

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
CRIMINAL APPLICATION NO.1490 OF 2017

Shatrughan s/o Ganpati Shinde,
age: 76 years, Occ: Agri.,
R/o Nivali, Tq. & District Latur.

Applicant

Versus

01 The State of Maharashtra,
through Police Station Officer,
Bembali Police Station,
Tq. & District Latur.

02 Santosh s/o Anantrao Shinde,
age: 36 years, Occ: Agril.,
R/o Shrirang, Latur MIDC,
Tq. & District Latur.

Respondents

Mr.P.P.More, advocate for the applicant.
Mr.K.D.Mundhe, A.G.P. for Respondent No.1.
Mr.M.S.Shaikh, advocate for Respondent No.2.

WITH
CRIMINAL APPLICATION NO.1831 OF 2017

Vinod s/o Navnath Mokashe,
age: 38 years, Occ: Business,
R/o Near Samatha Society,
Vikram Nagar, Latur,
Tq. & District Latur.

Applicant

Versus

01 The State of Maharashtra,
through Police Station Officer,
Bembali Police Station, Latur,
Tq. & District Latur.

02 Santosh s/o Anantrao Shinde,
age: 36 years, Occ: Agril.,
R/o Shrirang, Latur MIDC,

Tq. & District Latur.

Respondents

Mr.N.D.Kendre, advocate for the applicant.
Mr.K.D.Mundhe, A.G.P. for Respondent No.1.
Respondent No.2 served.

WITH
CRIMINAL APPLICATION NO.2108 OF 2017

Tukaram s/o Keshavrao Sawant,
age: 32 years, Occ: Business,
R/o Sham Nagar, 12 no. Patti,
Post Harangul (B),
Tq. & District Latur.

Applicant

Versus

01 The State of Maharashtra,
through the Investigation Officer,
Crime No.356/2016, registered with
MIDC Police Station, Latur,
Tq. & District Latur.

02 Santosh s/o Anantrao Shinde,
age: 36 years, Occ: Agril.,
R/o Shrirang, Latur MIDC,
Tq. & District Latur.

Respondents

Mr.P.P.More, advocate for the applicant.
Mr.K.D.Mundhe, A.G.P. for Respondent No.1.
Mr.M.S.Shaikh, advocate for Respondent No.2.

**CORAM : R.M.BORDE &
A.M.DHAVAL, JJ.**

DATE : 07th June, 2017.

ORAL JUDGMENT (Per R.M.Borde, J.):

1 Heard. Rule. Rule made returnable forthwith and
heard finally by consent of learned Counsel for respective parties.

2 These applications are presented by the applicants who are allegedly involved in commission of offence bearing Crime No.356/2016, registered on 14.10.2016 at MIDC Police Station, Latur, for offence punishable under Section 306 read with Section 34 of the Indian Penal Code.

3 The allegations relate to abetment to commit suicide by one Balaji Anant Shinde. The First Information Report is lodged by brother of deceased. Deceased died as a result of consumption of poison on 03.06.2016. It is alleged in the First Information Report that deceased was being harassed on account of recovery of loan amount, which the deceased had borrowed from applicants and other persons. It is stated in the First Information Report that after demise of Balaji, the informant searched belongings of deceased at his residence and noticed certain entries recorded on a *chit* of paper containing names of different individuals and the amount borrowed from them. It is the suspicion of brother of the deceased that the deceased might have consumed poison because of harassment meted out to deceased on account of recovery of loan amount by the applicants.

4 It is not specifically recorded in the First Information Report that the applicants herein were the persons who have harassed the deceased on account of recovery of amount borrowed by the deceased from them. The names of the applicants are also incorrectly recorded in the First Information Report so also on the *chit* of paper written by the deceased during his life time.

5 It is also necessary to be noted that ingredients of Section 107 of the Indian Penal Code, namely:

**107 Abetment of a thing – A person abets
the doing of a thing, who-**

First–Instigates any person to do that thing; or

Secondly- Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly- Intentionally aids, by any act or illegal omission, the doing of that thing,

are absent in the instant matter.

Since ingredients of Section 107 of the Indian Penal Code are absent in the instant matter, applicants cannot be prosecuted on the allegation of commission of offence punishable under Section 306 of the Indian Penal Code.

6 In identical circumstances, Criminal Application No.7000/2016, tendered by one of the co-accused, namely Sham s/o Ramratan Kabara, has been considered by the Division Bench of this Court and in view of the order dated 24th February, 2017, the application came to be allowed and the proceedings initiated against Sham are directed to be quashed.

7 The allegations made against the applicants herein are also identical. Thus, considering the reasons recorded by the Division Bench, while disposing of Criminal Application No.7000/2016, instant applications also deserve to be allowed.

8 Criminal Applications are, thus, allowed. Criminal proceedings initiated against applicants Shatrughan s/o Ganpati Shinde (Criminal Application No.1490 of 2017), Vinod s/o Navnath Mokashe (Criminal Application No.1831 of 2017) and Tukaram s/o Keshavrao Sawant (Criminal Application No.2108 of 2017), in pursuance to lodging of First Information Report, bearing Crime No.356/2016, registered at MIDC Police Station, Latur, on 14.10.2016, for offence punishable under Section 306 read with Section 34 of the Indian Penal Code, are quashed.

9 Rule is accordingly made absolute.

A.M.DHAVALÉ
JUDGE

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R.M.BORDE
JUDGE