

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AURANGABAD

CRIMINAL APPLICATION NO. 647 OF 2016

Raju s/o Lekhraj Tanwani

...Applicant

VERSUS

The State of Maharashtra & ors.

...Respondents

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Shri N.K.Kakade, advocate for applicant

Shri S.D.Ghayal, A.P.P. for respondent nos. 1 and 2/State

Shri S.B.Parnere, advocate h/f

Shri Abhishek Kulkarni, advocate for respondent no.3

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CORAM : A.V.NIRGUDE

AND

INDIRA K.JAIN, JJ.

DATED : 4th March, 2016

ORDER :

1] The applicant is accused in Crime No. 202 of 2015 registered on 6.11.2015 by Begumpura police station, Aurangabad for offences punishable under Sections 306, 504 r/w 34 of the Indian Penal Code.

2] The allegations made against the applicant are that the applicant has committed certain offence and a case is pending against him.

3] Victim Shivaji was one of the witnesses in that case. Shivaji recorded his statement implicating the applicant on 2.11.2015. Thereafter Shivaji started receiving phone calls from a

particular person who threatened Shivaji that since he had recorded deposition against the applicant he would be killed. Shivaji informed about these threats to his brother and wife. On 4.11.2015 Shivaji went to night duty. In the morning he did not come back. His brother the complainant searched Shivaji but in vain. On 5.11.2015 he lodged missing report to police. On 6.11.2015 it was found that Shivaji had committed suicide by getting hanged in forest near Boudha Vihar of Begumpura. The complainant also mentioned that prior to 2.11.2015 opponents of the applicant who are complainants in the earlier case had also threatened Shivaji. They asked Shivaji to depose against applicant. Shivaji was thus pressurized by both the groups, the applicant on one side and his opponents on the other. It is nowhere stated that the applicant himself made phone calls to Shivaji. It is alleged that some one related to applicant made phone calls and issued threats.

4] The question is whether the applicant or any other person even the person who issued threats can be accused of abetting Shivaji's suicide? The answer is in negative.

5] Section 107 of the Indian Penal Code defines what is abetment. It 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 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 caused or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of 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 facilitate the commission thereof, is said to aid the doing of that act. "

While reading this provision, one would assume that 'doing of a thing' means commission of suicide. Keeping this in mind, if one reads this provision, it is clear that the person who can be accused as abettor must intend that his acts would lead the victim to commit suicide. With such intention he would take such steps as are necessary to ensure that the victim commits suicide.

6] Having regard to this provision, we must now consider the case in hand. Applicant and his persons issued threats. They were serious threats. This disheartened victim Shivaji. But it cannot be said that the applicant and his friends who issued threats to Shivaji knew that Shivaji would commit suicide due to their threats. They had no intention while issuing threats that Shivaji should end his life by committing suicide. Besides this, for abetment of suicide the abettor

must do positive acts which would instigate the victim in commission of suicide. Explanation (2) to Section 107 of the Indian Penal Code throws sufficient light on commission of abetment of suicide. The abettor's acts should facilitate the commission of suicide. Issuing threats thus would not amount to acts facilitating commission of suicide.

7] We, therefore, hold that the applicant or any other person in this case can be accused of abetment of suicide of Shivaji. None-the-less in view of the threats issued by them they can still be prosecuted under Section 506 r/w 34 of the Indian Penal Code.

8] Application is partly allowed and disposed of.

[INDIRA K.JAIN, J.]

[A.V.NIRGUDE, J.]

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