

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 619 OF 2015

Bhagwan Yashwant Powar

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr. Anand S. Patil for the Applicant.

Ms G.P. Mulekar, APP for the Respondent -State.

CORAM:-M.L. TAHALIYANI, J.

DATED :8th JULY, 2015.

P.C.

Admit. Heard finally.

2. Heard learned Advocate for the Applicant and learned APP for the Respondent -State of Maharashtra.

3. The Applicant is facing trial for the offence punishable under section 306 of the IPC at the instance of father of the deceased viz. Anand Govind Jadhav. The deceased Prakash Anand Jadhav was married and there was a property in his wife's name. The Applicant is also married and it is a case of prosecution that there was an agreement between the Applicant and deceased that wife of the

deceased would sell agricultural land to the Applicant's wife for the sum of Rs.4,00,000/-. In view of the agreement an amount of Rs.3,00,000/- was paid by the Applicant to the deceased in installments. Rs.1,00,000/- was to be paid to materialise the transaction. The transaction could not materialised and it was decided to terminate the agreement.

4. As such the deceased was supposed to pay back an amount of Rs.3,00,000/- to the Applicant. It is the case of prosecution that deceased had paid Rs.5,00,000/- i.e. principal plus interest to the Applicant and that despite the payment, the Applicant went on making demand from the deceased. Because of the unreasonable demand and continuous alleged torture on the part of the Applicant deceased had committed suicide. Deceased left suicide note in which he had stated that he had paid the amount and that he was not liable to pay anything to the Applicant. He has further stated that the Applicant should be held responsible for his death.

5. It is on the basis of this suicide note that an offence was registered and investigation was completed. Learned counsel for the Applicant submits that there is no element of abetment as defined under section 107 of the IPC. It is further brought to my notice that

there is nothing in writing that the deceased had paid Rs.5,00,000/- to the Applicant.

6. Even if, it is assumed that amount was paid by the deceased to the Applicant and it is further assumed that the demand of the Applicant was unreasonable, that by itself cannot be said to be abetment. The abetment as defined under section 107 of the IPC is as under :

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.

7. In my opinion, the case of the Applicant does not fall under any of the above stated categories. Police have registered the complaint only on the basis of the suicide note and filed charge-sheet without examining as to whether it amounted to abetment.

8. Discharge application filed by the Applicant before the

Trial Court has been rejected. In view of the above stated observations the order of learned Sessions Judge will have to be set aside.

9. The application is allowed. Order of the learned Sessions Judge is set aside. The Applicant be discharged from offence under section 306 of the IPC vide Sessions Case No.49 of 2013 (FIR No.106/2012) of Karveer Police station, District-Kolhapur. Bail bonds, if any, of the Applicant shall stand cancelled.

10. The criminal application stands disposed of.

(JUDGE)