



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 1092 OF 2023

1. Varun S/o. Suresh Dhupe,
Aged about 32 years,
Occ.-Service, R/o Flat No. 46,
Shilpa Co-operative Society,
Manish Nagar, Nagpur – 440015.
 2. Suresh S/o. Laxmanrao Dhupe,
Aged 60 years, Occ.-retired, R/o Flat No. 46,
Shilpa Co-operative Society,
Manish Nagar, Nagpur – 440015.
 3. Vibhavari W/o. Suresh Dhupe,
Aged 54 years, R/o Flat No. 46,
Shilpa Co-operative Society,
Manish Nagar, Nagpur – 440015.
-Applicants
- Vs.

1. The State of Maharashtra,
through Police Station Officer,
Bharati Vidyapeeth Police Station, Pune.
 2. Shri. Sanjiv S/o. Gulabrao Ukey,
Aged about 60 years, Occ.-retired,
R/o. 118, Santaji Society, Manish Nagar,
Nagpur.
-Respondents

Mr. Pratik Puri a/w Ms. Shilpa Pawar for the Applicants.
Mr. Anand S. Shalgaonkar, A.PP for the Respondent-State.
Mr. S. B. Trivedi for Respondent No. 2.

CORAM : A. S. GADKARI AND
DR. NEELA GOKHALE, JJ.

RESERVED ON : 19th SEPTEMBER 2024.

PRONOUNCED ON : 07th OCTOBER 2024.

JUDGMENT (Per Dr. Neela Gokhale, J.) :-

1) Rule. Rule made returnable forthwith. By consent of the parties, the Application is finally heard.

2) Applicants seek quashing of F.I.R.No.383 of 2023 dated 18th June 2023 registered with the Bharati Vidyapeeth Police Station, Pune for offences punishable under Sections 498-A, 306, 323, 504, 506 read with 34 of the Indian Penal Code ("IPC").

3) The Applicants are the husband, the father-in-law and the mother-in-law of the deceased daughter of the Respondent No.2. The facts of the case in brief are as under:

3.1) The deceased daughter of the Respondent No.2 namely, Ms. Harshal married the Applicant No.1 on 3rd January 2021 and started residing in the joint family of her husband. It is alleged that the Applicants treated Ms. Harshal with utmost amount of mental and physical cruelty. She was made to work like a domestic help in the ten months duration of her stay with her in-laws. She was made to do all the household work single handedly including cleaning the house, cooking all meals, washing all clothes and utensils mopping the floor of the entire house three times a day, etc.

3.2) Ms. Harshal communicated the incidents of ill-treatments to her parents, but they advised her to adjust as she was a newly wed bride. Thereafter, Ms. Harshal and her husband went to Bangalore since they got employment there. In November 2021, Ms. Harshal's parents went to Bangalore to visit them. At that time, Ms. Harshal's in-laws and husband always taunted her that her parents should not interfere in their family life. Hence, the Respondent No.2 did not visit Ms. Harshal and her in-laws for a

period of one and half year thereafter.

3.3) Applicant No.1 was an alcoholic and used to abuse and insult Ms. Harshal in front of others. He demanded that Ms. Harshal compel the Respondent No.2 to transfer his flat at Shankarpur at Nagpur to her and the Applicant No.1. There are other specific instances of cruelty which are enumerated in the F.I.R.

3.4) During regular quarrels and abuses to Ms. Harshal, the Applicants No.2 and 3 always encouraged and provoked Applicant No.1 to divorce Ms. Harshal. On the fateful day of 28th May 2023, Applicant No.1 and his aunt phoned Ms. Harshal and told her that they were coming to the house to collect the Applicant No.1's belongings as he was going to divorce her and intended not to continue cohabitation with her. This phone call was made at 4:30 p.m. At 5:45 pm., the aunt telephoned Respondent No.2 and informed him that Ms. Harshal had locked herself in the room and committed suicide. Even thereafter, the Applicants continued to berate and abuse Ms. Harshal. The Respondent No.2 thus filed the present F.I.R..

4) Mr. Pratik Puri, learned counsel appeared for the Applicants and Mr. S. B. Tiwari, appeared for the Respondent No.2. Mr. A. S. Shalgaonkar, learned APP represents the State.

5) Mr. Puri submitted that *firstly*, the Applicant No.1 and the deceased were living separately for three months prior to the incident and hence the allegations are substanceless; *secondly*, there is a delay of twenty days in filing the F.I.R.; *thirdly*, there was no demand of money or any ill-

treatment by the Applicants and there was no proximity between the alleged acts of harassment and commission of suicide, and *lastly*, no case was made out to justify prosecuting the Applicants.

6) Mr. Tiwari vehemently opposed the Petition and pointed to specific allegations made by Respondent No.2 in the F.I.R. He contends that the grounds set out in the Application are not sufficient to justify quashing of the case and the allegations in the F.I.R. are serious enough to require complete investigation and trial. He also submitted that since the deceased committed suicide within two years of marriage there is a presumption of Section 113-A of Indian Evidence Act to justify prosecution. He thus prays that the Petition be dismissed.

7) Mr. Shalgaonkar supported the contentions of Mr. Tiwari.

8) We have heard learned counsel for all the parties and perused the record with their assistance. A plain but careful reading of the F.I.R. makes it evident that Ms. Harshal was treated with utmost mental and physical cruelty by the Applicants. She reported this cruelty to her parents, however the parents requested her to adjust with the family members of her husband since she was a newly wed bride. They also told her that these may be teething problems and gradually they will bond as a family and things will get better. However, the ill-treatment continued unabated. Even when the Applicant No.1 and Ms. Harshal shifted to Bangalore, there were extreme abuses and insults to Ms. Harshal. The Applicant No.1 abused her in a drunken state. After shifting to Pune again, he always threatened to

divorce her. Ms. Harshal was at her tether's end and was completely frustrated. She repeatedly confided her plight to her parents.

9) The F.I.R. also indicates that there was a close proximity between the time of threat of divorce by Applicants followed by heated arguments and the commission of suicide by Ms. Harshal. Thus, there is a specific role attributed to the Applicants herein in the F.I.R. Admittedly, investigation is not complete as yet. There is also a presumption against these Applicants since the death of Ms. Harshal took place within two years of the marriage and under suspect conditions.

10) Section 306 of the IPC makes abetment to commit suicide as an offence. Section 107 of the IPC, which defines the abetment of a thing, reads thus:

*“Section 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 — A person who, by wilful misrepresentation, or by wilful 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.”

(underline supplied)

11) In the facts of this case, second and third category in Section 107, will have no application. Hence, the question is whether the appellants instigated the deceased to commit suicide.

12) The Supreme court in the matter of *Mohit Singh v. State of Uttarakhand & Ors.*¹ held that to attract the first clause, there must be instigation in some form on the part of the accused to cause the deceased to commit suicide. Hence, the accused must have *mensrea* to instigate the deceased to commit suicide. The act of instigation must be of such intensity that it is intended to push the deceased to such a position under which he or she has no choice but to commit suicide. Such instigation must be in close proximity to the act of committing suicide.

13) In the present case, it is evident from the contents of the F.I.R. that the Applicants were deliberately and intentionally harassing the deceased daughter of the Respondent No.2 namely Ms. Harshal to such an extent that she was left with no alternative but to commit suicide. Section 113-B of the Indian Evidence Act also deals with presumption of dowry death. There is a clear allegation in the F.I.R. that there were demands for transfer of the flat of the Respondent No.2 in the name of the Applicant No.1. When Ms. Harshal was unable to fulfill the said demand, she was further harassed. Even when she bought clothes for herself, she was told to bring money from her parents. It is thus clear that soon before her death, Ms. Harshal was subjected to such cruelty and harassment *per-se* and also in connection with demand for dowry in the form of the flat, thus raising

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the presumption that the Applicants were responsible for Ms. Harshal taking the extreme step of ending her life. The abuses of the Applicant No.1 and his threat of divorce coupled with his express act of telephoning her and telling her that he is coming to take away his belongings as he does not intend to cohabit with her is in direct and close proximity with the commission of suicide. It is the point when the deceased decided to take extreme step of ending her life. The defenses raised by the Applicants cannot be tested at this stage in an application under Section 482 of Cr.PC.

14) Therefore, in our considered view, the offences alleged against the appellants are *prima facie* disclosed in the F.I.R. The continuation of their prosecution will not be an abuse of the process of law. In this view of the matter, we are not inclined to quash the F.I.R.

14.1) The Petition is dismissed.

14.2) Rule is accordingly discharged.

(DR. NEELA GOKHALE, J.)

(A. S. GADKARI, J.)

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