

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1530 OF 2017

1. Shaikh Amir s/o Shaikh Bhikan
age 75 years, occ. pensioner
2. Shaikh Ishaq s/o Shaikh Amir
age 46 years, occ. advocate
3. Shaikh Mustaq s/o Shaikh Amir
age 44 years, occ. business
4. Shaikh Ashpak s/o Shaikh Amir
age 58 years, occ. service
5. Shaikh Asif w/o Shaikh Amir
age 32 years, occ. business

All r/o Amir Nagar, Kuchar Ota
Old Jalna, Jalna, Tq. & Dist. Jalna.

6. Uttam s/o Somaji Padol
age 58 years, occ. agriculture
r/o Dongargaon Dabhadi
Tq. Badnapur, Dist. Jalna

Applicants

Versus

1. The State of Maharashtra
Through Police Station
Badnapur
Dist. Jalna
2. Dnyaneshwar Nanasaheb Padol
age 19 years, occ. agriculture
r/o Dongargaon (Da)
Tq. Badnapur, Dist. Jalna

Respondents

Mr. S.J. Salunke, advocate for the applicants.
Mr. K.D. Mundhe,, A.P.P. for Respondent no.1.
Mr. S.S. Randive, advocate for respondent no. 2.

**CORAM : R.M.BORDE &
A. M. DHAVAL, JJ.
DATE : 9th JUNE, 2017**

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

1. Rule. Rule made returnable forthwith.
2. Heard finally at admission stage by consent of learned counsel for the respective parties.
3. Instant application is presented by petitioners-accused implicated in crime no. I-25/2017 registered on 22.02.2017 at Police Station Badnapur, for commission of offence punishable under section 306 r/w 34 of the Indian Penal Code.
4. First Information Report is lodged by one Dnayneshwar Nanasaheb Padol levelling allegations of abetment to commit suicide against the accused herein. The father of the informant is alleged to have committed suicide by drinking poisonous substance on 16.02.2017. It is alleged in the First Information Report that some seven years back, father of the informant had taken Rs. 2,00,000/- from the accused. There was some agreement entered into between deceased father of the informant and the accused in respect of supply of bore-well water for agricultural use of accused and adjoining land holders. An amount at the rate of Rs. 50,000/- per year was agreed to be paid by the accused to the father of the informant for user of bore-well water. It is stated that some amount was due from the accused and the father of the informant was claiming recovery of amount. The accused did not

pay the amount however, they were asking the money back from the father of the informant and were extending threats on account of payment of Rs. 1,00,000/- to them. It is stated that on 15.02.2017 all the accused came together and extended threats to the father of the informant. The accused have also threatened to kill the father of the informant. It is further alleged that on 16.2.2017, father of the informant went to the agricultural land and consumed poison. At 8 O' clock, when the informant went to search his father, he noticed his father lying in the sweetlime orchid belonging to the family. The deceased was taken to the hospital where he died on 22.02.2017 while undergoing treatment. Informant alleges that as a result of persistent harassment by the accused, his father has committed suicide.

5. Affidavit-in-reply has been presented by the informant opposing the application presented by the applicants herein seeking quashment of the First Information Report. Alongwith affidavit-in-reply, complaints allegedly tendered by father of the informant to the police authority on 04.01.2017 is also annexed. It is alleged in the complaint lodged by father of the informant that there was an agreement in respect of providing bore-well water to the agricultural lands belonging to the accused and, the accused were supposed to pay Rs. 50,000/- per year towards user of bore-well water to the father of the informant. It is stated that accused utilised water for seven years however, paid only Rs. 2,00,000/- and, there was balance of Rs. 1,50,000/- receivable from them. Father of the complainant asked for money however, accused threatened him with lodging of false police case against him. It appears that the details stated by the informant are contrary to the

allegations levelled by his father during his lifetime against the applicants herein by tendering application to the police authority on 04.01.2017.

6. Even otherwise, the question that needs to be answered is whether the allegations levelled in the First Information Report lodged by the informant constitute abetment as defined in section 107 of the Indian Penal Code. It is provided that a person abets doing of a thing who instigates any person to do that thing, or 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 intentionally aids, by any act or illegal omission, the doing of that thing. In the instant matter, on perusal of the First Information Report, it cannot be inferred that the applicants have instigated father of the informant to commit suicide nor have intentionally aided by any act or illegal omission, in committing suicide.

7. The Honourable Apex Court in the matter of **Pravin Pradhan Vs. State of Uttaranchal and another, (2012) 9 Supreme Court Cases 734** has observed in paragraphs 16 and 17 thus :

16. This Court in Ramesh Kumar V. State of Chhattisgarh while dealing with a similar situation observed that what constitutes "instigation" must necessarily and specifically be suggestive of the consequences. A reasonable certainty to incite the consequences must be capable of being spelt out. More so, a continued

course of conduct is to create such circumstances that the deceased was left with no other option but to commit suicide.

17. The offence of abetment by instigation depends upon the intention of the person who abets and not upon the act which is done by the person who has abetted. The abetment may be by instigation, conspiracy or intentional aid as provided under Section 107 IPC. However, the words uttered in a fit of anger or omission without any intention cannot be termed as instigation. (Vide : State of Punjab v. Iqbal Singh, Surender v. State of Haryana, Kishori Lal v. State of M.P. and Sonti Rama Krishna v. Sonti Shanti Sree.)

In the matter of **Seema Ajay Bhoosreddy, 2011 ALL MR (Cri) 3326**, decided by the Division Bench of this Court, it is recorded in paragraph no. 18 thus :

18. It can thus, be clearly seen that for proceeding further with the trial against the accused for an offence punishable under Section 306, it is necessary for the prosecution to at least, prima facie, establish that the accused had an intention to aid or instigate or abet the deceased to commit suicide. In the absence of availability of such material, the accused cannot be compelled to face trial for the offence punishable under Section 306. As held by the Apex Court, an abetment involves mental process of instigating the person or intentionally aiding the person for doing of a thing. Without a positive act on the part of the accused in aiding or instigating or abetting the deceased to commit suicide, the said person cannot be compelled to face a trial. Unless there is

clear mens rea to commit the offence or an active act or direct act which led the deceased to commit suicide seeing no option or the act intending to push the deceased into such a position, the trial against the accused under Section 306 cannot be permitted.

Reliance can also be placed on a judgment in the matter of **Netai Dutta Vs. State of West Bengal, 2005(2) SC 659**, wherein it has been laid down that the no mens rea can be attributed to the petitioner including of any role in any conspiracy which ultimately instigated the deceased to commit suicide.

Reliance can also be placed on a judgment in the matter of **Binod s/o Ratan Sarkar Vs. State of Maharashtra, 2014 ALL M R 1216**, wherein a preposition has been laid down that in the absence of direct or indirect act of instigation to commit suicide, the accused cannot be held responsible for the alleged offence.

8. Even if the allegations levelled against the accused in First Information Report are taken to be true, there is nothing to infer that there was any instigation by the accused to the deceased to commit suicide. It also has to be considered as to whether there is any proximity or nexus of the alleged act of the accused while drawing inference as regards their involvement in the alleged act of abetment for committing suicide by the deceased.

9. Learned counsel for respondent has placed reliance on the judgment of the Honourable Apex Court in the matter of **Amit Kapoor Vs. Ramesh Chander and another , 2012(4) SCC 460**.

The Apex Court in the aforesaid judgment has laid down preposition in respect of causing interference by High Court in exercise of powers under section 482 of the Code of Criminal Procedure. There shall not be any dual opinion as regards the preposition laid down by the Honourable Apex Court. Keeping the principles in mind, in our considered view, on mere perusal of the contents of the First Information Report, the ingredients of section 107 of the Indian Penal Code are not attracted and as such, the applicants cannot be branded as abetors. Although, in the instant matter, it is noticed on perusal of the report lodged by deceased on 04.01.2017 during his lifetime to the police authority that it is the deceased himself who was asking balance amount of Rs. 1,50,000/- from the accused/applicants herein so also, in the first paragraph of the First Information Report, there is a reference to an agreement in respect of supply of bore-well water to the accused and payment of amount for user bore-well water by the accused. Although it is stated that accused were demanded the amount, it appears to be contrary to the admitted stand taken by the father of the informant i.e. deceased during his lifetime. Even otherwise, we do not find that there is any material placed on record on the basis of which inference can be drawn that there was persistent harassment by accused / applicants to the deceased which drove him to take extreme step of committing suicide.

10. For the reasons recorded above, the criminal application deserves to be allowed and the same is accordingly allowed. Proceedings initiated against applicants in pursuance of lodging of First Information Report on 22.02.2017 being Crime No. I-25/2017

stands quashed. Rule made absolute accordingly.

(A.M. DHAVALÉ)
JUDGE

(R.M.BORDE)
JUDGE

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