

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

CRIMINAL APPLICATION NO. 3017 OF 2017

Gopal Premchand Agrawal (Bansal),
Age : 31 years, Occu. Business,
R/o. Flat No. 36, Navjeevan Apartment,
"B" Wing, Near Kaleshwar Mangal Karyalaya,
Hatte Nagar, Latur, Taluka and
District Latur.

... Applicant

VERSUS

1. The State of Maharashtra
2. Vijay S/o Vishwanath Kergire,
Age : 30 years, Occu.
R/o. Gangadham Society,
Basweshwar Chowk Road,
Latur.

... Respondents

.....
Mr Sachin S. Deshmukh, Advocate for the applicant
Mr V. M. Kagne, APP for respondent/State
Mr Joydeep Chatterji, Advocate for respondent No. 2
.....

**CORAM : S. S. SHINDE &
A. M. DHAVALA, JJ.**

RESERVED ON : 06.09.2017.
PRONOUNCED ON : 14.09.2017.

JUDGMENT (Per A. M. Dhavale, J.) :

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the parties and taken up for final disposal at admission stage.

2. By this application, the applicant, who is original accused No. 7, is invoking inherent powers u/s 482 of the Code of Criminal Procedure for quashing of FIR bearing C.R. No. 47/2017 registered against him with Vivekanand Chowk Police Station, Latur for offences punishable u/s 306, 506 r/w 34 of IPC.

3. As per FIR, deceased - Raju Kesgire was elder brother of the informant Vijay. Deceased - Raju was running Hotel Shimla at Scrapped Market Corner, Latur, since 2008. Besides, he was running two more hotels namely; 'Visava' at Ambajogai Road, Latur and 'Amar' at Barshi Road, Latur. He had taken loan from some persons for installing furniture to the hotel and to meet other expenses of the business. In November 2016, there was demonetization of notes and there was rumour that the hotels along the side of the highways would be closed. Both these things had adverse impact on the business of the deceased - Raju. The persons, who had lent loan to him, started meeting him and making phone calls to him repeatedly for demanding their money. It is claimed that, Raju was very prompt in repayment and he had promised them that their money would be repaid in time, still those persons were threatening to him that his hotels would be closed unless he returns their money immediately.

On 21.01.2017, Raju committed suicide by hanging himself in his house. He had left behind one chit disclosing the names of seven accused persons and there were instructions to watch his mobile. When his mobile was checked, one video clip was found wherein he uttered the names of seven accused persons who were repeatedly making demands to return their money, threatening him to close his shop (hotels) and to forcibly enter in his house. It created tremendous mental disturbance to the deceased. Deceased stated that though he had returned money of some of the lenders, still some blank cheques and bonds were with them and they were threatening to misuse the same for prosecuting him. Hence, Raju committed suicide.

4. Mr Deshmukh, learned counsel for the applicant argued that the FIR does not disclose any acts on the part of the applicant whereby it can be said that he has abetted the deceased to commit suicide. There is no material to show any proximity about the alleged demands and the date of death. There is also nothing wrong in demanding one's legitimate dues. The applicant has claimed that he had no conversation with the deceased. An amount of Rs. 3000/- was due from the deceased to him towards the supply of commodities since January-2016. There was unexplained delay of six days in

lodging the FIR. The continuation of this prosecution amounts to abuse of process of the court and, therefore, it should be quashed as against the applicant. He has relied on the judgment of this Court in the case of **Suhas @ Pappu S/o Sarjerao Kakade & Anr. Versus The State of Maharashtra & Anr.** in Criminal Application No. 3865 of 2016, to which one of us (S. S. Shinde, J.) was a party, decided on 15th March, 2017, and in case of **Dr. Shivanand S/o Shivraj Biradar Versus The State of Maharashtra & Anr.** in Criminal Application No. 3149 of 2016 decided on 2nd March, 2017.

5. Mr Chatterji, learned counsel for respondent No. 2 and Mr V. M. Kagne, APP for respondent/State submitted that, persistent demands of money and thereby causing serious harassment amounts to abetment and the deceased himself has stated that due to such harassment he has committed suicide. There is a video recording of his dying-declaration. The contents of the FIR disclose the ingredients of the offence in question. This is not a stage where the material can be appreciated to find out whether the harassment was to such an extent that the deceased would commit suicide or not. There cannot be minute scrutiny of the material and the facts alleged in the FIR should be taken at their face value.

6. After hearing the learned counsel and going through the papers of investigation produced by the Investigating Officer, the question falls for our consideration is, whether the FIR deserves to be quashed against the applicant.

7. The principles regarding exercise of inherent powers u/s 482 of Cr.P.C. are laid down in several rulings starting from **State of Haryana and Ors. Vs. Ch. Bhajan Lal & Ors. AIR 1992 SC 604**. The law regarding quashing of FIR u/s 306 of IPC is also well developed. In **Amit Kapoor Vs. Ramesh Chander and Anr. 2012(9) SCC 460**, 15 points are laid down of which following are material for consideration of present case.

- 2) *The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.*
- 3) *The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.*

- 4) *Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate courts even in such cases, the High Court should be loathe to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers.*
- 9) *Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction, the Court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.*
- 10) *It is neither necessary nor is the court called upon to hold a full-fledged enquiry or to appreciate evidence collected by the investigating agencies to find out whether it is a case of acquittal or conviction.*
- 15) *Coupled with any or all of the above, where the Court finds that it would amount to abuse of process of the Code or that interest of justice favours, otherwise it may quash the charge. The power is to be exercised ex debito justitiae, i.e. to do real and substantial justice for administration of which alone, the courts exist.*

8. In case of **Praveen Pradhan Versus State of Uttarakhand & Anr.** (2012) 9 SCC 734, the Supreme Court quoted with approval the following principles from earlier judgments.

15. In **Chitresh Kumar Chopra v. State (Government of NCT of Delhi)**, AIR 2010 SC 1446, this Court while dealing with the term 'instigation' held: *Instigation is to goad, urge forward, provoke, incite or encourage to do "an act". 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. 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 to be inferred. A word uttered in a fit of anger or emotion without intending the consequences to actually follow, cannot be said to be instigation.

Thus, to constitute ‘instigation’, a person who instigates another has to provoke, incite, urge or encourage the doing of an act by the other by “goading” or ‘urging forward’. The dictionary meaning of the word “goad” is “a thing that stimulates someone into action; provoke to action or reaction.....to keep irritating or annoying somebody until he reacts.

16. *This Court in Ramesh Kumar v. State of Chhattisgarh, AIR 2001 SC 3837, 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.*

18. *In fact, from the above discussion it is apparent that instigation has to be gathered from the circumstances of a particular case. No straight-jacket formula can be laid down to find out as to whether in a particular case there has been instigation which force the person to commit suicide. In a particular case, there may not be direct evidence in regard to instigation which may have direct nexus to suicide. Therefore, in such a case, an inference has to be drawn from the circumstances and it is to be determined whether circumstances had been such which in fact had created the situation that a person felt totally frustrated and committed suicide. More so, while dealing with an application for quashing of the proceedings, a court cannot form a firm opinion, rather a tentative view that would evoke the presumption referred to under Section 228 Cr.P.C.*

9. It is true that, mere lending of money even by unlicensed money lender will not amount to an abetment nor will it be an act of abetment in demanding once money back from the borrower. But in the present case as rightly argued by Mr Chatterji the allegations do not end here, the deceased has himself recorded his own video and left one suicide chit also. His video clip discloses that he was suffering financial crisis due to demonetization and on account of rumour about closing down hotel businesses run by the side of the highways. In such situation, all the seven accused were not only making demands of their money but their demands were persistent and aggressive. They were threatening that his shops would be closed down and they would forcibly enter in his house and they would file police cases against him. He has stated in his video that he had paid the dues of some of the borrowers and was ready to pay the balance amount of other borrowers, if any. He has alleged that, in spite of refund of money, there were persistent demands of money by the lenders. Besides, the lenders had taken from him bond papers and blank cheques and they were threatening to misuse the blank cheques. He has specifically stated that, there was tremendous mental harassment to him by all of them and he has committed suicide only on account of unbearable mental harassment. The FIR is as per his video clip. It discloses the material allegations showing

persistent demands of money creating such a situation whereby the deceased was left with no other option but to commit suicide. It is for the Investigating Officer to find out the details about such transactions. It is to be brought on record during investigation as to whose loans were repaid by the deceased and still they were making further demands, who had taken blank cheques from the deceased, who were threatening to prosecute him, to close his shops and to forcibly enter in his house. The facts in the cases of Suhas @ Pappu S/o Sarjerao Kakade's case & Dr. Shivanand S/o Shivraj Biradar's case (supra) are not similar as referred above.

10. In the present case, the deceased undisputedly committed suicide and just before the suicide, he has recorded the video clip taking the names of seven persons including the applicant herein. The police are investigating to collect the documents pertaining to the loan transactions and repayment of money. The statements of account shows that the deceased has made huge payments during the month of December and January. It is a matter of investigation to collect the material appearing against each of the accused. There is also documentary evidence left behind by the deceased about his transactions with each of the accused. It is a matter of investigation to find out material against each of the accused and whether it was

sufficient to show that he has caused mental harassment of a nature falling within the definition of Section 107 of the Cr.P.C.

11. We find that, there is absolutely no abuse of process of court in conducting the investigation. In fact, the investigation in this case is essential to find out the truth. If there is no material against the present applicant, he will be at liberty to file an application for discharge before the trial Court. At present, the facts are not sufficient to quash the criminal proceedings against the applicant. Hence, the application deserves to be rejected.

12. Before parting with the judgment, we clarify that none of the observations made herein above would have adverse effect on the right of the applicants in any of the proceedings during the trial as, these observations have been made only and only to decide this case.

13. For the reasons recorded herein above, the Criminal Application is rejected. Rule is discharged.

[A. M. DHAVALE]
JUDGE

[S. S. SHINDE]
JUDGE