

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 2841 OF 2019

Dhananjay Sitaram Raorane & Anr. Petitioners

Versus

The State of Maharashtra & Anr. Respondents

Mr. Mehul Shah for the Petitioners.

Ms. Anamika Vichare for the Respondent No.2.

Ms. Anuja S. Gotad, A.P.P. for the State.

Mr. Vishal R. More, Head Constable, Chiplun Police Station present.

**CORAM: RAVINDRA V. GHUGE AND
RAJESH S. PATIL, JJ.**

RESERVED ON : 2nd JANUARY, 2025

PRONOUNCED ON : 7th JANUARY, 2025

JUDGMENT (PER - RAJESH S.PATIL, J.) :-

1. The present Writ Petition has been filed under Article 226 of the Constitution of India and under Section 482 of the Code of Criminal Procedure, 1973, by both the original Accused persons against whom offence vide Crime No. 50 of 2019 has been registered at Chiplun Police Station, Taluka Chiplun, District Ratnagiri, at the

behest of Respondent No.2 for the offence punishable under Sections 306, 498A, 109, 201 of Indian Penal Code.

2. This Court by its order dated 7th October, 2019 (Coram : Ranjit More & N.J.Jamadar, JJ.) issued notice to Respondent No.2. Further by an order dated 17th February, 2020 (Coram : B. P. Dharmadhikari & N. R. Borkar, JJ.) this Court took on record the charge-sheet filed in the proceedings and in the meanwhile stayed further proceedings in furtherance of C.R.No. 50 of 2019. After Respondent No.2 appeared in the present proceedings through an advocate, on 2nd January 2025, we have heard advocate Mr.Mehul Shah for the Petitioner, advocate Ms.Anuja Gotad, A.P.P. for the State, advocate Ms.Anamika Vichare for Respondent No.2.

3. It has been vehemently submitted on behalf of the Petitioner that the marriage between Petitioner No.1 and the deceased had taken place in the year 2002 which was not a arranged marriage, but a love marriage and after a period of 17 years, the unfortunate incident had occurred. The deceased was a local Sarpanch and was

also a mother of son Shreedaya who was studying in 10th standard at the relevant time. The deceased had even earlier attempted to commit suicide. The Informant who is the sister of the deceased is attached to a rival political party, to that of the deceased, who was a Sarpanch of the local village. The father of the deceased in his statement to the police, has categorically mentioned that he has no grievance against the Petitioners. It is further submitted that the husband of Petitioner No.2 and the Petitioner No.1 were partners in business, therefore the wife of the Petitioner No.1 who is now deceased and Petitioner No.2 used to interact with each other. It is further submitted that in fact, the deceased had made her last telephonic call to the Informant. The fact that the father of the deceased had no complaint against Petitioners, and only the Informant who is the sister of the deceased, belonging to a different political ideology and had filed a complaint after three days proves that the said complaint was an afterthought complaint filed with the ulterior motives to take revenge. The Sessions Court had granted bail to Petitioner No.2 immediately on 13th March, 2019 and the High Court had granted bail to Petitioner No.1 on 20th March, 2019. A bare reading of FIR, shows that the ingredients of offence punishable under

Sections 306, 498A, 109, 201 read with 34 of the Indian Penal Code are not made out.

4. Learned advocate appearing for the Petitioner has relied on the decision of this Court in *Meenabai Deepak Mahale & Ors. vs. the State of Maharashtra*, reported in *2024 SCC OnLine Bom 952*. He submitted that the Writ Petition be allowed and the F.I.R. be quashed and set aside.

5. *Per contra*, the learned A.P.P. as well as learned advocate appearing for Respondent No.2 strongly opposed the Petition and submitted that the perusal of the entire FIR and charge-sheet would show that there is ample evidence against both Petitioners to convict them under the offence under Sections 306, 498A, 109, 201 read with 34 of the Indian Penal Code. It is further submitted that once Charge-Sheet is filed this court should not entertain the present writ petition. The Statement recorded of witnesses and the fact that it has come on record that the Accused no.1/ petitioner no.1, has deleted data from the mobile phone, further proves that the Accused persons needs to face

trial and the F.I.R. can't be quashed at this stage.

6. For quashing criminal proceedings under Section 482 of Criminal Procedure Code, and under Article 226 of the Constitution, we have to see whether the allegations in the complaint and F.I.R. *prima facie* indicate that there are serious allegations against the accused of having committed an offence.

7. The present Writ Petition has been jointly preferred by both the Accused. The Accused No.1/Petitioner No.1 is the husband of the deceased lady, who has committed suicide. It is the case of the prosecution that the deceased was under tremendous pressure as she got knowledge that Petitioner No.1, who is her husband and Petitioner No.2 who is the wife of the partner of her husband, had illicit relationship. The F.I.R. has been lodged by the police after a complaint being lodged by the Informant who is the sister of the deceased. The Informant has come up with the case that due to the illicit relationship of Petitioner No.1, with the Petitioner No.2, the deceased was under tremendous pressure. Hence, she committed the suicide on 5th

February, 2019 by consuming poison, due to which the deceased died on 6th February, 2019. In the complaint attached to the F.I.R. it has been specifically stated as under : “ माझ्या नवऱ्याचे बाहेर काय प्रताप आहेत त्याने त्याची पार्टनर स्मिता झा हीचेशी त्याची जवळीक वाढली असून माझ्याकडे साधे बोलायला सुद्धा वेळ नाही. त्याने व स्मिता झा यांनी एकत्र फोटो देखील काढले आहेत. तुला मी विचारत नाही असे वेळोवेळी बोलून माझ्याशी वाद घालून त्रास देत असतो परंतु त्याबाबत मी तुझ्याकडे व माहेरी काम सांगून मी माझ्या इज्जतीला जपते. पण त्याचा माझा नवरा गैरफायदा घेतोय याला आता खूप कंटाळली आहे माझा आज वाढदिवस आहे परंतु माझ्या नवऱ्याने मला विष सुद्धा केले नाही तर इतरांचे फोन कशाला घेऊ त्यांना त्यांच्या मैत्रिणीकडे बोलायला वेळ असतो. मी ज्या बेडरूम मध्ये झोपले तर तो दुसऱ्या बेडरूम मध्ये जाऊन झोपतो. माझी अपुलीकीने कधी चौकशी करत नाही मला जगण्यात काही अर्थ नाही अशी रडल्या आवाजात बोलत होती त्यावेळी मी तिची समजूत काढली त्यानंतर मी तिच्या नवऱ्याला फोन करून अपूचा आज वाढदिवस असताना तू तिला का विष केले नाहीस असे विचारले त्यावेळी त्यांनी जाऊदे तिची नेहमीचीच नाटके असतात असे रागाने म्हणाला.....”

8. The police has recorded the statement of witness during the information which includes the statement of the son (Shreedaya) of Petitioner No.1 and the deceased. His statement is part of the charge-sheet which is annexed in the present proceedings at page no. 109. In the said statement, the son Shreedaya has mentioned that on 5th February, 2019 when his mother was taken to hospital, his father had

handed over the mobile phone of his mother to him and while checking the said mobile phone, he came across a message which reads as under :-

“आज तुला बर्थडे चे सरप्राईज आहे. यापुढे तुला माइयावर रागवायचा चान्स मिळणार नाही आता तुला माझा चेहराही दिसणार नाही. गुड बाय”

9. The police in their reply to the bail application, a copy of which is annexed to the charge-sheet has specifically stated that Petitioner No.1 has deleted WhatsApp messages and photographs from the mobile phone of the deceased. Hence, a vital part of evidence has been destroyed by Petitioner No.1, which attracts the provisions of Section 201 of the Indian Penal Code. The police has further stated that Petitioner Nos. 1 and 2 have instigated the deceased to commit suicide. They have further stated that though the deceased has consumed poison, the container from which the poison was consumed, is not recovered and the police has an apprehension that the Accused has destroyed the same. The police has also doubt about the *prima facie* medical treatment given to the deceased, by the brother of Petitioner No.1, was not proper.

10. The police has also obtained laboratory analysis conclusion and report of Directorate of Forensic Science Laboratory. So also, they obtained CDR of the mobile number of the deceased and the Accused. The son of the deceased has mentioned that he was staying with the Informant, who is his mother's sister as he was studying in 10th standard. Therefore, the theory put up by the Petitioners that the Informant due to difference in political ideology and out of ulterior motives has filed complaint before police against the Petitioners, according to us is highly unbelievable. Print outs of the WhatsApp messages between Petitioner No.1 and Petitioner No.2 are annexed to the charge-sheet, which are enclosed at page no. 76.

11. As far as the decision referred by Petitioners in case of ***Meenabai Deepak Mahale & Ors.*** (supra) of the Division Bench of this Court is concerned, the facts of that case were very different. In the said case, the brother of the deceased wife had roped in, the husband of the deceased alongwith his relatives. In the said proceedings, based on the statement of the daughter of the deceased, the Division Bench came to the conclusion that ingredients of offence punishable under Sections

306, 498A, 323, 504 and 34 of the Indian Penal Code are not made out.

12. In the present proceedings, the deceased has committed suicide on her birthday. Her son was studying in 10th standard and staying with his mother's sister (मावशी)/Informant, who has made a categorical statement with the police during investigation that he had checked the WhatsApp message on his mother's mobile. The said WhatsApp message has been reproduced in the earlier part of the judgment. Hence, the observations made in the judgment of ***Meenabai Deepak Mahale & Ors.*** (supra) will not be applicable to the present proceedings.

13. The Supreme Court in the judgments of (i) ***State of Haryana & Ors. vs. Ch. Bhajan Lal & Ors., AIR 1992 SC 604***, (ii) ***Rajeev Kourav vs. Baisahab & others, (2020) 3 SCC 317*** and (iii) ***Kaptan Singh vs. State of Uttar Pradesh and others, (2021) 9 SCC 35***, have held that exercise of powers under section 482 CrPC to quash the proceedings is an exception and not a rule. Appreciation of evidence is not permissible at the stage of quashing of proceedings is exercise of

powers under Section 482 CrPC.

14. In the recently reported judgment of ***CBI vs. Aryan Singh, AIR 2023 SC 1987***, the Supreme Court has held that while examining the power under Section 482, the High Court should not conduct a mini trial. Similarly in the judgment of ***State of Odisha vs. Pratima Mohanty and others, (2022) 16 SCC 703***, the Supreme Court has held that once the charge-sheet is filed, the High Court should be reluctant to quash the complaint. Paragraph no.8.2 of the judgment reads as under :

8.2 It is trite that the power of quashing should be exercised sparingly and with circumspection and in rare cases. As per the settled proposition of law while examining an FIR/complaint quashing of which is sought, the court cannot embark upon any enquiry as to the reliability or genuineness of allegations made in the FIR/complaint. Quashing of a complaint/FIR should be an exception rather than any ordinary rule. Normally the criminal proceedings should not be quashed in exercise of powers under section 482 CrPC when after a thorough investigation the charge-sheet has been filed. At the stage of discharge and/or considering the application under section 482 CrPC the courts are not required to go into the merits of the allegations and/or evidence in detail as if conducting the mini-trial. As held by this court the powers under section 482 CrPC are very wide, but conferment of wide power requires the court to be more cautious. It casts all onerous and

more diligent duty on the Court.

[Emphasis supplied]

15. In the present proceedings, the charge-sheet has been already filed on 31st December 2019 and the police have recorded the statement of 35 witnesses, copies of which are enclosed with the charge-sheet and forms part of the records of the present proceedings. As this Court had granted stay to the trial proceedings by Order dated 17th February 2020 the matter before the Trial Court did not proceed further.

16. After considering the contents of FIR and the various documents on record attached to the FIR, and the Charge-sheet, we are satisfied that it constitutes the ingredients of the offences alleged. Taking into account the law as laid down by the Supreme Court in the judgments referred above, we find that there is no merit in the present Writ Petition and the same deserves to be dismissed. Hence, the following order :-

ORDER

- (i) **The Writ Petition stands dismissed.**

(ii) Needless to state, any observations made herein are only for the purposes of deciding the Writ Petition only and would have no bearing on the final adjudication of the proceedings.

[RAJESH S. PATIL, J.]

[RAVINDRA V. GHUGE , J.]