

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

Criminal Revision Application No. 174 of 2015

District : Aurangabad

1. Anand s/o. Sakharam Pote,
Age : 30 years,
Occupation : Agriculture,
R/o. Anwa,
Taluka Bhokardan,
District Jalna.

2. Navnath s/o. Sudam Daud,
Age : 30 years,
Occupation : Agriculture,
R/o. Janephal,
Taluka Bhokardan,
District Jalna.

.. Applicants
(Original
accused
nos.1 & 2)

versus

1. The State of Maharashtra,
Through the Police Inspector,
Police Station, Ajanta,
Taluka Soygaon,
District Aurangabad.

2. Sunita w/o. Fakirba Lahane,
Age : Major,
Occupation : Nil,
R/o. Sarola, Taluka Sillod,
District Aurangabad.

.. Non-applicants.

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*Mr. S.V. Kurundkar, Advocate, with
Mr. Vaibhav Deshmukh, Advocate, for the applicant.*

*Mr. A.R. Kale, Addl. Public Prosecutor, for
non-applicant no.01.*

*Mr. Umesh N. Shete, Advocate, for
non-applicant no.02.*

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CORAM : Z.A. HAQ, J.

DATE : 02ND DECEMBER 2016

ORAL JUDGMENT :

Heard learned Advocates for the respective parties.

02. Rule. Rule made returnable forthwith.

03. The applicants have assailed the order passed by the Sessions Court rejecting the application (Exhibit No.36) filed by them praying that they be discharged from the prosecution for offence punishable under Section 306 read with Section 34 of Indian Penal Code.

04. The prosecution is launched against the applicants and 06 others on the accusation that deceased Fakira s/o. Santosh Lahane consumed poison and committed suicide because of harassment by the accused, demand of money, forcibly taking cheque for amount of Rs. 2,00,000/- and forcibly taking away motorcycle of deceased. The foundation of prosecution is a note dated 03rd September, 2011 alleged to have been written by deceased Fakira s/o. Santosh Lahane. The true translation of the note is as follows :-

“

Date : 03/09/2011

Letter Written by Fakira Santosh Lahane.

Reason for writing of this letter is that I had purchased an agricultural land belonging to Soniya Bachat Gat for consideration of Rs. 6,31,000/- permanently. I have applied for loan to the Home Finance Sillod from the Branch Ajanta through its Manager Shri Vinod Ramchandra Shirsath who took Rs. 60,000/- as an expenses from me for granting me loan of Rs. Three lacs for purchasing the said land but till this time I have not received any loan. Therefore, I sold out said agricultural land for the consideration of Rs. 6,00,000/-. While selling of said land to one Navnath Sudam Daud, Vice President of Shivsena Taluka Bhokardan, who said me that he would get the said land sell out to one Fuke if you allow me to utilize Rs. 2,00,000/- therefrom which I have already with me. However, said information is leaded to my father, brothers and sisters and they denied to accept the condition of keeping rupees two lacs with one Fuke. Thereafter, I received one cheque of Rs. 2,00,000/- from Home Finance on 20.07.2011. Thereafter, Navnath Sudam Daud has taken cheque of Rs. One lac of ICICI Bank and a cheque of Rs. One lac of S.B.H. Bank from me respectively, and on 01.09.2011, Anant Pote took my unregistered new TVS motorcycle in front of my house on the pretext of saying that he would go to village and later on told me on phone that within two months I should pay amount to him and Navnath otherwise to face the consequences. Therefore, I am committing suicide. Similarly, one lady namely Savita Sanjay Kakade had purchased sand and cement on credit from me for construction of house. For the reason of payment of money on the eve of Ramnavmi at village Koda, Savita and her parents and relatives assaulted me and they

refused to pay my Rs. 34,700/-. due to this my health always remains unwell and I always remain under tension. Therefore, by consuming drug I am committing suicide. My outstanding amount at least Rs.3,80,000/- is due from the village.

Sd/-

Fakira Santosh Lahane."

05. The learned Advocate for the applicants has submitted that the ingredients necessary to constitute the offence punishable under Section 306 of Indian Penal Code are not existing in the present case. He further submitted that even if all the accusations against the applicants are taken to be true, on their face value, the offence under Section 306 of Indian Penal Code is not made out and, therefore, the prosecution of the applicants is unsustainable. To support the submission, the learned Advocate has relied on the following judgments :-

[01] Judgment of the Hon'ble Supreme Court in the case of **Gangula Mohan Reddy Vs. State of Andhra Pradesh** (2010 AIR (SC) 327).

[02] Judgment of the Hon'ble Supreme Court in the case of **Sohan Raj Sharma Vs. State of Haryana** (2008 AIR (SC) 2108).

[03] Judgment of the Hon'ble Supreme Court in the case of **S.K. Badre Alam Vs. State of West Bengal** (2015 ALL MR (Cri) 4085 (S.C.)).

- [04] Judgment of the Hon'ble Supreme Court in the case of **Madan Mohan Singh Vs. State of Gujarat & another** (2010(8) SCC 628).
- [05] Judgment of this Court at Nagpur Bench in the case of **Santosh Goenka & another Vs. State of Maharashtra, through Its P.S.O.** (2009 All.M.R.(Cri) 3377)
- [06] Judgment of this Court at Principal Seat, in the case of **Raviraj Ramchandra Deshpande Vs. The State of Maharashtra & another** (2016 ALL MR (Cri) 1420)
- [07] Judgment of this Court at Nagpur Bench, in the case of **Binod s/o. Ratan Sarkar & 3 others Vs. The State of Maharashtra & another**, delivered in **Criminal Application (APL) No. 327 of 2013**, on 31st July 2013.
- [08] Judgment of this Court at Nagpur Bench, in the case of **Dilip s/o. Ramrao Shirasao & 4 others Vs. The State of Maharashtra & another**, delivered in **Criminal Application [APL] No. 332 of 2016**, on 05th of August, 2016.

06. In the judgment given in the case of **Madan Mohan Singh (supra)**, the Hon'ble Supreme Court has laid down as follows :-

"..... In order to bring out an offence under Section 306, IPC specific abetment as contemplated by Section 107, IPC on the part of the accused with an intention to bring out

the suicide of the concerned person as a result of that abetment is required. The intention of the accused to aid or to instigate or to abet the deceased to commit suicide is a must for this particular offence under Section 306, IPC."

07. The issue is considered by the Division Bench of this Court in the case of **Binod s/o. Ratan Sarkar & others** [Criminal Application (APL) No. 327 of 2013] (*supra*), decided on 31st July, 2013 at Nagpur Bench in which the law on the point is considered and summed up in para 19 which reads as follows :-

" Considering the law laid down by the Apex Court in the cases of *Madan Mohan Singh* and *S.S. Chhena* cited *supra*, this Court has held that for proceeding further with the trial against the accused for an offence punishable under Section 306, it is necessary for the prosecution to, at least, *prima facie* establish that the accused had an intention to aid or instigate or abet the deceased to commit suicide. In the absence of availability of such material, the accused cannot be compelled to face trial for the offence punishable under Section 306. An abetment involves mental process of instigating the person or intentionally aiding the person for doing of a thing. Without a positive act on the part of the accused in aiding or instigating or abetting the deceased to commit suicide, the said person cannot be compelled to face a trial. Unless there is clear *mens rea* to commit the offence or an active act or direct act which

led the deceased to commit suicide seeing no option or the act intending to push the deceased into such a position, the trial against the accused under Section 306 of the Indian Penal code cannot be permitted. "

08. The facts of the present case are similar to the case of ***Binod s/o. Ratan Sarkar & 03 others Vs. The State of Maharashtra & another (supra)***. Even if the averments in the alleged suicide note are taken to be true at their face value, they do not show that the present applicants have done any act to aid or instigate the deceased to commit suicide. As the accusations against the present applicants do not prima facie establish that the accused had an intention to aid or instigate the deceased to commit suicide, in my view, the prosecution of the applicants for the offence punishable under Section 306 read with Section 34 of the Indian Penal code is unsustainable.

09. Hence, the following order :-

(a) The impugned order is set aside.

(b) The application (Exhibit No.36) filed by the applicants before Sessions Court is allowed. The applicants are discharged from the prosecution in Crime No. 77/2011 for offence punishable under Section 306 read with Section 34 of the Indian Penal Code.

(c) Rule made absolute in the above terms. In the circumstances, the parties to bear their own costs.

(Z.A. HAQ)
JUDGE

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