

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 3258 OF 2016

1. Ansiram s/o Namdeo Ghandge,
Age : 34 years, Occu. Agri.,
R/o Patharghavan (B), Taluka
Pathri, District Parbhani
2. Tukaram s/o Sakharam Ghandge,
Age : 36 years, Occu. Agri.,
R/o Patharghavan (B), Taluka
Pathri, District Parbhani
3. Suryakant s/o Asaram Ghandge,
Age : 45 years, Occu. Agri.,
R/o Patharghavan (B), Taluka
Pathri, District Parbhani

APPLICANTS

VERSUS

1. The State of Maharashtra,
through the Investigation Officer,
Crime No. 105/2016, registered
with Pathri Police Station,
Tq. Pathri, District Parbhani
2. Gajanan s/o Ankushrao Ghandge,
Age : 24 years, Occu. Agri.,
R/o Patharghavan (B), Taluka
Pathri, District Parbhani

RESPONDENTS

Mr. D.A. Mane, Advocate holding for Mr. N.R.
Pawade, Advocate for the applicants
Mr. A.R. Borulkar, A.P.P. for respondent No. 1/State
Mr. R.J. Nirmal, Advocate for respondent No. 2

CORAM : S.S. SHINDE AND
SANGITRAO S. PATIL, JJ.

DATE : 14th September, 2016

PER COURT :

Heard the learned counsel for the applicants, the learned A.P.P. for respondent No.1/State and the learned counsel for respondent No. 2

2. The learned counsel for the applicants invites our attention to the allegations in the FIR and submits that even if those are taken at their face value and read in their entirety, no offence, as alleged punishable under section 306 of the Indian Penal Code (for short, "the I.P.C.") is disclosed against the applicants. He invites our attention to the provisions of sections 306 and 107 of the I.P.C. He submits that upon careful reading of the allegations in the FIR, in the light of the provisions of sections 306 and 107 of the I.P.C., it is abundantly clear that no ingredients of the said offences have been made out and therefore, further investigation based upon the said FIR would be an exercise in futility. He submits that the applicants never intended to kill the deceased since they wanted to recover the amount from the deceased. He submits that no intention can be attributed or alleged against the applicants that they intended to kill the deceased. He

further submits that there is delay of one week in filing the FIR and therefore, the genuineness of the allegations made in the FIR becomes doubtful. In support of his contention that even though the suicide note is recovered, when the allegations in the FIR do not disclose the commission of the offence, which would attract the provisions of section 306 of the I.P.C., he pressed into service the judgments in the following cases :-

- (i) State of Kerala and others Vs. S. Unnikrishnan Nair and others (2015) 9 SCC 639
- (ii) Madan Mohan Singh Vs. State of Gujarat and another 2010 AIR SCW 5101
- (iii) Dilip Ramrao Shirasao and others Vs. State of Maharashtra and another
Cri. Application No. 332/2016, decided on 5th August, 2016
- (iv) Mahesh Shashikant Jape and others Vs. State of Maharashtra and another
Cri. Application No. 4362/2015, decided on 11th December, 2015
- (v) Tushar Arsul Vs. State of Maharashtra and another - Cri. Application No. 3683/2012, decided on 26th November, 2012
- (vi) Vivek Kumar Jain and another Vs. State of Madhya Pradesh and another
Misc. Cri. Petition No. 815/2014, decided on 27th November, 2014

3. The learned counsel for the applicants has specifically invites our attention to the judgment of Nagpur Bench of this Court in the case of **Dilip s/o Ramrao Shirasao and others** (supra) and submits that in that case also, the suicide note was recovered. However, the High Court has taken a view that merely because the suicide note is recovered and the allegations of harassment against the superior officers are there, it is not a ground to go ahead with the investigation into the crime and ultimately, the FIR came to be quashed in the facts of that case. Therefore, relying upon the pleadings in the petition, the annexures thereto and the provisions of sections 306 and 107 of the I.P.C., the learned counsel for the applicants submits that the application deserves to be allowed.

4. On the other hand, the learned A.P.P., representing the State, relying on the investigation papers and in particular the contents of the suicide note, submits that the matter is at the stage of investigation and it is not desirable to invoke the jurisdiction under section 482 of the Code of Criminal Procedure and stall the investigation which is in

progress.

5. The learned counsel appearing for respondent No.2 relying on the case of ***Didigam Bikshapathi and another Vs. State of Andhra Pradesh (2008) 2 S.C.C. 403*** submits that when the investigation is at preliminary stage and the Investigating Officer has to further investigate into the FIR, it is not desirable to invoke the provisions of section 482 of the Code of Criminal Procedure and quash the FIR. He specifically invites our attention to paragraph No. 9 of the judgment in the case of ***Didigam Bikshapathi and another*** (supra) and submits that in the facts of that case also, the Hon'ble the Supreme Court made reference to the suicide note and found that the acts of the appellant/accused and the roles played by them were spelt out in the suicide note and therefore, the Supreme Court opined that the order passed by the High Court declining to exercise the powers under section 482 of the Code of Criminal Procedure in the facts of that case was proper.

6. Upon hearing the learned counsel for the applicants, the learned A.P.P. for the State and the learned counsel for respondent No.2, who are of the

opinion that since there are two suicide notes and investigation is in progress and prima facie, the acts attributed to the applicants and also there is mention that in case no loan amount was returned to the applicants, the applicants would kill the deceased, we are not inclined to entertain this application. Prima facie, it appears to us that the harassment caused by the applicants led to the commission of suicide by the deceased. In that view of the matter, without further elaborating the reasons, when the investigation is in progress, we decline to entertain this application. The criminal application, therefore, stands rejected.

7. We make it clear that the observations made in this order shall not be construed to have been made on the merits of the matter and the learned Trial Court shall not be influenced by the same.

Sd/-
[**SANGITRAO S. PATIL**]
JUDGE

Sd/-
[**S.S. SHINDE**]
JUDGE