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

CRIMINAL APPLICATION NO.3202 OF 2017

1. Balasaheb s/o Ashruba Farke
Age 46 years, Occu. Service,
R/o 7/196, Laxmi Nagar,
Adas Road, Dharur, Taluka Dharur,
District Beed

2. Ramesh @ Bandu s/o Ashruba Farke,
Age 43 years, Occu.Agri.,
R/o Hasnabad, Taluka Dharur,
District Beed

3. Indu w/o Balasaheb Farke,
Age 40 years, Occu. Household,
R/o 7/196,Laxmi Nagar,
Adas Road, Dharur, Taluka Dharur,
District Beed ..Applicants

Versus

1. The State of Maharashtra and
through Police Station, Dhaur,
District Beed

2. Rushikesh Dnyanoba Nakhate,
Age 22 years, occu. Business,
R/o Laxmi Nagar, Adas road,
Dharur, Taluka Dharur
District Beed ..Respondents

Mr S.J. Salunke, Advocate for applicants
Mr K.N. Lokhande, A.P.P. for respondent no.1
Mr A.R. Tapse, Advocate h/f Mr P.D. Suryawanshi, Advocate for respondent no.2

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

**DATE OF RESERVING
THE JUDGMENT : 10th August 2017
DATE OF PRONOUNCING
THE JUDGMENT : 14th August 2017**

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

1. Rule. Rule returnable forthwith. With the consent of parties, matter is taken up for final disposal at admission stage.

2. This is an application by three accused facing charge under Sections 306, 506 read with 34 of the Indian Penal Code in crime registered on 15.6.2017 at C.r.No.146/2017 at Dharur Police Station, District Beed.

3. As per admitted facts, Dnyanoba Nakhate, father of respondent no.2, on 13.6.2017 at 5.00 a.m. committed suicide by hanging himself in a pick-up van in front of his house. It is claimed that he left behind two suicide notes naming six persons including the present applicants as the persons responsible for driving him to commit suicide. These chits were found by respondent no.2 in house later and the first information report is lodged after two days, but these facts are not material at this stage. It is necessary to proceed assuming these chits are genuine.

4. There are two sets of accused referred in these chits. The first set consists of Pramod Shingare, Laxman Shingare and Bhimrao Tidke. The allegation against them is that the deceased had taken hand loan from them and it was repaid by him with high rate of interest and in spite of paying huge amount, they were demanding further amounts. It is written in one chit that amount of Rs.30,000/- was advanced as a loan and in spite of payment of Rs.1 lakh, there was further demand. In one chit it is stated that Rs.1 lakh was lent as a loan and in spite of refund of Rs.3,10,000/-, there were further demands.

5. The present applicants are not the money lenders. In respect of them, the first chit shows that the amount of Rs.4 lakh was advanced by deceased to applicant no.1 Balasaheb by selling his own land. The

second chit shows that land was sold and Rs.4 lakh was advanced to applicant no.1-Balasaheb, applicant no.2-Ramesh and applicant no.3-Indu. Ramesh is brother of Balasaheb, whereas Indu is wife of Balasaheb. In the first information report, lodged by respondent no.2, son of the deceased, it is stated that Rs.4 lakhs was paid as hand loan to the applicants for education of their children and in spite of demand of refund, the applicants did not return the said amount. It is also alleged that they had given threats of killing. Besides, the first information report shows allegations of persistent demands of hand loan by other three accused Pramod Shingare, Laxman Shingare and Bhimrao Tidke.

6. Heard learned Advocates for the parties. It is argued on behalf of the applicants that applicant no.1 is serving as Teacher, drawing salary of Rs.52,000/- and take home salary of Rs.37,590/-. He had no reason to take hand loan from the deceased. The story is concocted. There is delay in lodging the first information report and the suicide notes are forged. These grounds cannot be considered in these proceedings of quashment. However, it is also argued that even if the facts are taken at face value, those do not satisfy the ingredients of Section 306 of the Indian Penal Code against the present applicants.

7. Per contra, learned Advocate for respondent no.2 and learned A.P.P. have argued that there is sufficient material to show that the applicants had taken hand loan of Rs.4 lakh from the deceased and Balasaheb was not returning the said amount at the instance of other two applicants. After lodging of first information report, Balasaheb had visited the house of respondent no.2 and conversation with him

was recorded wherein he has given admission of receiving the hand loan. Besides, the applicants have given threats of killing and, therefore, it was the cause for driving the deceased Dnyanoba to commit suicide.

8. After considering the facts on record carefully, we find that there is no material to show that the applicants intended that Dnyanoba should commit suicide. There is not even material to show that they had knowledge that because of that acts Dnyanoba wold commit suicide. In **Chitresh Kumar Chopra Vs. State (Govt.of NCT of Delhi), (2009) 16 SCC 605**, it is held by the Apex Court that :

> " 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".

In **Ramesh Kumar Vs. State of Chhattisgarh (2001) 9 SCC 618,** Apex Court held that :

> " 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."

9. Persistent demand of refund of hand loan has been held to be one of such circumstances. However, mere taking of hand loan and

not refunding the same cannot be called as an act of abetment to commit suicide. Even if the allegation regarding threats of killing is accepted at its face value, still both the acts taken together will also not amount to abetment, as defined under Section 107 of Indian Penal Code. In this regard, learned Advocate for the applicants has placed reliance on **Ramesh Someshwarrao Tayde & Anr. Vs. State of Maharashtra & Anr., 2016 ALL MR (Cri) 5049**. In that case, the applicants had borrowed a loan from the deceased and in spite of service of legal notice, they were not repaying it and were giving threats of life. In the present case, the facts are similar except that there was no service of legal notice. In that case, the Division Bench of Nagpur Bench held that the act of the applicants cannot be said to be abetment.

10. Further reliance is placed on **Ratan Pundlik Salunkhe & Ors., Vs. State of Maharashtra & Anr., 2016 ALL MR (Cri) 4858.** It was a case of non-payment of balance amount due to the deceased. Though the facts were somewhat different inasmuch as the first information report was delayed by three months and there was no proximity and nexus of the act alleged with the behaviour of the petitioners, it is held that the mere non-payment of any amount due to deceased will not amount to abetment.

11. Reliance is also placed by the applicants on the judgment in **Sanju alias Sanjay Singh Sengar Vs. State of M.P. AIR 2002 SC 1998.** In that case, the facts were different. The applicant had told the deceased to go and die. It was held that the words without any

intention should not be taken as an instigation but it was held that mere disclosure of names in the suicide note as responsible for suicide will not be sufficient to hold the applicants guilty of abetment.

12. It may be stated here that though the material is consistent with regard to advancing hand loan by the deceased to applicant no.1, one chit does not disclose names of applicant no.2 Ramesh and applicant no.3 Indu. Both the chits do not disclose any allegations about intimidation or threats of killing. Respondent no.2, in his first information report has alleged that there were threats of killing but, other witnesses including his mother have not supported on the point of giving threats by the applicants. One Baliram had stated that the applicants were promising to refund the amount but were not actually refunding the amount.

13. It is also rightly argued that there cannot be common intention between the two sets of acts one of borrowers and other of receivers of hand loan.

14. Considering the totality of facts assumed to be correct at the face value those do not disclose any material to show the ingredients of abetment punishable under Section 306 of Indian Penal Code against the present applicants. In the circumstances, the first information report and the prosecution of the applicants under Section 306 read with 34 of the Indian Penal Code is not sustainable and amounts to abuse of process of Court. The same deserves to be quashed.

15. Hence, the application allowed. First information report bearing C.R.No.146/2017 lodged on 15.6.2017 registered at Dharur Police Station, District Beed as against the present applicant no.1 - Balasaheb s/o Ashruba Farke, applicant no.2 - Ramesh @ Bandu s/o Ashruba Farke and applicant no.3 - Indu w/o Balasaheb Farke and the prosecution arising therefrom is quashed.

16. Rule is made absolute in above terms. There shall be no order as to costs.

(A.M. DHAVALE, J.) **(S.S. SHINDE, J.)**

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