



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2110 OF 2022

- 1) Vimal w/o Bhagwanrao Shinde
 - 2) Bhagwanrao s/o Mahadu Shinde
 - 3) Saroj w/o Sachin Velankar
 - 4) Rohini w/o Shivakant Kirwale
 - 5) Shivakant s/o Pandit Kirwale
 - 6) Vaibhavkumar s/o Bhagwanrao Shinde
 - 7) Pallavi w/o Vaibhavkumar Shinde
- ... Applicants

VERSUS

- 1) The State of Maharashtra
 - 2) Shivaji s/o Ranaba Waghmare
- ... Respondents

...

Advocate for Applicants : Mr. Dhananjay M. Shinde
A.P.P. for Respondent No. 1 : Mr. M.M. Nerlikar
Advocate for Respondent No. 2 : Mr. S.R. Bagal h/f Mr. B.N. Gadegaonkar

CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.

RESERVED ON : 02.04.2024
PRONOUNCED ON : 15.04.2024

ORDER : (PER : MANGESH S. PATIL, J.)

By way of this application under Section 482 of the Code of Criminal Procedure, the applicants are seeking quashment of Crime No. 161/2022, registered with Shivajinagar Police Station, District Nanded, for the offences punishable under Sections, 304B, 306, 323 and 498A of the Indian Penal Code and the Regular Criminal Case No. 911/2023, pending before the Chief Judicial Magistrate, Nanded.

2. We have heard both the sides finally with consent.
3. The respondent no.2 who is father of the deceased Ashwini lodged

the F.I.R. on 26.04.2022 with the allegations that she was married to co-accused Vishal on 17.01.2021. She was maintained properly for first four months. However, thereafter, she was subjected to ill-treatment by questioning her fidelity. Even there was a demand for an amount of Rs. 25 lakh. A complaint was lodged with Women's Grievance Cell on 21.01.2022 and then with the Superintendent of Police on 16.04.2022. However, since nothing transpired so as to patch up the things, being under tremendous stress because of the alleged ill-treatment Ashwini committed suicide at her parental home on 25.04.2022.

4. It is necessary to note here that husband Vishal had also filed a similar application seeking quashment of the crime bearing Criminal Application No. 154/2023 and both these matters were heard simultaneously. However, after we expressed our disinclination to grant any relief to him on merits, he withdrew that application.

5. The learned advocate Mr. Shinde for the applicants would vehemently submit that as is the frequent experience, all the family members have been roped in to wreak vengeance. The deceased Ashwini was involved in an extra marital affair. She had confessed about it and when she was questioned, as a revenge she started attributing husband Vishal and the applicants who are his relatives, having abused her.

6. He would point out that accepting the averments in the F.I.R. and the statement of the witnesses, the only cause for the marital discord was her character. There are no allegations about any demand having been raised at any point of time or was there any other cause. If this was the only issue, it was a matter between the couple. The applicants cannot be attributed with the allegations about having subjected her to cruelty nor can they be held liable for abatement of suicide or can be held responsible for occurrence of her death within seven years of marriage as suspicious, when the death has occurred while she was at the parental home. It would be abuse of the

process of law to make all these applicants face the prosecution as it is husband Vishal would face the prosecution.

7. Per contra, the learned A.P.P. and the learned advocate for the respondent no. 2 would strenuously submit that this being a proceeding for quashment by resorting to Section 482 of the Code of Criminal Procedure, this Court cannot indulge in threadbare scanning of the material and cannot conduct a mini trial. They would cite the decision in the matter of **D. K. Ganesh Babu Vs. State of Tamil Nadu; 2010 (2) SCALE 698.**

8. The learned A.P.P. and the learned advocate for the respondent no. 2 would submit that there are specific and precise allegations against each of the applicants. As can be discerned from the F.I.R. and the statements of the witnesses, deceased Ashwini was constantly put under pressure and was unable to sustain the cruelty meted out to her and the fact that she ultimately took the last step is demonstrative of the effect of that trauma. The place of death is immaterial. The allegations are sufficient to demonstrate that she was subjected to cruelty and the death having occurred within seven years of marriage and there being a demand of money, presumptions under Section 113A and 113B of the Indian Evidence Act would come in aid of the prosecution and an opportunity deserves to be extended to the prosecution to substantiate the allegations by leading cogent and convincing evidence.

9. The learned advocate for the respondent no.2 would submit that though it is not a part of the charge-sheet, as mentioned in the affidavit in reply deceased Ashwini had left behind a writing which runs into several pages and demonstrates the manner in which she was subjected to ill-treatment by all the applicants. He would submit that appropriate steps can be taken by resorting to further investigation as contemplated under Section 173(8) of the Code of Criminal Procedure and even this writing could be taken aid of at the trial.

10. We have carefully considered the rival submissions and perused the papers. The applicant nos. 1 and 2 are the parents of the husband. Applicant nos. 3 and 4 are the married sisters of the husband. Applicant no. 5 is the husband of applicant no. 4 and applicant no. 6 is husband's brother and applicant no. 7 is his wife. The F.I.R. is not supposed to be an encyclopedia and can only give a broader outline about the allegations. It will have to be read in conjunction with the other material, particularly when the investigation has been completed and even the charge-sheet has been filed as has been laid down in the matter of **D.G. Ganesh Babu (supra)**. The investigating officer has recorded statements of the parents of the deceased Ashwini, her brother and few other witnesses.

11. Bearing in mind the limits on the powers of this Court in undertaking scrutiny of the material collected by the investigating officer while considering the request for quashment of the crime and the criminal case by resorting to Section 482 of the Code of Criminal Procedure, as laid down in the matter of *D.K. Ganesh Babu (supra)* and several such matters, this Court cannot undertake threadbare scrutiny of the material and cannot resort to a mini trial. The only course expected is to scan the material to ascertain if ingredients for constituting the offences are deducible from the material collected during the investigation coupled with the relevant provisions of law. The exercise is not supposed to be aimed at ascertaining as to if the material collected by the investigating officer is sufficient to ultimately prove the charge.

12. Bearing in mind the aforementioned principles, if one examines the record it is well nigh clear that the deceased could lead a brief marital life and had cohabited with husband Vishal for some time in Mumbai then in Kolkata, where his sister-applicant no. 3 was then posted having been in the service of the Border Security Force. The statements of the witnesses make it abundantly clear that the questions were being raised on fidelity of the deceased. She was being attributed with having extra marital relationship

with husband's friend, who was also staying with his wife in the same building, in which this couple was staying in Mumbai. On that count, while the couple was staying at Kolkatta in the house of the applicant No. 3, the deceased was subjected to variety of ill-treatment. She was being taunted. Her husband was neglecting her and she was allegedly compelled to confess about her having indulged in sexual intercourse with husband's friend. Whether it was a confession made voluntarily or was she made to confess about it, is a matter which can only be decided at a full fledged trial. That exercise neither is permissible nor can it be undertaken while deciding the present application.

13. Whatever may be the reason, there is enough material to demonstrate that the deceased was subjected to ill-treatment while being in Kolkata.

14. There are other circumstances to corroborate these facts in the form of the incident wherein, in order to send her back to Nanded ticket was booked had to be cancelled and again it was booked and she was sent back.

15. As can be noticed, initially the complaint was lodged with a Bharosa Cell and thereafter with the Superintendent of Police by the deceased herself, in the month of January 2022, making several allegations in tune with the allegations of the prosecution and it is thereafter in the month of April she ended her life, whereupon the F.I.R. was lodged. These complaints lodged with Bharosa Cell and the Superintendent of Police are annexed to the affidavit in reply and substantiate these facts about the alleged ill-treatment particularly the trauma suffered by her, the allegations about her chastity and also regarding the demand for money when it was made known to her and her family members that it is only after Rs. 25 lakh were paid that she would be allowed to resume, which demand has been attributed to the applicants and precisely the applicant nos. 4 and 5 who are another sister of the husband and her husband.

16. Needless to state that since the deceased committed suicide within seven years of marriage and there was demand for money, even the presumptions under Section 113A and 113B of the Evidence Act will come into play.

17. There are specific allegations regarding the demand and ill-treatment meted out to the deceased, which can be easily deduced from the material collected by the investigating officer against applicant no. 1 – mother-in-law, applicant no. 2-father in law, applicant no. 3 and 4 sisters in law and the applicant no. 5, who is the husband of the applicant no. 4. In the circumstances, the extraordinary power under Section 482 of the Code of Criminal Procedure which is supposed to be exercised sparingly cannot be resorted to quash the crime to the extent of applicant nos. 1 to 5.

18. However, so far as the applicant nos. 6 and 7 are concerned, applicant no. 6 being the brother of husband and applicant no. 7 his wife, we do not find any precise and specific allegations about they having played any active role in subjecting the deceased to cruelty or in raising the demand for money. Though it is unfortunate that the deceased could barely lead not even two years of marital life before taking the last step, unless there are sufficient allegations attributing the applicant nos. 6 and 7 with any role in subjecting the deceased to cruelty, it would be abuse of the process of law to allow them to face the prosecution as is laid down in the matters of :

- 1) **Preeti Gupta and Anr. V/s. State of Jharkhand and Anr. [(2010) 7 Supreme Court Cases 667],**
- 2) **Geeta Mahrotra & Anr V/s. State of U.P. & Anr. [2013 (AIR) (SC) 181],**
- 3) **Kahkashan Kausar alias Sonam and others Vs. State of Bihar; (2022) 6 SCC 599**

19. True it is that the respondent no. 2 has been relying upon some writing, which according to him was left behind by the deceased which he

has annexed with his affidavit in reply and which is not a part of the charge-sheet. However, as has been rightly submitted by the learned A.P.P. and learned advocate for the respondent no. 2, there are appropriate remedies available to the prosecution even to resort to a further investigation so that even this writing can be subjected to scrutiny and if it is found to be genuine handwriting of the deceased, though it is not strictly speaking a suicide note, since it reflects on the experiences faced by the deceased *prima facie* having nexus with her cause of death being proximate in relation there with, one cannot brush it aside lightly.

20. Be that as it may, in our considered view, this is not a fit case to quash the crime and the criminal case to the extent of the applicant nos. 1 to 5 but allowing the applicant nos. 6 and 7 to face the prosecution would be abuse of the process of law and exercise in futility.

21. The Application is partly allowed. Crime No. 161/2022, registered with Shivaji Nagar Police Station, District Nanded, for the offences punishable under Sections 304B, 306, 323 and 498A of the Indian Penal Code and the Regular Criminal Case No. 911/2023, pending before the Chief Judicial Magistrate, Nanded, are quashed and set aside as against the applicant nos. 6 Vaibhavkumar Bhagwanrao Shinde and applicant No. 7 Pallavi w/o Vaibhavkumar Shinde.

22. The Application to the extent of the applicant nos. 1 to 5 is rejected.

(SHAILESH P. BRAHME, J.)

(MANGESH S. PATIL, J.)

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