



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

CRIMINAL APPLICATION NO. 55 OF 2024

Deepak S/o Pandit Bhosle
Age : 33 years, Occ : Agri.,
R/o Waghi, Tq. Nanded,
Dist. Nanded.

..APPLICANT

-VERSUS-

1. The State of Maharashtra
Through Police Station, Limbgaon,
Dist. Nanded.
2. Anil S/o Pralhad Rathod
Age : 31 years, Occ : Labour,
R/o Waghi Tanda, Tq. Nanded,
Dist. Nanded.

..RESPONDENTS

...
Advocate for the applicant : Mr.Suraj R. Bagal
APP for Respondent- State : Mr. A.D. Wange
Advocate for respondent No.2 : Mr. Umesh Mitkari (appointed)

...
**CORAM : SMT. VIBHA KANKANWADI AND
ROHIT W. JOSHI, JJ.**

DATED : 3rd JANUARY, 2025

JUDGMENT (PER ROHIT W. JOSHI, J.) :

. The present application is filed under Section 482 of the Code of Criminal Procedure (Cr.P.C.) seeking to quash F.I.R. 0094/2023 registered with Police Station Limbgaon, Dist. Nanded for the offence punishable under Section 306 read with Section 34 of the Indian Penal Code (I.P.C.) and Regular Criminal Case No.1580/2023 pending on the

file of learned Chief Judicial Magistrate, Nanded. Respondent No.2 is informant.

2. Father of respondent No.2 Shri Pralhad Rathod has committed suicide in the night intervening 25.06.2023 and 26.06.2023 by hanging himself to the roof of house. Respondent No.2 has lodged F.I.R. against the present applicant and Priyanka, who is wife of respondent No.2 on 18.07.2023.

3. A perusal of F.I.R. will demonstrate that respondent No.2 alleges that the present applicant/accused No.2 had developed illicit relations with accused No.1, who is wife of respondent No.2. Respondent No.2 has stated that on 23.06.2023, his father had gone for doing manual labour work at Nasaratpur and after finishing his work, he returned to home at around 3.00 to 3.30 p.m. When he returned to the house, he called the wife of respondent No.2 asking her to give him water. Since the wife of respondent No.2 did not bring water, he casually opened the door of one of the rooms in the house and was shocked to find that the present applicant and wife of respondent No.2 were indulging in sexual activity. Respondent No.2 alleges that his father was deeply disturbed due to this. He was afraid about reputation of the family in the society. He has stated that the present applicant had warned the deceased that he should not disclose the incident to

anybody or else he will eliminate him. He was also afraid that the present applicant would kill him since he was witness to the said incident. He states that the father has committed suicide due to the said incident coupled with death threat extended by applicant No.1 to him.

4. On the basis of the allegations, F.I.R. has been registered against the present applicant and wife of respondent No.2 for offence punishable under Section 306 read with Section 34 of the Indian Penal Code.

5. The allegations in the F.I.R. only suggest that there were illicit relations between the applicant and daughter-in-law of deceased Pralhad. The F.I.R. discloses that the deceased had seen his daughter-in-law indulging in a sexual activity with applicant and that applicant had threatened to kill deceased Pralhad. The allegation is that the deceased was seriously disturbed due to the aforesaid incident and also feared for his life due to death threat extended by applicant and as a consequence of this, he has committed suicide.

6. Learned counsel for the applicant submits that ingredients of Section 306 of IPC are not even remotely made out. He states that assuming not admitting that the applicant had illicit sexual intercourse with daughter-in-law of the deceased and that he had threatened to

eliminate the deceased, who had seen the applicant and the daughter-in-law of deceased indulging in sexual activity, the same would not amount to causing abetment to commit suicide.

7. Learned APP Shri A.D. Wange opposes the application stating that whether there was any intention on the part of the applicant to force the deceased to commit suicide or not can be determined only upon full-fledged trial. Advocate Shri Umesh Mitkari appearing for respondent No.2 has advanced the submissions on similar lines.

8. It is obvious that applicant did not establish relationship with daughter-in-law of the deceased in order to instigate him to commit suicide. The alleged illicit relationship of applicant and daughter-in-law of deceased was not revealed by them to anybody including the deceased. Accidentally deceased found the applicant and his daughter-in-law in a compromising position, which according to respondent No.2 was the cause for committing suicide. By no stretch of imagination, it can be said that the applicant had abetted the suicide stated to be committed by the deceased. Apart from illicit relations, the other allegation is that when the applicant was caught red handed, he had threatened the deceased with dire consequences including extending death threat in the event he disclosed the matter to any other

person. This also can by no stretch of imagination amount to abetment to commit suicide. An offence under Section 306 of the Indian Penal Code is made out only when the accused can be shown to have instigated, urged or encouraged the act of suicide by willfully acting in a manner which may compel the deceased to commit ghastly act of suicide. The proposition that correctness or otherwise of the allegations cannot be assessed at this stage is undisputed. However, at the same time, one needs to examine as to whether the undisputed material on record makes out an offence punishable under Section 306 of IPC. The essential ingredients of the offence are that the accused must actually instigate, urge or encourage the act of suicide by willfully acting in a manner which may compel the deceased to commit ghastly act of suicide. *Mens rea* is an essential element of the offence. It is held by catena of decisions of the Hon'ble Supreme Court and this Court that mere harassment meted out to the deceased is not sufficient to hold a person guilty of the offence of abetment of suicide. There must be clear evidence in order to demonstrate active and direct action by the accused that led to the deceased committing suicide.

9. Therefore, we are of the considered opinion that the material on record is grossly inadequate to make out any case against the applicant for the offence under Section 306 of the IPC. It will not be

in the interest of justice to force the applicant to face prosecution in such a matter, where the undisputed material on record does not satisfy the essential elements of the offence. We are, therefore, of the considered opinion that FIR and resultant criminal prosecution against the applicant is required to be quashed. Hence, we pass the following order:

ORDER

- (i) The application is allowed.
- (ii) F.I.R. 0094/2023 registered with Police Station Limbgaon, Dist.Nanded for the offence punishable under Section 306 read with Section 34 of the Indian Penal Code and Regular Criminal Case No.1580/2023 pending on the file of learned Chief Judicial Magistrate, Nanded, are hereby quashed against applicant - Deepak S/o Pandit Bhosle.
- (iii) The learned Secretary, High Court Legal Services Sub-Committee, Aurangabad to pay the fees which is quantified as Rs.5,000/- (Rupees Five Thousand) to the learned Advocate appointed to represent Respondent No.2.

[ROHIT W. JOSHI]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

sga/