

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.
CRIMINAL APPELLATE JURISDICTION.**

Criminal Writ Petition No.1368 Of 2014.

Virsing Bhopsing Pardeshi
Age : 40 Years, Occ.: Driver.
R/o.: Narayan Master Chal, Chitod Road,
Dhule, Dist. Dhule. :: **Petitioner.**

Versus

The State of Maharashtra.
Through the Police Inspector
Zilla Peth Police Station, Jalgaon,
Dist. Jalgaon. :: **Respondent.**

Appearance =>

Mr. H.D. Deshmukh, Advocate for the Petitioner.

Mr. S.A. Ambad, Additional Public Prosecutor for the State of Maha.

CORAM : V.M. DESHPANDE, J.

DATE : 14th JANUARY, 2015.

Per Court :-

Rule. Rule made returnable forthwith. Heard finally with the consent of both the parties.

[2] I have heard Mr. H.D. Deshmukh, learned counsel for the Petitioner and Mr. S.A. Ambad, Additional Public Prosecutor for the State of Maharashtra.

[3] The reasons for the petitioner to approach this court is rejection of his application Exh.No.31 filed in Sessions Case No.246/12, by the learned

Additional Sessions Judge, Jalgaon, rejected the said application and refused to discharge the present petitioner. On the basis of First Information Report lodged by Srawan Budha Ahire, brother of deceased Suresh, Crime was registered with Police Station, Jalgaon vide C.R. No. 51/06 for the offences punishable under Section/s 306, 294, 500, 504 read with 34 of the Indian Penal Code. The investigation agency after completion of its entire investigation filed charge sheet in the court of law. The present petitioner is accused No.14 in the said charge sheet.

[4] 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 mis -representation, 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.

[5] The entire charge sheet is placed on record. The learned counsel for the applicant has pointed out from the charge-sheet that the only material against the present petitioner is page No.138 of the compilation, which is part and parcel of the suicide note alleged to have been written by deceased Suresh Budha. The recites in so far as present petitioner is concerned in the said suicide note, reads as under :-

“ विरसिंग परदेशी रा.धुळे हा प्रभाकरचा डायव्हर असून त्याने प्रभाकरचे ऐकून माझे विषयी बदनामी केली आहे.”

Even the learned A.P.P. has fairly submitted that except this, there is no material available against the present petitioner.

[6] In view of the provisions of Section 107 of the Indian Penal Code, in the light of the material collected by the prosecution, which is

reproduced herein-above, it is absolutely clear that there is no material on record to suggest that the petitioner in any manner instigated the deceased or he has intentionally aided any act or illegal omission in abetting the deceased to commit suicide.

[7] 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.”

[8] Perusal of the aforesaid recital in the suicide note clearly shows that, the petitioner cannot be held responsible. In that view of the matter, present petition is required to be allowed by setting aside the order impugned. Consequently, I pass the following order :-

ORDER

- (i) Writ Petition is allowed.
- (ii) Order dated 28th August, 2014 passed by the learned Additional Sessions Judge, Jalgaon below application Exh.No. 31 in Sessions Case No.246 Of 2012, is quashed and set aside.

(iii) Petitioner - Virsing Bhopsing Pardeshi is discharged from the Sessions Case No. 246 Of 2012.

(iv) Rule is made absolute.

(V.M. DESHPANDE, J.)