

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.776 OF 2022

Adhikar s/o. Dhudaku Khairnar ..Petitioner

Vs.

The State of Maharashtra and anr. ..Respondents

Mr.N.K.Chaudhari, Advocate for petitioner

Mr.R.V.Dasalkar, APP for respondent no.1

Mr.J.S.Gangawane, Advocate for respondent no.2

**CORAM : R.G.AVACHAT AND
SANJAY A. DESHMUKH, JJ.**

DATE : JULY 05, 2023

ORDER :-

Leave to carry out the amendment. Amendment be carried out forthwith.

2. This application under Section 482 of the Code of Criminal Procedure has been filed for quashment of the FIR, being Crime No.150 of 2022, registered with Nandurbar Taluka Police Station, Dist.Nandurbar, for the offence punishable under Section 306 read with 34 of Indian Penal Code and the consequential charge sheet filed in R.C.C. No.244 of 2022/Sessions Case No.3 of 2023.

3. The gist of the prosecution case, as is disclosed from the FIR and the police papers, is as under:-

The FIR has been lodged by the brother-in-law of the deceased – Shriram who committed suicide by hanging on 09.05.2022. It has been averred in the FIR that the forefather of the deceased Shriram had agricultural land admeasuring 52 acres. An oral partition was effected long back, whereby about 16 acres of land had come to the share of the father of the deceased Shriram. He was cultivating the same. His father again purchased 2 acres of land from his brother Murlidhar Patil way back in 2003 for Rs.75,000/-. In the 7/12 extract, the land to the extent of 50 R was shown in the name of one Motanbai, while 40 R land was shown in the name of father of deceased Shriram. However, deceased Shriram was cultivating the entire land. The applicant before the Court is the son-in-law of Motanbai. A civil suit, being R.C.S No.35 of 1994, was filed for partition of the family properties. It was dismissed. The appeal preferred there-against was allowed vide judgment and order dated 11.07.2002. The decree was put to execution.

4. It is also the case of the prosecution that on 08.05.2022, the land was measured and the applicant took possession of 50 R land, which was being cultivated by deceased Shriram. Shriram took this fact to his heart and therefore, committed suicide.

5. A suicide note is said to have been left behind by the deceased Shriram. It has been narrated therein that injustice was caused to him by the persons including the present applicant. The gist of the suicide note was in relation to a dispute over the agricultural land. There are statements of widow of the deceased and one Hari Jairam Patil. The prosecution relies on their statements. The widow of the deceased has stated that the applicant and the co-accused would harass the deceased. The deceased had related her the same. The statement of Hari records that the fact that the applicant took possession of 50 R land, caused mental stress to the deceased and he committed suicide.

6. Learned counsel for the applicant would submit that if the prosecution case is taken as it is, the same would suggest to be a case of civil dispute. The deceased appears to have been hyper-sensitive. He had remedy of taking exception to taking possession of the land by the applicant. The name of the applicant has been

interpolated in the suicide note. The same is obvious on a bare look thereat. According to learned counsel, the intention (*mens rea*) is the essential ingredient of the offence of abetment of suicide. The same is lacking herein. In the circumstances, directing the applicant to stand trial, would be an abuse of the process of Court. He, therefore, urged for allowing the application.

7. Learned APP and learned counsel for respondent no.2 would, on the other hand, submit that the name of the applicant figures in the suicide note. The statements of the widow and witness Hari also implicate the present applicant. The probative value of their statements cannot be gone into in the present proceedings. According to them, it is for the trial Court to decide the matter on its own merits. No mini trial can be conducted hereat. They, therefore, urged for rejection of the application.

8. Considered the submissions advanced. Perused the FIR and the police papers relied on.

9. The record indicates that suit was filed for partition and separate possession of the family properties, including the

agricultural land. It was a suit filed way in 1994. The suit was dismissed. The appeal filed there-against, came to be allowed vide judgment and order dated 11.07.2002. The execution proceedings were initiated. On the preceding day of the deceased committed suicide, measurement of the land was carried out through a private surveyor. It is the case of the prosecution that after the marriage of the daughter of Motanbai with present applicant, he had filed a suit for possession of 50 R land. The suit was decreed. The applicant, therefore, took possession of 50 R land on 08.05.2022. The deceased was present while the measurement was effected. The deceased took the fact of losing possession of 50 R land to his heart. The same suggests from the statement of witness – Hari, which specifically described it as “मनस्ताप”. The statement of the widow of the deceased simply suggests that the applicant and the co-accused would harass the deceased. Her statement is silent about the way in which they, allegedly, would harass the deceased, and whether, such harassment was sufficient to constitute the offence of abetment of suicide.

10. So far as regards the suicide note is concerned, assuming it to be in the handwriting of the deceased, the name of

the applicant appears to have been interpolated therein lateron.

What has been averred in the suicide note is as under:-

" अन्याय "

खुप विनंती करुन आम्हाला सा थ नसल्या कारणाने मला आत्महत्या प्रवृत्त केले. नरेंद्र मुरलीधर पाटील खुप शांत असल्या कारणाने आम्ही शेत घेतले. २००२ मध्ये माझे वडिल साहेबराव तुळशीदास पाटील यांचा दौलत घेतला होता व त्याचा त्यांना नरेंद्र पाटील दवाखान्यात घेवून जातो असे सांगून

अन्याय करणारे धमकी देणारे न्याय मिळाला पाहिजे.

- जबाबदार १. नरेंद्र मुरलीधर पा (काकाचा मुलगा)
२. ब्रिजलाल काशिराम पा (आत्याचा मुलगा)
३. शत्रुघ्न नारायण पा (काकाचा मुलगा)
४. भरत नारायण पा (काकाचा मुलगा)
५. प्रकाश नारायण पा (काकाचा मुलगा)
६. अधिकार धुरकु खैरनार पिंपळखेडा

(१) मुरलीधर तुळशीराम पाटील यांच्या कडून आम्ही शेत घेतले होते पण आम्हाला सा थ कोणाची मिळत नसल्या कारणाने ... शेत माझेकडे घेतले.

The aforesaid matter in the suicide note indicates the fact of the deceased to have lost possession of the land and since there being no one to support him, committed suicide.

11. Section 306 of Indian Penal Code reads:-

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 of Indian Penal Code reads:-

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 1.—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.

Explanation 2.—Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.

12. Needless to mention, *mens rea* (intention) is the essential ingredient of the offence of abetment of suicide. The fact that the present applicant took possession of the land admeasuring 50 R on the previous day of commission of suicide by the deceased, would, in no way, be termed as an act intended by him to drive the deceased to commit suicide. As such, the material ingredient (intention) of offence punishable under Section 306 of Indian Penal Code, is lacking against the applicant herein. In the circumstances, directing the applicant to stand trial would be an abuse of the process of Court. We are, therefore, inclined to allow the application.

13. The application is allowed. The FIR, being Crime No.150 of 2022, registered with Nandurbar Taluka Police Station, Dist.Nandurbar, for the offence punishable under Section 306 read with 34 of Indian Penal Code and the consequential charge sheet filed in R.C.C. No.244 of 2022/Sessions Case No.3 of 2023, stand quashed qua the applicant herein.

[SANJAY A. DESHMUKH, J.]

[R.G. AVACHAT, J.]

KBP