



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

CRIMINAL APPLICATION NO.1288/2023

1. Maya W/o Subhash Umale,
aged about 36 Yrs., Occ. Housewife.
2. Shri Subhash S/o Umaji Umale,
aged about 47 Yrs., Occ. Service
and Agriculturist.

Both R/o at Post Dudhala,
Tah. Mouda, Distt. Nagpur.

... Applicants

- Versus -

1. State of Maharashtra,
through PSO Sonegaon,
Nagpur.
2. Shri Shailesh Gangadharrao Nikam,
aged about 31 Yrs., Occ. Govt. Contractor,
R/o Ramnagar, Kanhan, Tah. Parshivani,
Distt. Nagpur. ... Non-applicants.

AND

CRIMINAL APPLICATION NO.1514/2022

Shri Nitin S/o Pandharinath Idare,
aged about 41 Yrs., Occ. Service,
R/o Plot No.24, Anand Nagar,
Jaitala Road, Nagpur.

... Applicant

- Versus -

1. State of Maharashtra,
through PSO Sonegaon,
Nagpur.

2. Shri Shailesh Gangadharrao Nikam,
aged about 31 Yrs., Occ. Govt. Contractor,
R/o Ramnagar, Kanhan, Tah. Parshivani,
Distt. Nagpur. ... Non-applicants.

Mr. Raju Kadu, Advocate for the applicants. (APL 1288/2023)
Mr. Manoj Kariya with Mr. Raju Kadu, Advocates for applicant.
(APL 1541/2022)
Ms. K.H. Bhondge, A.P.P. for non-applicant No.1/State.
Mr. Nitin Bargat, Advocate for non-applicant No.2.

CORAM: VINAY JOSHI & MRS.VRUSHALI V. JOSHI, JJ.
DATED: 5.9.2024.

ORAL JUDGMENT (Per Mrs. Vrushali V. Joshi, J.)

Heard Mr. Raju Kadu, learned Advocate for the
applicants in Criminal Application (APL) No.1288/2023, Mr.
Manoj Kariya with Mr. Raju Kadu, learned Advocates for
applicant in Criminal Application (APL) No.1514/2022, Ms.
K.H. Bhondge, learned A.P.P. for non-applicant No.1/State and
Mr. Nitin Bargat, learned Advocate for non-applicant No.2.
Rule.

2. Since issues involved in both the applications arise out of common first informant report both the applications were heard and are being disposed of by common judgment.

3. These two applications are filed by the husband, and the relatives of the deceased i.e. sister-in-law and her husband under Section 482 of the Code of Criminal Procedure for quashing of F.I.R. in Crime No.0144/2022 registered on 15.9.2022 for the offence punishable under Sections 306 and 498-A read with Section 34 of Indian Penal Code.

4. The F.I.R. was lodged at the behest of non-applicant No.2, who is the brother of deceased Ranjana. Her marriage was performed on 30.11.2010. At the time of marriage 25 tolas of gold, Rs.1 Lakh and other gift articles were given. For one year everything was good. But after the birth of son i.e. Nibodh her husband (Nitin - applicant in APL No.1514/2022) has started demanding money and other things. The complainant and his father had fulfilled some of the demands but the husband of the deceased started harassing her physically and mentally by

suspecting her character. His sister used to inform about ill-treatment to his mother and father on phone. The complainant has stated that the applicant is in their relations and, therefore, they were hopeful for their proper marital life.

5. It is alleged that in 2015 father of non-applicant No.2 has given Rs.15 Lakhs to applicant Nitin i.e. husband of deceased for purchasing the agricultural land. In the year 2018 her husband beat her mercilessly. She informed about it to her father and thereafter he went there and took her back to her maternal home. She stayed there for one year. Thereafter husband had settled the matter, the meeting was called of respective members of both the families and deceased went to stay with her husband. He has made allegations that the applicant Nitin never used to send her for the marriage and for household celebrations but she used to come to his house for few festivals. At that time, she used to tell them that applicant used to harass her mentally and physically by suspecting her character. Once she told that she is living only for well-being of her son.

6. In the year 2021 applicant Nitin wanted to purchase a car. At that time, he demanded money and his father had given money for purchasing the Indica Car. The allegations are made against applicant Nos.1 and 2 in APL No.1288/2023 who are the sister-in-law and her husband that her sister-in-law was staying at Kanhan and whenever she used to come to house of his sister applicants used to pass sarcastic comments and harass her mentally. Her husband also used to say that whenever he used to come to his house for any festival “निकमांना झुकवणारा कोणीतरी मिळाला आणि तो माझा साळा आहे आणि त्यासाठी त्याला लागेल ती मदत मी करेन” by saying such words he used to support the applicant Nitin.

7. On 13.8.2022 the deceased went for *Rakshabandhan* to the house of complainant. On 10.9.2022 in the evening at 5.30 p.m. the cousin brother of complainant Kishor Dengre informed him on phone that his sister Ranjana is admitted in Viveka Hospital. When he asked him why she is admitted, he told that she has consumed poisonous tablets. When he enquired with Priyanka, the co-sister-in-law of the deceased, she told him that

on that day there was parents teacher meeting in the school of son of the deceased and after coming from parents meeting the husband/applicant scolded his wife i.e. deceased saying that she is only watching T.V. and mobile and, therefore, his son is also watching T.V. and mobile and had received less marks. He scolded her in front of the family members and, therefore, the deceased became nervous and has consumed poison. At about 10.15 p.m. doctors declared her dead. Thereafter the complainant has lodged the F.I.R stating that because of the ill-treatment, mental and physical harassment, by the applicant Nitin and her sister-in-law and her husband deceased has committed the suicide.

8. Learned Advocates for the applicants has stated that all the allegations are false, vague and baseless. He never demanded Rs.15 Lakhs for agricultural land and the complainant has not given Rs.15 Lakhs in the year 2015 as he has already purchased the agricultural land in the year 2011. The allegations about the demand for purchasing car are also not correct. He himself has purchased the vehicle i.e. Indica Car. His relations

with the deceased was good. The vague allegations are made against the sister-in-law and her husband. No offence is made out against these applicants. Hence prayed to quash the F.I.R. against all the applicants.

9. The Advocate for the respondent no.2 has opposed the application stating that the specific allegations about the ill-treatment are there that the husband has treated her with cruelty for demand of money. Immediately before committing suicide there was quarrel between husband and wife, there is nexus between the suicide and the incident of scolding for study of his son. The applicant has planted the poisonous tablets which were banned. This is not a case to quash the FIR as *prima facie* offence is made out. Hence prayed to reject the application. The learned A.P.P. argued on same line of arguments of respondent No.2.

10. Heard all the Advocates and perused the record.

11. The offence under Section 306 and 498-A of I.P.C. is registered against all the applicants.

12. While considering the offence under Section 306 it is necessary to consider whether the ingredients of offence under Section 107 are attracted. The essence of abetment lies in inciting a person to do a thing or the intentional doing of that thing or an act or illegal omission. Instigation is goad or urge to provoke or encourage to do an act which the person otherwise would not have done. To satisfy the requirements of instigation though it is not necessary that actual words must be used to that effect or what constitutes the instigation must necessarily and specifically be suggestive of the consequence, yet a reasonable certainty to instigate must be capable of being spelt out. A word uttered in the fit of anger or emotion without intending the consequence to actually follow cannot be said to be instigation.

13. On perusal of the F.I.R. it is seen that the offence under Section 498-A and 306 of I.P.C. are registered against applicant husband. The incidents are mentioned about demand

and ill-treatment and because of which deceased stayed at her maternal home for one year is also brought to the notice. The incident immediately occurred before she consumed poisonous tablets, as husband scolded her in presence of other family members. He was annoyed as in parents meeting he was informed that his son has received less marks and, therefore, he blamed his wife i.e. deceased that because of her, he got less marks as she used to watch T.V. and mobile and, therefore, their son is watching T.V. and mobile and, therefore, she is not vigilant towards his studies. It is in hit of anger. The intention was not there to abet her for committing the suicide.

14. The instigation can be inferred where the accused by his acts or by a continued course of conduct creates such circumstances that the deceased was left with no other option except to commit suicide. In other words, in order to prove that the accused abetted commission of suicide by a person, it has to be established that (i) the accused kept on irritating or annoying the deceased by words, deeds or wilful omission or conduct which

may even be a wilful silence until the deceased reacted or pushed or force the deceased by his deeds, words or wilful omission or conduct to make the deceased move forward more quickly in a forward direction and (ii) that the accused had the intention to provoke, urge or encourage the deceased to commit suicide while acting in the manner noted above. Undoubtedly, presence of *mens rea* is the necessary concomitant of instigation. The Hon'ble Apex Court in the case of Mahendra K.C. V/s State of Karnataka and another reported in (2022) 2 SCC 129 has observed that "The question as to what is the cause of a suicide has no easy answers because suicidal ideation and behaviours in human beings are complex and multifaceted. Different individuals in the same situation react and behave differently because of the personal meaning they add to each event, thus accounting for individual vulnerability to suicide. Each individual's suicidability pattern depends on his inner subjective experience of mental pain, fear and loss of self- respect. Each of these factors are crucial and exacerbating contributor to an

individual's vulnerability to end his own life, which may either be an attempt for self-protection or an escapism from intolerable self.” It has further observed that “It is also to be borne in mind that in cases of alleged abetment of suicide there must be proof of direct or indirect acts of incitement to the commission of suicide. Merely on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide, conviction in terms of Section 306 IPC is not sustainable.”

15. In the case in hand the complainant appeared through the Advocate and has stated that the intention is there. Deceased died due to consuming poisonous tablets which are used to keep in grains. Said tablets are banned and are not easily available in market. The accused was doing job in Warehouse. From there he brought said tablets and planted intentionally to abet her to commit suicide. The submissions made by the learned Advocate for the complainant cannot be digested. The incident, according to the complainant by which the deceased had committed suicide,

is the normal conversation between husband and wife out of worry about future of their son. He has only blamed her and cautioned her not to watch T.V. and mobile and to look after the study of his son. It cannot be termed as instigation to a person to commit suicide. The earlier incidents which the complainant has mentioned are about ill-treatment and her stay at maternal home in the year 2018 which cannot be considered as an abetment to commit suicide. The statement of son of the deceased shows that before the incident there were no quarrels as he has stated that before two years the quarrel used to take place between his parents. He has stated that he used to go with his mother at her grandparents' house. Since last two years there is no quarrel between his parents but he has stated that before that it used to take place. He has also narrated about the conversation between his father and mother that as he had received less marks in English and E.V.S. his father beat him and asked his mother not to allow him to watch T.V. and mobile. Statement of Aakansha Idre shows that she has narrated the same incident, and

immediately after she went to her house the deceased informed her that she is not feeling well and told her that she had consumed tablets and thereafter she was hospitalized. From the statements of witnesses and statement of son it appears that conversation between husband and wife is out of care for their son and does not amount to instigation to commit suicide. Therefore, the offence under Section 306 of I.P.C. is not made out against the husband. No allegations are made against sister-in-law and her husband about abetment to commit suicide. As per ratio laid down in State of Haryana and others V/s. Bhajan Lal and others reported in **AIR 1992 SC 604** no *prima facie* offence is made out against all these applicants for the offence punishable under Section 306 I.P.C.

16. Offence under Section 498-A of I.P.C. is also registered against all these applicants. The allegations made are about demand of money, mental and physical torture and suspecting the character of the deceased.

17. Definition of Section 498-A reads as follows:-

Section 498A:- Husband or relative of husband of a woman subjecting her to cruelty. - Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation. - For the purposes of this section, “cruelty” means:

- (a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or
- (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

18. After going through the F.I.R., in our view, it cannot said that the deceased being subjected to cruelty by the applicants in APL No.1288/2023.

19. Explanation (a) to Section 498-A provides that cruelty to mean any wilful conduct which is of such a nature that is likely to drive a woman to commit suicide or to cause grave injury or danger to life, limb or health of the woman.

20. In APL No.1514/2022 specific allegations with dates are mentioned against Nitin i.e. husband about demands and fulfilment of demands by the complainant's parents. The statement of son also shows that the quarrel used to take place before 2 years between deceased and the applicant. Though applicant husband has stated that the allegations about giving Rs.15 Lakhs for purchasing agricultural land and for purchasing four wheeler are not correct and has tried to brought on record the documents to show that the said allegations are not correct, it requires to be tested on the touchstone of trial. Therefore, we are of the opinion that the *prima facie* allegations made against applicant husband for the offence punishable under Section 498-A of I.P.C. requires to be proved in trial. Therefore, applicant husband has to face the trial to prove his defence before the trial Court for the offence punishable under Section 498-A of I.P.C. Hence we pass the following order:-

- (i) Criminal Application (APL) No.1514/2022 is partly allowed.

F.I.R. No.0144/2022 registered to the extent of the offence punishable under Section 306 of I.P.C. is quashed and set aside against the present applicant husband.

(ii) Criminal Application (APL) No.1288/2023 is allowed.

F.I.R. No.0144/2022 for the offence punishable under Sections 306 and 498-A of I.P.C. is quashed and set aside against both the applicants.

(MRS.VRUSHALI V. JOSHI, J.)

(VINAY JOSHI, J.)