



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

18 CRIMINAL APPLICATION NO.2408 OF 2023

- 1 Salim Sikandar Mulani,
Age 39 yrs., Occ. Business,
R/o Panchshil Nagar, Beed,
Tq. & Dist. Beed.
- 2 Shahanoorbi Sikandar Mulani,
Age 68 yrs., Occ. Household,
R/o Panchshil Nagar, Beed,
Tq. & Dist. Beed.
- 3 Shamin Yusuf Arab,
Age 47 yrs., Occ. Household,
R/o Panchshil Nagar, Beed,
Tq. & Dist. Beed.

... Applicants

... Versus ...

- 1 The State of Maharashtra
Through Police Inspector,
City Police Station, Beed,
Tq. & Dist. Beed.
- 2 Shahanoor @ Shamshad Babu Sayyed,
Age 67 yrs., Occ. Business,
R/o Anjangaon Umate,
Tq. Madha, Dist. Solapur.

... Respondents

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Mr. M.P. Gandle, Advocate for applicants

Mr. A.M. Phule, APP for respondent No.1

Mr. Akshay Kulkarni, Advocate (appointed) for respondent No.2

...

**CORAM : SMT. VIBHA KANKANWADI &
SUSHIL M. GHODESWAR, JJ.**

DATE : 02nd SEPTEMBER, 2025

ORDER : (PER : SMT. VIBHA KANKANWADI, J.)

1 Present application has been filed under Section 482 of the Code of Criminal Procedure, 1973 for quashment of the proceedings in Regular Criminal Case No.31/2022 pending before learned Chief Judicial Magistrate, Beed, arising out of First Information Report vide Crime No.185/2021 dated 24.09.2021 registered with City Police Station, Beed, for the offence punishable under Sections 306, 498-A, 323, 504 read with Section 34 of the Indian Penal Code, 1860.

2 Heard learned Advocate Mr. M.P. Gandle for applicants, learned APP Mr. A.M. Phule for respondent No.1 and learned appointed Advocate Mr. Akshay Kulkarni for respondent No.2.

3 It will not be out of place to mention here that after disinclination is shown to grant any relief to applicant No.1, learned Advocate for applicants, upon instructions, sought withdrawal of application as against him. Therefore, application stands dismissed as withdrawn as against applicant No.1. Now, the application proceeded for the reliefs

claimed by applicant Nos.2 and 3.

4 Learned Advocate appearing for applicants has taken us through the entire charge sheet including First Information Report, which is lodged by father of deceased Mahek. It is not in dispute that Mahek got married to applicant No.1 on 04.05.2009 as per Muslim rites. She has twins, who were born in 2010. Applicant No.2 is mother-in-law and applicant No.3 is married sister-in-law. Applicant No.3 is residing at Koparkhairne, New Mumbai, Dist. Thane, whereas applicant Nos.1 and 2 are residing at Beed. Applicant No.1 was serving with D.Ed. College. In First Information Report itself it is stated that applicant No.1 was removed from service in 2012 and thereafter he as well as applicant No.2 started harassing Mahek by saying that she should bring money for the household expenses. Taking into consideration the future of children she had kept quiet. Two years prior to First Information Report i.e. on 24.09.2021 it is stated that Mahek was driven out of the house with two children by applicant Nos.1 and 2 by saying that she should bring amount of Rs.2,00,000/-. The informant states that after eight days he had left Mahek with children at Beed and persuaded the applicants. Informant then states that since 2014 applicant No.1 was having illicit relations with a lady and he was not reporting to the house many days. He used to assault her and give mental cruelty. There was attempt of mediation, but then failed.

Mahek had given phone call to her brother Mohseen on 21.09.2021 stating that she has seen photograph of her husband with the lady and also a small child with them and she was unable to sustain the said fact. Around 7.30 p.m. on the same day informant's another son received phone call stating that Mahek has committed suicide by hanging. Therefore, the informant and prosecution story is that the present applicants have instigated/abetted the commission of suicide by deceased Mahek.

5 Learned Advocate for applicant Nos.2 and 3 states that even if we take First Information Report and material in the charge sheet as it is; yet no specific role has been attributed. All the allegations are appears to be against applicant No.1 – husband. Applicant No.3 was not even in Beed on the day of incident. There is statement of one son of deceased aged 11 years viz. Mohd. Atib Salim Mulani, who has stated about the strained relationship between deceased mother and applicant No.1 – father. He has stated that applicant No.2, the grandmother is good. But, as the father was not earning and was not even staying, applicant No.2 used to quarrel with deceased and used to say that she should bring amount from her parents. In respect of applicant No.3 also he states that whenever she used to come, she used to demand money. However, these statements are vague. There are statements of witnesses, who are either the neighbours or known to deceased and/or

applicants, but they have stated against applicant No.1. In statement of one of the witnesses it has come on record that applicant No.2 is a pensioner. When husband was not giving money and pension amount of applicant No.2 was too meagre, at some times, there might be the demand of money, as the children of deceased were taking education and were growing up. But it cannot be stated in absence of active role that either applicant Nos.2 and 3 had intention that deceased should commit suicide or they had subjected deceased to harassment. It would be an abuse of process of law if applicant Nos.2 and 3 are asked to face the trial.

6 Per contra, learned APP and learned Advocate for respondent No.2, who has been appointed by this Court taking into consideration the allegations for the offence punishable under Section 306 of the Indian Penal Code, strongly opposed the application and submit that statement of son of deceased is sufficient to hold that there is a *prima facie* case for taking cognizance and for trial. The witnesses have then stated that applicant No.2 used to ask deceased to massage her hands and legs, when, in fact, Mahek's hands used to be aching. That means, in spite of her illness applicant No.2 was asking her to do the work and, therefore, it would be the subject of trial.

7 Before turning to the facts of the case, we would like to consider the legal position. In recent decision in **Abhinav Mohan Delkar vs. the State**

of Maharashtra and others, Criminal Appeal Nos.2177-2185 of 2024, decided on 18th August 2025, the Hon'ble Supreme Court has considered many leading cases, i.e., the decision in **Ude Singh and Others. vs. State of Haryana** [(2019) 17 SCC 301], **Pawan Kumar vs. State of Himachal Pradesh** [(2017) 7 SCC 78], **Amalendu Pal vs. State of West Bengal** [(2010) 1 SCC 707], **S.S. Chheena vs. Vijay Kumar Mahajan** [(2010) 12 SCC 190], **Chitresh Kumar Chopra vs. State (NCT Of Delhi)** [(2009) 16 SCC 605], **Madan Mohan Singh vs. State of Gujarat** [(2010) 8 SCC 628], **Prakash and others vs. State of Maharashtra and another** [2024 SCC OnLine 3835], **State of West Bengal vs. Orilal Jaiswal** [(1994) 1 SCC 73]. After taking into consideration all these cases, the Hon'ble Supreme Court, in **Abhinav Mohan Delkar** (supra), observed thus :

“22. What comes out essentially from the various decisions herein before cited is that, even if there is allegation of constant harassment, continued over a long period; to bring in the ingredients of Section 306 read with Section 307, still there has to be a proximate prior act to clearly find that the suicide was the direct consequence of such continuous harassment, the last proximate incident having finally driven the subject to the extreme act of taking one's life. Figuratively, 'the straw that broke the camel's back'; that final event, in a series, that occasioned a larger, sudden impact resulting in the unpredictable act of suicide. What drove the victim to that extreme act, often depends on individual predilections; but whether it is goaded, definitively and demonstrably, by a particular act of another, is the

test to find *mens rea*. Merely because the victim was continuously harassed and at one point, he or she succumbed to the extreme act of taking his life cannot by itself result in finding a positive instigation constituting abetment. *Mens rea* cannot be gleaned merely by what goes on in the mind of the victim.

23. The victim may have felt that there was no alternative or option, but to take his life, because of what another person did or said; which cannot lead to a finding of *mens rea* and resultant abetment on that other person. What constitutes *mens rea* is the intention and purpose of the alleged perpetrator as discernible from the conscious acts or words and the attendant circumstances, which in all probability could lead to such an end. The real intention of the accused and whether he intended by his action to at least possibly drive the victim to suicide, is the sure test. Did the thought of goading the victim to suicide occur in the mind of the accused or whether it can be inferred from the facts and circumstances arising in the case, as the true test of *mens rea* would depend on the facts of each case. The social status, the community setting, the relationship between the parties and other myriad factors would distinguish one case from another. However harsh or severe the harassment, unless there is a conscious deliberate intention, *mens rea*, to drive another person to suicidal death, there cannot be a finding of abetment under Section 306.

24. We have already seen that even a rebuke to “go, kill yourself”; often a rustic expression against distasteful conduct, cannot by itself be found to have the ingredients to charge an offence of abetment to suicide. There is no uniformity in how different individuals respond and react under pressure. Many stand up, some fight back, a few

runaway and certain people crumble and at times take the extreme step of suicide. To put the blame on the pressure imposed and the person responsible for it, at all times, without something more to clearly discern an intention, would not be the proper application of the penal provisions under Section 306.”

8 Taking into consideration the facts on record it is not in dispute that Mahek has committed suicide on 21.09.2021. But as regards alleged illicit relations are concerned, it is stated that she was knowing it since 2014. She was allegedly driven out two years prior to First Information Report. That means, that incident might have taken place somewhere in 2018 – 2019. But as per informant – respondent No.2, he had left her back to matrimonial home within eight days. Thereafter, till 21.09.2021 there appears to be no meeting of deceased with informant and his family members. It can also be seen from the statements of Mohseen Shahanoor Sayyad, Mujammil Shahanoor Sayyad, who are brothers of deceased Mahek. That means, ordinarily only applicant No.2, deceased and twins were residing in the matrimonial home. Applicant No.1 – husband is stated to be occasionally visiting the house, so also, applicant No.3 – sister-in-law. It has come on record that applicant No.2 is a pensioner. Statements of witnesses also show that applicant No.1 was not doing anything to earn. Under such circumstance, when children were growing, taking education, then who was

incurring the expenditure on the household expenses, was a question ? Even the son of deceased says that his father was not doing anything to earn and was not even remaining present in the house. According to him, applicant No.2 was quarreling with deceased. Now, what was the subject of quarrel has not been stated by him. Now, the triggering point appears to be that somewhere around 21.09.2021 deceased Mahek had seen the photograph of lady with husband and small child. Now, she conveyed this fact to her brother Mohseen on 21.09.2021, but in the statement of Mohseen it has not been stated that when she had seen the said photograph in the mobile of her husband. What he states is that deceased conveyed to him that husband had told her that he would go to Surat, but she was not believing that as she had seen the photograph of said lady and there is a small child with them. When she had asked about the said relationship, her husband had told that he has taken amount of Rs.2,00,000/- from the lady and, therefore, he goes to meet her, but there is no such relationship. He was then demanding amount of Rs.2,00,000/- for giving it to the said lady and thereafter the transaction would be closed. Now, this conversation appears to be somewhat contrary, because as per the contention of informant, Mahek had come to know about the illicit relation of husband in 2014 itself. Now, if the child has been born, then it would have raised anxiety, annoyance to Mahek. Entire charge sheet does not show that there was investigation whether the child was born to the

said lady. Some document has been collected in respect of sale deed, but the name does not match. When applicant No.3 had met deceased Mahek prior to 21.09.2021 has not been clarified or there is nothing on record to infer that son of deceased in his statement under Section 161 of the Code of Criminal Procedure does not say that there was any quarrel between applicant No.2 and deceased, just prior to commission of suicide by Mahek. Therefore, in order to show the proximity there is nothing. Therefore, the entire charge sheet does not show that case is *prima facie* made out to attract the ingredients of offences under Sections 306, 498-A, 323, 504 read with Section 34 of the Indian Penal Code as against applicant Nos.2 and 3. Case is made out for exercise of powers under Section 482 of the Code of Criminal Procedure as against them. Hence, following order.

ORDER

- i) Criminal Application stands partly allowed.
- ii) Criminal Application stands disposed of as withdrawn, after disinclination, as against applicant No.1) **Salim Sikandar Mulani**.
- iii) The proceedings in Regular Criminal Case No.31/2022 pending before learned Chief Judicial Magistrate, Beed, arising out of First Information Report vide Crime No.185/2021 dated 24.09.2021 registered

with City Police Station, Beed, for the offence punishable under Sections 306, 498-A, 323, 504 read with Section 34 of the Indian Penal Code, 1860, stands quashed and set aside as against applicant Nos.2) **Shahanoorbi Sikandar Mulani** and 3) **Shamin Yusuf Arab**.

iv) Fees of the appointed Advocate is quantified at Rs.10,000/- (Rupees Ten Thousand only), to be paid by High Court Legal Services Sub Committee, Aurangabad.

(SUSHIL M. GHODESWAR, J.)

(SMT. VIBHA KANKANWADI, J.)

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