

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 499 OF 2016

Tanaji s/o Keshavrao Bhoite
Age. 63 years, Occu. Advocate,
R/o-Plot No. 1, Bhoite Nagar,
Jalgaon, Tq. & Dist. Jalgaon.
At. present- A1/A, 1001,
Manikchand Malharbar, Lulla
Nagar, Junction, Pune

...Petitioner

Versus

1. The State of Maharashtra,
Through Police Inspector
Zilla Peth Police Station,
Jalgaon at Jalgaon
(Copy to be served on
Government Pleader,
High Court of Bombay
Bench at Aurangabad)
2. Subhash Madhavrao Shinkar
Age. 50 years, Occu. Service,
R/o. Vakratund Apartment,
Plot No. 3, Bhagirath Colony,
Jalgaon, Tq. & Dist. Jalgaon

...Respondents

...
Advocate for Petitioner : Mr. R.S. Shinde h/f Mr. A.G. Talhar
APP for Respondent No.1: Mr. A.A. Jagatkar
Advocate for respondent No.2: Mr. S.P. Brahme
.....

CORAM : V. K. JADHAV, J.
DATED : 4th OCTOBER, 2017

JUDGMENT

1. Rule. Rule returnable forthwith. By consent, heard finally at admission stage.

2. Being aggrieved by the order dated 23.3.2016 passed by the learned Assistant Sessions Judge, Jalgaon blow Exh.19 in Sessions Case No. 65 of 2013, the original accused has preferred this writ petition.

3. Brief facts giving rise to the present writ petition are as follows:-

a. On 18.5.2010, respondent No.2-original complainant has informed to Zilla Peth police station, Jalgaon about suicidal death of his wife deceased Ratnabai. It has been informed in writing to the said police station that on 17.5.2010 at 11.00 p.m. the informant alongwith his children and deceased Ratnabai slept in the house and on 18.5.2010 at about 8.00 a.m. When he woke up, he found that deceased Ratnabai committed suicide by hanging herself to the roof of house. It has been also informed to the police station that deceased Ratnabai was suffering from pains in her hands and legs and therefore, she had committed suicide. On the basis of this information, A.D. No. 30 of 2010 came to be registered at about 9.15 a.m.

b. On the same day i.e. on 18.05.2010, during the course of enquiry of accidental death, respondent No.2 original complainant

lodged a complaint stating therein that he was working as lecturer on permanent basis in Nutan Maratha Mahavidyalaya, Jalgaon since last 22 years. Though, initially he has been paid salary, however, his salary was stopped thereafter. It has been stated in the complaint that he is serving in computer department and the said department was without any Government aid and therefore, the institution was paying his salary. It has been stated in the complaint that his daughter Shalaka met with an accident and thus, he had incurred huge expenses to the tune of Rs.4.00 to 5.00 lacs for her treatment. Deceased Ratnabai was doing household work and she was suffering from pains to her hands and legs. It has been further alleged in the complaint that before commission of suicide, deceased Ratnabai had left suicidal note, wherein she had stated that she was committing suicide on her own due to said pains to her hands and legs. She had also stated in the said suicidal note that department of her husband was without grants and present petitioner is responsible for the same and she fed up due to the financial crises. It has been thus, alleged in the complaint that the present petitioner, is having entire control on the affairs of the management and as such, he is responsible for suicidal death of the complainant's wife. On the basis of these allegations, crime No. 111 of 2010 for the offence punishable under Section 306 of I.P.C. came to be registered with Zilla Peth Police Station, Jalgaon and after due investigation, charge

sheet has been submitted against the present petitioner. The petitioner has filed an application Exh.19 under Section 227 of the Code of Criminal Procedure, 1973 seeking discharge of the offence punishable under Section 306 of I.P.C. Respondent State has strongly resisted the said application. Learned Assistant Sessions Judge, Jalgaon by the impugned order dated 23.3.2016 rejected the said application Exh.19. Hence, this writ petition.

4. Learned counsel for the petitioner submits that even though the allegations made in the complaint and the contents of charge sheet admitted as it is, penal provision of Section 306 of I.P.C. does not attract as against the present petitioner. It appears that deceased Ratnabai had committed suicide due to financial problems, as she could not cope up with the said situation. There is no material on record to show that the petitioner has abetted commission of suicide of deceased Ratnabai. Learned counsel submits that deceased Ratnabai had stated in the suicidal note that she fed up due to continuous pains in her hands and legs and therefore, she is committing suicide, voluntarily. It has been merely stated in the suicidal note that the department, where her husband was working, was without grants for which present petitioner is responsible. It has been stated in the said suicidal note that she fed up due to financial problems in the family. Learned counsel submits that though the

petitioner has made out case for discharge under Section 227 of the Code of Criminal Procedure, however, the learned Assistant Sessions Judge, by its impugned order, has rejected the application. Learned counsel submits that on account of suicidal death of deceased Ratnabai, in the fit of anger, respondent No.2 has lodged the complaint. Learned counsel submits that the law as to requirements to constitute the offence punishable under Section 306 of I.P.C. is no more res-integra. The Hon'ble Apex Court in the catena of judgments, has very well crystallized the law. Learned counsel submits that in order to bring out an offence under Section 306 of I.P.C. specific abetment, as contemplated under Section 107 of I.P.C. on the part of the 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 I.P.C. So far as the allegations made in the present case are concerned, there is no proximity either.

5. Learned counsel for the petitioner, in order to substantiate his contentions, placed reliance on the following judgments:-

- i) Judgment dated 5.8.2016 of Division Bench of this Court (Nagpur Bench) in Criminal application (APL) No.332 of 2016.

ii) Sanjay Kumar K. Shinde vs. State of Maharashtra, reported in 2015 (All M.R. (Cri.) 1085

iii) Vijay @ Munna Bharat Gurkhude vs. State of Maharashtra, reported in 2016 ALL MR (Cri) 2566.

6. Learned counsel for respondent No.2 complainant submits that the present petitioner was the Secretary of Jalgaon Zilla Maratha Vidya Prasarak Sahakari Samaj Limited at the relevant time. The said institution runs several schools and colleges. The respondent No.2 complainant was working as lecturer in one of the college run by the said institution. The complainant was appointed as lecturer in computer Science department on 16.9.1988 by following due process of law. Initially, he was given salary as per the pay scale, however, abruptly, the salary came to be stopped for the period from September, 2001 to July, 2002. Even the Principal of the institution constrained to raise the grievance, as the salary was not being paid regularly. Even salary for the year 2005-2006 was not paid. The issue of salary was not resolved for years together. The petitioner herein has entire control over the affairs of management of the said institution. He was responsible for the above incident. Learned counsel submits that the daughter of respondent No.2 complainant met with an accident on 31.3.2008. She was hospitalized and

respondent-complainant was required to spend huge amount of Rs.4.00 to 5.00 lacs for her medical treatment. The petitioner herein was aware of the accident and the difficulties faced by the complainant and his family members. Even his application for advance amount was not considered. The deceased wife of the complainant was to manage the domestic expenses with meager amount. She was fed up by the said harassment at the instance of the present petitioner and thus ultimately she had committed suicide. Learned counsel submits that the petitioner is habitual offender. The petitioner has been indulged in various criminal activities. In all 25 criminal cases are pending against the petitioner. Learned counsel submits that the salary of the complainant was the only source of income for the members of his family. Deceased Ratnabai found it difficult to meet the expenses. She continuously suffered financial crises. Thus, deceased Ratnabai left with no other choice than to commit suicide. Learned counsel submits that the medical evidence and the statements recorded by the investigating officer support the case of the prosecution. Prima facie, strong case is made out against the petitioner. Learned Assistant Sessions Judge, Jalgaon has rightly rejected the application below Exh.19. No interference is called for.

7. I have also heard the learned A.P.P. for the respondent State.

8. The Division Bench of this Court (Coram: B.R. Gavai and V.M. Deshpande, JJ.) while deciding the criminal application No. 332 of 2016, relied upon by learned counsel for the petitioner, has referred the judgments of the Supreme Court in the cases of **(i) Sanju alias Sanjay Singh Sengar vs. State of Madhya Pradesh, reported in 2002 Cri.L.J. 2796, (ii) Madan Mohan Singh vs. State of Gujrat and another, reported in (2010) 8 SCC 628 and (iii) S.S. Chheena vs. Vijay Kumar Mahajan reported in 2010 All MR (Cri) 3298 (S.C.).**

9. In the case of **Sanju alias Sanjay Singh Sengar vs. State of Madhya Pradesh (supra)**, referred by the Division Bench of this Court in the aforesaid criminal application, in para 13 and 15, the Supreme Court has made the following observations:-

“13.It is in a fit of anger and emotional. Secondly, the alleged abusive words, said to have been told to the deceased were on 25th July, 1998 ensued by quarrel. The deceased was found hanging on 27th July, 1998. Assuming that the deceased had taken the abusive language seriously, he had enough time in between to think over and reflect and, therefore, it can not be said that the abusive language, which had been used by the appellant on 25th July, 1998 drove the deceased to commit suicide. Suicide by the deceased on 27th July, 1998 is not proximate to the abusive language uttered by the appellant on 25th July, 1998. The fact that the deceased committed suicide on 27th July, 1998 would itself clearly pointed out

that it is not the direct result of the quarrel taken place on 25th July, 1998 when it it alleged that the appellant had used the abusive language and also told the deceased to go and die. This fact had escaped notice of the courts below.”

“15.The prosecution story, if believed, shows that the quarrel between the deceased and the appellant had taken place on 25th July, 1998 and if the deceased came back to the house again on 26th July, 1998, it cannot be said that the suicide by the deceased was the direct result of the quarrel that had taken place on 25th July, 1998. Viewed from the aforesaid circumstances independently, we are clearly of the view that the ingredients of 'abetment' are totally absent in the instant case for an offence under Section 306 I.P.C.....”

10. In the case of **Madan Mohan Singh vs. State of Gujrat and another (supra)**, referred in the aforesaid judgment, in para 10 and 12 of the judgment, the Supreme Court has made the following observations:-

“10. 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 I.P.C.. 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.

“12. In order to bring out an offence under Section 306 I.P.C. specific abetment as contemplated by Section 107 I.P.C. on the part of the 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 I.P.C.. We are of the clear opinion that there is no question of there being material for offence under Section 306 I.P.C. either in the FIR or in the so-called suicide note.

11. In the recent case ***State of Kerala and others vs. S. Unnikrishnan Nair and others***, reported in ***AIR 2015 SC 3351***, referred by the Division Bench of this Court in the aforesaid judgment, in para 13 of the said judgment, the Supreme Court has made following observations:-

“13. As we find the narration of facts and the material brought on record in the case at hand, it is the suicide note which forms the fulcrum of the allegations and for proper appreciation of the same, we have reproduced it herein-before. On a plain reading of the same, it is difficult to hold that there had been any abetment by the respondents. The note, except saying that the respondents compelled him to do everything and cheated him and put him in deep trouble, contains nothing else. The respondents were inferior in rank and it is surprising that such a thing could happen. That apart, the allegation is really vague. It also baffles reasons, for the department had made him the head of the investigating team and the High Court had reposed complete faith in him and granted him the liberty to move the court, in such a situation, there was no warrant to feel cheated and to be put in trouble by the officers belonging to the lower rank. That apart, he has also put the blame

on the Chief Judicial Magistrate by stating that he had put pressure on him. He has also made the allegation against the Advocate.”

12. In the backdrop of this legal position, the contents of the suicidal note are reproduced herein-below:-

“I am committing suicide voluntarily. I am tired due to severe pains in my hands and legs. Nobody should weep after my death. You had taken care of me and why to weep. After suicide people try to find out the reason. My husband is Godman. He is doing well for others, however, when God will do good for him. There is no grant to his department for which Bhoite is the reason. I am tired with the financial condition.”

13. On careful perusal of contents of suicidal note, I do not find that the prosecution even prima facie, establishes that the present petitioner had an intention to aid, instigate or abet deceased Ratnabai to commit suicide. In absence of availability of such material, the petitioner cannot be compelled to face the trial for the offence punishable under Section 306 of I.P.C. Though the sympathy of this Court is with the family of the complainant, however, the same is not sufficient to prosecute the present petitioner. Even the proximity test also fails. As per the allegations made in the complaint, the complainant was appointed on the said post way back in the year 1988. Initially, the complainant got salary as per the pay

scale, however, he was not getting salary continuously and even for the period from 2005-2006 he could not get the salary. In the year 2008, the daughter of the complainant met with an accident and as such, the complainant incurred huge expenses for her medical treatment. Obviously, entire family suffered because of the said huge expenses and also due to the irregularity in payment of salary. Admittedly, the computer department of the college run by the said institution was not getting Government aid. It is but obvious that the institution has to bear the expenses towards salary of the employees of the said department and other consequential expenses. In the backdrop of this case, it is difficult to draw inference that the present petitioner had instigated, abetted or intentionally aided deceased Ratnabai to commit suicide. Learned Assistant Sessions Judge has not considered this material aspects of the case.

14. In view of above discussion, I do not think that there are sufficient grounds for proceeding against the petitioner original accused. Hence, the following order:-

O R D E R

I. The writ petition is hereby allowed.

- II. The judgment and order dated 23.3.2016 passed by the learned Assistant Sessions Judge, Jalgaon below Exh.19 in Sessions Case No. 65 of 2013 is hereby quashed and set aside.
- III. The application below Exh.19 in Sessions Case No. 65 of 2013 is hereby allowed. The petitioner is hereby discharged of the charge under Section 306 of I.P.C. vide Sessions Case No. 65 of 2013.
- IV. Criminal writ petition is disposed of accordingly. Rule made absolute in the above terms.

(V. K. JADHAV, J.)

rlj/