

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 651 OF 2007.

Jaypal S/o Maruti Chavan,
Aged: 51 Years, Occu: Service,
Working as a Medical Suptd.
Sud-District hospital, Mukhed,
R/o Mukhed, Tq. Mukhed,
Dist. Nanded.

....Petitioner.

Versus

1. The State of Maharashtra
Through its Secretary,
Department of Home,
Mantralaya, Mumbai-32.
2. Police Inspector,
Mukhed Police Station,
Tq. Mukhed, Dist. Nanded.
3. Shri. Hanmantrao Govindrao Goud,
A/P. Pala. Tq. Mukhed.
Dist. Nanded.

....Respondents.

Mr. P. D. Bachate h/f Mr. A. B. Girase, Advocate for petitioner.

Mr. S.D. Ghayal, APP for respondent Nos.1 and 2/State.

**CORAM : T.V. NALAWADE AND
SUNIL K. KOTWAL, JJ.
DATED : JULY 21, 2017.**

JUDGMENT : [PER T.V. NALAWADE, J.]

. The proceeding is filed for relief of quashment of F.I.R.
No. 105/2007 registered in Mukhed Police Station for the offence
punishable under section 306 of Indian Penal Code ('IPC' for short).
Both the sides are heard.

2) The deceased Shivam was nephew of respondent No. 3. The deceased was aged about 23 years. He was worker of political party, Bhartiya Janta Party and he was involved in students agitation and also the agitations of people for some social cause. He was agitating against the public servants and the corruption in the offices of Government.

3) He had applied for collecting information against Medical Superintendent Dr. Jaipal Chavan, present petitioner and the information was about his M.R. bills, T.A. bills etc. for the period from 2001 to 2004 of his previous station Mukhed under Right to Information Act. The application was given on 24.8.2007 and since then present petitioner Chavan was harassing him and had started giving threats to him. Some information was ultimately supplied to the deceased under aforesaid Act, but it was not complete and sufficient information and so, the deceased wanted to file appeal for getting complete information.

4) On 21.9.2007, present petitioner called the deceased when he learnt that the deceased was still after him and he wanted to collect the remaining information. The deceased had already given complaint to Deputy Director of Health Latur against the

petitioner for requesting to make inquiry in to the corrupt activities. In the past, he had attempted to give copy of the said representation to the petitioner also. When on 21.9.2007, the deceased went to the private dispensary of the petitioner, copy of the aforesaid representation prepared was handed over by the deceased to the petitioner. After reading the contents of the representation, the petitioner became angry and he gave threat to destroy the deceased. On 21.9.2007 itself F.I.R. was given by the petitioner against the deceased that the deceased was blackmailing him and he had demanded Rs.10,000/- from him. On the same day, the deceased came to be arrested and he was produced before the Magistrate on 22.9.2007. After the arrest of the deceased, a press conference was arranged in which information was supplied against the deceased and the deceased was humiliated. Magistrate granted bail to deceased on 22.9.2007.

5) The deceased was feeling insulted and humiliated due to his arrest and his detention in police custody and also due to the press conference which was arranged at the instance of the present petitioner. He started agitating in respect of this and on 26.9.2007 he went to Tahsildar with representation. Before Tahsildar's Office he consumed poison. His representation was then taken over. Attempt was made to save his life. But he died due to poisoning. In the

representation, he blamed the present petitioner for his arrest and detention and also false implication in the case and he also blamed the police for joining hands with the petitioner. He specifically contended that he was consuming poison due to his insult and defamation. On the basis of this representation, the crime came to be registered against the petitioner for the offence punishable under section 306 of IPC.

6) It appears that after making investigation, chargesheet is also filed. During investigation, police recorded statements of friends and relatives of the deceased and also of other persons. They are to the effect that the deceased was feeling insulted and he was depressed due to the conduct which was given to him at the instance of present petitioner. The chargesheet was filed in the Court on 22.2.2008. It appears that on 20.2.2008 this Court granted interim relief and directed not to take coercive action against the petitioner. As the case is filed, relief ought to have been claimed in respect of the case itself, but that is not done and the relief of quashment of the F.I.R. is claimed.

7) The papers of investigation show that there are statements of as many as 30 witnesses and there is the representation of the deceased which can be treated as dying

declaration now. The statements show that only due to the harassment which the deceased had faced and due to the incident of his arrest in aforesaid case, the deceased committed suicide. The deceased has specifically blamed the petitioner. It is not disputed that the death took place due to poisoning.

8) The learned counsel for petitioner placed reliance on some observations made by the Apex Court like **AIR 2002 SUPREME COURT 1998 [Sanju alias Sanjay Singh Sengar Vs. State of Madhya Pradesh]**, **2008 AIR SCW 3202 [Sohan Raj Sharma Vs. State of Haryana]** and **(2010) 8 Supreme Court Cases 628 [Madan Mohan Singh Vs. State of Gujrat and Anr.]**. On the other hand the learned APP placed reliance on some observations made by the Apex Court in **Criminal Appeal No. 1589/2012 [Praveen Pradhan Vs. State of Uttaranchal and Anr.] decided on 4.10.2012.**

9) Facts and circumstances of each and every case are always different. Many facts of the present matter are admitted and they are quoted above. The contention of the petitioner that he had right to give report to police and the circumstance of giving of the report, cannot be called as abetment, cannot be accepted at this stage. It is a defence and there is counter contention and there are

many statements in that regard. It will be matter of evidence. The important fact which can be kept in mind is that only on the basis of report of the present petitioner that the deceased was demanding money, he was arrested and kept in police custody for one day. Further, press conference was arranged and care was taken to see that he is defamed in the society. There are statements of police officers with the chargesheet showing that some officers of other department had also grievance that the deceased was harassing them by making applications and complaints. It can be said that the step like arrest of the deceased was taken intentionally. If there was really demand of money to the petitioner by the deceased, in ordinary course, police would have arranged trap and person making demand of money by blackmailing could have been caught red handed. Such an attempt was not made and this circumstance cannot be ignored. These facts of the present matter are peculiar in nature. The deceased had taken the decision to finish himself, for that he had prepared hand written representation and he had gone before Tahsildar to give it. In view of these circumstances, this Court holds that the matter needs to be left to the Court to appreciate the material which is collected by the police. At this stage, it cannot be said that the act of the petitioner does not amount to abetment as defined in section 107 of the IPC. The Apex Court has laid down that there cannot be straight jacket formula on such point and in

each and every case, it needs to be ascertained as to whether the act of the accused is abetment. When there is voluminous material of aforesaid nature and when chargesheet is filed, it is not possible to quash the F.I.R.

10) In the result, the petition stands dismissed. Rule is discharged. The learned counsel for petitioner wants time to challenge the order of this Court. Time of four weeks is given to him.

[SUNIL K. KOTWAL, J.]

[T.V. NALAWADE, J.]

ssc/