

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

CRIMINAL APPLICATION NO. 3128 OF 2017

Pravin s/o Apparao Gujar,  
Age 40 years, Occu. Service,  
R/o Damam Building,  
Purusharthi Housing,  
Sindhi Colony, Nanded,  
Taluka and District Nanded

..Applicant

Versus

1. The State of Maharashtra,  
Through Nanded Rural Police  
Station, Nanded, Taluka and  
District Nanded

2. Laxman Haibati Kamble,  
Age 68 years, Occu. Retired,  
R/o Ektanagar, Bhaigaon road,  
Degloor, Taluka Degloor,  
District Nanded

..Respondents

Mr M.V. Ghatge, Advocate for applicant  
Mr S.D. Ghayal, A.P.P. for respondent-State  
Mr A.M. Salok, Advocate for respondent no.2

- WITH -

CRIMINAL APPLICATION NO. 3123 OF 2017

Amar s/o Subhashchandra Upenar,  
Age 26 years, Occu. Student,  
R/o Anandnagar, Taluka and  
District Bidar (Karnataka)

..Applicant

Versus

1. The State of Maharashtra,  
Through the Police Sub Inspector,  
CIDCO Gramin Police Station,  
Taluka and District Nanded

2. Laxman Haibati Kamble,  
Age 68 years, Occu. Retired,  
R/o Bhayegaon road,  
Degloor, Taluka Degloor,  
District Nanded

..Respondents

Mr S.N. Janakwade, Advocate for applicant  
Mr S.D. Ghayal, A.P.P. for respondent-State  
Mr A.M. Salok, Advocate for respondent no.2

**CORAM : S.S. SHINDE AND  
A.M. DHAVAL, JJ**

**DATE OF RESERVING  
THE JUDGMENT : 21.8.2017**

**DATE OF PRONOUNCING  
THE JUDGMENT : 31.8.2017**

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

1. Rule. Rule returnable forthwith. With the consent of parties, matters are taken up for final disposal at admission stage.
2. These two applications are filed by two accused facing prosecution for offences punishable under Sections 306, 506 read with Sec.34 of Indian Penal Code, initiated on F.I.R. registered at C.R.No. 179/2017 at Gramin Police Station, Nanded on 1<sup>st</sup> April 2017. Both the applicants seek quashing of the F.I.R. as against them by invoking the inherent jurisdiction under Section 482 of Cr.P.C. Criminal Application No.3123 of 2017 is filed by accused No.3 Amar Subhashchandra Upenar and Criminal Application No.3128 of 2017 is filed by accused No.1 Pravin Gujar.
3. The facts relevant for deciding these applications may be stated as follows :

As per F.I.R. lodged by Laxman Haibati Kamble, his son aged 41 years was serving as Counsellor in Government Hospital, Nanded since 2008. On 1<sup>st</sup> April 2017, Laxman received message that bag and some papers of Deepak were found near Kaleshwar temple by the side of bank of river at Vishnupuri, Nanded. Further search by Police disclosed that Deepak committed suicide by jumping into the river and he had left behind a chit of three pages disclosing the reasons

why he committed suicide. Sum and substance of his chit is that he was harassed by accused No.1 Pravin Gujar, who was District Supervisor, one Counsellor Sunita Wavale and Dr. Amar Upenar. He alleged that Sunita Wavale was avoiding work and was preparing false record about her counselling work. She used to remain absent from duty but was showing that she was present. It may be stated that Sunita Wavale had filed Criminal Application No.2159 of 2017 and the same was allowed by the Division Bench of this Court of which one of us ( Justice A.M. Dhavale ) was a party and F.I.R. was quashed against her on 14<sup>th</sup> June 2017.

4. With regard to applicant Pravin Gujar (Criminal Application No.3128 of 2017), deceased Deepak made allegations that whenever he was meeting him, he was demanding and recovering from him amounts of Rs.100, Rs.200, Rs.500 or Rs.1,000 and was not leaving him without payment of money. With respect to Dr. Amar Upenar, he has made allegations that he had given lot of mental stress to him and he wanted to cut off his life.

5. Learned A.P.P. has fairly conceded that dying declaration is the main material against the applicants. Besides, there were some statements showing that deceased used to complain about these three persons before them and because of their mental harassment he had desire to commit suicide.

6. Learned Advocate S.N. Janakwade for applicant Dr. Amar Upenar has argued that there are no specific allegations against the applicant. The applicant was not a doctor, he was in the last year of B.D.S. Course and he was not employed in the Government Hospital at

Nanded, where the deceased was serving. Learned Counsel for applicant Dr. Amar Upenar has produced documents to show that Dr. Upenar was studying in last year B.D.S. Course and was not serving. The investigation has, however, revealed that Dr. Amar Upenar was distantly related to sister of deceased Deepak and he wanted to marry to the daughter of sister of Deepak, but as she was M.B.B.S., his proposal was not approved and, therefore, he was regularly making calls to the deceased, giving him threats and was thereby mentally harassing him.

7. Reliance is placed on the judgment in **Deelip Ramrao Shirasao and four others Vs. State, Criminal Application [APL] No.332 of 2016 decided by Division Bench of Nagpur High Court on 5<sup>th</sup> August 2016**. In this case, Civil Judge, Senior Division committed suicide on 2<sup>nd</sup> August 2014, leaving behind a chit in which he named Principal District Judge, Yavatmal and other Judges as the persons responsible for mentally harassing him and transferring him to Darvha and thereby abetted him in commission of suicide.

8. When there is no direct instigation or abetment by any person to another person to commit suicide, it can be inferred that one person abetted the commission of suicide, if he creates such circumstances that the deceased would be left with no other option to commit suicide. In this regard, we rely on **Praveen Pradhan Vs.State of Uttaranchal and anr., (2012) 9 SCC 734**. In this case, the following observations from earlier Supreme Court judgments were quoted with approval.

“ In **Chitreshkumar Vs. State of NCT Delhi, AIR 2010 SC 1446**, where the accused by his acts or omissions or by 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. In **Ramesh Kumar Vs. State of Chhattisgarh, AIR 2001 SC 3837**, while dealing with similar situation Apex Court 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.

In **Praveen Pradhan's** case (**cited supra**), in paragraph 18, it was held:

“18. In fact, from the above discussion it is apparent that instigation has to be gathered from the circumstances of a particular case. No straitjacket formula can be laid down to find out as to whether in a particular case there has been instigation which forced 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 CrPC.”

**In Chitresh Kumar Chopra's** case (cited supra), in paragraph 18, it is held:

“18. ....It is trite that at the stage of framing charge, the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclose the existence of all the ingredients constituting the alleged offence or offences. For this limited purpose, the court may sift the evidence as it cannot be expected even at the initial stage to accept as gospel truth all that the prosecution states. At this stage, the court has to consider the material only with a view to find out if there is ground for “presuming” that the accused has committed an offence and not for the purpose of arriving at the conclusion that it is not likely to lead to a conviction.”

**In State of Maharashtra Vs. Som Nath Thapa & Ors 1996 AIR SCW 1977**, it is held that “at the stage of framing charge, probative value of the materials on record cannot be gone into; the materials brought on record by the prosecution has to be accepted as true at that stage.” The principle laid down in this case will be equally applicable with more rigor in case of exercising powers under Section 482 of Cr.P.C.

9. Mere appearance of name in the suicide note left by the deceased cannot be a circumstance to show that the person named therein has abetted the commission of suicide. There should be specific allegation in the suicide note or there should be other material to show that either by express words or by conduct, the person named

in the suicide note physically or mentally harassed, the deceased in such a manner was left with no other option but to commit suicide. Applying this yardstick, we find that there is no material either in the statements recorded by the Investigating Officer during the investigation or in suicide note to show any specific conduct or acts on the part of Dr. Amar Upenar, which can amount to abetment to commit suicide. Hence, the prosecution against Dr. Amar Upenar on the basis of the F.I.R. and suicide note is not sustainable.

10. As far as applicant Pravin Gujar is concerned, there are specific allegations in the suicide note that he was regularly demanding and accepting money from deceased Deepak. Every time he used to collect amount of Rs.100, Rs.200, Rs.500, Rs.1,000/- from deceased Deepak. Deceased Deepak was a Counsellor and must be having meager income. Payment of such huge amounts regularly to Pravin Gujar would be putting him in severe financial crunches and would amount to mental cruelty of serious nature. There are persistent demands and acceptance of money alleged. Pravin Gujar was superior to deceased Deepak. Considering these facts at face value, we find that this is not a fit case to invoke inherent powers under Section 482 Cr.P.C. to quash the F.I.R. against applicant Pravin Gujar. As held in Praveen Pradhan's case, persistent demands amount to abetment.

11. We clarify that we are not going to consider whether the statements made in the suicide note against Pravin Gujar are true or false. It is for the trial Court to decide. We can say that no material has been produced to show that deceased Deepak had any reason to make false allegations against Pravin Gujar or to show that the

allegations made by him are false. At this stage, even some possibility of making out a case of abetment to commit suicide is enough. In such matters, powers under Section 482 Cr.P.C. cannot be invoked, as there is no miscarriage of justice nor there is abuse of the process of Court nor necessity of prevention of injustice, by quashing the investigation at the threshold. Hence, Criminal Application No.3128 of 2017 filed by applicant Pravin Gujar deserves to be rejected, whereas Criminal Application No.3123 of 2017 filed by Amar Upenar deserves to be allowed.

12. It is clarified that the observations made hereinabove are prima facie in nature and made only for the purpose of deciding these applications and should not be used to influence while deciding the original proceedings by the sub-ordinate Judges.

13. We accordingly allow Criminal Application No.3123 of 2017 and reject Criminal Application No.3128 of 2017.

14. Rule is made absolute in Criminal Application No.3123 of 2017 and Rule is discharged in Criminal Application No.3128 of 2017. There shall be no order as to costs.

**( A.M. DHAVAL, J.)**

**( S.S. SHINDE, J.)**

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