

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 629 OF 2014

1. Ratan Pundlik Salunkhe,
Age: 70 years, Occu : Agri.,
R/o Laxminagar, Chalisgaon,
Tq. Chalisgaon, Dist. Jalgaon.
2. Nitin Ratan Salunkhe,
Age: 39 years, Occu : Business,
R/o Laxminagar, Chalisgaon,
Tq. Chalisgaon, Dist. Jalgaon.
3. Raosaheb Gulab Bhosale,
Age: 61 years, Occu: Agri.,
R/o Chitegaon,
Tq. Chalisgaon, Dist. Jalgaon.
4. Babanrao Fakirrao Jagtap,
Age: 66 years, Occu: Retired,
R/o Hirapur Raod, Near Sweta
Traders, Chalisgaon,
Tq. Chalisgaon, Dist. Jalgaon. ...Petitioners

versus

1. State of Maharashtra,
Through Police Inspector,
Chalisgaon Police Station,
Chalisgaon, Tq. Chalisgaon,
Dist. Jalgaon.
2. Ashok Shivaji Patil,
Age: 42 years, Occu: Service,
R/o Suvarnatai Nagar,
Pawarwadi, Chalisgaon,
Tq. Chalisgaon, Dist. Jalgaon. ...Respondents

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Mr. V. D. Salunke, Advocate h/f Mr. D. B. Thoke, Advocate for petitioners.

Mr. D. V. Tele, A.P.P. for respondent/State.

Mr. B. S. Deshmukh, Advocate for respondent No. 2.

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CORAM :

**S.S. SHINDE &
N.W. SAMBRE, JJ.**

**RESERVED ON : 24TH DECEMBER, 2014
PRONOUNCED ON : 13TH MARCH, 2015**

JUDGMENT : (PER N. W. SAMBRE, J.)

. Heard learned respective Counsel and learned A.P.P.

2. The petitioners herein are the accused in Crime No. 156 of 2014 registered on 21/05/2014 with the police station, Chalisgaon for the offence punishable under Section 306 read with Section 34 of the Indian Penal Code.

3. Respondent No. 2 Ashok alleged in the complaint tendered with the Police Station Officer on 21/05/2014 that he is residing on the address mentioned therein along with his younger brother Yuvraj, his brother's wife Kavita, his wife Anita, his son Saurabh and is serving in Zilla Parishad School at Ozar. He further

claims that his brother Yuvraj was holding diploma in Agriculture, hired a block in Lucky Complex near Bus stop in Chalisgaon from Raosaheb Gulabrao Bhosale petitioner No. 3 in 2007 and started business of agricultural items such as seeds, insecticides, pesticides etc.

4. It is claimed that the petitioners herein entered into partnership with the brother of complainant i.e. late Yuvraj and reduced the same in writing on stamp paper on 22/06/2007 and also opened an account in the name of firm "Patanai Krushi Kendra" in Central Bank of India, Branch Chalisgaon, wherein petitioner No. 4 was authorized to operate the said amount.

5. It is further claimed that the petitioners herein alongwith late brother of complainant Ashok, decided to close down the said business resulting into issuance of four cheques in favour of Yuvraj towards the settlement of account. It is claimed that Yuvraj was entitled to Rs.16,11,074/- from the said firm and on the issue of settlement of account, it is claimed that petitioner No. 4 entered into altercation and assaulted late Yuvraj in September, 2013. It is further alleged that the complainant at that time was neither present nor any complaint to the police station was made about said incident by Yuvraj.

6. It is further claimed in the complaint that, on 11/09/2013, petitioner No. 4 issued three cheques of Rs.4,00,000/- each and one cheque of Rs. 3,00,000/-. It is claimed that all these cheques were honoured.

7. According to the complainant, petitioner No. 4 without any investment in the firm, withdrawn Rs.10,00,000/- in September, 2013 and has not paid Rs. 10,00,000/- to his brother.

8. It is further claimed that late Yuvraj along with his father Shivaji, uncle Tanaji, and complainant Ashok had been to the petitioners demanding amount Rs.10,00,000/-, however, the petitioners have refused to pay the said amount. Said fact according to complainant was narrated by Yuvraj to his wife Kavita and also to his wife Anita. It is claimed that the said amount was demanded for starting of new business.

9. It is claimed that on 23/02/2014 the petitioners abused Yuvraj when he was summoned at the residence of petitioner No. 4 in filthy language and was informed that he will not get his money and also issued threats to him.

10. It is further claimed that on 24/02/2014 the said Yuvraj committed suicide in the dwelling house, which according to the complainant, was abetted by present petitioners. It is claimed by the complainant that the above referred act of the petitioners has abetted the cause of suicide of late Yuvraj.

11. Though Yuvraj has committed suicide on 24/02/2014, however the complaint came to be lodged on 21/05/2014, as is reflected in the narrations.

12. Upon receipt of the said complaint, the offence referred above, came to be registered and investigation was set in motion.

13. The petitioners questioned the registration of the offence and sought quashing of the same on the various grounds, which prompted this Court to issue notice and interim relief was granted as regards filing of the charge sheet.

14. With the consent of the parties, this matter is taken out for final disposal at admission stage.

15. Learned Counsel for the petitioners would urge that the accusations against the petitioners made by the complainant are

false and far away from truth. According to them, there is no question of abetting suicide of Yuvraj, as they claimed that till date of his death, relationship between the parties were as cordial. He further urged that upon reading of entire complaint, no *mens rea* could be disclosed as regards abetment of suicide by Yuvraj. It is further claimed that during life time of Yuvraj, no threats or any move on the part of Yuvraj was noticed that he will commit suicide and intention to commit suicide by Yuvraj was neither disclosed by him either in the interaction or otherwise. He further urged that it was never within their knowledge that the deceased might take extreme step of committing suicide. As according to them, in absence of criminal intention, the prosecution against them is not sustainable. It is further claimed that even if the investigation papers are perused by this Court, the link establishing abetment by petitioners in commission of suicide by deceased Yuvraj cannot be established with that of the conduct of present petitioners and as such, sought quashing of the F.I.R.

16. In support of the contentions raised in the present petition, the petitioners have placed reliance upon the judgment of the Apex Court in the matter of **Netai Datta vs. State of West Bengal** reported in **2005(2) SCC 659**, so as to aver that no *mens rea* could be attributed to the petitioners including of any role in any

conspiracy, which ultimately instigated Yuvraj to commit suicide. Learned Counsel for the petitioners has also placed reliance upon the judgment of this Court in the matter of **Binod s/o Ratan Sarkar & Ors. vs. The State of Maharashtra & Anr.** reported in **2014 ALL MR (Cri.) 1216**, so as to canvass that in absence of direct or indirect acts of incitement to commission of suicide, the petitioners can not be held responsible. It is also submitted that there has to be a proof to that effect. In addition to above, learned Counsel for the petitioners would urge that even if the accusations made in F.I.R. are taken to be true as its face value, still according to them, no offence can be made out against the accused persons.

17. Per contra, learned A.P.P. would urge that in the statement of brother of deceased, there are specific attributions to present petitioners as regards the cause for suicide. Learned A.P.P. would further urge that wife of deceased also supported the case of the complainant. According to learned A.P.P., it is a fit case that upon appreciation of evidence in the trial, foundation could be established including that of live link between the death of Yuvraj and that of conduct of accused driving Yuvraj to commit suicide. Learned A.P.P. as such, prayed for dismissal of the petition.

18. Mr. Deshmukh, learned Counsel for respondent No. 2

complainant has advanced submissions on the same line as made by learned A.P.P. and in addition to above, would urge that the petitioners must face trial as there is sufficient evidence available against the accused persons. He further urged that it is premature at this stage to infer that accused are not involved in the crime in question. According to Mr. Deshmukh, learned Counsel for respondent No.2, the conduct of the accused as narrated in F.I.R. which is required to be accepted for the purpose of considering the claim for quashing, in the present petition to be true, same points finger towards the accused persons that they have abetted the suicide of late Yuvraj and as such, prayed for dismissal of the petition.

19. After having gone through the accusation made in the F.I.R. by the complainant-respondent No.2 and other investigation papers, so also the documents which are placed on record by the petitioners in support thereof, it is noticed that Yuvraj has entered into partnership with petitioner No.4 on 22/06/2007. It is further noticed that there is a deed of dissolution of partnership entered into between Yuvraj and petitioner No. 4 on 16/11/2013, wherein there is a reference to partnership deed dated 22/06/2007, which partnership started from 05/05/2007 in the name and style of "M/s. Patanai Krishi Kendra". The deed of dissolution is executed by citing the cause

that parties have decided to voluntarily dissolve the partnership firm w.e.f. 30/09/2013 wherein the entire liability of the firm was taken over by petitioner No. 4 whereas the tax dues to be paid as per the assessment of the authority by the respective parties.

20. The shop and establishment license was also cancelled as per intimation dated 06/12/2013.

21. Perusal of the reply submitted by respondent No.2-complainant reflects that initially the prosecution has taken note of death of Yuvraj, who has expired on 24/02/2014 and intimation about which was given to the police on 25/02/2014 at 00.15 hrs. However, respondent No. 2 claimed that though he has given police complaint, neither any offence was registered nor any inquiry was made in the matter.

22. The fact remains that the complainant on 25/02/2014 has given intimation about suicide by his brother Yuvraj.

23. On 15/03/2014 the Investigating Officer communicated with the complainant that he has shown inability to give any statement on 25/02/2014. However, upon subsequent communication on mobile phone and otherwise to him, he has not

come forward to give any statement in relation to suicidal death of his brother. The said communication dated 15/03/2014 which claimed to have been objected by the complainant wherein he claimed that police have registered a false offence and doubted integrity of the Investigating Officer in carrying out the investigation.

24. Wife of deceased namely Kavita who has made complaint on 18/03/2014 to the Police Inspector, towing the line of complaint with that of respondent No. 2 as regards the conduct of present petitioners, prompting her husband to commit suicide. In view of allegations made by the complainant, the matter was handed over to another P.S.I. for investigation, who has also noticed non co-operation by respondent No. 2 resulting into unpleasant written exchanges and threats by respondent No. 2 to take recourse to other modalities, such as hunger protest.

25. Perusal of investigation papers reveals that the wife of deceased, Kavita initially alleges ill intention of present petitioners, however in subsequent statement narrated about good relation of the petitioners with that of complainant and settlement of account. She has further stated that she has no claim whatsoever against the present petitioners. Her father Bapurao, uncle Jaywant, another uncle Prabhakar, brother Sachin, and her brother's wife Ujwala gave similar statements that they have no claim against the present

petitioners. In the statement of Kavita, it is noticed that she has made a claim that she has given complaint at the behest of Ashok, elder brother of late Yuvraj.

26. Upon scrutiny of the investigation papers, it is noticed that the documents in relation to the balance sheet of the firm, statement of account were forwarded to the Auditor of the Co-operative Societies to have his opinion in the matter. Similar requests are made to Income Tax Officer, so also Sales Tax Officer, however, the response of the said authorities in the matter are still awaited. As such, from the said record it cannot be ascertained as regards the settlement of accounts by the petitioners as claimed by them in the application which is disputed by the complainant Ashok.

27. Though the petitioners' version is supported by the other witnesses i.e. Kavita and her relatives from her parental side, the adjoining shop owner in the said complex and attendant in the shop of petitioner No. 4 and deceased Yuvraj, Chartered Accountant Sanjay, adjoining shop owners Ramesh, Raviraj, Walmiki and Dipak in their statements fortifies the stand of the accused petitioners.

28. From the record, there appears to be version supporting the case of the petitioners from the investigation papers. Close relatives of the deceased Yuvraj that is to say, brother, father, mother,

wife of complainant, his cousin brother supported the case of the complainant.

29. Complainant-respondent No. 2 in his complaint dated 21/05/2014 narrated the following chronological events :-

- a) The partnership in between deceased Yuvraj and petitioner No. 4 Babanrao on 22/06/2007.
- b) The petitioners became partners to the said firm as per partnership dated 22/06/2007.
- c) Petitioner No. 4 decided in September 2013 to close down the business.
- d) Dispute between petitioner No. 4 and late Yuvraj resulting into altercation between petitioner No. 4 and deceased Yuvraj in presence of petitioner Nos. 1 to 3.
- e) Payment of an amount vide four cheques dated 17/09/2013.
- f) Demand of additional Rs. 10,00,000/- by Yuvraj to petitioner No. 4, however, the said demand was not honoured.
- g) On 23/02/2014 petitioners called deceased Yuvraj and abused him. On 24/02/2014 deceased Yuvraj committed suicide and F.I.R. lodged by complainant-respondent No. 2 on 21/05/2014.

30. Though from the reply filed by respondent No. 2, it is noticed that, respondent No. 2 was not satisfied with the investigation carried out by prosecution, however, in the report lodged on 21/05/2014, the respondent No. 2 has not given single explanation for lodging the said F.I.R. after period of almost three months. The said act on the part of respondent No. 2 raises serious doubt on the bonafides of respondent No. 2 in lodging the complaint against the petitioners.

31. It is the case of respondent No. 2 that the accused persons threatened deceased Yuvraj initially before dissolution of the firm i.e. some time in September, 2013. It is important to note that respondent No. 2 has not complained to the police about it. If the said statement is tested in the light of the contents of the F.I.R., it is noted that the said version is required to be disbelieved, as after the alleged assault on the deceased Yuvraj in September, 2013 by the petitioners, Yuvraj received four cheques from petitioner No. 4 which were honoured as is stated in the F.I.R. As such, on one hand, the complainant is saying that the deceased Yuvraj was assaulted which was followed with the issuance of four cheques, which were honoured in his favour. The above referred statement of the complainant is really hard to digest. The said event though was known to the complainant or Yuvraj, the issue was not taken up with

the police at that time. No explanation is offered even for the same. It is important to note that deceased Yuvraj has executed Deed of Dissolution of Partnership on 16/11/2013.

32. Subsequent to threat by the petitioners to Yuvraj, particularly as is claimed in the complaint, in presence of complainant-respondent No.2, his father and uncle etc., was also not taken to its logical end by lodging complaint to the police. The last threat before the death on 23/02/2014 by the petitioners was also not reported to the police though respondent No.2 claims to be having knowledge about the same. The above referred unnatural conduct prompts this Court to disbelieve the case of the complainant about alleged abetment.

33. Furthermore, upon analyzing the contents of the F.I.R., it is noticed that, the complainant is relying upon partnership deed dated 22/06/2007. The partnership dated 22/06/2007 is between petitioner No. 4 and the late Yuvraj. Though it is claimed by the respondent No. 2 in the complaint that all the petitioners are partners in the said partnership deed, however, the names of the petitioner Nos. 1 to 3 are absent from the said partnership deed. If the said partnership deed is tested in the light of dissolution of partnership deed brought on record by respondent No. 2, it is required to be

noted that, the dissolution deed was executed on 16/11/2013 in between petitioner No. 4 and late Yuvraj. Petitioner No. 1 to 3 are not party to the said deed of partnership or dissolution. Upon perusal of investigation papers, it is noticed that, petitioner Nos. 1 to 3 have no role in the commission of alleged crime of abating suicide by deceased Yuvraj. It is required to be noted that, payment of four cheques and honouring thereof is very much admitted by respondent No. 2 in the complaint itself. Once it is admitted that an amount around Rs. 15,00,000/- was paid to deceased Yuvraj in the month of September 2013, dissolution deed was executed in the month of November 2013, it is really hard to digest that, there was any *mens rea* on the part of the petitioners in commission of crime in question. It is also required to be noted that, only role attributed to petitioner Nos. 1 to 3 is that, they have abused late Yuvraj on 23/02/2014. Even if the said incident is taken to be true, it is not the case that at that moment, Yuvraj immediately committed suicide. Yuvraj has committed suicide on 24/02/2014 that too in the evening. It is also required to be noted that, respondent No. 2 was not witness to alleged threat given to Yuvraj on 23/02/2014. It is also required to be noted that, the statement of the witness particularly that of wife of deceased namely Kavita, though initially speaks of cordial relations as regards partnership of petitioner No. 4 including that of proper maintenance of account of the business, she has stated that, her

husband late Yuvraj never disclosed her about any misunderstanding or differences between petitioner No. 4 or petitioners. She has further stated that, the business was closed down as appropriate response was not received.

34. It is also brought on record in her statement that, after marriage with Yuvraj, they were not blessed with any issue for quite long time and as such they have taken treatment from Dr. Sangita Chauhan, Chalisgaon. It is also narrated by her that, late Yuvraj was taking treatment from Psychiatrist. She in her statement dated 19/05/2014 referred above, noted that, Police Officer Sanjay Panje visited her place for recording statement, however, she was not permitted by respondent No. 2 to give statement. Subsequent attempt on the part of Police Officer to record the statement, was also not permitted by respondent No. 2 and respondent No. 2 was instrumental in pressurizing her in moving the complaint against the petitioners. She has also stated that, the amount that was given by petitioner No. 4 to late Yuvraj was demanded by respondent No. 2 and respondent No. 2 further threatened, to dislodge Kavita from the joint family property. She further stated that, her husband has committed suicide. Similar statement was given by her parental relatives.

35. The other witness namely Ashok Kashinath Wani, who was working as Assistant in the firm of petitioner No. 4 and Yuvraj, has stated that, Yuvraj used to look after the entire business and accounts. He has further stated that, there were no differences in between Yuvraj and petitioner No. 4. Witness Sanjay Anandrao Khairnar, Chartered Accountant who used to look after the accounts of the firm, has stated about deed of partnership and dissolution and has also stated about cordial relations between petitioner No. 4 and deceased Yuvraj. Witnesses Ramesh Fakira Kotkar (Wani), Raviraj Jalamsingh Pardeshi and Walmik Dattatray Bhambare who are having shop adjacent to the shop of late Yuvraj, have stated on same line.

36. Statements made by Pravin Ramesh Patil claiming to be cousin brother of Yuvraj and close friend Pandurang Patil, further reflects about differences between petitioner No. 4 and deceased Yuvraj and also about alleged threats.

37. Supplementary statements given by Kavita, widow of deceased Yuvraj re-iterates her case with the subsequent complaint given by her through respondent No. 2 dated 26/07/2014 was under threat and coercion from respondent No. 2 and re-iterated that, she has no complaint about death of her husband Yuvraj. Other

supplementary statement on record by Somnath Patil speaks about ill act of respondent No. 2 as regards wrong certification of document in his name and production thereof by respondent No. 2.

38. In the light of above, it is clear that, the F.I.R. is lodged by respondent No. 2 after lapse of period of three months from the death of deceased Yuvraj. The Investigation carried out till date reflects that, no *mens rea* on the part of present petitioners to abet the crime of suicide as there is hardly any link to the said act of suicide as regards commission of act of petitioners herein.

39. It is also noted from the record that, Kavita-wife of deceased Yuvraj has unequivocally stated in her statement that, she had no grievance against the petitioners herein and complaint lodged by her was upon pressure exerted by respondent No. 2, brother of deceased Yuvraj.

40. The abetment of a thing is defined in Section 107 of Indian Penal Code whereas abettor in Section 108, which provides for an instigation by the accused to do that thing. It also provides for conspiracy for doing that thing, if an act or illegal omission takes place in pursuant to the conspiracy in order to do that thing. It further provides for an intention in aiding an act or illegal omission in doing

of that thing.

41. In the present case, if we look into the conduct of the petitioners in the light of accusation in the complaint, it is required to be seen, as to whether the petitioners have intentionally aided by their act in abetment of suicide of late Yuvraj.

42. The complaint discloses that the differences started in September, 2013 before payment of amount around Rs.15,00,000/- to the deceased Yuvraj by cheques by petitioner No. 4, execution of dissolution of partnership deed and non-lodging of complaint to the police about alleged threats or assault to Yuvraj by the petitioners. In the wake of above conduct, it is really hard to believe that the petitioners have abetted in suicide of deceased Yuvraj. What is formed to be basis for making complaint of abetment is, non payment of balance amount of Rs.10,00,000/-. Even if it is believed that the said amount is outstanding, still how the said act could be linked with that of abetment of suicide of Yuvraj, is not spelt out in the complaint or in other material brought on record.

43. It is required to be observed that, the offence of abetment could be termed complete only when there is an instigation or engagement in the alleged conspiracy of commission of crime.

There is hardly anything on record to form an opinion that, the act of petitioners herein constituted conspiracy to commit the crime of abetment. The observations of the Apex Court in the matter of constitution of abetment is required to be taken into account i.e. (a) Instigating a person to commit an offence, (b) engaging in conspiracy to commit it or (c) intentionally aiding a person to commit it. The abetment is required to be coupled with the criminal intention i.e. *mens rea*, so as to brought against the accused person charge of commission of crime in question. It is, therefore, necessary to show that, the petitioners have intentionally aided the suicide by late Yuvraj, which is not brought on record either in the complaint or in other investigation material. The Apex Court, while dealing with the issue of abetment has observed that, the abetment involves mental process, wherein the element of instigation, is very much required to be established. The intention to instigate in aid to a person in committing suicide is required to be brought on record and in absence of positive act on the part of the accused to instigate or aid the commission of suicide, the case would not stand against the accused persons. An appropriate support can be drawn in support of the above referred proposition on the judgment of the Apex Court in the matter of **Sohan Raj Sharma vs. State of Haryana** reported in **2008 (1) S.C.C. 2015**. The proximity and nexus of the act alleged against the petitioners and conduct and behavior of petitioners, while

establishing the link of abetment, is absent in the present case, as is apparent from the fact that, the alleged abetment, according to the complainant, begun in September 2013 resulting into suicide of Yuvraj on 24/02/2013 i.e. almost after period of five months.

44. In the light of above, the reliance is placed by learned Counsel for the petitioners on the judgment of this Court in the matter of **Binod s/o Ratan Sarkar & ors.** (supra) and the Apex Court in the matter of **Netai Datta** (supra) are required to be taken note of. The Apex Court, while dealing with the issue as regards the offence under Section 306 of Indian Penal Code has observed that, it would stand only if there is an abetment for commission of crime and the parameters of the abetment have been clearly established, which provides for instigating any person to do a thing.

45. From the narration of the contents in the F.I.R. and other material, in any case, a conclusion cannot be drawn that, there was an instigation at the behest of the petitioners, which has resulted into commission of the crime. It is also required to be taken note of the fact that, there is no suicide note left behind by the deceased Yuvraj pointing out fingers towards the commission of offence by the petitioners. As such, the ingredients of Sections 306, 107 and 108 of Indian Penal Code are not satisfied in the present case.

46. In the light of above, in our opinion, the petitioners are not required to be called upon to answer the prosecution and face the trial. As such, the present petition is allowed in terms of prayer clause (C) which reads thus:

“ C) By appropriate order or direction, the crime bearing C.R. No. 154 /2014 registered with Chalisgaon Police Station, for the offences punishable U/s. 306 read with 34 of the IPC dated 21.05.2014 may kindly be quashed and set aside.”

[N.W. SAMBRE, J.]

[S. S. SHINDE, J.]

Tupe/