

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

CRIMINAL APPLICATION NO. 3071 OF 2017

1. Maniklal @ Manikchand Chandulal Borana
Age: 66 years, Occ. Agriculture,
R/o. Terkheda, Tq. Washi,
Dist. Osmabanad.
2. Shantilal Chandulal Borana
Age: 76 years, Occ. Agriculture,
R/o. Terkheda, Tq. Washi,
Dist. Osmabanad.
3. Kantilal Chandulal Borana
Age: 70 years, Occ. Agriculture & Business,
R/o. Terkheda, Tq. Washi,
Dist. Osmabanad.
4. Subhash Zumbarlal Borana
Age: 58 years, Occ. Agriculture,
R/o. Terkheda, Tq. Washi,
Dist. Osmabanad.
5. Sumit Subhash Borana
Age: 26 years, Occ. Business,
R/o. Samarthnagar, Tq. Osmanabad,
Dist. Osmabanad.

... **Applicants**

Versus

1. The State of Maharashtra
Through Police Station Yermala
Dist. Osmanabad.
2. Shantiling Rangnath Kumbhar,
Age: 50 years, Occ. Agriculture,
Tq. Terkheda, Tq. Washi,
Dist. Osmanabad.

... **Respondents**

Mr. Sudarshan J. Salunke, Advocate for the Applicants.
Mr. A.R. Kale, A.P.P. for the Respondent/State.
Mr. S.P. Brahme, amicus curie (Appointed Advocate).

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

**DATE OF RESERVING THE JUDGMENT : 10.10.2017
DATE OF PRONOUNCING THE JUDGMENT : 31.10.2017**

...

JUDGMENT: (*Per Mangesh S. Patil, J.*)

. Rule. Rule is made returnable forthwith. With the consent of both the sides the matter is heard finally.

2. The applicants are invoking the powers of this Court under Section 482 of the Cri.P.C. for quashing the F.I.R. no. 84 of 2017 lodged with Yermala Police Station, District Osmanabad on 24.05.2017 alleging *inter alia* about they having abetted commission of suicide of one Suvarna Shantiling Kumbhar, wife of the present respondent no.2.

3. According to the learned Advocate for the applicants, there has been a long standing litigation going on between their family on the one hand and the family of the respondent no.2 on the other. The civil suits have been decided in their favour and even the writ petition preferred by the family of the respondent no.2 was dismissed by this

Court. Though the deceased Suvarna has committed suicide, there is absolutely no material or allegation against the applicants to constitute an offence of abetment of suicide punishable under Section 306 of the Indian Penal Code. The allegations in the complaint only refer to a suicidal note as the basis for drawing an inference of abetment. However, even the contents of the suicidal note taken at its face value do not suggest about they having abetted suicide. The learned Advocate in support of his submission also sought to draw parallel with the decision in the case of **G. Sagar Suri and Anr. V/s. State of U.P. and Ors.; AIR 2000 SC 754, State of Kerala and Ors. V/s. S. Unnikrishnan Nair and Ors.; AIR 2015 SC 3351** and also in the case of **Netai Dutta V/s. State of West Bengal; AIR 2005 SC 1775.**

4. The learned Advocate for the respondent no.2 and the learned A.P.P. strenuously submitted that in view of the contents of the suicidal note, wherein it has been specifically alleged by naming all the applicants that due to their harassment deceased Suvarna was committing suicide, the F.I.R. registered on that basis cannot be quashed.

5. We have perused the papers filed with the application, as also the investigation papers.

6. It is apparent that there has been a long standing civil dispute going on between the family of the applicants on the one hand and that of the respondent no.2 on the other. It is also apparent that both the suits viz., R.C.S No. 90 of 2009 and R.C.S. No. 525 of 2008 have been finally decided in favour of the applicants. The former was lodged by the family of the respondent no.2 which was dismissed, whereas, the latter was filed by the family of the applicants which was decreed. It is also apparent that initially the son of the deceased had lodged the report with the police specifically mentioning that his mother sustained burns because of flickering of the stove when she attempted to heat water. Further, it is also apparent from the investigation papers that dying declaration was recorded and even in that dying declaration recorded before the Executive Magistrate deceased Suvarna had not attributed any instigation on the part of the applicants. At the first blush these circumstances support the applicants' version.

7. However, it needs to be borne in mind that a suicidal note allegedly written by the deceased Suvarna on the previous day forms the basis of changing the course and the impugned F.I.R. was registered on the basis of the contents of this suicidal note. The suicidal note has also been got examined by a hand writing expert to confirm that it was

written by Suvarna. It is therefore necessary to refer to the contents of the suicidal note which is written in vernacular. Roughly translated the relevant portion thereof reveals that Suvarna was mentally disturbed, applicant Maniklal Chandulal was repeatedly harassing her and threatening to kill her whenever she used to go for toilet. She has pretended that she had caught fire due to flickering of the stove but in fact she had poured kerosene on her person and had set herself ablaze. It also reads that all the applicants by name Shantilal Chandulal Borana, Kantilal Borana, Subhash Borana, Sumit Borana had mentally harassed her and threatened her of dire consequences and because of the harassment, action should be taken against them if something wrong was to happen to her. A bare reading of these contents would *prima facie* show that the harassment meted out to deceased Suvarna by the present applicants has been said to be the triggering factor for her to commit suicide. At this juncture, we cannot and should not examine the evidentiary value of the suicidal note. Suffice for the purpose to observe that the contents of the suicidal note specifically attribute harassment meted out by the applicants as the cause for commission of the suicide by the deceased and for the purpose of deciding the present application that should be the end of the matter. The contents of the F.I.R. based on the suicidal note, therefore, *prima facie* make out a case of abetment of

suicide by the applicants.

8. Reliance placed by the learned Advocate for the applicants on the decisions of the Supreme Court (supra) is misplaced. Though, in some of the cases the facts are similar, the principle laid down therein does not come to the rescue of the applicants. Obviously, the decisions lay down a binding precedent, however, those have been rendered in the peculiar facts and circumstances of the cases obtaining before the Supreme Court.

9. In the case of **Sagar Suri** (supra), the accused persons were alleged to have approached the complainant finance company for grant of loan and had issued cheques for re-payment of the loan but which were dishonored and a proceeding under Section 138 of the Negotiable Instruments Act was initiated by the finance company against the accused borrowers. In these circumstances, it was held that the complaint filed against the accused borrowers for duping the finance company for the offences punishable under Section 406 and 420 of the Indian Penal Code could not sustain. Obviously, the facts obtaining before the Supreme Court were peculiar and no parallel can be drawn with the matter in hand.

10. In the case of **S. Unnikrishnan Nair** (supra), it has been laid down that for constituting an offence punishable under Section 306 of the Indian Penal Code, there has to be a clear *mens rea* to commit the offence. It requires an active act which leads the deceased to commit suicide seeing no option but to commit suicide. In that case, the Chief Investigating Officer appointed by the High Court had committed suicide pending investigation in a murder case. The suicide note left behind by him, except saying that the respondents-accused compelled him to do everything and cheated him and put him in deep trouble contained nothing else. The respondents accused were inferior in rank and it was noted that it was surprising that such a thing could have happened. The allegations were really vague and in the facts and circumstances peculiar to the case where the deceased was made head of the investigating team by the High Court and the High Court had also reposed confidence and faith in him, it was improbable that harassment allegedly meted out by the inferior could have abetted the suicide. Again, *ex facie* no parallel can be drawn in the two cases, one before the Supreme Court and the one at hand. As is observed above, at the cost of repetition, the suicide note herein specifically attributes repeated harassment by the applicant no.1 Maniklal Chandulal and threat by him whenever the deceased used to go for toilet and also specifically attributes such harassment to all the

applicants by name. Therefore, the applicants are not entitled to draw any advantage from the decision in the case of **S. Unnikrishnan Nair** (supra) also.

11. Lastly, in the case of **Netai Dutta** (supra) there was no averment in the alleged suicide note attributing any harm caused by the accused to the deceased or there was any allegation against the accused that he was responsible for delay in paying salary. The deceased in the course of his employment in M/s. M.L. Dalmiya and Co. Ltd., was posted at various work sites of the company. He was transferred to the stores located at Kolkata. Pursuant to the transfer order he did not join the duty and after a period of about two years he sent in his resignation expressing grievance of stagnancy of salary and also alleged that he was a victim of unfortunate circumstances. The resignation was accepted, however, he committed suicide leaving a suicide note which was the basis for registering the offence. In the suicide note, it was mentioned that one Netai Datta and Paramesh Chatterjee had engaged him in several wrong doings. A reference was made to both of them alleging that he had reported certain incidents to them. However, it was concluded by the Supreme Court that a reading of the suicide note revealed that the deceased was not satisfied with the working conditions in the office. He

had to work some times throughout the day. It is in the peculiar facts of this case that it was held that the contents of the suicide note were falling short to constitute abetment. Again, in the matter in hand, as we have noted herein-above there are specific allegations attributing overt acts on the part of all the applicants in instigating deceased Suvarna to commit suicide, and in view of such allegations in the complaint, we are not inclined to exercise the inherent jurisdiction vested in us under Section 482 of the Cr.P.C.

12. In the result, the application is liable to be rejected, however, it is made clear that the observations made herein-above are restricted to the decision of the matter in hand and shall not influence either the investigation or the trial.

13. The application is rejected. Rule is discharged.

[MANGESH S. PATIL, J.]

[S.S. SHINDE, J.]