



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

CRIMINAL APPLICATION (APL) NO.1004 OF 2019

Mangal @ Mangesh Budhakar Telmore and ors. Vs. the State of Mah. and another

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. M. Badar, Advocate for the applicants

Mr. U.R. Phasate, A.P.P. for the non-applicant No.1/State

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

DATE : 04.07.2024.

1. The applicants are the original accused, who are challenging the FIR filed against them vide C.R. No.160 of 2019 and by way of amendment they have prayed for quashing and setting aside the Regular Criminal Case No.1199 of 2023 under Section 498-A, 306 and read with Section 34 of the IPC. The said FIR came to be lodged at the behest of the present respondent No.2, who is the father of deceased Shilpa. It is not in dispute that Shilpa got married with applicant No.1 on 15.07.2019.

2. Heard the learned Advocate for the applicant and learned APP for the State. The learned Advocate (appointed) for the respondent No.2 was absent when the matter was called.

3. It has been vehemently submitted on behalf of the applicants that a perusal of the FIR as well as the entire charge sheet would show there was no abetment. It is unfortunate that Shilpa was in the hospital where her both leg, one hand got amputated and another hand had suffered injuries. It was then

told that it was due to the dash of railway. But if we peruse the written dying declaration that has been recorded as it is, she has not stated any acts of ill-treatment because the marriage was solemnized before eight days only. She met with an accident on 20.07.2019 and she succumbed to the injuries on 23.07.2019. The dying declaration which has been recorded by the police would show in clear terms that she has not made any allegation against the applicants and she has stated that she has no complaints to make against anybody. She also states that her marriage with the applicant No.1 was against her wish and she was in love affair with another boy. Thereby, it was a suicidal attempt which was recorded in her dying declaration and therefore, none of the ingredients of the offence is transpiring and therefore, it would be futile exercise to ask the applicants to face the trial.

4. The learned APP strongly opposes the application. It is submitted by the learned APP that since the investigation is over and the charge sheet is filed, the evidence would be led by the prosecution and therefore, this may not be a fit case for exercising the powers under Section 482 of the CrPC.

5. The first and the foremost fact after reading the FIR is that it is based on the oral dying declaration to the father. He went to the hospital after the information was received. Initially, the applicant No.1's brother had informed him by phone call, stating that since 5.00 a.m. Shilpa is missing from house around 11 to 11.30 a.m. Then the informant went to the house of the applicants where he was informed that Shilpa has met with

accident and has been admitted to Government Hospital, Akola. He went to the hospital and met with her and saw that her both legs, one hand got amputated and another hand had suffered injuries. He asked the daughter as to what has happened, then it is stated that the daughter told him that on the first night her husband had put knife to her neck and then he raised suspicious over her character. It is then, stated that she felt insulted and therefore, went out of the house in anger and tried to commit suicide. Thus, there are some allegations against the applicant No.1. Which offence would be transpiring against him would be decided by the trial Court, where the charge is yet to be framed. Therefore, we do not find this to be a fit case to exercise our inherent powers in favour of the applicant No.1 and therefore, the application stands rejected against him.

6. As regards as the other applicants are concerned, there is absolutely no statements of cruelty, harassment or instigation by them. In fact, the marriage had taken place on 15.07.2019 and the incident occurred on 20.07.2019 and she succumbed to the injuries on 23.07.2019. Further there is written dying declaration recorded by the police, wherein it is clearly a question that whether the relative had instigated her or abetted her to commit suicide, she had stated 'no'. She has stated that the husband had raised suspicious over her character. Then, she states that her marriage was performed against her wish. She had love affair with another boy from her village and therefore, taking into consideration the said dying declaration and so also the statements of her relatives, it cannot be said that the ingredients

of offences under Section 498-A, 306 and read with Section 34 of the IPC are any way attracted.

7. Now, it appears that later on in the statements of the witnesses a story has been built that Shilpa left the home in night time and though all the applicants were in the house, they had not stopped Shilpa from going out of the house appears to be the allegation for abetment against other applicants. We do not agree with the prosecution story that it would attract ingredients of offence under Section 306 of the IPC. First of all none of these relatives who have made those statements were present at the said spot. This fact is even not reflected in the written dying declaration of Shilpa. Even if for the sake of convenience, it is accepted that these applicants were present and they were watching Shilpa going out of the house, yet it could not have been presumed that she was going for committing suicide. Shilpa does not say in her written dying declaration that she informed the applicants that she would be proceeding to commit suicide and still she was not stopped by anybody. It appears that these statements have been made or got inserted just to rope the other relatives of the husband and therefore, we find this is not a fit case where we should exercise our inherent powers, because it would be a futile exercise to ask them to face the trial.

8. For the aforesaid reasons, the application stands **partly allowed**.

9. The application stands rejected against the applicant No.1.

10. The application stands allowed in respect of the applicant Nos.2 to 7.

11. FIR C.R. 160 of 2019 registered with MIDC, Akola Police Station for the offence punishable under Section 498-A, 306 and read with Section 34 of the IPC and Regular Criminal Case No.1199 of 2023 arising out said FIR, stand quashed and set aside against the applicant Nos.2 to 7.

[MRS. VRUSHALI V. JOSHI, J]

[SMT. VIBHA KANKANWADI, J]