIT PETITION NO.5325 OF 2019**

Mitesh Laxmichand Gangar ..Petitioner
Versus
The State of Maharashtra & Ors. ..Respondents

**WITH
WRIT PETITION NO.5326 OF 2019**

Laxmichand Devraj Gangar ..Petitioner
Versus
The State of Maharashtra & Ors. ..Respondents

Mr. Kedar J. Patil a/w Sakshi S. Kadam, for the Petitioner in all Petitions.
Smt. M. M. Deshmukh, APP for the Respondent/State in all Petitions.
Ms. Gargi Joshi a/w Jitesh Mundhwa, for the Respondent No.2 in all Petitions.

**CORAM : NITIN W. SAMBRE &
R. N. LADDHA, JJ.**

DATE : 19th JANUARY, 2023

PC.

1. The contentions of counsel for the petitioners are, even

if the last whatsapp message sent by the deceased to the complainant/father is accepted to withdraw for the sake of argument, still the necessary ingredients of Section 107 of the IPC i.e. abetment are not satisfied. So as to substantiate said contention, he has drawn support from the judgment of Apex Court in the matter of ***Geo Varghese Vs. State of Rajasthan & Anr.*** reported in ***2021 SCC OnLine SC 873***.

2. According to counsel for the petitioners, even if contents in the FIR are appreciated, still it cannot be inferred that the necessary ingredients of Section 107 r/w 306 of IPC are satisfied. Apart from above, his contentions are, it is under misconception the complaint came to be lodged. Learned counsel would further urge that as far as the accused-Mitesh is concerned, there are no attributions against him as regards the offence. The only basis for invoking provisions of Section 107 r/w 306 of IPC is the provisions of Section 34 of IPC i.e. common intention. He would urge that in the FIR, it is categorically mentioned that the husband in fact is always supportive to the deceased and as such he would urge that even the provisions of Section 34 of IPC cannot be invoked.

3. Learned APP would oppose the prayer, as according to her, perusal of the contents in the FIR speaks of the last message which is in the form of suicide note addressed to the complainant/father. According to her, from the language employed in the said message, it can be inferred that the father-in-law and

mother-in-law have abetted the offence and the husband Mitesh has also not supported the deceased/victim. So as to substantiate the contentions, she has drawn support from the various material collected during the investigation.

4. Counsel for the respondent No.2/complainant has placed on record an affidavit and has stated that the allegations in the FIR may be permitted to be withdrawn as same were at the spur of the moment when his daughter lost life. The respondent No.2 during the course of argument informs that he has no objection for quashing of the FIR.

5. We have appreciated the submissions.

6. The daughter of the complainant Nisha got married to Mitesh, petitioner in Writ Petition No.5325 of 2019 on 15th December, 2017. It appears that all the three petitioners i.e. Mitesh and his parents along with Nisha were joint in mess.

7. It is claimed in the FIR that the accused/in-laws used to treat deceased with cruelty and there was demand of dowry also.

8. The last message sent by deceased Nisha to her father i.e. on 3rd September, 2019 speaks of the discipline being implemented in the family by the in-laws to which she was resistant. It appears from the contents of the suicide message that deceased

was intending to live her life as per her own wish and not by adjusting herself in the joint family with her in-laws. She in categorical terms stated that the accused/Mitesh/her husband has always supported her and it was in-laws who were objecting her behaviour.

9. The case narrated in the FIR about meeting out ill-treatment to deceased Nisha by the in-laws if appreciated, it cannot be inferred from the investigation that it was within the knowledge of the in-laws that their act of implementing discipline will be cruelty to Nisha and she will be driven to commit suicide for such act. The provisions of Section 107 of the IPC which defines abetment cannot be inferred from the narrations in the FIR or the investigation papers so as to form an opinion that petitioners have abetted the act of Nisha committing suicide.

10. As such, the necessary ingredients of Section 306 r/w 107 of the IPC cannot be made out. The respondent/complainant has filed an affidavit stating that he is not pressing the contents in the FIR and such FIR was lodged even if there was no ill-treatment by the petitioners to deceased/Nisha. As a sequel of above, it can be inferred that the respondent No.2 is of the view that at the spur of moment when Nisha committed suicide, as he being lost beloved daughter was prompted to file FIR with the allegations therein. He has extended no objection for quashing of the FIR against all the three accused persons.

11. In the wake of aforesaid observations and having regard to the fact that the approach of deceased Nisha from the contents of the message sent by her to the complainant appears to be of hypersensitive in nature. It can be said that the case for showing indulgence is made out.

12. As such, all these three petitions are allowed in terms of prayer clause (b).

13. The FIR in Crime No.411 of 2019 stands quashed and set aside against the accused persons.

[R. N. LADDHA, J.]

[NITIN W. SAMBRE, J.]