

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPLICATION NO.1358 OF 2015**

...
 Shri Santosh Kisan Darekar & Anr. ...Applicants
 v/s.
 The State of Maharashtra & Anr. ...Respondents
 ...
 Mr.Irfan A.Shaikh for the Applicants.
 Dr.F.R.Shaikh, APP for Respondent No.1-State.
 Mr.Rajesh Arvind More for Respondent No.2.
 ...

CORAM : A.S.OKA &
A.A. SAYED, JJ.

RESERVED ON : 12 JULY 2016

PRONOUNCED ON: 10 OCTOBER, 2016

ORAL JUDGMENT: (Per A.A.Sayed, J.)

Rule. Learned APP waives service on behalf of the first Respondent. Learned Counsel Mr. More waives service on behalf of the second Respondent. Forthwith taken up for final disposal.

2. The Applicants have filed the present Application under Section 482 of the Code of Criminal Procedure, 1973 seeking to quash the First Information Report bearing CR.No.I-148/2014 registered with Lonikand Police Station for the commission of offence punishable under

section 306 read with section 34 of the Indian Penal Code, 1980 (for short "IPC") at the instance of the second Respondent.

3. The case of the Applicants is as follows:

The Applicants are working in Maharashtra State Electricity Distribution Corporation Ltd. (MESDCL). At the time of the incident, the first Applicant was working as a Lower Divisional Clerk posted in Hadapsar Rural Sub-Division Office and the second Applicant was working as Jr.Technician posted at Perne Section Office. A First Information Report bearing CR No.I-148/2014 was registered against the Applicants and one Kishor Shinde at the instance of the second Respondent, who is the wife of deceased Dilip Haribhau Magar, (hereinafter referred as "the deceased"). The deceased was working as Technician with Maharashtra State Electricity Board (MSEB). It is the case of the Applicants that on 20 March 2014, the deceased and one S.B.Bhamgar, who was also working as a Technician with MSEB, were directed by Perne Section Office to go to Phulgaon to shut down a line supply of a High Tension wire to conduct certain tests in relation to a consumer. It was decided between them that the deceased would go to take the line permit to shut down the line supply and Bhamgar would wait at the site for the call from the deceased to proceed. After getting

instructions to go-ahead from the deceased, Bhamgar climbed the electric pole to open the connection. However, he received a massive electric shock. Bhamgar was rushed to a hospital with 45% burns due to the electric shock. On 4 April 2014, during the course of treatment, Bhamgar died. The deceased was in a great mental shock due to the death of Bhamgar. The deceased had also attended the funeral of Bhamgar. On 8 April 2014, the Applicants received information from one of their colleagues that the deceased was found dead hanging on a tree. A suicide note was found allegedly on the body of the deceased. The second Respondent, who is the wife of the deceased lodged the First Information Report against the present Applicants and the said Mr.Kishor Shinde (co-accused) for abetting suicide of her deceased husband. The First Information Report was registered five days after the body of the deceased was found hanging. The allegations in the Complaint do not constitute an offence as the ingredients required to attract section 306 of IPC are completely absent in the Complaint. The ingredients for offence of conspiracy are also completely absent.

4. We have heard the learned Counsel appearing for the parties and the learned APP. Learned Counsel for the Applicants has taken us through the copy of the First Information Report as also the suicide note.

He submitted that both these documents, even if taken at their face value, do not disclose any offence, much less, an offence punishable under section 306 of IPC. Learned Counsel relied upon the decision of the Apex Court in the case of **Madan Mohan Singh v/s. State of Gujarat**¹. He also placed reliance upon the judgment of the Division Bench of this Court dated 2 December 2015 in Criminal Application No.814 of 2014 filed by the co-accused Shri Kishor Shinde, whereby the Criminal Application was allowed and the very First Information Report bearing CR.No.I-148/2014 was quashed and set aside.

5 Learned Counsel for the Applicants further pointed out the averments in the Application that the first Applicant was at the relevant time posted at Hadapsar Sub-Division Office as a Lower Divisional Clerk. His work profile was to generate new bills for the consumers and in case there were any objections or complaints, then he was required to modify the electricity bills accordingly. He submitted that the deceased was posted at Perne Section as a Technician and at no point of time there was any contact or communication between the first Applicant and the deceased. Learned Counsel for the Applicant submitted that so far as second Applicant is concerned, he was working as a Junior Technician at

1 2010 (8) SCC 628

Perne section and he was junior to the deceased in designation and therefore he was in no way responsible for not granting leave or preventing the deceased from signing the muster as stated in the alleged suicide note. The learned Counsel invited our attention to the averment in the Application that the deceased was under mental stress since the accident on 20 March 2014 when Bhamgar received a massive electric shock and his consequent death on 4 April 2014.

6. In the Affidavit-in-Reply filed by the second Respondent, (wife of the deceased) opposing the present Application, it is stated that against the order dated 2 December 2014 of the Division Bench allowing the Criminal Application No.814 of 2014 of co-accused Kishor Shinde, she has filed a petition in the Supreme Court being Special Leave to Appeal (CRL.) No.1585/2016 and the Supreme Court has been pleased to issue notice on 4 March 2016. It is also pointed out that on 17 March 2016, she has filed Criminal Writ Petition No.1592 of 2015 in this Court for transfer of investigation of C.R.No.148/2014, as according to her, the investigation was not properly conducted by the Investigating Officer. It is averred in the Affidavit in Reply that her deceased husband, was attending office at St.Bishop High School, Hadpsar, Pune. But the superior officers used to harass her husband a lot and he used to get

calls for work at any time. On 20 March 2014 when Bhamgar, the colleague of her deceased husband had met with the accident, the deceased had asked for leave, but he was not granted leave by the superior officers. She has stated that the Applicants alongwith Kishor Shinde were responsible for her husband committing suicide. It is averred that due to the inhuman behavior and mental torture by the Applicants and the said Kishor Shinde (co-accused), her husband had no option and was compelled to kill himself. Learned Counsel for the second Respondent in his submission reiterated what has been stated by the second Respondent in her Affidavit-in-Reply and urged that no case is made out by the Applicants for this Court to exercise jurisdiction under section 482 of the Criminal Procedure Code, 1973.

7. It would at the outset be necessary to refer to the alleged suicide note, the english translation whereof, reads as under:

“Om Namo Shivay Date : 5/04/014

Day Sunday

(Page 1) Bowed at the feet of my Sadguru, today at 05.4.14 this letter is written. I have devoted my life for last 34 years happily taking the name of god and working. But now I am worried about my future hardships. I have taken utmost care and efforts for being good to all living beings and human beings. I have tried my level best not to mis behave with them. But due to an accident in 2009, my guru bandhu expired. I was very much sad. Inspite of my

sorrow I have tried to continue with my worry. I am unable to find the reason. Yet there should not be any problems to my colleagues and family members. The main reason for this is my officers K. D. Shinde, Darekar, Amit Lanjewar. These 3 persons have troubled us a lot and made to face hardships. Two weeks before by saying, you take salaries sitting like cattle, even though we both worked very honestly.

(Page 2) Though we worked several days by travelling on motor bike, we were transferred and gave us pain. After bearing such pain and hardships in life, now suddenly colleague got injured and died in accident therefore I also felt very sad as his family had felt. Bore unbearable pain. Mentally I am shocked. Remaining in this world is an offence and the only way to come out of this without troubling anybody is to punish myself and I am punishing myself. These three persons not only transferred both of us but troubled us a lot. New officer came since 5 days muster is also not in office. In the morning, I came to office to sign the muster was not there. I met Navale, only spoke few words.

(page 3) then Yogeshwar stone started atlast _____ at this place concerned the wire kamaldara wire also joined Yet now the only possible thing means end the life. All my family members, my tai is expecting child. I name the child as Narayan before I go. My god give courage to my son Narendra, wife Meenakshi to bear the pain. My work is incomplete yet I am going. Please do not misunderstand because I have worked as per capacity. I apologise by bowing at the feet of my God(Mauli) and take leave.

Magar D. H.

Sd.”

8. In our view, the case of the present Applicants is completely covered by the judgment and order dated 2 December 2015 of the Division Bench of this Court in Criminal Application No.814 2014 filed by

Kishor Shinde. The said Kishor Shinde was the co-accused alongwith present Applicants in the very FIR bearing CR.No.I-148/2014. The insinuations made in the suicide note of the deceased against the Applicants are no different than that made against Kishor Shinde. The allegations made in the FIR filed by the second Respondent against the Applicants are also the same as made against the co-accused Kishor Shinde. As a matter of fact, considering the averments made in the Application as stated in paragraph 4 hereinabove, the case of the present Applicants stands on a better footing. The observations and findings of the Division Bench in Criminal Application No.814 of 2014 filed by the said Kishor Shinde are relevant and are extracted hereunder:

“9. Before going into question whether FIR or suicide note constitutes an offence under section 306 of IPC, we must take note of the decision of the Apex Court in Madan Mohan Singh (supra). The Petitioner therein was working as a DET in Bharat Sanchar Nigam Limited. The deceased Deepakbhai had committed suicide. On the basis of complaint filed by his wife, an FIR came to be registered. The FIR came to be challenged before the High Court by filing an application under section 482. However, the same was dismissed. The Apex Court allowed the SLP negating the approach of the High Court and observed thus in paragraphs 8, 9 and 10. :

“8 It is on this that Shri Tulsi contended that all this is absolutely absurd. If a person writes a suicide note on 4.2.2008, he had no business to send the suicide note to High

Court and keep a copy thereof in the house. Learned Senior Counsel said that even if all this is accepted as it is, there is nothing to suggest that the appellant has committed any offence or that any offence could be spelt out from the said suicide note or the FIR much less offence under [Sections 306](#)

and [294, IPC](#). We are convinced that there is absolutely nothing in this suicide note or the FIR which would even distantly be viewed as an offence much less under [Section 306, IPC](#). We could not find anything in the FIR or in the so-called suicide note which could be suggested as abetment to commit suicide. In such matters there must be an allegation that the accused had instigated the deceased to commit suicide or secondly, had engaged with some other person in a conspiracy and lastly, that the accused had in any way aided any act or illegal omission to bring about the suicide. In spite of our best efforts and microscopic examination of the suicide note and the FIR, all that we find is that the suicide note is a rhetoric document in the nature of a departmental complaint. It also suggests some mental imbalance on the part of the deceased which he himself describes as depression. In the so-called suicide note, it cannot be said that the accused ever intended that the driver under him should commit suicide or should end his life and did anything in that behalf. Even if it is accepted that the accused changed the duty of the driver or that the accused asked him not to take the keys of the car and to keep the keys of the car in the office itself, it does not mean that the accused intended or knew that the driver should commit suicide because of this. 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](#). We are of the clear opinion that there is no question of there being any material for offence under [Section 306, IPC](#) either in the FIR or in the so-called suicide note.

9. It is absurd to even think that a superior officer like the appellant would intend to bring about suicide of his driver and, therefore, abet the offence. In fact, there is no nexus between the so called suicide (if at all it is one for which also there is no

material on record) and any of the alleged acts on the part of the appellant. There is no proximity either. In the prosecution under [Section 306, IPC](#), much more material is required. The Courts have to be extremely careful as the main person is not available for cross-examination by the appellant/accused. Unless, therefore, there is specific allegation and material of definite nature (not imaginary or inferential one), it would be hazardous to ask the appellant/accused to face the trial. A criminal trial is not exactly a pleasant experience. The person like the appellant in present case who is serving in a responsible post would certainly suffer great prejudice, were he to face prosecution on absurd allegations of irrelevant nature. In the similar circumstances, as reported in *Netai Dutta Vs. State of W.B.* [2005 (2) SCC 659], this Court had quashed the proceedings initiated against the accused.

10. As regards the suicide note, which is a document of about 15 pages, all that we can say is that it is an anguish expressed by the driver who felt that his boss (the accused) had wronged him. The suicide note and the FIR do not impress us at all. They cannot be depicted as expressing anything intentional on the part of the accused that the deceased might commit suicide. If the prosecutions are allowed to continue on such basis, it will be difficult for every superior officer even to work.

10. The above observations of the Apex Court make it abundantly clear that in order to attract the provisions of section 306 of IPC, there must be an allegation that accused had instigated the deceased to commit suicide or secondly had engaged with some other person in a conspiracy and lastly that the accused had in any way aided any act or illegal omission to bring about the suicide. So also in order to bring out an offence under section 306, specific abetment as contemplated by section 107 of IPC on the part of accused with an intention to bring about the suicide of the person concerned 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 of IPC.

11. The allegations made in the FIR in the present case reveal that the senior officers of deceased – Dilip were harassing him. He was not given leave and because of that he committed suicide. In the suicide note, deceased has stated that the Applicant as well as Darkear and Amit Lanjewar made him suffer hardships. The suicide note reveals that the deceased was mentally shocked due to death of his colleague Bhamgar in electric accident and he was sad and

because of all these reasons he decided to end his life. In our view, there is nothing in the FIR or suicide-note so as to suggest that the Applicant or other officers had instigated the deceased Dilip to commit suicide or engaged in conspiracy to bring about the suicide of Dilip. There is nothing to infer that the Applicant or other officers had conspiracy with an intention to bring about the suicide of deceased Dilip as a result of abetment. The abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, the offence under section 306 of IPC cannot be said to have been made out. In order to attract the provisions of section 306, there has to be a direct or clear intention or means *rea* to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide. In the present case, the deceased seems to be a hypersensitive to minor or ordinary petulance, discord and difference which happen in our day-to-day life.

12. In our view, the allegations made in the FIR or alleged suicide-note even if taken at their face value do not constitute an offence under section 306 of IPC and therefore continuation of the prosecution against the Applicant would result in the abuse of the process of law.

13. Even assuming for the sake of argument that there was harassment by the Applicant and other officers, it cannot be said to be a positive act on their part that the deceased should commit suicide. It appears that the deceased being hypersensitive, was unable to face the ground realities and has committed unfortunate act of ending his life. However, we find that there is no material to say that the Applicant has abetted the death of deceased Dilip. In above circumstances, the application is made absolute in terms of prayer clause (a)."

(emphasis supplied)

9. Thus, a co-ordinate Division Bench, drawing support from the judgment of the Apex Court in the case of **Madan Mohan Singh V/s. State of Gujarat (supra)** while quashing the very FIR bearing CR No.I-148/2014 in the case of co-accused Kishor Shinde has clearly held that

the allegations made in the FIR or alleged suicide note, even if taken at their face value do not constitute an offence under Section 306 of the Indian Penal Code and therefore the continuation of the prosecution against the said Kishor Shinde would amount to abuse of process of law. As stated earlier, the allegations against the present Applicants who are the co-accused alongwith the said Kishor Shinde in the FIR are one and the same. The case of the present Applicants stands on a better footing than that of the co-accused Kishor Shinde, as indicated earlier. We are in complete agreement with the view of the Division Bench that the allegations made in the FIR or suicide note even if taken at their face value do not constitute an offence under Section 306 of Indian Penal Code. In our view, the continuation of the prosecution against the present Applicant would also to amount to abuse of the process of law. Though the second Respondent has filed a SLP in the Supreme Court challenging the judgment and order of the Division Bench, there is no stay granted by the Supreme Court to the judgment and order of the Division Bench. Hence, the decision of co-ordinate Bench in the case of Kishor Shinde continues to bind this Court. For the aforementioned reasons, the present Application also deserves to be allowed.

10. In the circumstances, we pass the following order:

ORDER

The Application is allowed. Rule is made absolute in terms of prayer clause (a), which reads thus:

(a) This Hon'ble Court may be pleased to quash the C.R.No.1-148/2014 registered at Lonikand Police Station on 13-04-2014 u/s 306 read with section 34 of IPC.

(A.A. SAYED, J.)

(A.S.OKA, J.)