

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION 2758 OF 2017

1] Asaram S/o Salakram Ladda,
Age:70 Years, Occ.: Business

2] Jitu @ Jitendra S/o Madhavlalji Dhoot
Age 40 years, Occu.Private Service,

Both R/o New Mondha, Ambad
Taluka Ambad, District Jalna

.. APPLICANTS
[ORIG.ACCUSED NO.1&2]

Versus

1] The State of Maharashtra,
Through Police Station Officer
Police Station Ambad, District Jalna

(Copy to be served on Public
Prosecutor, High Court of Judicature
of Bombay,Bench at Aurangabad)

2] Sainath Baburao Wagh
Age Major, Occu-Busines
R/o Kingaon, Taluka Ambad
District Jalna.

..RESPONDENTS
[No.2 – ORIG.COMPLAINANT]

Mr.Mohit R.Deshmukh, Advocate for applicant.

Mrs.P.V.Diggikar, AGP for Respondent Nos. 1.

Mr.A.A.Nimbalkar, Advocate for respondent No.2.

**CORAM : S.S.SHINDE &
MANGESH S. PATIL, JJ.**

**RESERVED ON : 05/10/ 2017.
PRONOUNCED ON :13/10/2017.**

JUDGMENT (PER MANGESH S. PATIL,J.) :

1] Rule. Rule is made returnable forthwith. Heard finally with the consent of parties.

2] This is an application invoking the powers of this Court under Section 482 of Cr.P.C. for quashment of Crime No.66/2017 registered with Police Station, Ambad, Dist.Jalna for the offences punishable under Sections 306, 506 r.w. 34 of IPC.

3] We have heard the learned advocate for the applicants, the learned APP and the learned Advocate for the respondent no.2 who happens to be the original complainant.

4] The cousin brother of the respondent no.2 by name Santosh was running a fertilizer shop at village Kingaon. He used to purchase fertilizers from the shop of the applicant no.1, sometimes on cash and at times on credit. Respondent no.2 lodged complaint with police on 11/4/2017 on the basis of which the crime has been registered alleging that on the previous day, Santosh committed suicide and the applicants abetted its commission inasmuch as they were exerting constant pressure on him by demanding money. The deceased had told the respondent no.2 that the applicants were insisting for payment of money although he had cleared all the dues. He also told

the respondent no.2 about having issued a blank cheque to the applicant no.1 by way of security of the amount due but the applicants started threatening him to lodge a complaint by misusing the cheque. In fact the applicants also instituted criminal proceedings for dishonour of the cheques and thus exerted further pressure and thereby abetted commission of suicide by Santosh. On the basis of such complaint, offence has been registered.

5] According to the learned advocate for the applicants, even by accepting the contents of the complaint at their face value, the ingredients for constituting the offences punishable u/s 306 and 506 of IPC cannot be made out. The learned advocate also submitted that the complaint has been filed out of vengeance. In fact there were several business transactions that had taken place between the applicant no.1 and deceased Santosh and the latter was owing several amounts to the former. It is only when the cheques issued by Santosh were dishonoured in the year 2013, the complaints were lodged against him under Section 138 of the Negotiable Instruments Act. According to the learned advocate, it is only after long gap of four years after the criminal complaints were lodged under Section 138 of the Negotiable Instruments Act that Santosh has committed suicide and therefore, it cannot be said the applicants have abetted commission of suicide. Learned advocate referred to the often quoted decision in the case of State of Haryana V/s Bhajanlal; AIR 1992 SC 604 and also submitted couple of decisions in the matter of Criminal Application No.628/2017; Dr.Pravin S/o Shivanand Gujar V/s The State of Maharashtra and another and in the case of Ravindra S/o Bhimrao Khillare and others V/s State of Maharashtra and another; 2017 All MR (Cri) 2966, rendered by Division Bench of

this Court to which one of us (S.S.Shinde,J.) was a party. The learned advocate also referred to the decision in the case of Pravin Pradhan V/s State of Uttranchal and another; (2012) 9 SCC 734 and in the case of Dilip S/o Ramrao Shirsao and others V/s State of Maharashtra and another; 2016 All MR (Cri) 4328.

6] The learned APP as also the learned advocate for the respondent no.2 opposed the application by submitting that this Court cannot go into the minute details of the allegations made in the complaint and the complaint is not expected to be an encyclopedia.

7] Suffice for the purpose to bear in mind, as has been laid down in the case of Bhajanlal (supra), each case has to be considered on the basis of peculiar facts and circumstances and no straight jacket formula can be laid down for a High Court to invoke inherent powers under Section 482 of Cr.P.C. or extraordinary powers under Article 226 of the Constitution of India, in quashing a criminal proceeding. The principles laid down, need to be reproduced and which read thus :

108] In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extra-ordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently

channelised and inflexible guidelines of rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

1] Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

2] Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156 (1) of the Code except under an order of a Magistrate within the purview of Section 155 (2) of the Code.

3] Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

4] Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155 (2) of the Code.

5] Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6] Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7] Where a criminal proceeding is manifestly attended with mala fide and / or where the proceeding is maliciously instituted with an

ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

8] It is apparent from the copies of the complaint and proceedings filed under Section 138 of the Negotiable Instruments Act, that the applicant no.1 had filed couple of complaints against the deceased for dishonour of cheques and those were pending scrutiny before the Criminal Court. The Roznama in those proceedings also clearly indicate that the deceased had put in appearance and was contesting the matters since the year 2013. Even the contents of those complaints at page 32 and 34 would reveal, as has been averred in the present application, that there were business transactions between the applicant no.1 and the deceased since the latter was purchasing fertilizers and seeds from the former's shop. Indeed we need not and cannot go into veracity of the allegations made in those complaints. However, we are referring to these circumstances only to point out that the petitioner no.1 was having commercial relations with the deceased and had filed these complaints way back in the year 2013. We are also referring to these circumstances to show that the deceased had in fact appeared in both these complaints through his advocate and was contesting them. If this is the state of affairs, it can very well be appreciated that the circumstance can be referred to and relied upon both ways.

9] It is important to note that during his life time, deceased Santosh apparently has not made any grievance with anybody about the present applicants having ever harassed or continuously pressurised him for recovery of amount. It is for the first time that the respondent no.2 in his complaint seems to have come out with a version that deceased Santosh himself had told him (respondent

no.2.) that inspite of having repaid the amount, the applicant no.1 was demanding more money. We are not intending to embark upon veracity or otherwise of the grievance being made out in the complaint lodged by respondent no.2, but we are referring to this circumstance, to point out that if at all deceased Santosh was under some kind of pressure exerted by the applicants, like normal human being, he would have certainly made an attempt to ventilate the grievance. As is observed above, in fact deceased Santosh had closed down his business/shop almost six years before he took the last step. Even the complaints filed under the Negotiable Instruments Act, were filed in the year 2013, whereas, he took the last step in the year 2017, after about four years and after facing the criminal complainants. It is one thing to say that since he has committed suicide, he would have certainly suffered from some kind of depression and it is altogether a different thing to say that the cause of depression was the pressure being exerted by the applicants. If he could face the criminal complaints for four years, it cannot be said that filing of such criminal case had any proximate relation with the suicide.

10] In this behalf, it must be observed that in every offence, there has to be some kind of mens rea and even if it is assumed for the sake of argument that the applicant no.1, with the aid of the applicant no.2 was demanding money from the deceased Santosh, there is absolutely no material to connect such demand to the suicide. In the absence of such material to bring about any nexus between the two, applicants cannot be made to face the trial simply on the basis of averments in the complaint. We may refer to and rely upon the observations of the Division Bench of this Court in the case of Dilip V/s State (supra) in paragraph no. 20, which reads as under :

“20] As has been held by Their Lordships of the Apex Court that for permitting a trial to proceed against the accused for the offence punishable under Section 306 of the Indian Penal Code, 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 of the Indian Penal Code. As has been held by Their Lordships of the Apex Court that abetment involves mental process of instigating a person or intentionally aiding a person in doing of a thing and without a positive act on the part of the accused in aiding or instigating or abetting the deceased to commit suicide, the said persons cannot be compelled to face the trial. Unless there is clear mens rea to commit an offence or 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 of the Indian Penal Code, in our considered view, would be an abuse of process of law.”

11] In these circumstances, we find no sufficient reason to allow the applicants to face the prosecution. The FIR/complaint does not make out all the ingredients much less sufficient enough to constitute the offence punishable under Section 306 and 506 of IPC. Hence we allow the application.

12] Rule is made absolute in terms of prayer clause “B”.

(MANGESH S. PATIL,J.)

(S.S.SHINDE ,J.)