



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

49 CRIMINAL APPLICATION NO. 1118 OF 2024

- 1] Sarla Radheshayam Sananse,
Age: 34 Years, Occu. Private Service,
- 2] Rukhmanbai Sharad Kharate,
Age: 60 Years, Occu. Household,
- 3] Sharad Laxman Kharate,
Age: 69 Years, Occu. Retired
All R/o. Asiyad Colony,
Beed bye pass, Aurangabad.
- 4] Prakesh Sharad Kharate
Age: 40 Years, Occu. Pvt. Service,
R/o: Navi colony Deopur,
District: Dhule.
- 5] Ravindra Waman Jadhav,
Age: 47 Years, Occu. Carpenter,
- 6] Manoj Kaduba Bhale,
Age: 33 Years, Occu. Carpenter,
Both R/o: Sairaj Nagar,
District: Aurangabad.

... Applicants

Versus

- 1] The State of Maharashtra,
Through Mukundwadi Police Station,
District Aurangabad.
- 2] Rupali Sunil Rajguru
Age: 36 Years, Occu. Household,
R/o. Vitthalnagar, Taluka: Bhokardan,
District Jalna.

... Respondents

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Mr. Chaitanya C. Deshpande, h/f Mr. Pradeep Gurunath Tambade, Advocate
for Applicants.

Smt. P. R. Bharaswadkar, APP for Respondent / State.

Mr. Aditya Arun Puranik, Advocate for Respondent No.2.

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

DATE : 04th March, 2025.

PER COURT:

. Present application has been filed for quashment of the proceedings in R.C.C. No.1833 of 2023, pending before the learned Sessions Judge, Aurangabad, arising out of FIR vide C.R. No.28 of 2023, dated 25th January, 2023, registered with Mukundwadi Police Station, District Aurangabad, for the offence punishable under Section 306 read with 34 of Indian Penal Code.

2 Heard the learned counsel for the applicants, the learned APP and the learned counsel for respondent No.2. In order to cut short, it can be stated that all of them have made submissions supporting their respective contentions.

3 The FIR has been lodged by respondent No.2, who is the sister of the deceased Radheshayam. Respondent No.2 is residing at Vitthalnagar, Taluka Bhokardan, District Jalna. However, deceased

Radheshayam was residing in Sairaj Nagar, Mukundwadi Railway Station, Aurangabad. In the FIR, it is stated that she came to know about the suicide committed by her brother Radheshayam on 19th January, 2023, which was by hanging with the help of *Odhni / Dupatta*. AD was registered in respect of the same vide AD No.4 of 2023 with Mukundwadi Police Station. The informant then says that Radheshayam was married to one Sarla i.e. applicant No.1 in 2008 and they were blessed with two children. Radheshayam was serving as a carpenter with MGM Hospital. His co-brothers (husband of sister of wife), his parents-in-law and brother-in-law were residing adjacent to the place where Radheshayam and Sarla were residing. There used to be quarrels between Radheshayam and Sarla and it is stated that Sarla i.e. applicant No.1 used to abuse and assault Radheshayam after informing it to her parents, brother and brother-in-law. The informant also states that on 19th January, 2023, Radheshayam had given a phone call to his mother Chandrakala and told that his wife, parents-in-law, brother-in-law and two co-brothers were harassing him oftenly and then the suicide has been committed. It is to be noted that FIR has been lodged on 25th January, 2023. There is no explanation of delay that has been given in the FIR.

4 The charge-sheet would show that after AD was registered, the dead body was sent for postmortem, after executing

inquest *Panchanama*. The postmortem report would show that the cause of death has been given as "Death due to Hanging". So there is no dispute that Radheshayam has committed suicide. Now the question is whether the said suicide was abetted by the present applicants or not ? The statement of the mother of the deceased, namely Chandrakala, has been recorded under Section 161 of the Cr.P.C. Witness Chandrakala has stated that applicant No.1 used to pick up quarrels with Radheshayam and used to say that she does not like to reside at Udangaon and therefore, she alongwith Radheshayam shifted to Aurangabad. She addresses applicant No.1 as a quarrelsome lady and states that she was not allowing Radheshayam to talk with Chandrakala. The purpose for quarrel, as stated, is that she was insisting Radheshayam that they would sell out the house at Udangaon and will take house near the house of her parents, which was resisted by Radheshayam. She also states that in May 2022, Sarla had given notice through Advocate, wherein it was stated that she was not ready for cohabitation with Radheshayam and she had claimed maintenance. Witness Chandrakala then says that on 17th January, 2023, all of a sudden Sarla had come with her son, who was 18 months of age and after keeping her bag, she went alongwith Radheshayam's friend Kailash to his house. Thereafter, there was a quarrel between Radheshayam and Sarla. Witness Chandrakala then says that around 10:30 am on 19th January, 2022, she received phone

call from Radheshayam asking her as to why she had allowed Sarla to come at Udangaon as she tortures him and he has come to know everything about her. Thereafter, witness Chandrakala came to know about the suicide. Thus, it can be seen that the statement is too vague. If that was the only conversation that had taken place between her and Radheshayam, even if taken as it is, will not amount to abetment.

5 The statement of 11 year old son of Radheshayam is also taken. From his statement also, what is transpiring, is the quarrel between Radheshayam and applicant No.1. But even the son says that the quarrel used to be on triple ground. He also stated that Radheshayam used to drink liquor and Sarla used to object for the same and then there used to be quarrel between them.

6 In order to prove an offence under Section 306 of IPC, it has to pass through the test of Section 107 of the IPC. In order to constitute abatement, the abettor must be shown to have intentionally aided the commission of the crime. Now, the specific acts of abatement are not coming forward here. In ***Wazir Chand and Ors Vs. State of Haryana***, reported in, ***AIR 1989 Supreme Court 378***, the Honourable Supreme Court has stated that in order to convict any person for instigating any person to commit suicide, it is to be

established that the victim committed suicide and then in view of the decisions in the cases of ***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.)***, it has to be proved that some active role has been performed by each person against whom the charge is leveled. Here, the quarrels may be frequent, will not amount to instigation unless there would have been the intention on the part of the applicants that Radheshayam should commit suicide. Even if we take the notice given by applicant No.1 as it is, it was stated that she is not willing to cohabit with Radheshayam for the reasons stated therein. This cannot be taken as an intention on the part of Sarla that she intended that Radheshayam should commit suicide. Further, from the statement of the 11 year old son of deceased Radheshayam, it can be seen that on that day, the activities of Radheshayam were normal with the child and then he says that after mother came, there were quarrels between the mother and father. Therefore, the ingredients of the offence cannot be said to be attracting in the present matter and therefore, it would be an abuse of the process of law if the applicants are allowed to face the trial. We therefore, proceed to pass the following order:-

ORDER

- I. The application stands allowed.
- II. The proceedings in R.C.C. No.1833 of 2023, pending before the learned Sessions Judge, Aurangabad, arising out of FIR vide C.R. No.28 of 2023, dated 25th January, 2023, registered with Mukundwadi Police Station, District Aurangabad, for the offence punishable under Section 306 read with 34 of Indian Penal Code, stands quashed and set aside as against all the applicants.

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