



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

CRIMINAL APPLICATION NO. 493 OF 2024

1. Dhanashri wd/o Abhijit Jadhav
@ Dhanashri Nilkanthrao Pawale
Age: 21 years, Occ. Education,
 2. Nilkanthrao Digambarrao Pawale
Age: 55 years, Occ. Service,
 3. Rukhminbai Nilkanthrao Pawale
Age: 45 years, Occ. Household,
All R/o. Marwali, Tq. Naigaon, Dist. Nanded
 4. Bhramhanand @ Nandu Desai s/o Ramrao Kalyan
Age: 50 years, Occ. Agri,
R/o Kalyan Galli, Naigaon, Tq. Naigaon,
Dist. Nanded.
- ... Applicants**

Versus

1. The State of Maharashtra
Through Bhokar Police Station.
 2. Keshav Gangaram Jadhav,
Age: 57 years, Occ. Service,
R/o. Borgaon, Tq. Bhokar, Dist. Nanded.
At Present R/o. Gokul Nagar, Bhokar,
Tq. Bhokar, Dist. Nanded.
- ... Respondents**

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Mr. Anil M. Gaikwad, Advocate for Applicants.
Mr. A. R. Kale, APP for Respondent / State.
Mr. Ravindra B. Narvade Patil, Advocate for Respondent No.2.

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CORAM : **SMT. VIBHA KANKANWADI &
SANJAY A. DESHMUKH, JJ.**

DATE : 28th March, 2025.

Per Court:

. Present application has been filed initially for quashment of the FIR vide C.R. No.339 of 2023, registered with Bhokar Police Station, District Nanded, and later on by way of amendment for quashment of the proceedings in R.C.C. No.10 of 2024 and Sessions Case No.36 of 2024, pending before the learned Additional Sessions Judge, Bhokar, District Nanded, for offence punishable under Section 306 read with 34 of the Indian Penal Code.

2 Heard the learned counsel for the applicants, the learned APP and the learned counsel for respondent No.2.

3 The learned counsel appearing for the applicants submits that respondent No.2 is the father of deceased Abhijit, who got married to applicant No.1 on 16th May, 2023. Applicant Nos.2 and 3 are the parents of applicant No.1 and applicant No.4 is the near relative of applicant Nos.1 to 3. In fact, this is a case of non consummation of marriage and it appears that applicant No.1, who had gone to her parental home, had not returned to the matrimonial home and then the fact was disclosed to the informant, deceased and other relatives by applicant No.1 regarding the reason why she is not returning. Then twice the meetings had taken place in between. Applicant No.1 had

come to the matrimonial home, but then the informant states that applicant No.1 had levelled false allegations against the husband. But then the uncle and grandfather of applicant No.1 had been to the house of informant and there was a discussion regarding divorce to be obtained. But then the informant says that on 10th September, 2023, applicant Nos.2 and 4 and some other persons had gone to the matrimonial home of applicant No.1 and they demanded an amount of Rs.30,00,000/- for divorce. They had given threat to defame the informant and the deceased and the informant states that because of it, the deceased was under tension and he committed suicide around 06:00 pm on 13th September, 2023. The contents of the FIR and the charge-sheet taken as it is, would show that there was no active abetment or active role to attract Section 107 of the IPC, which will have to be then considered under Section 306 of the IPC. The statements of witnesses are on the same line and stereotype. Therefore, with this kind of evidence, it would be an abuse of the process of law to ask the applicants to face the trial.

4 The learned APP as well as the learned counsel for respondent No.2 strongly opposed the application and they submit that taking into consideration the events those have been taken place, it can be then considered that applicant No.1 was levelling false allegations against the deceased. The informant has stated that in the

first meeting itself when applicant No.1 had raised the reason as to why she was not going for cohabitation, at that time itself, it was offered that the deceased to be taken to a doctor, where he would be medically examined. But that was not accepted by the applicants. The initial cohabitation was for a week or so and thereafter, after the first meeting, she had come for about 8-10 days. But in that period, the relatives of the informant, were told about the alleged physical defect of the deceased, which was nothing but his defamation. The deceased could not bear the said defamation and he used to be under mental tension. Not only the proposal for divorce was placed, but applicant Nos.2 and 4 had demanded amount of Rs.30,00,000/- from the informant. Threat was given that if that amount is not paid then the informant and his family members would be defamed. The fact was spread to the near and dear ones of the informant in the village, as a result of which, the deceased went further in tension as he was saying that why false allegations are levelled against him and he has been defamed; and it appears that he could not bear the said tension and he committed suicide by hanging. All these events would definitely show that each applicant had played active role and then it amounts to instigation or abetment. When, now, the investigation is over and charge-sheet is filed, let there be a trial.

as regards the offence under Section 306 of the IPC. The ingredients of the said offence will have to be read with Section 107 of the IPC. The ingredients of these Sections have been elaborately explained in ***Sanju alias Sanjay Singh Sengar Vs. State of Madhya Pradesh***, reported in, ***2002 Cri.L.J. 2796; Madan Mohan Singh Vs. State of Gujrat and another***, reported in, ***(2010) 8 SCC 628***; and in the case of ***S.S. Chheena Vs. Vijay Kumar Mahajan***, reported in, ***2010 All MR (Cri) 3298 (S.C.)***.

6 Here, taking into consideration the contents of the charge-sheet, which consists of AD, *in-quest Panchanama*, postmortem report and spot *Panchanama*, it can be seen that there is no dispute as regards the commission of suicide. The postmortem report gives probable cause of death as “Asphyxia due to hanging”. Therefore, when the suicide is admitted to the applicants, next question is whether there is evidence to *prima-facie* show that the applicants had abetted commission of the said suicide. Another fact to be specifically noted is that when there are allegations of commission of offence under Section 306 of the IPC, the prosecution will have to prove or bring such fact on record even *prima-facie* that the accused persons had the intention or *mens-rea* that the deceased should commit suicide or the accused persons had the knowledge that their such act would certainly lead to commission of suicide by a person. With this

background, the facts which are already noted, are required to be assessed. Of course, this is a *prima-facie* assessment taking into consideration the scope of Section 482 of the Cr.P.C.

7 The marriage had taken place on 16th May, 2023 and it is stated in the FIR that after some days after the further rituals were performed, applicant No.1 went to her parental home by saying that she has to attend the death anniversary of her cousin grandfather. She did not return for about 7-8 days and then the informant's cousin brother went to fetch applicant No.1. He was informed that he should get 3-4 persons and therefore, on the next day the informant with his relatives and deceased went to the house of applicant No.2. It appears from the contents of the FIR that applicant No.4 was already related to the informant when he says that his niece got married in the house of applicant No.4. Applicant No.1 appears to have raised the point of impotency of the deceased and then the informant had offered that the medical check-up of the son to be done. But when deceased asked applicant No.1 as to why she is saying so and what had happened between them, was different ? The informant then says that the applicants had then changed the subject and told by giving advice to applicant No.1 that she would be sent for cohabitation. The informant says that while returning, the deceased was angry and repeatedly stating that he has been defamed. He was under tension.

He then says that after two days, the deceased and his brother went to the house of applicants and fetched applicant No.1 and after eight days again applicant No.1 left for the parental home stating that there is marriage of her cousin sister. According to the informant, she had taken all her belongings and ornaments alongwith her. Thus, it can be seen from this part of the FIR that no other incident or allegations regarding the impotency were levelled by the applicants during the said period of eight days. But then the informant again says that when even after 7-8 days after the marriage when applicant No.1 was not returning to the matrimonial home, the informant and others were again called upon phone. The second meeting took place in the house of paternal uncle of applicant No.1 and when her grandfather asked about her intention whether to resume the cohabitation, it is alleged that again the same grievance was made. The grandfather then asked the informant and others that they should come after 4-5 days. The informant then says that the uncle and grandfather of applicant No.1 had gone to his house 4-5 days thereafter, and disclosed that applicant No.1 is not ready for cohabitation and therefore, they were of the opinion that there should be divorce. The informant put a proposal that if she is sent for cohabitation, they will have no objection, but if they want that there should be a divorce then they should wait for 6 months more. However, according to the informant, on 10th September, 2023 applicant Nos.2 and 4 and others went to Bhokar. He also states that

before entering the house of the informant, applicant Nos.2 and 4 and others had gone to the relatives of applicant Nos.2, 4 and others and told them that the deceased is impotent and therefore, the relatives should ask the informant to give permission for the divorce and to give amount of Rs.30,00,000/-. This, according to the informant, is the act of defamation and then the informant states that when applicant Nos.2 and 4 had come to their house when deceased offered them water, they abused him and insulted by stating that he is impotent and he should give amount of Rs.30,00,000/-. Threat was given to defame. This incident taken as it is, would show that applicant Nos.1 and 3 were not present at that time.

8 The FIR and the statements of witnesses have further stated that as the deceased felt defamed, the deceased was under extreme mental tension and he wanted to show that he is not impotent and therefore, on 12th September, 2023, he uploaded a video on YouTube. Then, on 13th September, 2023, the informant's nephew called the deceased and asked him to come to Bhokar for purchases on the festival of Pola. The deceased had then talked to his cousin brother and raised concern stating that when the marriage was performed, it has been tried to be dissolved by levelling false allegations and they are demanding amount, which amounts to then injustice for him. The informant then states that because of the

defamation, there was tension to the deceased and therefore, he committed suicide on 13th September, 2023.

9 The another fact that is required to be considered is that on 13th September, 2023 itself, AD No.77 of 2023 under Section 174 of the Cr.P.C. was registered, which appears to be by the cousin brother of the deceased. But then the FIR has been lodged on 3rd October, 2023. Definitely, there is delay. However, it has been stated that since the informant was in grief and health of the informant as well as of his wife was not proper and therefore, the FIR was not lodged. Here, we may not go into the aspect of delay in detail because the delay can be explained at any point of time, but certainly we can observe that when all the family members including the cousin brother were stated to be aware about the reason behind the suicide, then anybody could have set the law in motion.

10 From the analysis of the FIR as well as the statements of witnesses, it can be seen that after the alleged meeting of 10th September, 2023, between applicant Nos.2, 4 and some other persons coming to the house of the informant till 13th September, 2023 i.e. till the suicide was committed, none of the applicants are stated to be in contact with the deceased. Thus, there is a gap of almost three days, as to when the alleged incident had happened on 10th September,

2023. As regards applicant Nos.1 and 3 are concerned, they were not even in contact since much prior to 10th September, 2023. Now, even if we take the incident dated 10th September, 2023 as it is, it can be considered that some illegal demand was put by applicant Nos.2 and 4 for divorce. If they had committed any offence, definitely the deceased or the informant were at liberty to set the law in motion by filing the appropriate proceedings. The said illegal demand cannot be equated to the intention or mens-rea.

11 In the case of Ramesh ***Kumar Vs. State of Chhattisgarh***, reported in, ***2001 (9) SCC 618***, even the Honourable Supreme Court had considered the direct allegations i.e. when the accused had asked the deceased to go and commit suicide. Even that was taken as not amounting to instigation or abetment as contemplated under Section 107 of the IPC.

12 Thus, taking into consideration the entire facts and the material in the proceedings, we are of the opinion that even *prima-facie* the ingredients of Section 306 of the IPC are not attracted. We are also expressing our doubt as to whether in such circumstances or in such cases, whether Section 34 of the IPC can be invoked when the main offence i.e. 306 of the IPC requires basic intention on the part of each accused, which should lead to the abetment to commit suicide of

the deceased. In other words, there cannot be a common intention in abetment to commit suicide. Therefore, case is made out for exercise of powers under Section 482 of the Cr.P.C. as the facts are within the parameters laid down in the ***State of Haryana and others Vs. Ch. Bhajan Lal and others***, reported in, ***[AIR 1992 SC 604]***. Hence, the following order:-

ORDER

- I. The application stands allowed.
- II. The proceedings in R.C.C. No.10 of 2024 and Sessions Case No.36 of 2024, pending before the learned Additional Sessions Judge, Bhokar, District Nanded, arising out of FIR vide C.R. No.339 of 2023, registered with Bhokar Police Station, District Nanded, for offence punishable under Section 306 read with 34 of the Indian Penal Code, stands quashed and set aside as against all the applicants.

[SANJAY A. DESHMUKH, J.] [SMT. VIBHA KANKANWADI, J.]

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