

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

CRIMINAL WRIT PETITION NO. 464 OF 2016

Chandramal Pradhanmal Galani & ors. .. Petitioners

Versus

The State of Maharashtra & Anr. .. Respondents

Mr. P.R. Katneshwarkar h/f. Mr. P.B. Pawar, Advocate for the petitioners.

Mr. A.R. Borulkar, A.P.P. for respondent/State.

Mr. Bhausahab P. Deshmukh, Advocate for respondent No.2.

WITH

CRIMINAL APPLICATION NO. 1713 OF 2016

Kailas Ramdas Patil .. Applicant

Versus

The State of Maharashtra & Anr. .. Respondents

Mr. Alok Sharma, Advocate for the petitioner.

Mr. A.R. Borulkar, A.P.P. for respondent/State.

Mr. B.R. Kedar, Advocate for respondent No.2.

**CORAM : A.V.NIRGUDE &
V.L.ACHLIYA, JJ.**

DATED : 12.07.2016

P.C. :-

1. Both the above mentioned proceedings arise from registration of Crime No.173 of 2015 on 1st December, 2015 at Dharangaon Police Station, for offence punishable

under sections 306 and 506 read with section 34 of the Indian Penal Code and offence punishable under section 39 and 35 of the Maharashtra Money Lenders Act against the above mentioned petitioners/applicant. The offence is registered against five persons and four of them are present before us as petitioners/applicant.

2. The complainant is one Varsha Annasa Kshatriya. Her husband – Annasa committed suicide on 26.11.2015 at about 3.30 p.m. near village Dharangaon. During A.D. Inquiry, suicide note was found. On perusal of the suicide note, the complainant lodged this complaint alleging that her husband Annasa was harassed by the petitioners/applicant and other accused so much so that he was left with no choice but to commit suicide. In the complaint, details about victim's predicaments are described. The gist of the complaint in short can be stated as under :-

3. Annasa was a businessman. He had a cloth shop at Parola. Long back he purchased a plot of land at prime location of Parola and constructed a structure. However, in 2002 since he was in need of funds, he thought of selling his plot and the structure. But he was advised not to sell away the property which stood in his as well in his wife's name. Petitioners in Cr.W.P.

No. 464 of 2016 lent him certain amount on condition that his wife – complainant should execute out right sale in the name of one Naresh s/o. Petitioner No.1. In the sale-deed, it was mentioned that the purchaser would be free to get structure standing on the property vacated from the tenant. Subsequently, he also took loan from Kailas Patil. Annasa also agreed to sell a part of above mentioned property at Parola to Kailas who is applicant in Cri. Application No. 1713 of 2016.

4. It is not clear from the complaint as to how much amount was given as loan but the complainant mentioned that from 2002 onwards, her husband Annasa was giving Rs.60,000/- as interest on the loan per month. Such interest was paid till 2004. Around this time, Annasa thought that he should dispose of the property so as to get out from the debt trap. But the petitioners did not allow him to put the property on sale in open market, obviously because they were apparently holding title. On the other hand, applicant in Cri. Application No.1713 of 2016 filed a suit for specific performance and succeeded. The second appeal arising from said litigation is pending. In 2004, Annasa felt frustrated and left his house telling that he would commit suicide. After 12-13 days, he came back. Thereafter, Annasa continued his efforts to get his property released from the clutches of

alleged money lenders, but in vain. He ultimately committed suicide on 26.11.2015.

5. The question that arises for our consideration in both these cases is - whether the acts alleged against the petitioners/applicant would amount to abetment to Annasa's suicide? Our answer is in negative. We take whatever is stated in the complaint as truthful. In other words, we are not examining its probity. Assuming what is stated there to be true, it can at the most be said that the petitioners and the applicant were creating difficulties after difficulties for deceased Annasa. We also assume that all of them were aware that in 2004 Annasa showed tendency of suicide. By no stretch of imagination, we can say that the activity attributed to the petitioners and the applicant amounted to aiding that too intentionally to commission of suicide. The harassment to Annasa most probably worsened Annasa's emotional health, but it cannot be said that so called perpetrators intended that by their acts Annasa would commit suicide. The element of abetment is absent in the allegations made in the complaint.

6. In order to oppose the application, learned Counsel for the complainant showed us a significant judgment of the Supreme Court in the case of Amit Kapoor

Vs. Ramesh Chander & Anr., 2012 All MR (Cri) 3806 (S.C.).

In this judgment, the Supreme Court culled out following principles which are required to be followed while the High Court exercises jurisdiction with regard to quashing of charge etc., either in the exercise of jurisdiction under section 397 or under section 482 of Cr.P.C. Said principles are reproduced as under :-

- "1) Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.
- 2) The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.
- 3) The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.
- 4) Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate courts even in such cases, the High Court should be loathe to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers.

5) Where there is an express legal bar enacted in any of the provisions of the Code or any specific law in force to the very initiation or institution and continuance of such criminal proceedings, such a bar is intended to provide specific protection to an accused.

6) The Court has a duty to balance the freedom of a person and the right of the complainant or prosecution to investigate and prosecute the offender.

7) The process of the Court cannot be permitted to be used for an oblique or ultimate/ulterior purpose.

8) Where the allegations made and as they appeared from the record and documents annexed therewith to predominantly give rise and constitute a 'civil wrong' with no 'element of criminality' and does not satisfy the basic ingredients of a criminal offence, the Court may be justified in quashing the charge. Even in such cases, the Court would not embark upon the critical analysis of the evidence.

9) Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction, the Court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

10) It is neither necessary nor is the court called upon to hold a full-fledged enquiry or to appreciate evidence collected by the investigating agencies to find out whether it is a case of acquittal or conviction.

11) Where allegations give rise to a civil claim and also amount to an offence, merely because a civil claim is maintainable, does not mean that a criminal complaint

cannot be maintained.

12) In exercise of its jurisdiction under Section 228 and/or under Section 482, the Court cannot take into consideration external materials given by an accused for reaching the conclusion that no offence was disclosed or that there was possibility of his acquittal. The Court has to consider the record and documents annexed with by the prosecution.

13) Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed *prima facie*.

14) Where the charge-sheet, report under Section 173(2) of the Code, suffers from fundamental legal defects, the Court may be well within its jurisdiction to frame a charge.

15) Coupled with any or all of the above, where the Court finds that it would amount to abuse of process of the Code or that interest of justice favours, otherwise it may quash the charge. The power is to be exercised *ex debito justitiae*, i.e. to do real and substantial justice for administration of which alone, the courts exist."

7. We have taken care to follow all the principles enumerated above. This is a unique case where abetment of suicide is alleged against the alleged money lenders. We have not conducted meticulous examination of material produced before us. But we have taken a birds eye view

of the complaint, assuming it to be true. We, thereafter examined the possibilities of making out any offence punishable under the Indian Penal Code. We are certain that both these proceedings deserve to be allowed to the extent of quashing of complaint alleging offences punishable under sections 306 and 506 read with section 34 of the Indian Penal Code. We are not expressing our views in respect of offence punishable under sections Bombay Money Lenders Act.

8. The Criminal Writ Petition and the Criminal Applications are accordingly partly allowed. The offences punishable under sections 306 and 506 read with section 34 of the Indian Penal Code as against the petitioners and the applicant are quashed.

[V.L.ACHLIYA, J.]

[A.V.NIRGUDE, J.]