

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 4423 OF 2006

Mr. Jayprakash P. Mishra
aged about 53 yrs., Occ. Advocate,
residing at 103, Jaya Apartment,
Ram Kuwar Thakur Road,
Dahisar (E), Mumbai 400 068.

... Applicant.

Versus

The State of Maharashtra.

... Respondent.

Mr. Niteen Pradhan i/b. Mr. Amrendra Mishra, advocate for applicant.

Ms. V.S. Mhaispurkar, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J

DATE : AUGUST 27, 2015

JUDGMENT :

1 Heard the learned Counsel for the applicant and the learned
APP for State. Perused the papers.

2 Being aggrieved by the order passed by the Additional Sessions
Judge, Mumbai dated 29/3/2006 thereby rejecting the application

filed by the present applicant seeking discharge in Sessions Case No. 567 of 2004. The Petitioner has filed the present application seeking the relief of discharge. Such of the facts necessary for the decision of this application are as follows :

On 15/4/2014 Smt. Surekha Jariwala lodged a report at Malad Police Station alleging therein that the present applicant and seven others are responsible for the suicidal death of her son Dharmesh. According to her, her son Dharmesh had studied upto 12th standard in Thakur College at Thakur Complex, Kandivali. In 1999 he had discontinued his education and started taking courses in computer. That he could not secure a job for himself. According to the complainant, one Suresh Rawal, who was residing in the same society had an evil eye upon her. She has alleged that on 3/6/1998 Suresh Rawal had visited her house for tendering an apology. He had outraged the modesty of the complainant. At that time, she had lodged a report about the said incident to the police station which was registered as Crime No. 220 of 1998.

3 According to her, some influential person like Hemendra Mehta and the Councilor Vinod Ghedia attempted to influence her to withdraw the complaint against the secretary of the society. She had taken recourse to legal proceedings against the same. On 17/9/2000 her son Dharmesh was assaulted by four unknown persons. In respect of the said incident, she had lodged a report at Borivali Police Station, which was registered as Crime No. 412 of 2000. On 17/3/2001, she had gone on hunger strike. She was assaulted by the worker of Janta Party i.e. Leelaben Soni. She had also lodged report which was registered as Crime No. 127 of 2001. She alleged that on one occasion her son had been to Borivali. At that time, brother of Hemendra Mehta namely, Bansi Mehta and Kesari Yadav had threatened him of dire consequences. That he was scared to step out of the house.

4 The complainant has alleged that her son was passing through depressed state of mind because of the previous incidences. That he could not get over the trauma that he was assaulted on 16/2/1998

and 5/5/1998. On 16/2/2004 when she tried to wake up her son, she realised that he had taken an excessive dose of the sleeping tablets and had attempted to commit suicide. She had taken him to Evershine Nursing Home. He was not answering as to why he had attempted to commit suicide.

5 On 2/4/2004 her son was found in an unconscious state of mind at house. He had again attempted to commit suicide by taking overdose of sleeping tablets. On 9/4/2004 she had asked her son as to why he appeared to be worried. He had reacted by informing her that he is being coerced by Suresh Rawal, Vinod Ghedia, Hemendra Mehta, Bansi Mehta, Kesari Yadav, Lilaben Soni to withdraw the complaints. She had assured him that they could inform the police about the same.

6 In the early hours of 10/4/2004 her son Dharmesh had committed suicide by hanging himself to ceiling fan in the hall. She found a suicide note in the hall. The deceased had stated in the

suicide note that he has committed suicide and that Shri Hemendra Mehta, Suresh Rawal, Vinod Ghedia, Bansi Mehta, Kesari Yadav, Lilaben Soni, Jayprakash Mishra and Shamlal are responsible for the same. He has narrated several instances. It is mentioned in the suicide note that the present applicant i.e. Jayprakash Mishra alongwith Bansi Mehta and 3 others had attempted to kill him and therefore, the present applicant is also held responsible for the suicidal death of Dharmesh. Since the case was triable by the Court of Sessions, it was committed to the Court of Sessions and registered as Sessions Case No. 567 of 2004.

7 The present Applicant had filed a discharge application. It was contended in the discharge application that the family of the complainant had initiated several proceedings against accused and in view of that the learned Sessions Judge refused to discharge the accused. The Applicant had challenged the impugned order dated 29/3/2006. This Court vide order dated 31st August, 2007 was

pleased to issue Rule and had stayed the proceedings qua present Petitioner.

8 In the interregnum, the co-accused were tried by the Sessions Court. The learned Ad-hoc Assistant Sessions Judge vide Judgment and Order dated 10th May, 2013 has been pleased to acquit all the accused of the offence punishable under Section 306 read with Section 34 of the Indian Penal Code. It is a matter of record that the said Judgment and order is not challenged by the State and hence, the same has attained finality.

9 Upon perusal of records and proceedings and the substantive evidence of the complainant who was examined as P.W. 2, it is clear that her son was passing through the stage of mental depression. She has admitted that prior to 10/4/2004, he had made two attempts to commit suicide and on both the occasion, he had refused to answer the cause for attempting to commit suicide. He had only informed his mother that he would disclose the cause at an appropriate time.

10 Upon perusal of the cross-examination of the complainant, it is clear that her son was in search of employment and at the time of the incident, he was not employed. She has admitted in the cross-examination that in the year 1997, he was engaged to one Dipti Patil, however, the marriage could not be materialised as Dipti had married to some another boy without any intimation to the complainant and her son. She had admitted that she had not disclosed to the police that her son was passing through a phase of mental tension due to unemployment for considerable time.

11 There was inherent omission and contradiction in the substantive evidence of the complainant. As far as the present Petitioner is concerned, she has stated before the Court that she had informed the police that on 7/9/2000 she had received a phone call from the present Petitioner who had told her to withdraw the case against Suresh Rawal and Hemendra Mehta. However, the said averment does not find place in the first information report. It is an

admitted position that the name of the present petitioner does not appear in the first information report. No specific role is attributed to the present Petitioner.

12 Section 306 of the Indian Penal Code has to be read in consonance with Section 107 of the Indian Penal Code. To constitute abetment or in order that a person may be convicted as an accomplice, it is necessary that there should be sufficient material to show that the accused aided, abetted, counselled or procured the commission of the principal offence and that the accused had the intent to aid or encourage the commission of suicide, or that the accused had by his act, instigated the commission of suicide. Abetment implies a certain degree of activity in the abettor. Unless the essential ingredients of Section 107 of the Indian Penal Code are prima facie apparent in the case of prosecution, no charge for abetment can be framed against an accused person.

13 In the present case, there is no sufficient material to frame charge against the accused under section 306 of the Indian Penal Code. Moreover, this Court cannot be oblivious of the fact that the co-accused who were prosecuted on the same set of facts have been acquitted. Hence, continuance of the proceedings against the present applicant would be an abuse of process of law.

14 It can not be said that the Petitioner has abetted, instigated or facilitated commission of suicide by Dharmesh Jariwala. The fact that all the co-accused have been acquitted by the Sessions Court on the same set of evidence, there is no reason to send the present petitioner for trial, as it would be an abuse of process of law. At the threshold, this Court upon considering the averments in the first information report as well as the papers of investigation was pleased to stay the proceedings qua the present Applicant and at this stage, there is no reason for this Court to send the Applicant to trial, as there is no material against him to frame charge under Section 306 of the Indian Penal Code.

15 In view of this, the application is allowed in terms of prayer clause (b). Rule is made absolute in the above terms.

16 Criminal Application is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)