

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

CRIMINAL APPLICATION NO. 5472 OF 2015

State of Maharashtra

..APPLICANT

VERSUS

Mahesh Kishan Jadhav

..RESPONDENT

.....
Mrs. R.K. Ladda, APP for applicant.

Mr. A.A. Yadkikar, Advocate for respondent.
.....

CORAM : INDIRA K. JAIN, J.

DATED : 31st MARCH, 2016

ORDER :

. This is an application under Section 378(1)(3) of the Code of Criminal Procedure for grant of leave to appeal against the judgment and order dated 23.07.2015 passed by learned Sessions Judge, Latur in Sessions Case No. 45/2013. By the said judgment and order learned Sessions Judge acquitted the sole accused of the offence punishable under Section 306 of the Indian Penal Code.

2. Heard Mrs. Ladda, learned APP for State and Mr. Yadkikar, learned Counsel for respondent. Perused record.

3. Prosecution case in brief is as under:

Complainant Angad Vishwanath Madne is father of Deceased Chandrakant. Accused was the friend of Chandrakant. Both were on visiting terms. According to prosecution Chandrakant had given hand loan of Rs.35,000/- to Accused in May 2012. Chandrakant demanded amount back many times but accused avoided the same. It is alleged that instead of repaying the hand loan Accused started making false propaganda in the village that there was illicit relationship between his wife and Chandrakant and defamed the deceased. Chandrakant was disturbed due to false propaganda. On 18.12.2012 at around 11.00 a.m. he came home. At around 7.00 p.m. when complainant came back to home he was informed by his nephew Digambar Madne that Chandrakant consumed poison and was lying in field. On receiving message complainant rushed to the field. Chandrakant was taken to Latur but he could not survive and died. On the death of Chandrakant AD was registered. Enquiry into AD was made. During enquiry inquest panchnama was drawn. Dead body was sent for post mortem. Then all the papers in AD were sent to Chakur Police Station on 19.12.2012.

4. On 21.12.2012 statement of complainant was recorded and based on statement Crime No.234/2012 under Section 306 of the Indian Penal Code was registered against Accused.

5. It is the contention of prosecution that at the time of preparing Inquest panchnama a chit was found in the right pocket of full pant of deceased. Said chit was implicating accused. On the basis of report and chit, investigation proceeded. On completion of investigation charge-sheet was submitted to the Court of Judicial Magistrate First Class, Chakur who in turn committed the case for trial to the Court of Sessions.

6. Charge was framed against the accused. He pleaded not guilty and claimed to be tried. Vide his written statement Exhibit 16 and cross examination of witnesses accused raised defence that he never made false propaganda as alleged in FIR. According to accused his wife Meera was hardly visiting her native place after marriage. Accused and his wife were staying at Aurangabad and Latur. It is alleged that past character of Chandrakant was not clean and clear. He was involved in a criminal case regarding outraging the modesty of a woman in the village. He submitted that only to extract money from him he was falsely implicated.

7. Prosecution examined in all eight witnesses to substantiate the alleged guilt of accused. Considering the evidence of material witnesses P.W.1 Angad Madne, P.W.2 Amar Shinde, P.W. 8 Sanjay

Kathar and handwriting expert Trial Court came to the conclusion that prosecution could not prove alleged false propaganda in village and attempt to defame the deceased. Contents of chit were not proved as there were material infirmities and lapses in the evidence of an expert. In consequence thereof accused was acquitted. Being aggrieved thereof State has filed this application for leave to appeal.

8. With the assistance of learned Counsel for parties this Court has gone through the evidence of prosecution witnesses. P.W.1 Angad Madne is father of deceased. According to him before two months of the death of Chandrakant he came to know about the loan transaction between accused and Chandrakant. He stated that Chandrakant disclosed to him that accused was not repaying the loan and making false propaganda in village about illicit relationship between his wife and Chandrakant. P.W.1 also states that on the date of incident in the morning Chandrakant disclosed to him that he was restless because accused was not repaying the loan amount.

9. P.W.2 Amar Shinde is a friend and relative of deceased. His evidence is on the same line as of P.W.1 Angad Madne. Both these witnesses have categorically admitted that they did not disclose to anyone about the disclosure made by Chandrakant. No timely report

was lodged though Chandrakant told them about serious allegations against accused. Both the witnesses were highly interested witnesses and considering their conduct Trial Court found it fit not to rely upon their evidence in the absence of independent corroboration.

10. So far as chit (Exhibit 44) is concerned, prosecution relied on evidence of handwriting expert P.W.8 Sanjay Kathar. It is apparent from the evidence of handwriting expert that he found similarity in some letters in both the sets which were furnished to him but he did not take photographs of similar words in both the sets of documents. No super imposing of disputed documents with natural handwriting was done. P.W.8 admitted that when he examined the documents no additional documents were furnished to him as per the requisition sent on earlier occasion. There is no clear evidence to show that handwriting in notebook Article B was of the deceased. There were infirmities regarding examination of questioned documents and as additional documents called by handwriting expert were not submitted by police report of handwriting expert was not relied upon by Trial Court. Seizure of chit from the pocket of deceased was also doubtful as one of the panch witnesses on seizure panchnama of chit did not support the prosecution.

11. This Court has minutely perused chit (Exhibit 44). Even if contents of chit are taken as they are, this Court finds that it would not amount to abetment under Section 107 of the Code of Criminal Procedure and so offence under Section 306 of the Indian Penal Code would not be attracted.

12. In the above premise this Court is of the view that there is no case on merits for the prosecution. Even if leave is granted, no purpose would be served. Application thus deserves to be dismissed. Hence the following order:

ORDER

- I) Criminal Application No. 5472 of 2015 stands dismissed.
- II) Leave refused.

(INDIRA K. JAIN, J.)