

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

CRIMINAL WRIT PETITION NO. 128 OF 2015

Eknath s/o Nimba Pagar,
age 39 years, occ. Labourer,
R/o Pratap Chowk, Patil Wada,
Chalisgaon, Tq.Chalisgaon,
Dist. Jalgaon

...Petitioner

VERSUS

The State of Maharashtra

...Respondent

.....
Shri H.D.Deshmukh, advocate for petitioner
Shri V.D.Godbharle, A.P.P. for respondent
.....

CORAM : V.M.DESHPANDE, J.

DATED : 10th March, 2015

ORAL JUDGMENT : -

1] Rule. Rule is made returnable forthwith. With the consent of the learned counsel for the parties heard finally.

2] I have heard Shri H.D.Deshmukh, learned counsel for the petitioner and Shri V.D.Godbharle, learned Additional Public Prosecutor for the respondent.

3] The present Writ Petition is directed against the order, passed by the learned Additional Sessions Judge, Jalgaon, below Exh.31 in Sessions Case No. 246 of 2012, dated 28.8.2014, whereby the learned Judge of the court below has rejected the application for discharge.

4] The first information report was recorded by Shravan Buddha Ahire, brother of deceased Suresh, with police station Jalgaon vide C.R.No.51 of 2006, for the offences punishable under Sections 306, 294, 500, 504 r/w 34 of the Indian Penal Code. After completion of the investigation, charge sheet is filed and present petitioner is accused no.3 in the said charge sheet.

5] For invoking the powers under Section 482 of the Code of Criminal Procedure to quash the proceedings, the court has to see following :-

- (i) Where the allegations in the First Information Report or complaint taken of their face value and accepted in its entirety do not constitute the offence alleged.
- (ii) Where the allegations constituted an offence, but there is no legal subservience adduced or the evidence adduced clearly or manifestly fails proved the charge.

Section 107 of the Indian Penal Code deals with

abetment of things. Section 107 of the Indian Penal Code reads as under :-

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.

Further the abetment of suicide is made punishable under Section 306 of the Indian Penal Code, which reads as under :-

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.

6] Though the learned Additional Public Prosecutor has vehemently submitted that there is ample material available on record against the present petitioner, perusal of the statements recorded during the course of investigation of various witnesses do not show that the present petitioner in any manner instigated the deceased or has intentionally aided in act and had abetted the deceased to commit suicide.

7] The suicide note which is available on record only states that the present petitioner being the friend of the police is responsible for his defamation.

8] The Hon'ble Apex Court in the authoritative pronouncement in case of **Randhir Singh and another Versus State of Punjab, reported in (2004) 13 Supreme court Cases 129** has reiterated the legal position as regards Section 306 of the Indian Penal Code. In paragraph No.12 of the said Judgment, the Hon'ble Apex Court has observed as under :-

“ Abetment involves a mental process of instigating a person or intentionally aiding that person in doing of a thing. In cases of conspiracy also it would involve that mental process of entering into conspiracy for the doing of that thing. More active role which can be described as instigating or aiding the doing of a thing is required before a person can be said to be abetting the commission of offence under Section 306 of IPC.”

9] This court has already discharged original accused no. 12 Virsing in Criminal Writ Petition No. 1368 of 2014. The role attributed to Virsing and the present petitioner is similar in nature.

10] The material as further pointed out by the learned Additional Public Prosecutor and the recitals of the suicide note clearly show that the present petitioner cannot be held responsible for the suicide.

11] In that view of the matter, present Writ Petition is allowed. The order, passed by the learned Additional Sessions Judge, Jalgaon, below Exh.31 in Sessions Case No. 246 of 2012, dated 28.8.2014, rejecting the application for discharge is quashed and set aside. The petitioner Eknath Nimba Pagar is discharged from Sessions Case No. 246 of 2012. Rule is made absolute.

[V.M.DESHPANDE, J.]