

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.417 of 2013

MR.WASIM HUSSAIN SHAIKH

Occ.Business,

Residing at 22, Atlas Copco Colony,

Mahesh Nagar, Pimpri,

PUNE – 411018

.. APPLICANT*Versus***THE STATE OF MAHARASHTRA****.. RESPONDENT**

Mr.K.M. Mhatre, Advocate for the applicant.

Mrs.S.V.Gajare, APP for the Respondent State.

CORAM : ABHAY M. THIPSAY, J.**DATED : 25th FEBRUARY 2015**

ORAL ORDER :-

1 The applicant who is the accused no.3 in Sessions Case No.568 of 2009 pending before the Court of Sessions, Pune, is aggrieved by the order dated 23rd January 2012 passed by the learned Assistant Sessions Judge, rejecting the applicant's application for discharge as contemplated under section 227 of the Code of Criminal Procedure.

2 There are two other accused in the said case, and they had also applied for discharge, but by the said order dated 23rd January 2012, which is a common order dealing with the

discharge applications filed by all the accused, their applications also came to be rejected. The applicant has therefore, by the present revision application approached this Court, praying that the impugned order be set aside, and that he be discharged.

3 As decided, by consent, the revision application has been heard finally at the admission stage itself.

4 I have heard Mr.K.M.Mhatre, the learned counsel for the applicant. I have heard Mrs.S.V.Gajare, learned APP for the State. With the assistance of the learned counsel for the applicant, and the learned APP, I have gone through the application and the annexures thereto which include the application for discharge and a copy of the impugned order, but also a copy of the entire charge-sheet. I have also taken into consideration the counter affidavit filed by the Investigating Officer.

5 The prosecution case, as is reflected from the charge-sheet, may be stated thus :-

Kiran Kalbhor (the deceased) was a driver. He had purchased one car, and had given the same for the use of the company of the applicant on contract basis. The deceased was getting a monthly rent of Rs.10,000/- from the applicant as a consideration. Additionally, the deceased was employed by the applicant as a Supervisor in his office, and was getting an amount of Rs.4,000/- per month towards remuneration. The deceased went missing from 1st May 2005, and on 4th May 2005, his dead body was found on the terrace of the building where he had been residing. He was found to have died by consuming poisonous

substance. Hrishikesh – cousin of Kiran Kalbhor – was the one who had taken him to the hospital. A ward-boy in the hospital had given the articles belongings of Kiran to the said Hrishikesh. Among the articles that were handed over by the ward-boy to Hrishikesh, there were two chits written by Kiran for his father and the police. It was mentioned in the chits that *the applicant and others had badly beaten him, alleging that he had committed theft, that the applicant had threatened him that the flat which was in the name of Kiran should be transferred by Kiran in the name of the applicant, and that some signatures of Kiran had been taken on blank cheques. That, Kiran felt humiliated on that account and being unable to bear the humiliation, he was committing suicide.*

On this basis, Chetan Kalbhor-brother of Kiran, lodged a report with the police on 6th May 2006 alleging commission of offence by the applicant, Manager - Salim, Supervisor Dilip and one unknown person described as applicant's friend. After investigation, the police filed charge-sheet against the applicant, one Dilip Dhotre (Accused no.1) and one Salim (Accused No.2), alleging commission of offences punishable under section 306 of the IPC and 506 II of the IPC read with section 34 of the IPC. The applicant and the other accused applied for discharge, raising a number of contentions. It was submitted that the deceased Kiran had been committing theft of diesel, and that he had even bribed the watchman of the applicant's company so that he should not reveal this to anyone. That the theft of deceased had come to light, and that, thereafter, the deceased had accepted his liability and agreed to compensate the applicant's company for the loss caused to it. It was contended that the suicide notes were not

genuine, and could not be relied upon. It was also contended that there were a number of aspects which created doubt about the genuineness/truth/bonafides of the allegations levelled against the applicant and other accused. It was contended that there was absolutely no material in the charge-sheet to show that the applicant or the other accused had assaulted or caused any hurt to deceased Kiran. It was contended that the statements of two important witnesses were not recorded. It was contended that a false complaint had been lodged against the applicant and the other accused with the intention of saving the property of deceased Kiran which he had agreed to give to the Company for compensating the loss caused to the company.

6 I have carefully gone through the impugned order. The learned Assistant Sessions Judge noted the contention raised on behalf of the applicant and the other accused that the signatures on the suicide notes did not tally with the admitted signature of Kiran on a letter, and that the difference in the signatures could be viewed even by naked eyes, but dealt with the same by saying that 'at the stage of framing of charge, the genuineness of the chits could not be looked into'. The learned Assistant Sessions Judge noted the case law relied upon by the applicant and the other accused, but dealt with the same by saying that 'at the stage of framing of charge, it was not necessary for him to see as to whether there was sufficient evidence to convict the accused'. He did not discuss whether on the facts alleged, a case of abetment of suicide by Kiran was made out against the applicant and/or the other accused.

7 After carefully considering the police report and accompanying documents, I am of the opinion that there are not sufficient grounds for proceeding against the applicant – and even against any of the other accused.

8 In the first place, the genuineness of the suicide note is open to doubt without any meticulous examination thereof. It is because the suicide notes are said to have been found by one ward-boy in the hospital, and handed over to the cousin of Kiran – one Hrishikesh – who in turn handed over the same to First Informant Chetan. No statement of any such ward-boy has been recorded in the investigation. Why the suicide notes were not found during the inquest panchnama, is not at all clear. Who was the ward-boy and what was the reason for him to hand over the notes to the cousin or Kiran, instead of handing it over to the police or to the hospital administration, is not clear.

9 Apart from this, the contents of the suicide notes in question do not find any corroboration from the other material available in the charge-sheet. Though the claim is that Kiran was badly beaten, the inquest panchnama and the notes of the post mortem examination do not lend any support to such a claim. Only three injuries of an extremely minor nature were found on the dead body of Kiran. They are contusion over lower lip, one abrasion on cheek and one abrasion on chin.

10 The statements of the employees of the Company that were recorded indicate that Kiran Kalbhor had confessed that he had been committing theft of diesel, but that, Kiran was not beaten by anyone.

11 However, the real question that needs to be considered is whether on the facts alleged, a case of the applicant and the other accused having abetted commission of suicide by Kiran, is made out.

12 For answering this question, the legal concept of 'abetment' needs to be fully comprehended. The law relating to it is found in Chapter V of the IPC. Section 107 of the IPC reads 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 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 that thing.*

Illustration

A, a public officer, is authorized by a warrant from a Court of Justice to apprehend Z. B, knowing that fact and also that C is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here, B abets by instigation the apprehension of C.

Explanation 2.-- *Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act."*

13 Section 108 of the IPC defines 'abettor'. It reads as under :

"108. Abettor.-- *A person abets an offence, who abets either the commission of an offence, or the commission of an act which would be an offence, if committed by a person capable by law of committing an offence with the same intention or knowledge as that of the abettor."*
(Explanations and illustrations omitted as not relevant for the present.)

14 The concept of 'abetment' in the context of abetment of suicide, which is punishable under Section 306 of the IPC, has been often discussed by the High Courts and also by the Apex Court in their pronouncements. A reference may usefully be made to the following reported judgments.

- (i) *Manish Kumar Sharma vs. State of Rajasthan*
 (1995 Criminal Law Journal 3066)
- (ii) *Vedprakash Bhaiji Vs. State of Madhya Pradesh*
 (1995 Criminal Law Journal 893)
- (iii) *Sanju @ Sanjay Singh Sengar Vs. State of Madhya Pradesh*
 (2002 Criminal Law Journal 2796)

- (iv) *Cyriac s/o Devassia & Anr Vs. Sub-Inspector of Police, Kaduthuruthy & Anr*
(2005 Criminal Law Journal 4322)
- (v) *Ramesh Kumar Vs. State of Chattisgarh*
(2001 Criminal Law Journal 4724)
- (vi) *Madan Mohan Singh Vs. State of Gujarat*
(2010) 8 Supreme Court Cases 628

15 I had on occasion to deal with this question in **Shivaji Shitole Vs. State of Maharashtra (WP No.1113/11 decided on 26th April 2012)**; and after considering the aforesaid judgments, the legal position was summarised by me as follows :-

Even if a person would commit suicide because of the torments of an accused, the accused cannot be said to have abetted the commission of suicide by the deceased, unless the accused would intend, while causing torments to the victim/deceased, that he should commit suicide. Even if the rigour of this proposition is diluted, still, the least that would be required is, that it should be shown that the accused could reasonably foresee that because of his conduct, the victim was almost certain- or at least quite likely-to commit suicide. Unless that the victim should commit suicide, is either intended, or can be reasonably foreseen and expected

a person cannot be charged of having abetted the commission of suicide, even if the suicide has been committed as a result of some of the acts committed by the accused. A perusal of the reported judgments show that even in cases where the accused had uttered the words such as "go and die", in abusive and humiliating language, which, allegedly, led to the committing of suicide, it was held that it would not amount to instigation and that consequently, there would be no offence of abetment of suicide.

16 The legal position as can be gathered from a perusal of the aforesaid judgments leaves no manner of doubt that *even if it is accepted for the sake of arguments that Kiran had committed suicide because he felt humiliated on account of the treatment given to him by the applicant and the other accused, still the applicant and/or the other accused cannot be said to have abetted the commission of suicide by Kiran, inasmuch as it is nobody's case that while treating Kiran in the manner alleged, the applicant and/or the other accused intended that Kiran should thereby commit suicide.*

17 Clearly, therefore, there is no case for proceeding against the applicant – and even the other accused – for that matter.

18 The learned Assistant Sessions Judge had failed to apply his mind in respect of the contentions raised by the applicant and the other accused, and has merely avoided to deal with the contentions by stating that at the stage of charge, he was not required to go into depth. Though at the stage of framing of charge, a meticulous analysis of the material collected by the police during investigation is not to be undertaken still, a limited examination of the material in the charge-sheet for the purpose of ascertaining whether a *prima facie* case for proceeding against the accused is made out, would be essential. In coming to the conclusion as to whether or not, there is sufficient ground for proceeding against an accused, the Court of Sessions is not expected to go merely by what the police have alleged. In the instant case, the learned Assistant Sessions Judge has dealt with the question of discharge in an improper manner. In paragraph no.9 of the impugned order, he observed as follows :-

“In the statement of Hrishikesh Kalbhor, it appears that it has been stated by him before the police that the deceased has committed suicide only due to harassment at the hands of the accused”.

19 The learned Judge did not realize that this is a statement of inference drawn by Hrishikesh, and not a statement of fact known to Hrishikesh. The learned Judge also observed as follows :

“The statements of the witnesses recorded during the investigation *prima facie* show that the chits were found in the pocket of the deceased”

20 The learned Judge overlooked that the chits were allegedly found by a ward-boy whose statement was not at all recorded. That the chits were found in the pocket of the deceased was supposed to be known only to that ward-boy (who is unnamed and untraced); and other witnesses were only stating that the ward-boy had told them that chits were found in the pocket of the deceased.

21 Over and above, the learned Judge did not address himself to the question as to whether, assuming that the deceased indeed committed suicide on account of the humiliation felt by him due to the treatment given to him by the applicant and other accused, that, by itself, would render the applicant and other accused liable for having abetted commission of suicide by Kiran.

22 The impugned order is not in accordance with law.

23 There is not sufficient ground for proceeding against the applicant – and even the other accused.

24 Though the other accused have not challenged the order rejecting their prayer for discharge, after having examined the record of the case and having come to the conclusion that there are not sufficient grounds for proceeding against the accused persons, I see no reason as to why the benefit of this conclusion should not be available to the other accused also.

25 Revision Application is allowed.

26 The impugned order is set aside.

27 The applicant is discharged.

28 Even the other accused i.e. Accused No.1 – Dhotre and
Accused no.2 – Salim Abdul Haq Shaikh are also discharged.

29 Revision Application is disposed of in the aforesaid
terms.

(ABHAY M.THIPSAY, J)