



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APL) NO. 1398 OF 2021

1. Vaishnavi Harshal Kilnake,
(Maiden Name : Vaishnavi Devendra Borkar), Aged about 21 years, Occ. Student,
R/o Sawli, Sasthabad, Post Taroda, Tah and District Wardha
2. Devendra Krushnaji Borkar,
Aged about 50 years, Occ. Agriculturist,
R/o Sawli, Sasthabad, Post Taroda, Tah and District Wardha.
3. Kalpana Devanand Borkar,
Aged about 36 years, Occ. Housewife,
R/o Sawli, Sasthabad, Post Taroda, Tah. and District Wardha
4. Sau. Payal Vishal Revatkar,
Aged about 23 years, Occ. Housewife,
R/o Kamgaon, Tah. Hinganghat, District Wardha

... Applicants

// VERSUS //

1. State of Maharashtra,
through Police Station Officer,
Tah. Hingna, District Nagpur
2. Durgabai Narendra Kilnake,
Aged about 49 years,
Occ. Agriculturist, R/o Taroda, Mangaon,
District Wardha

... Non-applicants

Shri M.P.Kariya, Advocate for the applicants.
Ms. Kalyani Marpakwar, APP for the non-applicant/State.

CORAM : SMT. VIBHA KANKANWADI, AND
MRS. VRUSHALI V. JOSHI, JJ.

DATED : 2nd JULY, 2024.

ORAL JUDGMENT : [PER : SMT. VIBHA KANKANWADI, J.]

Rule. Rule made returnable. Heard finally by consent of the parties.

2. The applicants invoked the inherent powers of this Court under Section 482 of the Code of Criminal Procedure for quashing the chargesheet and proceedings bearing Special Case No. 258 of 2021 pending before 12th District and Sessions Judge, Nagpur filed against them arising out of the First Information Report vide CR No. 43 of 2021 dated 6th February, 2021 registered under Section 306 read with Section 34 of Indian Penal Code (hereinafter referred as 'IPC') and Sections 3(2), 5 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred as 'Atrocities Act, 1989') with Butibori Police Station.

3. Heard Shri M.P.Kariya, learned counsel for the applicants and Ms. Kalyani Marpakwar, learned Additional Public Prosecutor for the non-applicant no.1/State.

4. Learned advocate for the applicants submits that the son of the non-applicant no.2 got married to applicant no.1 on 9th January, 2020. However, it appears that their marital life was not good and ultimately deceased Harshal committed suicide on 4th January, 2021 by

consuming poisonous substance. Perusal of the entire record will not attract the ingredients of Section 306 of IPC or even Sections 3(2) and 5 of the Atrocities Act, 1989. There was no act of instigation. Rather deceased and the applicant no.1 had eloped before performing the marriage. Informant was not residing with deceased and applicant no.1. Now after the incident, some omnibus allegations have been made. Even the alleged suicide note only mentioning the name of the applicants and states that they are responsible for his death, but how that explanation was shown, what was the alleged harassments is not at all stated. It would be unjust to ask the applicants to stand the trial under these proceedings and therefore the proceedings deserve to be quashed and set aside.

5. Per contra, learned Additional Public Prosecutor strongly opposed the application and submitted that entire investigation is done and chargesheet is filed on record. It is not in dispute that the non-applicant no.2 and the deceased were member of Schedule Tribes, whereas the applicants are not. The marriage between the deceased Harshal and the applicant no.1 was against the wish of the applicant nos. 2 to 4 and therefore they were instigating the applicant no.1 to act in hostility against deceased. So also, all the applicants used to pick up the quarrels with deceased. They used to insult the deceased on account of fact that he was member of Scheduled Tribes.

6. Apart from the statement of the witnesses under Section 161 of the Code of Criminal Procedure supporting the First Information Report under Section 154 of the Code of Criminal Procedure, it is on

record that deceased had given oral dying declaration to the brother of non-applicant no.2 and has also left the suicide note. The said suicide note has been sent for handwriting expert's opinion which is still pending and therefore the applicants should be directed to face the trial.

7. Learned advocate for the non-applicant no.2 who was appointed through legal aid was absent when the matter was called.

8. As the entire material is before this Court which is collected during the course of investigation, it now is required to be seen as to whether the First Information Report as well as the material collected is making out the *prima facie* case against the applicants. In other words whether the material is disclosing *prima facie* the ingredients of the offence for which they are asked to stand the trial is required to be considered.

9. Perusal of the First Information Report lodged by the non-applicant no.2 would show that her husband expired a year prior to First Information Report dated 6th February, 2021. She is having two children. One is Snehal who resides with her at Tiroda (Mangaon), Taluka and District Wardha and another son was the deceased Harshal who used to work in private company at Butibori, MIDC. She was having knowledge about the love affair between the deceased Harshal with applicant no.1 and she then states that applicant no.2 who is the father and applicant no.1 had gone to meet the informant after knowledge about the love affair. According to the informant, applicant no.2 had given

understanding to them that since the informant and the deceased are Adhivasi, there will not be a marriage between the deceased and the applicant no.1. He asked that the applicant no.1 and the deceased to severe in their relationship. However, the deceased got married to the applicant no.1 on 9th January, 2020 at Nagpur and they were residing together at Butibori. On the 4th day of death of husband of the informant, the applicant no.2 had picked up the quarrel and insulted them. She allege about the bad character of applicant no.1 and states that the applicants used to threat deceased and insult him on his 'Tribe'. She then states that the applicant no.1 was with her for a month, when she was ill. Deceased used to go informant's house but he was found under pressure. She then states that she came to know about consumption of poisonous substance by Harshal on 4th January, 2021. He was admitted in the hospital, however, succumbed to the same on the next day. She states that when her another son and relatives went to the room of Harshal on 9th January, 2021, they did not see the material of the applicant no.1. However, while collecting the material of Harshal, they found the suicide note. Thereafter, the non-applicant No. 2's brother Suresh informed her that Harshal while undergoing treatment, when got conscious, gave oral dying declaration that all the applicants had mentally harassed him and threatened him and applicant no.1 had left him along with her parents was the reason for which he consumed the poisonous substance.

10. The facts so stated clearly in the First Information Report do not attract the offence under Section 306 of the Indian Penal Code which should confirm to the ingredients of Section 109 of the Indian Penal

Code. There are vague allegations about the threatening. When in fact Harshal and the applicant no.1 had performed the marriage, when there was opposition and they were residing separately, there is least possibility that she would harass him on any count. Even if we accept that the suicide note has been left by Harshal (for the sake of argument that it is in his handwriting), even then it does not attract ingredients of any of the offence. The suicide note states:

“ माझ्या मृत्युला जबाबदार

1] वैष्णवी देवानंद बोरकर (पत्नी)

2] पायल खेतकर (बहिन)

3] देवानंद बोरकर (सासरा)

कल्पना बोरकर (सासू) ”

“Responsible for my dead

1] Vaishnavi Devand Borkar (Wife)

2] Payal Khetkar (Sister)

3] Devand Borkar (Father-in-law)

Kalpana Borkar (Mother-in-law)”

11. It cannot gathered when that note was written, what was the cause of harassment or instigation for which he wants to hold the applicants responsible. Therefore, the said written dying declaration by no stretch of imagination can provide a good evidence to prove the

offence. The statement of the persons who were residing nearby room of deceased does not indicate that there was strained relationship between the deceased and the applicant no.1.

12. Now, in the First Information Report it is tried to be contended that informant's brother Suresh Aatram told her about oral dying declaration given by Harshal to Suresh. However, if we consider the statement of said Suresh under Section 161 of the Code of Criminal Procedure, it is totally silent on the oral dying declaration. Further if we consider the medical report i.e. the intimation given by the Chief Medical Officer, Government Medical College Hospital to Police Task, Government Medical College, Nagpur (death call) specifically mentioned that "patient brought and declared dead in medical casualty on 4th January, 2021 at 8.10 pm. Body sent to mortuary for MLC procedure. Covid-19 swab taken", it indicates that Harshal was brought dead to hospital. He was not admitted anywhere. Casualty record also shows that pulse was not palpable, blood pressure (BP) was not recordable when he was brought to casualty. With this evidence even at this stage, we can certainly say that there is no supporting evidence for the alleged oral dying declaration.

13. There are no such submission or material which can show that as Harshal was belonging to a particular Tribe, the applicants had acted in such manner against him.

14. In the case of *S.S.Chheena Vs. Vijay Kumar Mahajan;* *[(2010) 12 SCC 190]* the Hon'ble Apex Court has explained the word 'abetment' thus –

“25. 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 be sustained. The intention of the legislature and the ratio of the cases decided by this 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.”

Further in *Ramesh Kumar Vs. State of Chattisgarh;* *[(2001) 9 SCC 618]* the larger Bench of Hon'ble Apex Court has elaborated word “Instigation” as follows:

“20. Instigation is to goad, urge forward, provoke, incite or encourage to do "an act". To satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. The present one is not a case where the accused had by his acts or omission or by a continued course of conduct created such circumstances that the deceased was left with no other option except to commit suicide in which case an instigation may have been inferred. A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation.”

In Sanju @ Sanjay Singh Sengar Vs. State of M.P.; [2002 SCC (Cri) 1141], it has been observed that, “The word ‘instigate’ denotes incitement or urging to do some drastic or inadvisable action or to stimulate or incite. Presence of *mens rea*, therefore, is the necessary concomitant of instigation”.

15. With the above said analysis of the facts and material on record and the legal position, we are of the opinion that it would be futile exercise to ask the applicants to face the trial and therefore the application deserves to be allowed by exercising our inherent powers under Section 482 of the Code of Criminal Procedure. We proceed to pass the following order.

- i. Application stands allowed;
- ii. The chargesheet i.e. proceedings of Special Case No. 258 of 2021 pending before 12th District and Sessions Judge, Nagpur arising out of First Information Report No. 43 of 2021 dated 6th February, 2021 registered under Sections 306, 34 of Indian Penal Code read with Section 3(2), 5 of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 with Butibori Police Station at the behest of the non-applicant no.2 stands quashed and set aside against the applicant no.1-Vaishnavi Harshal Kilnake, applicant no.2 Devendra Krushnaji Borkar, applicant no.3 Kalpana Devanand Borkar and applicant no.4 Sau. Payal Vishal Revatkar.

[MRS. VRUSHALI V. JOSHI, J.] [SMT. VIBHA KANKANWADI, J.]