

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

CRIMINAL WRIT PETITION NO. 1345 OF 2015

Padmakar Ramdas Agresar
age 54 years, occ. business
r/o Madhuban Apartment
LIC Colony, Jalgaon
Dist. Jalgaon

.. PETITIONER

VERSUS

1. The State of Maharashtra
Through Police Station Officer,
Dharangaon Police Station,
Dharangaon, Tq. Dharangaon,
Dist. Jalgaon
2. Lakhichand Bhagwan Pachpol
age 42 years, occ. agriculture
r/o Dhar, Tq. Dhrangaon
Dist. Jalgaon

.. RESPONDENTS

Mr. N.B. Suryawanshi, advocate for petitioner.
Mr. K.S. Patil, APP for the State.
Mr. G.A. Nagori, advocate for respondent no. 2.

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**CORAM : R.M. BORDE &
K. L. WADANE, JJ.
DATE : 29th MARCH, 2016.**

ORAL JUDGMENT : (PER R. M. BORDE, J.)

1. Heard.
2. Rule. Rule made returnable forthwith. With the consent of the parties, petition is taken up for final disposal at admission stage.
3. Petitioner-accused is involved in Sessions Case no. 123/2015 pending in the Court of Ad-hoc Sessions Judge – 2 and Assistant Sessions Judge,

Jalgaon, in respect of commission of offences punishable under section 306 and 506 of the Indian Penal Code. Petitioner who is Chairman of the Pat-Sanstha is alleged to have advanced loan to the tune of Rs. 80,00,000/- to the family of deceased. Petitioner is alleged to have presented First Information Report on 09.08.2015 alleging commission of offences punishable under section 323, 120-B, 504, 506 of the Indian Penal Code against deceased Sagar and some of his family members. It is alleged that on the aforesaid date, deceased Sagar and his family members launched assault on petitioner on account of persistent persuasion for recovery of amount due and payable by the family of deceased. It is further alleged that deceased Sagar committed suicide on 16.02.2015 and, in the suicide note attributed onus on the accused. First Information Report came to be lodged by the uncle of deceased implicating petitioner as abettor who is stated to have aided and abetted commission of suicide by deceased Sagar. Petitioner contends that after due investigation, charge sheet came to be presented and, since the offence is triable by the Court of Sessions, the case is committed to the Sessions Court. On 25-08-2015, papers were received by the Sessions Judge, Jalgaon alongwith record and proceeding of RCC No. 82/2015. Learned Sessions Judge handed over the case for trial to the Assistant Sessions Judge, Jalgaon vide order dated 04.09.2015 and, prescribed 21.09.2015 as the date of appearance. Learned Assistant Sessions Judge, Jalgaon, on the very first day prescribed in the sessions case, directed framing of charge against accused. Petitioner contends that he did not have any opportunity to tender application seeking discharge and that he has not been heard in the matter before framing of charge by the

Assistant Sessions Judge. It is not evident from record that before framing of charge, accused has been given an opportunity of hearing by the Assistant Sessions Judge, Jalgaon.

4. In the instant petition, petitioner contends that even if the allegations levelled in the First Information Report together with the material placed on record alongwith charge-sheet is taken to be true, the ingredients of section 107 of the Indian Penal Code cannot be said to have been satisfied and as such, petitioner cannot be hold responsible for commission of offence punishable under section 306 of the Indian Penal Code. In this context, we refrain to record our opinion, since we deem it appropriate to refer the matter back to the Assistant Sessions Judge. Without recording any finding as regards the contentions raised by learned counsel for petitioner, we direct quashment of the charge framed by the Assistant Sessions Judge on 21.09.2015 and, remit the matter back to the same Court for re-consideration. The learned Assistant Sessions Judge, Jalgaon, before framing of charge shall observe the procedure prescribed under section 227 and 228 of the Code of Criminal Procedure and proceed to frame charge. It would be open for the petitioner to tender application for discharge under section 227 of the Code of Criminal Procedure on the date of appearance prescribed in the matter and, it would be appropriate for learned Assistant Sessions Judge to consider such application, if presented in accordance with the provisions of law. Accused shall appear before the Assistant Sessions Judge, Jalgaon, on 11.04.2016 and may tender application for discharge within contemplation of section 227 of the Code of Criminal

Procedure on the given date. Keeping the option to tender application for discharge under section 227 of the Code of Criminal Procedure open for the petitioner, writ petition stands allowed to the extent as specified above. Rule made absolute accordingly.

(K. L. WADANE)
JUDGE

(R. M. BORDE)
JUDGE

dyb