



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

1 CRIMINAL APPLICATION NO. 2754 OF 2023

1. Raju s/o Maroti Nilewar
Age 36 years, Occ: Labour
R/o: Palsa, Taluka Hadgaon
District: Nanded.
2. Gayabai w/o Maroti Nilewar
Age 65 years, Occ: Household
R/o: Palsa, Taluka Hadgaon
District: Nanded.
3. Jayshree d/o Ganpat Nilamwar
Age 23 years, Occ: Household
R/o: Warwat, Taluka Kandhar
District: Nanded.
4. Sanjay @ Pintu s/o Maroti Nilewar
Age 30 years, Occ: Labour
R/o: Palsa, Taluka Hadgaon
District: Nanded.

... Applicants
(Orig. Accused)

Versus

1. The State of Maharashtra
Through Police Station Incharge
Vimantal Police Station, Nanded
Taluka and District Nanded.
2. Tarabai w/o Ashok Pandilwad,
Age 50 years, Occ: Labour
R/o: Guru Nagar, Nanded
Taluka and District Nanded.

... Respondents
(R.No.2 Orig. Complainant)

...

Mr. Dattatraya Rambhau Markad, Advocate for Applicants.

Smt. P. R. Bharaswadkar, APP for Respondent No.1 / State.

Mr. Majit Shaikh, h/f Mr. Manoj U. Shelke, Advocates for Respondent No.2.

...

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

DATE : 14th August, 2025.

Per Court:

. Present application has been filed under Section 482 of Cr.P.C. initially for quashing the FIR vide C.R. No.10 of 2023, dated 11th January, 2023, registered with Vimantal Police Station, Taluka and District Nanded, and later on, for quashment of the proceedings in R.C.C. No.537 of 2024, pending before the learned Judicial Magistrate First Class, Nanded, for the offence punishable under Section 306 read with 34 of IPC.

2 The fact which is not in dispute as is emerging is that deceased Ashwini was married to applicant No.1 – Raju about ten years prior to the FIR. They are blessed with two daughters aged 9 and 6, respectively. Applicant No.2 is the mother of applicant No.1 and applicant No.4 is his brother. Applicant No.3 has been stated to be the second wife of applicant No.1.

3 Heard the learned counsel for the applicants and the

learned APP for respondent No.1 / State as well as the learned counsel for respondent No.2.

4 The learned counsel for the applicants has taken us through the entire charge-sheet and submits that if we consider the postmortem report, then the opinion as to the probable cause of death given is “consistent with poisoning, however viscera preserved for chemical analysis”. The CA report has been received, which states that general and specific chemical testing does not reveal any poison in viscera samples. The final cause of death after the CA report appears to have not been taken. Even if we take the prosecution as it is, then it is coming from the statements of the witnesses that since 2015, deceased Ashwini was residing with her paternal aunt i.e. separately from applicant No.1. Of-course, then it is stated that at that time, they were blessed with the elder daughter only, but then the witnesses have stated that applicant No.1 continued to meet deceased Ashwini either at the place of her paternal aunt or in the house of respondent No.2, who is the mother of deceased Ashwini and then second daughter was born. As per the FIR, the incident is stated to have occurred on 2nd January, 2023 around 07:00 pm. The informant states that applicant No.1 had gone to her house and had called Ashwini there. Thereafter, there was quarrel between applicant No.1 and the deceased. Therefore, the informant asked as to why there

were quarreling. Then applicant No.1 told that he wants to give the TV, which he had given to Ashwini, to his maternal aunt. Then Ashwini told that since she had also given part of consideration for purchase of TV, she will not allow the TV to be given to the maternal aunt of applicant No.1. Then the quarrel continued and thereafter, suddenly Ashwini got giddiness and her health started deteriorating. When the informant asked Ashwini, then she told that she consumed poison due to the harassment by the applicants and the husband was pressing for taking back the cases, which she has filed against him. He had brought documents of divorce and had taken her signature forcibly. According to the informant, she herself and her son as well as applicant No.1 shifted Ashwini to the government hospital Vazirabad and then she was shifted to Shankarrao Chavan, Civil Hospital, Vishnupuri. Ashwini succumbed on 6th January, 2023. That means only applicant No.1 was present at the time of alleged incident as per the story. Other applicants were not present at all. The offence punishable under Section 306 of IPC, therefore, cannot be made out as against the other applicants. Even as against applicant No.1, it can be stated that he had not instigated or abetted the commission of suicide. If we consider the statement of informant's son Vishal, then he gives a different story. He is not stating that after applicant No.1 had come to their house, he had called Ashwini. Rather, he gives the sequence that Ashwini came first and thereafter, applicant No.1 came and thereafter, they had a

quarrel on account of TV. He states that applicant No.1 took away the TV and alongwith him Ashwini had also gone. He then states that around 07:00 pm, Ashwini as well as applicant No.1 returned and then Ashwini disclosed that she has consumed poisonous substance as applicant No.1 has ruined her life. Therefore, it will be unjust to ask all the applicants to face the trial.

5 Learned APP submits that after this Court's order on 29th July, 2025, the opinion has been given by the medical officer i.e. the final opinion as "consistent with the poisoning". The fact is on record that there used to be disputes between applicant No.1 and Ashwin after applicant No.1 had performed second marriage with applicant No.3. She has filed various proceedings including the proceedings under Section 498-A of IPC. As applicant No.1 wanted to get rid of those litigations, he was talking sweetly with Ashwini and wanted her to act as he wanted and to give divorce to him. The witnesses have also supported the FIR and therefore, this is not a fit case where the powers under Section 482 of Cr.P.C. can be exercised.

6 Advocate Mr. Majit Shaikh, holding for Mr. M. U. Shelke, learned counsel for respondent No.2 submits that the application has been filed at a premature stage and when the charge-sheet has been filed, let there be trial.

7 Before turning to the factual aspects involved, we would like to have a glance at the legal position governing the field in respect of Section 306 of IPC. In order to prove abetment to commit suicide as contemplated under Section 306 of the Indian Penal Code, the prosecution will have to prove Section 107 of the Indian Penal Code. The law on this point has been summarized by the Honourable Apex Court in ***Swamy Prahaladdas Vs. State of M.P. & Anr., 1995 Supp. (3) SCC 438, Mahendra Singh Vs. State of M.P., 1995 Supp. (3) SCC 731, Ramesh Kumar Vs. State of Chhattisgarh, (2001) 9 SCC 618, Sanju alias Sanjay Singh Sengar Vs. State of Madhya Pradesh, 2002 Cri.L.J. 2796; Chitresh Kumar Chopra Vs. State (Govt. of NCT of Delhi), (2009) 16 SCC 605, Madan Mohan Singh Vs. State of Gujrat and another, reported in (2010) 8 SCC 628; S.S. Chheena Vs. Vijay Kumar Mahajan reported in 2010 All MR (Cri) 3298 (S.C.), State of Kerala and others Vs. S. Unnikrishnan Nair and others, reported in AIR 2015 Supreme Court 3351.***

8 In ***M. Mohan Vs. State, Represented by the Deputy Superintendent of Police, (2011) 3 SCC 626***, the Honourable Apex Court has observed that, abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in

committing suicide, conviction cannot be sustained. In order to convict a person under Section 306 of the Indian Penal Code there has to be a clear *mens rea* to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and this act must have been intended to push the deceased into such a position that he/she committed suicide. It has been further observed that when there is no proximate link between the suicide and the event when deceased was tortured on some pretext or other, then it does not amount to abetment.

9 Now, turning towards the facts, the fact is not in dispute that deceased Ashwini had lodged case under Section 498-A of IPC. The FIR is, in fact, silent about the date, month and year in which applicant No.1 allegedly married applicant No.3 and when the offence under Section 498-A of IPC was filed by her. It also appears that the dispute was also pending before the Family Court, Nanded, and it is stated that in all four offences were registered. Now, the question is, when so many offences were registered, then what was the necessity for Ashwini to meet applicant No.1. From the statement of Kalyani, sister of Ashwini, it would show that Ashwini started residing with the informant in 2015. But the informant says that Ashwini was residing with her paternal aunt. The sister gives another story further stating that applicant No.1 had given a rented accommodation to Ashwini near

Hanuman Gad, where she resided for about 2-3 months and then went to reside with paternal aunt. Another sister of Ashwini namely, Soni Dutta Dubukwad, is giving another story as to where Ashwini was residing. Both the sisters and the brother of Ashwini are stating that applicant No.1 was quarreling with Ashwini by saying that the second child was not begotten from him. With all these background, whether it was then probable that in 2023 i.e. on the day on which the incident took place, applicant No.1 would have met deceased Ashwini in the house of the informant.

10 In the FIR, it is absolutely not stated that applicant No.1 and Ashwini went outside the house and returned after about half an hour to one hour, as claimed by another eye-witness i.e. Vishal. The investigating officer appears to have not found any bottle or substance, which can be said to be poisonous in nature and from the copies of the medical papers, which he has collected now, after the order was passed by this Court, would show that the history that was given was consumption of rat-killing substance. However, as aforesaid, the CA report gives the result of the analysis that general and specific chemical testing does not reveal any poison. The viscera was sent for the analysis. Still, now the final opinion that has been given is that it is “consistent with the analysis”.

11 Even if for the sake of argument, we accept that Ashwini had committed suicide, though as aforesaid it is also in question, yet fact is that Ashwini has expired. Unless it is the evidence on record that it was forcibly administered, it cannot be said to be sufficient enough to array the applicants as accused in any other Section of IPC. The FIR contains the oral dying declaration stating that due to the harassment, Ashwini has consumed the poisonous substance. Even sister Kalyani states that Ashwini had given phone call around 07:00 pm on the mobile of paternal aunt and told that she has consumed poisonous substance. Brother Vishal also states about oral dying declaration. Of-course, his theory is that Ashwini consumed it outside the house and then after returning to his house, she told it accordingly to him. That oral dying declaration was not in the form of forcible administration by applicant No.1. Therefore, in order to prove the offence under Section 306 of IPC when the active role or active part is necessary, that is missing here.

12 The incident is stated to have taken place around 07:00 pm on 2nd January, 2023 and immediately Ashwini was taken to Government Hospital, Vazirabad. The history that was given at the said hospital appears to have not been collected and not forming part of the charge-sheet. Shifting of Ashwini to Civil Hospital, Nanded, appears to be on the same day around 11:20 pm and now the medical

case record has been collected, however, we are unable to get from that record also that the history was taken. But if we consider the statements of witnesses, then Ashwini had given a telephone call also that means she was in a position to speak. Then the question is why her dying declaration was not recorded ? When this question was asked, the investigating officer, who is present before this Court, places a copy of General Diary Entry taken at 00.46 hours on 3rd January, 2023, stating that A.S.I. Lokhande, who appears to be on duty at the hospital, had gone to record the dying declaration of Ashwini. But she told that her mental condition is not proper and therefore, she is unable to give the statement. But arrangements were made for recording it on the next day. But no such statement appears to have been attempted to be recorded. This shows the lethargy on the part of the police officers, who were on duty. When a medico legal case is reported, then there should be attempt by them to take the statements of the injured / persons, who are in the expectation of death, if they are able to give the statements. Again we may refer the statement of sister of Ashwini, namely Kalyani, who rather states that when the police from Vimantal Police Station had come to record the statement, then Ashwini told that it was dispute between the husband and wife and she consumed poisonous substance. If this statement would have been given then it is rather against the prosecution. Merely because there is a dispute between the husband and wife, the consumption of

poisonous substance will not amount to abetment to commit suicide, if there is consumption of poisonous substance.

13 Thus, it can be seen that though there were disputes between applicant No.1 and Ashwini and the litigations were filed by Ashwini against him, right from 2018, there was then no proximity of those disputes or acts on 2nd January, 2023. The immediate dispute, as narrated, is on the point of taking TV. That cannot be the ground, which can be said to be triggering the abetment or cause for consumption of poisonous substance. Therefore, even against applicant No.1, the ingredients of offence under Section 306 of IPC are not getting attracted. It would be an abuse of the process of law if the applicants are asked to face the trial and therefore, this is a fit case for exercise of powers under Section 482 of Cr.P.C., as it is befitting in the guidelines laid down in ***State of Haryana and Ors Vs. Ch. Bhajan Lal and Ors***, reported in, ***AIR 1992 SCC 335***. Hence, we pass the following order:-

ORDER

- I. The application stands allowed.
- II. The proceedings in R.C.C. No.537 of 2024, pending before the learned Judicial Magistrate First Class, Nanded, and the Sessions Case, if any, if the case is

committed to the Court of Sessions, arising out of FIR vide C.R. No.10 of 2023, dated 11th January, 2023, registered with Vimantal Police Station, Taluka and District Nanded, for the offence punishable under Section 306 read with 34 of the IPC, stands quashed and set aside as against all the applicants.

nga

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