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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.1501 OF 2017

Pandurang @ Jitendra Laxman Dake
Age – 34 years, Occ – Agriculture
R/o Mali Galli, Shevgaon,
Taluka – Shevgaon, District – Ahmednagar

APPLICANT

VERSUS

1. The State of Maharashtra
Through Police Station,
Pathardi, Taluka – Pathardi,
District – Ahmednagar
2. Vishnu Trimbak Gore,
Age – 56 years, Occ – Agriculture
R/o Koradgaon, Taluka – Pathardi,
District – Ahmednagar

RESPONDENTS

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Mr. Nikhil S. Jaju, Advocate for the applicant
Mr. V. M. Kagne, APP for respondent - State
Mr. M.V.Salunke h/f Mr.V.D.Salunke, Adv. for respondent No.2

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WITH
CRIMINAL APPLICATION NO.5949 OF 2016

1. Jagannath Bhau @ Sagaji Bhadke
Age – 30 years, Occ – Agriculture
R/o Maliwada, Shevgaon,
Taluka – Shevgaon, District – Ahmednagar
2. Ganesh @ Ram Rajaram Linge
Age – 32 years, Occ – Agriculture
R/o Maliwada, Shevgaon,
Taluka – Shevgaon, District – Ahmednagar
3. Santosh Sitaram Suse,
Age – 30 years, Occ – Agriculture
R/o Maliwada, Shevgaon,
Taluka – Shevgaon, District – Ahmednagar

APPLICANTS

VERSUS

- | | |
|--|-------------|
| 1. The State of Maharashtra
Through Police Station,
Pathardi, Taluka – Pathardi,
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| 2. Vishnu Trimbak Gore,
Age – 56 years, Occ – Agriculture
R/o Koradgaon, Taluka – Pathardi,
District – Ahmednagar | |

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Mr. Yuvraj V. Kakade, Advocate for the applicants
Mr. V. M. Kagne, APP for respondent - State
Mr. M.V.Salunke h/f Mr.V.D.Salunke, Adv. for respondent No.2

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**[CORAM : SUNIL P. DESHMUKH, AND
ARUN M. DHAVAL, J.J.]**

DATE : 29th JUNE, 2017

ORAL JUDGMENT (Per Arun M. Dhavale, J.) :

1. Rule. Rule made returnable forthwith and heard learned advocates for the parties finally by consent.
2. These two criminal applications have been filed by the applicants under section 482 of the Criminal Procedure Code seeking quashing of criminal proceedings initiated against them on the basis of first information report lodged by respondent No. 2 – Vishnu Trimbak Gore on 25th December, 2014 at Pathardi police station, registered at Crime No. 400 of 2014 for the

offences punishable under sections 306, 504 read with 34 of the Indian Penal Code.

3. The First Information Report lodged by father of deceased Sanjay shows that on 23rd December, 2014, at 9.00 p.m. Sanjay had left his house. Thereafter relatives of his wife - Vanita, including present applicants came to his father and told him that Sanjay was not answering to the phone calls and he should be searched. While searching for Sanjay, they found his mobile, money purse and one chit near a well in field at 11.30 pm. The chit was picked up by Vimal – mother of the deceased and that time it was not seen by the informant. On next day, in the morning, the informant found that the chit was in fact a suicide note. Then, the well was searched and dead body of Sanjay was found on 24th December, 2014 at morning. Thus, on revealing that Sanjay has committed suicide, first information report came to be lodged naming nine accused persons including present applicants as abettors to commission of suicide.

4. The first information report shows that Sanjay was married to Vanita, daughter of Govind Linge, about 12 years before the incident. They were residing at Koradgaon, Taluka – Pathardi. The couple had a son and a daughter. It is alleged that Vanita

had illicit relations with two persons Yogesh and Ganesh, accused No. 8 and 9 in the crime, since long time. Vanita was also addicted to consumption of liquor and she had also made Sanjay addicted to liquor and though Sanjay had stopped consuming liquor, she still continued with the habit of consuming liquor. She also used to beat their son Pramod and about six months prior to the incident, she had left her matrimonial house and started residing at her maternal house. On 18th December, 2014, Sanjay had gone to Vanita's maternal house at Maliwada, Taluka – Shevgaon, District – Ahmednagar. That time, his in laws and the applicants had altercation with him and he was insulted and abused by them. Applicant No. 1 in criminal application No. 5949 of 2016 Jagannath Doke is husband of his wife's sister, applicant No. 2 Ganesh is cousin of his wife and applicant No. 3 Santosh is related to his wife, while applicant in Criminal Application No. 1501 of 2017 Pandurang Dake is just a neighbour of father of his wife. Sanjay was dejected due to the incident dated 18th December, 2014 of insulting and abusing and by refusal of Vanita to return with him for cohabitation. Five days thereafter, Sanjay committed suicide.

5. Sanjay has left behind a suicide note, which shows that he was driven to such an extreme step of committing suicide

because of conduct of his wife Vanita for last eighteen years. It had become unbearable for him, that she was not maintaining their son, who was maintained by his parents and Vanita used to beat him. She was also in a habit of consuming liquor and because of her he had also developed the habit of consuming liquor. He, however, had stopped consuming liquor, but she still continued with the habit of consuming liquor. On 18th December, 2014, he had gone to bring her back from her maternal home. That time her father did not send her with him and Vanita's sister Renuka's husband Datta, maternal uncle of Vanita, her father and brother had abused him and since it had become unbearable for him, he was committing suicide. There is additional note that Yogesh and one other person were responsible for his death.

6. After completion of investigation, the police have submitted charge sheet and the case is committed to the court of sessions and is numbered as Sessions Case No. 254 of 2017.

7. Learned advocates for the applicants argued that names of the applicants are not disclosed in the suicide note. The informant, who is father of deceased Sanjay, had no personal knowledge about incident dated 18th December, 2014. Later on

he has given a statement that he has wrongly given name of applicant Pandurang Doke. His supplementary statement shows that the suicide note is in the hand writing of deceased Sanjay, however, natural handwriting of Sanjay was not available for comparison. Learned advocates for the applicants relied on a decision of Supreme Court in the case of *“Sanju alias Sanjay Singh Sengar V/s State of M. P.”* reported in *AIR 2002 SC 1998* to argue that there is no proximity of the incident dated 18th December, 2014 and the act of committing suicide. There was no abetment by the applicants. The applicants have played no role in the alleged commission of suicide by Sanjay and hence continuation of proceedings against them is an abuse of process of law and court.

8. Learned APP submits that since charge sheet has been filed, the question should be left to the trial court for deciding by way of application for discharge. In the alternative learned APP submits that the first information report shows names of the applicants. Relations between deceased and his wife Vanita were very much strained. She was having illicit relations and when deceased had gone to bring her back from her maternal home, incident dated 18th December, 2014 had occurred and it triggered him to think of committing suicide, which ultimately resulted into

his committing suicide on 23rd December, 2014. He also relied on contents of the first information report to show that the applicants and in laws of deceased had come in the night of 23rd December, 2014 to the father of deceased and had disclosed that Sanjay was not responding to their phone calls. According to him, this shows connection of the applicants with the offence of abetment to commit suicide.

9. In the present matters, the question, which is to be decided is, whether the allegations in the first information report if taken at the face value, would disclose commission of offences punishable under section 306 and 504 of the Indian Penal Code by the applicants or not?

10. The law with regard to offence of abetment to commit suicide punishable under section 306 of the Indian Penal Code is laid down as follows:

a. In “*Ramesh Kumar V/s State of Chhattisgarh*” reported in (2001) 9 SCC 618 (Full Bench) it is held – To satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. The present one is not a case where the accused had

by his acts or omission or by a continued course of conduct created such circumstances that the deceased was left with no other option except to commit suicide in which case an instigation may have been inferred. A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation.

b. In “*State of West Bengal V. Orilal Jaiswal and Another*” reported in (1994) 1SCC 73, it is held – It appears to the Court that a victim committing suicide was hypersensitive to ordinary petulance, discord and difference in domestic life quite common to society to which the victim belonged and such petulance, discord and difference were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the Court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty.

c. In “*Chitresh Kumar Chopra V. State (Govt. of NCT of Delhi)*” reported in 2009 (11) SCALE 24 the Supreme Court had an occasion to deal with this aspect of abetment. The court dealt with the dictionary meaning of the word “instigation” and “goading”. The court opined that there should be intention to provoke, incite or encourage the doing of an act by the latter. Each person's suicidability pattern is different from the others. Each person has his own idea of self esteem and self respect. Therefore, it is impossible to lay down any straightjacket formula in

dealing with such cases. Each case has to be decided on the basis of its own facts and circumstances.

d. In “*Gangula Mohan Reddy V. State of A.P.*”. Reported in 2010 Cri.L.J. 2110 SC, the appellant agriculturist had harassed his agriculture labour by levelling allegation that he had committed theft of some gold ornaments two days prior to his death. It was also alleged that the appellant had demanded Rs.7,000/- from the deceased which was given in advance to him at the time when he was kept in employment. Due to this harassment deceased Ramulu committed suicide by consuming poison. It was held that the deceased was undoubtedly hypersensitive to ordinary petulance, discord and differences which happen in our day-to-day life. Human sensitivity of each individual differs from the other. Different people behave differently in the same situation. The intention of the Legislature and the ratio of the cases decided by this court is clear that in order to convict a person under Section 306, IPC there has to be a clear *mens rea* to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and this act must have been intended to push the deceased into such a position that he committed suicide.

e. “*Ramesh Someshwarrao Tayde & Anr. V. State of Maharashtra and Anr.*” reported in 2016 ALL MR (Cri.) 5049 (Nagpur Bench) was the case in which deceased Purushottam had taken loan of Rs.4,50,000/- from a bank which was not repaid. He told his father that he had borrowed Rs.20,000/- from

applicant No. 2 and he had given blank cheque and blank stamp paper of Rs.100/-. The borrowed amount was repaid, still cheque and stamp paper were not returned. One Nilesh served Purushottam with notice demanding Rs.70,000/- on the basis of cheque issued. Nilesh had also given him threat of life in Chandurbazar and threatened that he would approach court of law. Purushottam told his father that there was no option left to him but to commit suicide. On the same day at 8.00 p.m. Purushottam committed suicide by consuming poison. Accordingly, First Information Report was lodged. It was held that – material on record even accepted on its face value, was not sufficient to show abetment to Purushottam to commit suicide. There was neither any active or direct act on the part of applicants which led Purushottam to commit suicide nor was there any instigation. Hence, the proceeding was quashed.

f. In *“Madan Mohan Singh V. State of Gujrat and Another”* reported in (2010) 8 SCC 628, a staff had committed suicide leaving note stating that his superior had harassed him. His superior had acted as per law while taking action against the deceased. It was held that when there was no proximity, nexus and no *mens rea* there can be not abetment for commission of suicide.

11. As far as alleged illicit relations of Vanita with accused No. 8 and 9 are concerned, present applicants have no connection therewith. The only role attributed to them in the first

information report by father of deceased Sanjay, who has no knowledge about the incident dated 18th December, 2014, is that when there was altercation between maternal relatives of Vanita and Sanjay, the applicants were also present there and deceased Sanjay was insulted and abused there. However, the suicide note on which the prosecution has heavily relied, does not disclose names of any of the applicants. As far as applicant in Criminal Application No. 1501 of 2017 Pandurang Doke is concerned, first informant has given a supplementary statement stating that name of Pandurang Doke has been wrongly mentioned in the first information report.

12. In order to make out offence punishable under section 306 of the Indian Penal Code, there should be abetment by accused persons with an intention or knowledge that victim would commit suicide. Abetment as defined under section 107 of the Indian Penal Code includes either instigation or engaging in conspiracy or intentionally aiding deceased to commit suicide. In the present matters, there is no direct intention or knowledge disclosed on the part of the applicants which might have driven Sanjay to commit suicide. In such a case, deemed knowledge can be attributed to the accused persons if the act of the accused is such that the deceased is left with no option but to

commit suicide. In the present matters, as rightly argued by learned advocates for the applicants the incident dated 18th December, 2014 took place five days before the act of committing suicide and there is no proximity between the alleged acts of insulting and abusing and the act of committing suicide. Apart from it, there is mere allegation that the applicants and others had altercation with Sanjay and they abused him. Absence of the names of the applicants in the suicide note raises grave doubt about their involvement in the incident dated 18th December, 2014. These acts, even if, assumed to be true, by no stretch of imagination can be called as abetment to commit suicide.

13. To attract offence punishable under section 306 of the Indian Penal Code, the act of the accused should be such that a person of ordinary mental state would be driven to commit suicide on account of such acts. We find that the acts alleged in the first information report as against present applicants do not amount to abetment to commit suicide as those were not sufficient in ordinary course of nature to drive a person of stable mind to commit suicide.

14. As far as incident dated 23rd December, 2014 is

concerned, the suicide note is totally silent about the same. On careful consideration of the arguments and after going through the record, we find that present applicants are in no way responsible for the act of committing suicide by Sanjay.

15. Though normally when charge sheet has been filed, the courts will be slow in exercising powers under section 482 of the Criminal Procedure Code, there is no bar to exercise such power in order to prevent abuse of process of law or to meet the ends of justice.

16. In “*Kedar Narayan Parida and Others Vs. State of Orissa and Another.*,” reported in (2009) 9 SCC 538; “*Chunduru Siva Ram Krishna and Another Vs. Peddi Ravindra Babu and Another*” reported in (2009) 11 SCC 203, and *Vineet Kumar and Others Vs. State of U.P.*,” reported in 2017 SCC OnLineSC 316, it is held that even after filing of charge sheet and in some cases after committal also the powers under section 482 were exercised. As continuation of proceedings against the applicants will amount to abuse of process of court, in our opinion, it is a fit case for invoking powers under section 482 of the Criminal Procedure Code to quash and set aside criminal proceedings against the applicants.

17. In the circumstances, the applications are allowed. First

Information Report in Crime No. 400 of 2014 registered with Pathardi police station, charge sheet No. 133 of 2016 filed by Pathardi police station and proceedings of Sessions Case No. 254 of 2016 pending before Sessions Court, Ahmednagar stand quashed and set aside to the extent of the present applicants. Rule is made absolute in aforesaid terms. It is, however, clarified that aforesaid observations are only in respect of present criminal applications and should not influence the trial judge with regard to trial of other accused.

[ARUN M. DHAVAL, J.]

[SUNIL P. DESHMUKH, J.]