

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 201 OF 2015

Dr. Hidayatulla Hamidulla Khan ... Petitioner.

V/s.

The State of Maharashtra & Anr. ... Respondents.

Mr. Pawan Mali, Advocate for the Petitioner.

Mrs. S. V. Sonawane, APP for the State.

**CORAM : NARESH H. PATIL AND
A. M. BADAR, JJ.**

DATE : 06th APRIL, 2016.

P.C. :

1 By this petition under Article 226 of the Constitution of India, read with Section 482 of the Criminal Procedure Code, 1973, Petitioner/accused is praying for quashing and setting aside FIR bearing C. R. No. 176 of 2013 for offences under section 306 of Indian Penal Code registered against him with Nirmal Nagar Police Station, Mumbai at the instance of Respondent No.2/informant Mrs. Swapnali Rajendra Borade.

2 Heard the learned counsel appearing for the Petitioner and the learned APP for the State. According to the

learned counsel, the Petitioner is falsely implicated in the crime in question and even if the entire averments in the FIR are accepted then also there is no iota of evidence to substantiate the charge leveled against the present petitioner. No specific overt-act is attributed to the petitioner, suggesting his involvement in abetting suicide of Rajendra Borade. Learned counsel for the Petitioner further argued that perusal of the FIR shows that there is absolutely no averments which indicate that the Petitioner harboured an intention or aided or instigated the deceased Rajendra Borade to commit suicide. Hence, according to the learned counsel for the Petitioner, as the FIR does not reflect any intention on the part of the Petitioner for securing the desired result of commission of the suicide by Rajendra Borade, the FIR needs to be quashed.

3 Learned counsel for the Petitioner placed reliance on the judgments of the Hon'ble Supreme Court in the matters of **S. S.Chheena vs. Vijay Kumar Mahajan & Anr.**, reported in 2010 ALL MR (Cri.) 3298 (S.C.) And **Madan Mohan Singh vs. State of Gujarat & Anr.**, reported in 2010 (0) AIR (SC) 2933 to buttress his contention that without any positive act on the part of the Petitioner in instigation or in aid to the deceased in committing suicide, no offence under section 306 of the IPC is made out.

4 Per contra, the learned APP opposed the petition by contending that apart from suicide note, the FIR lodged by the daughter of the deceased reflects various acts on the part of the Petitioner, resulting in continuous harassment and torture to the deceased, leaving him no other alternative but to indulge in self-effacement. Learned APP relying upon the papers of investigation, submitted that the incidents reflected in the FIR do show that the Petitioner had an active will in his mind coupled with an intention to have desired result of the commission of suicide by the deceased.

5 Now let us examine whether the Petitioner has made out a case for quashing FIR bearing CR No. 176 of 2013 for the offence punishable under section 306 of the Indian Penal Code registered against him with Nirmal Nagar Police Station, Mumbai. In the matter of the **State of Haryana & Others vs Ch. Bhajan Lal & Others**, reported in 1992 Cri. L. J. 527, Hon'ble Supreme Court has given guidelines by categorizing the cases in which High Courts may in exercise of powers under Article 226 of the Constitution of India or under section 482 of the Criminal Procedure Code may interfere in proceedings relating to cognizable offence in order to prevent abuse of process of the court or otherwise to secure ends of justice. Following are some categories of the cases which are culled out by the Hon'ble Supreme Court in the said matter :

“(i) Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(ii) Where the allegations in the first information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under S. 156 (1) of the Code except under an order of a Magistrate within the purview of S.155(2) of the Code.

(iii) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.”

6 Now let us examine whether the allegations made in the FIR in this case if they are taken at their face value and accepted in toto, do not prima facie constitute the offence punishable under section 306 of the Indian Penal Code. Undisputedly, Rajendra Borade had committed suicide on 20th

June, 2013 at his hospital namely Sanjeevani Hospital at Versova, Mumbai by hanging himself by means of a rope. According to the prosecution, the deceased was abetted by the present Petitioner and one another for committing suicide. Whereas, according to the Petitioner, no prima facie case of abetment is made out in the FIR. Therefore, let us examine the FIR lodged by Mrs. Swapnali Rajendra Borade, the daughter of the deceased on the date of incident i.e. on 20th June, 2013. In her FIR lodged with the promptitude, informant Mrs. Swapnali has stated that her deceased father was owner of the Sanjeevani Hospital situate at Char Bangla, Versova, Mumbai. The FIR further reveals that in the year 2004, deceased Rajendra Borade had appointed the present Petitioner as Medical Director of the said Sanjeevani Hospital and as per the agreement, it was decided that the Petitioner will be paid 50% of the amount of profit earned by the said Hospital. The FIR further shows that the present petitioner used to directly take away the amount of receipts earned by the Sanjeevani Hospital. The FIR shows that instead of withdrawing his 50% share in profit earned by the Sanjeevani Hospital, the Petitioner used to withdraw 50% of amount of the gross receipts earned by the hospital without caring for payment of the salaries of other employees as well as other expenses of the hospital. The FIR further shows that because of this act of withdrawal of the amount directly from the gross receipts of the hospital by the Petitioner, Rajendra Borade

(since deceased) used to suffer losses. The deceased was required to bear the burden of payment of salary and other expenses of the hospital. The FIR further shows that the deceased used to request the petitioner not to withdraw the amount directly from the receipts of the hospital but the Petitioner was not paying any heed to the repeated requests of the deceased. The FIR further shows that the Petitioner used to insist the deceased that the deceased should hand over the entire charge of the hospital to the Petitioner. At this juncture, it needs to be mentioned that though the deceased Rajendra Borade had suffered paralysis and his left limbs were disabled, still he was required to attend the hospital because of unfair practices adopted by the Petitioner. Perusal of the FIR as such makes it clear that the Petitioner was bent upon to take over ownership of the hospital from the deceased and for that purpose he was leaving no stone unturned. The FIR indicates that the Petitioner was putting the deceased in financial trouble by withdrawing the amount from the receipts of the hospital. The FIR do indicate that such tactics had been adopted by the Petitioner for taking over control of the hospital owned by the disabled Rajendra Borade. Ultimately on 20th June, 2013 in the very same hospital, Rajendra Borade committed suicide by hanging himself to the ceiling by means of a rope. Prior to commission of the suicide he had written a note to the effect that the Petitioner had demolished his entire life. The suicide note written by the deceased Rajendra

Borade is also seized by the police during the course of the investigation.

7 In the matter of **S.S. Chheena** (supra), Hon'ble Supreme Court has held that abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. It is further held that without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. In the matter of **Madan Mohan Singh** (supra), the driver had committed suicide and had pointed a finger of accusation towards his employer by writing a suicide note. In that note, the deceased driver had complained about working style of his employer and alleged that he was put under mental tension by his employer. On the backdrop of these facts, the Hon'ble Supreme Court has held that baseless and irrelevant allegations could not be used as a basis for prosecution of a serious offence under section 306 of the IPC. One cannot dispute that in order to level the charge under section 306 of the Indian Penal Code, the prosecution must prove that there was instigation or provocation or incitement or encouragement by the accused to the deceased to commit suicide. Some active suggestions, some support or stimulation by the accused is required. In the case in hand the averments in the FIR do show that the petitioner /accused was constantly torturing the deceased in order to take over ownership and

control of the Sanjeevani Hospital owned by the deceased. For that purpose, as indicated in the FIRs handicapped deceased was tortured and financially burdening by the Petitioner. As such it cannot be said that the averments made in the FIR lodged by none-else but the daughter of the deceased do not show any instigation, incitement or provocation or encouragement by the Petitioner to the deceased for commission of the suicide. Therefore, the act of the accused elaborated in the FIR of the instant case cannot be said to be the act even if accepted in entirety, does not prima facie reflect the offence under section 306 of the Indian Penal code.

8 As such this petition is devoid of any merit and therefore, it is deserved to be dismissed. The same is dismissed accordingly.

(A. M. BADAR, J.)

(NARESH H.PATIL,J.)

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