

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

CRIMINAL WRIT PETITION NO. 433 OF 2016

Sushil Chandrakant Rashinkar

PETITIONER

V E R S U S

The State of Maharashtra & Anr.

RESPONDENTS

Mr. Dhananjay B. Thoke, Advocate for the Petitioner
Mr. R.B. Bagul, A.P.P. for Respondent No.1 - State

**CORAM : A.V. NIRGUDE &
V.K JADHAV, JJ.**

DATE : 24th June, 2016

PER COURT :

1. As an exception, we are inclined to entertain this petition.
2. Petitioner is accused in Crime No. 131 of 2014, registered at Sangamner City Police Station. Pursuant to filing of the complaint, investigation was completed and the charge-sheet is now filed in the Court of Judicial Magistrate, First Class, Kopergaon. We are told that the learned Magistrate has committed the case to the Special Court.
3. On perusal of the complaint, we found that there is practically no case against the petitioner and no action could have been taken against him.

4. An Advocate practicing in Sangamner Court by name Satish Raut committed suicide on 20th June, 2014. He left behind a Suicide-Note in which he alleged that he and his friend Mr. Mansur for and on behalf of his client approached a Talathi (another accused) for some favourable orders. They handed over certain amount to the petitioner as a bribe and yet their work was not done. Having suffered frustration, the Advocate committed suicide. On the basis of this suicide, offence was registered and investigation was completed. During the investigation, statement of Sohail, Advocate friend of deceased Raut was recorded. He supported the allegations made in the Suicide-note.

5. There are two parts of this case, one; whether the petitioner committed offence of abetting suicide of Advocate Mr. Raut, and secondly; whether he committed any offence punishable under Prevention of Corruption Act.

6. For the purpose of this discussion, we assume all the statements made including the Suicide-note to be true. Section 107 of the Indian Penal Code. It reads as under :-

“107. **Abetment of a thing.** - A person abets the doing of a thing, who-

Firstly. - 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.

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.”

The prosecution case would fall either under clause 'firstly' or 'thirdly'. In both situation, intention of the accused is necessary. In clause 'firstly', the accused should be shown to have instigated the victim to commit suicide. Such instigation should be a positive act. It would also be a physical act. Such act of instigation is generally committed in presence of the victim. In this case, assuming the petitioner and other accused intentionally avoided to pass favourable order in favour of the victim, it is not prosecution case that such act on their part would amount to instigation for suicide.

7. Let us consider whether the allegation would fall within clause 'thirdly'. Let us assume that petitioner and other accused intentionally did not help the victim. Can it be said that their conduct aided the act of suicide. The answer is in negative. Their conduct saddened the victim so-much-so that he in the fit of depression committed suicide. The accused did not intend that their act or omission would result into commission of suicide. In view of this, offence under Section 306 of the Indian Penal code is not made out in this case.

5. Now we turn to offences punishable under Sections 7 and 13

of the Prevention of Corruption Act. The petitioner is not a Government employee or a public servant, and therefore, he cannot be accused of any offence under the Act. In view of this, we are inclined to quash the proceeding against the petitioner. Criminal Writ Petition is allowed in terms of prayer clause 'B'.

(V.K. JADHAV, J.)

(A.V. NIRGUDE, J.)

srm/24/6/16