



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.1871 OF 2024

Ashish s/o Ganesh Rawalkar

.. Applicant

Versus

1. The State of Maharashtra
Through Sillegaon Police Station,
District Aurangabad.

2. XYZ

.. Respondents

...

Mr. Satej S. Jadhav, Advocate for the applicant.
Mrs. R. P. Gour, APP for respondent No.1/State.
Mr. S. B. Yawalkar, Advocate for respondent No.2. (Appointed)

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

DATE : 05 MARCH 2025

ORDER :

. Present application has been filed by invoking the inherent powers of this Court under Section 482 of the Code of Criminal Procedure initially for quashing the FIR bearing Crime No.116 of 2024 registered with Sillegaon Police Station, District Aurangabad and later on, by way of amendment, for quashing the proceedings in R.C.C. No.933 of 2024 pending before the learned Judicial Magistrate First Class, Gangapur for the offences punishable under Sections 306, 376(2)(n) of Indian Penal Code.

2. Heard learned Advocate Mr. Satej S. Jadhav for the applicant, learned APP Mrs. R. P. Gour for respondent No.1/State and learned Advocate Mr. S. B. Yawalkar, appointed to represent the cause of respondent No.2. In order to cut short, it can be said that both of them have made submissions in support of their respective contentions.

3. The informant is the father of deceased victim. The victim was 25 years old girl doing job at Pune. Present applicant is the original accused No.2. The FIR and the statements of witnesses under Section 161 of the Code of Criminal Procedure and even the statement of deceased, which appears to have been not treated as dying declaration though the girl was taking treatment with CIGMA Hospital, Chhatrapati Sambhajnagar, does not level allegations under Section 376(2)(n) of the Indian Penal Code. The present applicant has been tried to be arrayed as accused for the offence punishable under Section 306 of Indian Penal Code. The first and the foremost fact to be noted is that in the FIR as well as in the statement of the victim, the reason for consumption of poisonous substance by deceased victim is stated to be refusal to marry by accused No.1. Therefore, question of Section 34 of Indian Penal Code is against present applicant will not arise. The

statement of victim recorded on 05.04.2024 would show that she has not attributed any role and not even taken the name of the present applicant. We cannot in fact go beyond her statement, but still when the name of the applicant is appearing in the FIR as well as statement of other witnesses, we would consider the same. The informant appears to be aware about the love affair between the victim and accused No.1 and it is the say that the victim had informed him that on certain occasions she had gone along with accused No.1 to the house of applicant, who is the real brother of accused No.1. Applicant stays at Mumbai, whereas victim and accused No.1 used to reside in Pune. Thereafter, it is stated that after some time when there were physical relations between the deceased as well as accused No.1 which is stated to be under the promise to marry, then it is stated that even present applicant had refused to approve the marriage. Refusal to approve the marriage cannot be taken as instigation or abetment. There cannot be intention behind such refusal (even if accepted that the girl should go and commit suicide). For an offence under Section 306 of Indian Penal Code, *mens rea* is one of the key ingredient. Here, the entire record does not show that there was such intention on the part of the present applicant. It appears

that when accused No.1 refused to perform marriage, deceased had consumed poisonous substance and ultimately, succumbed to the same. As the ingredients of Section 107 of Indian Penal Code, which is the base for the offence under Section 306 of Indian Penal Code, are not attracted, it would be abuse of process of law to ask the applicant to face the trial. Hence, the following order :-

ORDER

- I) Criminal Application stands allowed.
- II) The FIR bearing Crime No.116 of 2024 registered with Sillegaon Police Station, District Aurangabad as well as the proceedings in R.C.C. No.933 of 2024 pending before the learned Judicial Magistrate First Class, Gangapur for the offences punishable under Sections 306, 376(2)(n) of Indian Penal Code, stand quashed and set aside as against the present applicant.
- III) Fees of learned Advocate, who is appointed to represent the cause of respondent No.2, is quantified at Rs.8,000/- to be paid by the High Court Legal Services Sub Committee, Aurangabad.

[SANJAY A. DESHMUKH]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE