

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 119 OF 2020

1. Sayyed Lal Amir Sayyed
Age: 52 years, Occu.: Labour,
R/o. Shirasgaon, Tq.Shrirampur,
Dist.Ahmednagar.
2. Aalim Sayyedlal Sayyed
Age: 26 years, Occu.: Labour,
R/o. Shirasgaon, Tq.Shrirampur,
Dist.Ahmednagar.
3. Tayra Sayyedlal Sayyed
Age: 50 years, Occ: Household,
R/o. Shirasgaon, Tq.Shrirampur,
Dist.Ahmednagar.
4. Raju Shaikhlal Shaikh
Age: 45 years, Occ.: Business,
R/o.Belapur, Tq.Shrirampur,
Dist.Ahmednagar.
5. Shabana Raju Shaikh
Age: 38 years, Occu.: Household,
R/o. Belapur, Tq. Shrirampur,
Dist.Ahmednagar.
6. Abdul Nasir Shaikh,
Age: 30 years, Occu.: Business,
R/o. Hamarapur, Tq.Shrirampur,
Dist.Ahmednagar.
7. Jabina Abdul Shaikh
Age: 27 years,
Occu.: Household, R/o. Hamarapur,
Tq.Shrirampur, Dist.Ahmednagar.

... Applicants.

Versus

1. The State of Maharashtra
Through Police Station Officer,
Shrirampur City Police Station,
Shrirampur, Dist.Ahmednagar.
2. Raheman Balambhai Shaikh
Age: 54 years, Occu.: Business,
R/o. Near Shirasgaon Masjid,
Shirasgason, Tal.Shrirampur,
Dist.Ahmednagar.

... Respondents

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Mr.Shaikh Mazhar A.Jahagirdar, Advocate for Applicants.

Mr.M.M.Nerlikar, APP for Respondent No.1-State.

Mr.Shaikh Tarek Mobin H., Advocate for Respondent No.2

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**CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

DATE : 16th December, 2022

JUDGMENT (PER ABHAY S. WAGHWASE, J.) :

. By way of instant application, applicants herein, who are arraigned as accused in Crime No.196 of 2019, registered at Shrirampur City Police Station, Shrirampur District – Ahmednagar, for the offence punishable under Section 498-A, 306, 323, 504, 506 read with Section 34 of the Indian Penal Code, are praying for quashing the said crime and consequential charge-sheet arising out of it.

2. Brief background of the case :

Raheman Shaikh, father of deceased Aasma, approached Shrirampur

City Police Station, Shrirampur, District Ahmednagar on 11-03-2019 informing about his deceased daughter to be married with Salim Sayyed Lal Sayyed on 08-05-2011. He has alleged that after two months of marriage, father-in-law brought his daughter to informant's house levelling allegations that she was back answering and she was unable to do household work. Informant claims that after he enquired with his daughter, she told that her husband after getting drunk, abused her and beat her. Parents-in-law and brother-in-law also beat her and put up demand of Rs.50,000/-. On failure to meet such demand, she was driven out of the house. Getting fed-up of such ill-treatment, his daughter hanged herself on 10-03-2019 and committed suicide. Hence, the complaint.

3. In the backdrop of above complaint, Police registered Crime No.196 of 2019 for the aforesaid offences against present applicants and investigation was carried out. On conclusion of the investigation, charge-sheet came to be filed. It is this crime and consequential proceeding, which are now sought to be quashed by the applicants herein by praying to invoke inherent powers under Section 482 of the Code of Criminal Procedure (for short 'Cr.P.C.').

Submissions

4. Learned Advocate for the applicants, after informing status of each of the applicants and their relation with the deceased, pointed out that marriage

is apparently of 2011. Allegations are petty and general in nature. According to him, there was no demand, ill-treatment or taunting nor there was any physical or mental ill-treatment. He pointed out that behaviour of deceased herself was not proper. That, it is an attempt to falsely implicate husband and in-laws that too after more than 6 to 7 years of marriage. There was no demand and for what purpose amount was sought is also not stated in FIR. He pointed out that deceased repeatedly left the company of her husband and was required to fetch time and again. Taking us through the FIR, he pointed out that necessary ingredients for attracting offence under Section 498-A of Indian Penal Code (IPC) and more particularly, under Section 306 of the IPC, are completely missing. He submits that there was no abetment or harassment which was of such nature that would compel deceased to commit suicide. On this count, he invited our attention to settled legal position on this point and would point out that in absence of any of the ingredients for the offence for which crime is registered, involvement of the applicants is with ulterior motive. That it is apparently an abuse of process of law. Thus, he prayed to invoke inherent powers of this Court under Section 482 of the Cr.P.C. for granting relief to the applicants as prayed.

5. While opposing the application, learned APP for respondent No.1 submits that from the FIR it is apparent that deceased regularly informed her father about ill-treatment being given to her by husband and in-laws. That,

she was subjected to mental and physical cruelty time and again. Subsequently, husband started suspecting her character. There is allegation about raising demand of Rs.50,000/- and on failure to meet said demand, she was allegedly harassed and ill-treated. Only because of such harassment and ill-treatment, it is his submission that deceased committed suicide. That, there are statements of relatives recorded under Section 161 of Cr.P.C., which clearly show that applicants - accused are responsible for ill-treatment and suicidal hanging. Therefore, applicants accused are liable to face prosecution.

6. On behalf of the informant, learned Advocate also argued on the same line by taking us through the FIR and pointing out that the applicants are named, their roles are specified and there are allegations of physical and mental ill-treatment to the deceased by the applicants. That husband suspected character of the deceased, beat her after getting drunk and other accused also beat her as their illegal demand was not met. Only because of such harassment and ill-treatment, deceased committed suicide. Therefore, all accused being responsible and as investigation reveals their complicity, he requested to dismiss the application.

7. Here applicants have prayed to invoke inherent powers of this Court under Section 482 of Cr.P.C..

As to when powers under Section 482 of Cr.P.C. can be exercised is fairly

settled by slew of judgments including *Inder Mohan Goswami and Anr. Vs. State of Uttaranchal and Ors. ; (2007) 12 SCC 1 and Mahendra K.C. Vs. State of Karnataka and Another ; (2022) 2 Supreme Court Cases 129.*

8. FIR is registered for commission of offence under Section 306 of IPC and therefore, it would be appropriate to even give a brief account, as to when penal provision under Section 306 of IPC would be attracted and what are the necessary ingredients for attracting said section.

Section 306 of IPC deals with punishment for abetment of suicide. Section 107 of IPC deals with as to what amounts to **abetment**. By umpteen judgments, time and again Hon'ble Apex Court and High Courts have dealt with and discussed as to when charge of Section 306 of IPC can be said to be brought home. A few landmark judgments on this point which could be referred are as under.

The Hon'ble Apex Court in *Mahendra K.C.* (supra) in para 23 to 25, has made the following observations :

“23. Section 306 IPC provides for punishment of the abetment of suicide:

“306. Abetment of suicide. - If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.” Section 107 IPC defines the expression “abetment”:

Section 107 IPC defines the expression “abetment”:

“107. Abetment of a thing- A person abets the doing of a thing, who -

First. - Instigates any person to do that thing; or

Secondly. - Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or
Thirdly. - Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1. - A person who by willful misrepresentation, or by willful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.”

24. *The essence of abetment lies in instigating a person to do a thing or the intentional doing of that thing by an act or illegal omission. In Ramesh Kumar v. State of Chhattisgarh ; (2001) 9 SCC 618 : 2002 SCC (Cri) 1088, a three-Judge Bench of this Court, speaking through R.C. Lahoti, J. (as the learned Chief Justice then was), observed: (SCC p. 629, para 20)*

“20. Instigation is to goad, urge forward, provoke, incite or encourage to do "an act". To satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. The present one is not a case where the accused had by his acts or omission or by a continued course of conduct created such circumstances that the deceased was left with no other option except to commit suicide in which case an instigation may have been inferred. A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation.”

25. *A two-Judge Bench of this Court in Chitresh Kumar Chopra v. State (NCT of Delhi); (2009) 16 SCC 605 : (2010) 3 SCC (Cri) 367, speaking through D.K. Jain, J., observed: (SCC pp. 611-12, paras 19-20)*

“19. As observed in Ramesh Kumar [(2001) 9 SCC 618 : 2002 SCC (Cri) 1088], where the accused by his acts or by a continued course of conduct creates such circumstances that the deceased was left with no other option except to commit suicide, an “instigation” may be inferred. In other words, in order to prove that the accused abetted commission of suicide by a person, it has to be established that:

(i) the accused kept on irritating or annoying the deceased by words, deeds or wilful omission or conduct which may even be a wilful silence until the deceased reacted or pushed or forced the deceased by his deeds, words or wilful omission or conduct to make the deceased move forward more quickly in a forward direction; and

(ii) that the accused had the intention to provoke, urge or encourage the deceased to commit suicide while acting in the manner noted above. Undoubtedly, presence of mens rea is the necessary concomitant of instigation.

20. In the background of this legal position, we may advert to the case at hand. The question as to what is the cause of a suicide has no easy answers because suicidal ideation and behaviours in human beings are complex and multifaceted. Different individuals in the same situation react and behave differently because of the personal meaning they add to each event, thus accounting for individual vulnerability to suicide. Each individual's suicidality pattern depends on his inner subjective experience of mental pain, fear and loss of self-respect. Each of these factors are crucial and exacerbating contributor to an individual's vulnerability to end his own life, which may either be an attempt for self-protection or an escapism from intolerable self.”

In the case of ***State of Kerala and Ors. Vs. Unnikrishnan Nair and Ors.;***

(2015) 9 SCC 639, the Hon’ble Apex Court has observed as under :

“10. The aforesaid provision was interpreted in Kishori Lal Vs. State of M.P.; (2007) 10 SCC 797, by a two-Judge Bench and the discussion therein is to the following effect :

“6. Section 107 IPC defines abetment of a thing. The offence of abetment is a separate and distinct offence provided in IPC. A person, abets the doing of a thing when (1) he instigates any person to do that thing; or (2) engages with one or more other persons in any conspiracy for the doing of that thing; or (3) intentionally aids, by act or illegal omission, the doing of that thing. These things are essential to complete abetment as a crime. The word “instigate” literally means to provoke, incite, urge on or bring about by persuasion to do any thing. The abetment may be by instigation, conspiracy or intentional aid, as provided in the three clauses of Section 107. Section 109 provides that if the act abetted is committed in consequence of abetment and there is no provision for the punishment of such abetment, then the offender is to be punished with the punishment provided for the original offence. “Abetted” in Section 109 means the specific offence abetted. Therefore, the offence for the abetment of which a person is charged with the abetment is normally linked with the proved offence.”

11. In *Amalendu Pal Vs. State of W.B.; (2010) 1 SCC 707*, dealing with expression of abetment the Court observed : (SCC pp.712-713 para 14)

“14. The expression “abetment” has been defined under Section 107 IPC which we have already extracted above. A person is said to abet the commission of suicide when a person instigates any person to do that thing as stated in clause Firstly or to do anything as stated in clauses Secondly or Thirdly of Section 107 IPC. Section 109 IPC provides that if the act abetted is committed pursuant to and in consequence of abetment then the offender is to be punished with the punishment provided for the original offence. Learned counsel for the respondent State, however, clearly stated before us that it would be a case where clause Thirdly of Section 107 IPC only would be attracted. According to him, a case of abetment of suicide is made out as provided for under Section 107 IPC.”

The other landmark rulings on above point are *Praviee Pradhan v. State of Uttaranchal* ; (2012) 9 SCC 734, *Vajjnath Kondiba Khandke v. State of Maharashtra* ; (2018) 7 SCC 781, *Ude Singh v. State of Haryana* ; (2019) 17

SCC 301, ***Gurcharan Singh v. State of Punjab*** ; (2020) 10 SCC 200 and ***Rajesh v. State of Haryana*** ; 2020 15 SCC 359.

9. At the admission stage, when this Court expressed its disinclination to grant relief to applicant Nos.1 to 3 herein, learned Advocate for the applicants sought leave to withdraw the application to their extent. Accordingly, leave is granted. Therefore, instant application survives only as regards applicant Nos.4 to 7.

10. Bearing in mind settled legal requirements on the point of exercise of inherent powers under Section 482 of Cr.PC. and penal Section 306 of IPC discussed in aforesaid paragraphs, we proceed to examine the case in hand.

On minutely going through the FIR, it transpires that informant's daughter Aasma was married to accused No.1 on 08-05-2011. It seems that after two months of marriage, deceased was brought to informant's home by her father-in-law levelling allegations against Aasma for not doing work properly and back-answering. Informant claims that his daughter informed him that her husband after getting drunk used to abuse her. There are allegations that in-laws also subjected her to ill-treatment, abused her and they used to say that they did not like her and she did not bring dowry and so she was asked to arrange Rs.50,000/-. It is alleged in the complaint that maternal cousin mother-in-law namely Shabana (applicant No.5), her

husband namely Raju (applicant No.4), who were residents of Belapur, alongwith sister-in-law namely Jabina (applicant No.7) and her husband namely Abdul (applicant No.6), who were residents of Hamarapur, Tq.Vaijapur, visited matrimonial house of deceased and they said that Salim Sayyed Lal Sayyed would have got a better looking girl and they suggested that, if the amount demanded is not met, Aasma should be driven out of the house. It is alleged in the FIR that on their instigation, amount was demanded. Informant further alleged that deceased Aasma was sensitive and emotional in nature and in spite of such ill-treatment, she went to reside with her husband but again she was complaining about ill-treatment given to her by the husband and in-laws. Finally, informant claims that on 10-03-2019, he got news about his daughter committing suicide and hence, FIR.

11. On taking audit of FIR, it is apparent that there are allegations of beating and ill treatment only against applicant Nos.1 to 3. As regards applicant Nos.4 to 7 are concerned, it seems that their names are taken in the backdrop of their alleged visit to the house of applicant Nos.1 to 3 and saying that a better girl could have been arranged for accused No.1 husband and also suggesting that she should be asked to fetch Rs.50,000/- or else she should be driven out of the house. It is pertinent to note that firstly allegations against applicants 4 to 7 are sweeping in nature. Alleged utterance is attributed to all in chorus. Even exactly when said applicant Nos.4 to 7 visited the house of

deceased, has not been revealed in the FIR. Apparently, in the title, their residential addresses are shown to be at distinct places. As regards applicant Nos.4 to 7 are concerned, in the statement of witnesses recorded under Section 161 of Cr.P.C. also it is merely stated that they used to visit and raise quarrel. Each of them have given monotonous statement without specifying details.

To attribute abetment, in our considered opinion, the exact time and date of visit of such applicants was essential, more particularly, to connect them to suicidal hanging. Proximity of their visit to the house of deceased and alleged suicide was very crucial to hold them liable for the offence of abetment of suicide. What exactly happened and who played which role on the date of incident is conspicuously missing from FIR as well as statements of witnesses recorded under Section 161 of Cr.P.C.

12. The residue that falls back on examining record before us is that present applicant Nos.4 to 7 are not family members residing in same house and furthermore there are omnibus allegations against them for the offence under Section 498-A of IPC. Likewise even as regards to commission of offence under Section 306 of IPC is concerned, there is solitary incident alleging that they visited house of husband and deceased and said that accused husband could have been married to a better girl and she should be asked to bring money. The very essential for attracting offence under Section 306 of IPC i.e.

continuous harassment, instigation, abetment coupled with *mens rea* is not surfacing from the record.

Therefore, in the light of above discussion, in our view, FIR is misplaced and misdirected against present applicant Nos.4 to 7. Making them face trial with such quality and nature of evidence in our considered opinion, would amount to subjecting them to injustice. It is a clear abuse of process of law only as against them. For ends of justice to meet, therefore, we are inclined to grant relief to applicant Nos.4 to 7. The cumulative effect of available material on record impels us to extend the relief sought by them. Hence, the following order:

ORDER

- (I) Application is partly allowed.
- (II) Application of applicant Nos.1 to 3 is disposed of as withdrawn.
- (III) Application to the extent of applicants Nos.4 to 7 is allowed in terms of prayer clauses-[B].
- (IV) Application is accordingly disposed of.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)

SPT