

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

**WRIT PETITION NO.4410 OF 2024
WITH
INTERIM APPLICATION (STAMP) NO. 22293 OF 2024
IN
WRIT PETITION NO.4410 OF 2024**

Subhash Shankarrao Jadhavar .. Petitioner

Versus

The State of Maharashtra and Anr. .. Respondents

...

Mr. D.S. Mhaispurkar, for the Petitioner.

Mr. S.V. Gavand, APP, for the Respondent – State.

...

**CORAM: BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.
DATED : 10th DECEMBER, 2024**

P.C:-

1. Despite being assured that Respondent No. 2 shall remain present on the next date of hearing, he has failed to remain present and as indicated in our earlier order we have taken up the Writ Petition for hearing.

We have heard Mr. Mhaispurkar learned counsel for the petitioner as well as Mr. Gavand, the learned APP for the State.

2. The Petition seek quashing of C.R. No.146 of 2024, registered with Pangari Police Station, Solapur (Rural), which has invoked Sections 108, 80, 85, 115(2), 351(2), 351(3), and 3(5) of the Bharatiya Nyay Sanhita, 2023.

The complaint lodged at the instance of one Somnath Shridhar Mundhe, referred to the accusations from 28.05.2021 till 24.08.2024.

In the said C.R., apart from the petitioner who is arraigned as Accused No. 3, there are five other persons who are arraigned as accused, and pursuant to the investigation carried out the charge-sheet is also filed, which forms part of the Petition.

3. The imputation of the charges leveled against the six accused persons on completion of the investigation reveal that deceased Anjali aged 25 years was married to Atul Jadhavar, the marriage being solemnized on 27.05.2022. It is the grievance raised by the complainant, that his sister immediately on the next date made a telephone call to him and narrated about the ill-treatment meted out to her by her in-laws on the ground that she has failed to bring any money, and she was ridiculed on the ground that in the marriage ceremony, they did not get due respect, which they commanded.

It is the case of the complainant that his sister was subjected to physical and mental torture, and when on 05.04.2024 she visited her parental house, she once again narrated to him the harassment faced by her, as she stated that her in-laws were constantly harassing her by saying that she may either commit suicide or may hang herself. But she was persuaded to return to her matrimonial house by the family members.

Further on 17.08.2024 when she had returned to her

parental house on account of Rakshabandhan, she reiterated that she was facing torture on the ground that despite two years of marriage she had not begotten a child, but once again she was convinced to return to her matrimonial house.

On 23.08.2024, she was found to be dead after she had a telephonic communication with Anita Darade, and it is alleged that deceased Anjali specifically referred to the six accused persons and narrated to her that for some or the other quibble in the house, she was being physically and mentally harassed and money was demanded from her.

4. It is in the wake of this complaint being lodged, the petitioner alongwith five others was arraigned as accused and on completion of investigation the charge-sheet is filed.

The charge-sheet compile statements of witnesses, and we have gone through the said statements.

As far as the present petitioner is concerned, who is referred by the complainant to be the cousin father-in-law of his deceased sister, the statement of Shridhar Mundhe, Shakuntala Mundhe, Sambhaji Mundhe, Shivaji Bade as well as Datta Fad are perused, the statement of the complainant and the version of these witnesses appeared to be identical. Except for mention of the name of the petitioner with an allegation that, immediately on the next date of her marriage she was taunted by all the accused, on the ground that she had not brought money and they were not treated with honour during the marriage ceremony, the statements are conspicuously silent about any incitement or instigation at the

instance of the present petitioner for attracting the offence.

Under Section 108 of the Bharatiya Nyay Sanhita, 2023, it is necessary that there has to be abetment and abetment should be of such nature as is contemplated under Section 45 of the Bharatiya Nyay Sanhita, which necessarily contemplate that instigating a person to do that thing or engaging with any other person or persons in conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, or intentionally leading, by an act or illegal omission the doing of that thing.

The necessary ingredients of the said section in order to attract abetment, as contemplated under Section 45 of the Bharatiya Nyay Sanhita being conspicuously absent, in the material compiled by the Investigating Officer in form of the charge-sheet, we find that the allegations are vague in nature and it relate back to an incident immediately after marriage, and the reference to his name is just casual, without attributing as to how it is said to have instigated or incited the deceased to commit suicide. It is merely alleged that she was subjected to physical and mental torture, therefore it cannot be said that the petitioner has abetted the deceased to commit suicide.

5. The law has been well settled in case of ***Arnab Goswami V/s. The State of Maharashtra and Ors.***¹, to the following effect:

“53. Dealing with the provisions of Section 306 IPC and the meaning of abetment within the meaning of Section 107, the Court observed: (Madan Mohan Singh case, SCC pp. 631-32, para 12)

1 (2021) 2 SCC

"12. In order to bring out an offence under Section 306 IPC specific abetment as contemplated by Section 107 IPC on the part of the accused with an intention to bring about the suicide of the person concerned as a result of that abetment is required. The intention of the accused to aid or to instigate or to abet the deceased to commit suicide is a must for this particular offence under Section 306 IPC. We are of the clear opinion that there is no question of there being any material for offence under Section 306 IPC either in the FIR or in the so-called suicide note."

The Court noted that the suicide note expressed a state of anguish of the deceased and "cannot be depicted as expressing anything intentional on the part of the accused that the deceased might commit suicide". Reversing the judgments of the High Court, the petition under Section 482 was allowed and the FIR was quashed.

54. In a concurring judgment delivered by one of us (Dhananjaya Y. Chandrachud, J.) in the decision of the Constitution Bench in Common Cause, the provisions of Section 107 were explained with the following observations: (SCC p. 244, para 458)

"458. For abetting an offence, the person abetting must have intentionally aided the commission of the crime. Abetment requires an instigation to commit or intentionally aiding the commission of a crime. It presupposes a course of conduct or action which (in the context of the present discussion) facilitates another to end life. Hence abetment of suicide is an offence expressly punishable under Sections 305 and 306 IPC."

6. Similarly in the recent decision of the Apex Court in case of ***Nipun Aneja and Ors. V/s. State of Uttar Pradesh***² the Apex Court has reiterated law, in the following words:-

² 2024 INSC 767

“21 The ingredients to constitute an offence under Section 306 of the IPC (abetment of suicide) would stand fulfilled if the suicide is committed by the deceased due to direct and alarming encouragement/incitement by the accused leaving no option but to commit suicide. Further, as the extreme action of committing suicide is also on account of great disturbance to the psychological imbalance of the deceased such incitement can be divided into two broad categories. First, where the deceased is having sentimental ties or physical relations with the accused and the second category would be where the deceased is having relations with the accused in his or her official capacity. In the case of former category sometimes a normal quarrel or the hot exchange of words may result into immediate psychological imbalance, consequently creating a situation of depression, loss of charm in life and if the person is unable to control sentiments of expectations, it may give temptations to the person to commit suicide, e.g., when there is relation of husband and wife, mother and son, brother and sister, sister and sister and other relations of such type, where sentimental tie is by blood or due to physical relations. In the case of second category the tie is on account of official relations, where the expectations would be to discharge the obligations as provided for such duty in law and to receive the considerations as provided in law. In normal circumstances, relationships by sentimental tie cannot be equated with the official relationship. The reason being different nature of conduct to maintain that relationship. The former category leaves more expectations, whereas in the latter category, by and large, the expectations and obligations are prescribed by law, rules, policies and regulations.”

7. By applying the principle of law laid down in case of ***State of Haryana and Ors. V/s. Bhajan Lal and Ors.***³, since no *prima facie* case is made out against the petitioner and the prosecution of the petitioner would be nothing but an abuse of process of law, we deem it appropriate to quash and set aside C.R. No.146 of 2024, registered with Pangari Police Station,

³ 1992 Supp (1) SCC 335

Solapur (Rural), invoking offence under Section 108 of the Bharatiya Nyay Sanhita, 2023, against the present petitioner.

The Writ Petition is made absolute in terms of prayer clause (a).

In view of disposal of the Writ Petition, Interim Application (Stamp) No.22293 of 2024 does not survive and the same is also disposed off.

(MANJUSHA DESHPANDE, J.)

(BHARATI DANGRE, J.)