

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,  
NAGPUR BENCH, NAGPUR.**

**CRIMINAL APPLICATION (APL) NO. 686 OF 2021**

Monika D/o Sidharth Jadhav,  
Age: 25 years, Occu.: Advocate,  
R/o: Saraswati Colony, Gevrai,  
Tq. Gevrai, Dist. Beed.

.... **APPLICANT**

// **VERSUS** //

- 1) The State of Maharashtra,  
through Buldhana City Police Station,  
District Buldhana.
- 2) Sangita W/o Ajaabrao Jadhav,  
Age: 50 years, Occu. Housewife,  
R/o: Shivshankar Nagar, Chandak Layout,  
Chikhli Road, Sundarkhed,  
Tq. & Dist. Buldhana.

.... **NON-APPLICANTS**

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None for the Applicant.  
Mr. S.S. Doiphode, Addl.P.P. for Non-applicant No.1.  
Mr. Sagar Thakkar, Advocate h/f Mr. A.J. Thakkar, Advocate for  
Non-applicant No.2.

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**CORAM : SUNIL B. SHUKRE AND  
G. A. SANAP, JJ.**

**DATED : 06.06.2022**

**ORAL JUDGMENT** : (Per Sunil B. Shukre, J.)

1. None for the Applicant. Heard Mr. S.S. Doiphode, learned  
Addl.P.P. for Non-applicant No.1 and Mr. Sagar Thakkar, learned

counsel holding for Mr. A.J. Thakkar, learned counsel for Non-applicant No.2.

2.           **Rule.** Rule made returnable forthwith. Heard finally by consent of the parties present before the Court.

3.           Upon a careful consideration of the First Information Report (FIR) lodged by Non-applicant No.2 against the Applicant and others and perusing the case diary, we find that this is a case wherein deceased Pawan decided to end of his life on account of the blunder that he committed in his life. From the admissions given in the FIR, one can see that deceased Pawan was married to accused No.3 and even though the marriage was not dissolved, marital dispute apart, deceased Pawan indulged in extra marital affair and established relations with the Applicant who is accused No.4. It appears that this Applicant, when deceased Pawan established extra marital relations with her, was unmarried and, therefore, she started insisting upon deceased Pawan to marry her but, deceased Pawan was in no position to oblige the Applicant as his marriage with accused No.3 was subsisting. After failure of her effort to win over mind of deceased Pawan in marrying her, it is seen from the FIR, this Applicant decided to wriggle herself out of the extra marital affair the deceased Pawan had with her and accordingly she performed marriage with another

person. This act on the part of the Applicant gave a severe blow to deceased Pawan and it is seen that he lost his mental balance. It is also seen, as admitted by the complainant i.e. Non-applicant No.2, deceased Pawan was already under great mental stress due to marital dispute with his wife i.e. accused No.3 and the above stated act on the part of the Applicant added to the mental stress that deceased Pawan was already going through. Marrying with another man by this Applicant was an event which could not be tolerated by deceased Pawan and it appears to have served like a final nail in the mental worries of deceased Pawan. All these facts are clearly borne out from the allegations made in the FIR filed by non-applicant No.2 against this Applicant and others.

4. Considering these facts, we find that no blame whatsoever could be placed upon the shoulders of this Applicant and in any case, the act of marrying another man by this Applicant at a time when she had extra marital affair with Pawan could not be considered, by no stretch of imagination, to be something like abetment to commit suicide by the deceased Pawan. The term 'abetment' has been defined under Section 107 of the Indian Penal Code. This definition indicates that abetment of a thing is nothing but doing of a thing by instigating another person to do that thing or engaging with one or more other persons in any conspiracy for the doing of that thing or intentionally

aiding, by any act or illegal omission, the doing of that thing. In this case, there is neither any engagement in conspiracy nor any active or intentionally aiding in committing of suicide by deceased Pawan. At the most, the allegations made against this Applicant could be considered to be falling in the instigation part of the definition of abetment. But, even for instigating another person to do a certain thing, there must exist facts and circumstances which show in a reasonable manner that the person doing the act had no other option other than committing that act and that he or she was so helpless as to feel convinced that his or her woes would not be eliminated unless the harmful act, in the present case commission of suicide, is done.

5. In the case of ***Kanchan Sharma Vs. State of Uttar Pradesh and Ors., 2022 (1) SCJ 372*** decided on 17.09.2021, the Supreme Court has held that in order to proceed against any person for the offence punishable under Section 306 of the Indian Penal Code, there must be present an active act or direct act of such a nature as would lead the deceased to commit suicide. The Supreme Court has further observed that offence of abetment of suicide requires presence of extreme and compelling circumstances and the act alleged against the accused must be seen to be committed by the accused with intention to push the deceased into desperate situation leading to commission of suicide.

6. In this case, even if all the allegations made against the Applicant are accepted as they are, we do not find that any offence of abetment of suicide is disclosed at least against this Applicant. After all, the only fault on the part of this Applicant was of engaging herself in an affair with a married person like deceased Pawan and further fault on her part was of she marrying another man while her affair with deceased Pawan, a married man, was on and that too when deceased Pawan did not agree to the suggestion of this Applicant to perform marriage with her. We, therefore, find that this is a fit case for making of interference in the investigation or otherwise there would be a miscarriage of justice. For this finding, we draw support from the guideline Nos.(iii) and (x) laid down by the Supreme Court in the case of ***Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra and Others, 2021 SCC Online SC 315***. These guidelines are reproduced thus :-

*i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into a cognizable offence;*

*ii) Courts would not thwart any investigation into the cognizable offences;*

*iii) It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on;*

*iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the*

*'rarest of rare cases (not to be confused with the formation in the context of death penalty).*

*v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;*

*vi) Criminal proceedings ought not to be scuttled at the initial stage;*

*vii) Quashing of a complaint/FIR should be an exception rather than an ordinary rule;*

*viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere;*

*ix) The functions of the judiciary and the police are complementary, not overlapping;*

*x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;*

*xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;*

*xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;*

*xiii) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court;*

*xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint;*

*xv) When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR;*

*xvi) The aforesaid parameters would be applicable and/or the aforesaid aspects are required to be considered by the High Court while passing an interim order in a quashing petition in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India. However, an interim order of stay of investigation during the pendency of the quashing petition can be passed with circumspection. Such an interim order should not require to be passed routinely, casually and/or mechanically. Normally, when the investigation is in progress and the facts are hazy and the entire evidence/material is not before the High Court, the High Court should restrain itself from passing the interim order of not to arrest or “no coercive steps to be adopted” and the accused should be relegated to apply for anticipatory bail under Section 438 Cr.P.C. before the competent court. The High Court shall not and as such is not justified in passing the order of not to arrest and/or “no coercive steps” either during the investigation or till the investigation is completed and/or till the final report/chargesheet is filed under Section 173 Cr.P.C., while dismissing/disposing of the quashing petition under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India.*

*xvii) Even in a case where the High Court is prima facie of the opinion that an exceptional case is made out for*

*grant of interim stay of further investigation, after considering the broad parameters while exercising the powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India referred to hereinabove, the High Court has to give brief reasons why such an interim order is warranted and/or is required to be passed so that it can demonstrate the application of mind by the Court and the higher forum can consider what was weighed with the High Court while passing such an interim order.*

*xviii) Whenever an interim order is passed by the High Court of “no coercive steps to be adopted” within the aforesaid parameters, the High Court must clarify what does it mean by “no coercive steps to be adopted” as the term “no coercive steps to be adopted” can be said to be too vague and/or broad which can be misunderstood and/or misapplied.”*

7. In the result, we find that this Application deserves to be allowed in terms of prayer clause (B), which reads thus :

*“B] The First Information Report bearing Crime No. 346/2021, dated 07.05.2021 registered at Buldhana Police Station, District Buldhana City for the offences under Section 306, 34 Indian Penal Code may kindly be quashed.”*

8. The Application is accordingly allowed in terms of prayer clause (B) against this Applicant i.e. accused No.4 only.

Rule is made absolute in the above terms.

(G.A. SANAP, J.)

(SUNIL B. SHUKRE, J.)