

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.3807 OF 2016

- 1) Ravindra s/o Bhimrao Khillare,
Age-36 years, Occu:Labour,
- 2) Seema w/o Ravindra Khillare,
Age-30 years, Occu:Household,
- 3) Deepak s/o Bhimrao Khillare,
Age-28 years, Occu:Labour,
- 4) Kalpana w/o Deepak Khillare,
Age-23 years, Occu:Household,

All R/o- Bagsher Jung,
Near Rama Nagar, Darga Road,
Kranti Chowk, Aurangabad,
Dist-Aurangabad.

...APPLICANTS

VERSUS

- 1) The State of Maharashtra,
Through Police Station,
Osmanpura, Aurangabad,
Dist-Aurangabad,
- 2) Jilabai w/o Atmaram Ingale,
Age-60 years, Occu:Household,
R/o-Galli No.2, Rama Nagar,
Osmanpura, Aurangabad.

...RESPONDENTS

...
Mr.S.J. Salunke Advocate for Applicants.
Mr.P.G. Borade, A.P.P. for Respondent No.1.
Mr.S.G. Ladda Advocate for Respondent No.2.
...

**CORAM: S.S. SHINDE AND
K.K. SONAWANE, JJ.**

DATE OF RESERVING JUDGMENT : 4TH APRIL, 2017.

DATE OF PRONOUNCING JUDGMENT: 6TH JUNE, 2017.

JUDGMENT [PER S.S. SHINDE, J.] :

1. Rule. Rule made returnable forthwith and heard finally with the consent of the learned counsel appearing for the parties.

2. By way of filing this Application, the Applicants have prayed that the First Information Report No.78 of 2016 dated 15th April, 2016 registered with Police Station, Osmanpura, Aurangabad for the offence punishable under Section 306 read with Section 34 of the Indian Penal Code, may be quashed and set aside.

3. Respondent No.2 herein - Jijabai w/o

Atmaram Ingale, who is mother of deceased Chandrakant, lodged First Information Report stating therein that, her married son Chandrakant was a practicing as an Advocate. He was blessed with a son namely Vaibhav and a daughter namely Ranjandini.

. On 5th April, 2016, during morning hours, wife of Chandrakant saw her husband in a hanging condition to a roof of room situate in their own house. He was removed from the house and was taken to the hospital. When he was hospitalized, a chit was found in his pocket. It was written in the said chit/note that, an accused Ravindra, Deepak and their wives i.e. Applicant Nos.2 and 4, with co-accused Prakash are responsible for his commission of suicide. All of them harassed him for repayment of money, and also threatened to kill him. Due to said harassment by the accused persons, he is committing suicide. On the back side of the said chit, it was written, that the accused persons gave him money on condition of

paying the same back to them with interest. Though the said amount was repaid with interest, again demand was made by them, and cheque was obtained from Chandrakant and also undertaking was taken on the bond. On 4th April, 2016, Deepak snatched mobile from him. The informant further alleged that, the accused with an intention that Chandrakant should commit suicide, instigated an act of commission of suicide by Chandrakant and ultimately Chandrakant committed suicide, and died on 12th April, 2016. On the basis of an aforesaid information Crime was registered against five accused persons including the present Applicants for the offence punishable under Section 306 read with 34 of the Indian Penal Code (for short "I.P. Code").

4. Hence this Application is filed by the Applicants, for quashing the First Information Report.

5. Learned counsel appearing for the

applicants submitted that, the police ought not to have registered the crime under Section 306 of the I.P. Code. Merely being named in the alleged suicide note, one shall not immediately jump to the conclusion that a person is an offender. There must be an intentional aiding to the commission of suicide by the accused. The contents of the suicide note and other attending circumstances have to be examined so as to find out, whether the act/acts of the accused would constitute an abetment, instigation or intentional aiding within the meaning of Section 107 of the I.P. Code, so as to constitute an offence punishable under Section 306 of I.P. Code.

6. Learned counsel further submitted that Chandrakant died on 12th April, 2016, and the First Information Report was lodged on 15th April, 2016. There is delay in lodging the First Information Report which is not explained by the informant. Thus an allegations levelled against the Applicants are the result of due deliberation

and concoction.

7. Learned counsel further submitted that the Applicants never lend any amount on the basis of repayment of said amount on interest basis to deceased Chandrakant. Applicants are not involved in any money lending business. It is submitted that deceased Chandrakant was practicing as an Advocate in the Civil and Criminal Court at Aurangabad. One Subhash Sukhdeo Jadhav is the relative of accused Ravindra. Subhash was in jail in connection with the offence of rape. Accused Ravindra was acquainted with deceased Chandrakant being a lawyer. The merits of bail application of Subhash Jadhav were discussed with deceased Chandrakant. It is submitted that, Chandrakant taken exorbitant amount of Rs.60,000/- from Subhash Jadhav. An amount of Rs.60,000/- paid to Chandrakant was demanded by accused Ravindra, as Subhash was not released on bail. It is submitted that the cheque of Rs.60,000/- was issued by deceased Chandrakant in favour of accused

Ravindra. However when the cheque was presented, it was dishonoured for not having sufficient funds.

8. Learned counsel for the Applicants submits that deceased Chandrakant was addicted to bad vices. He borrowed huge amount from many people, but was unable to repay the same. His family life was also disturbed due to his bad habits and huge debt incurred by him. Due to the huge debt and family problems, Chandrakant committed suicide. It is submitted that only being relatives of accused No.1 Ravindra, rest of the accused are roped into an alleged offence. It is submitted that, alleged note written by Chandrakant before commission of suicide is fabricated document, and no reliance whatsoever can be placed on contents of the said chit.

9. Learned counsel appearing for the Applicants submits that, even if an allegations in the First Information Report are taken at its face

value and read in its entirety, prima facie alleged offences have not been disclosed against the Applicants. An allegations against the Applicants are so absurd that no prudent person would believe the same. The continuation of the criminal proceedings on the basis of the First Information Report which is lodged against the Applicants only with a view of wrecking vengeance, would be sheer abuse of the process of law, and ultimately, trial would not result into conviction of the Applicants.

10. Learned counsel submitted that an abetment involves mental process of an instigation or intentionally aiding person to do certain thing. Some positive act by accused is essential to constitute abetment. In support of aforesaid submission, the learned counsel placed reliance on the law laid down by the Supreme Court in the case of **Gangula Mohan Reddy vs. State of A.P.**¹ Learned counsel further submitted that merely on

¹ 2010 Cri. L.J. 2110

allegations of harassment without there being any positive action proximate to time of occurrence on the part of accused which led or compelled person to commit suicide, conviction in terms of Section 306 of the I.P. Code is not sustainable. In support of his submissions, learned counsel placed reliance on the ratio laid down in the case of **Vijay @ Munna Bharat Gurkhde vs. State of Maharashtra**². Learned counsel in support of his submissions that persistent demand made by the accused who claim that they are entitled to recover money from any other person, cannot be equated to an overt act as understood in Section 107 of the I.P. Code, placed reliance on the ratio laid down in the case of **Santosh Nathulmal Goenka and another vs. State of Maharashtra, through its P.S.O.**³ Learned counsel further submitted that, to constitute an offence under Section 306 of I.P. Code, it is necessary for prosecution to at-least prima facie establish that the accused had an intention to aid the deceased to commit suicide.

² 2014(4) Bom.C.R.(Cri.)72

³ 2010(1) Bom.C.R.(Cri.) 233

In absence of availability of such material, the Applicants cannot be compelled to undergo ordeal of trial. In support of his aforesaid submissions, learned counsel placed reliance on the law laid down in the case of **Binod Ratan Sarkar vs. State of Maharashtra**⁴.

11. Therefore, relying upon the averments in the Application, grounds taken therein, learned counsel appearing for the Applicants submits that the Application deserves to be allowed.

12. Learned A.P.P. appearing for the State, relying upon the investigation papers and in particular the contents of the First Information Report, submits that an ingredients of alleged offences have been clearly attracted on reading the allegations in its entirety. It is submitted that an allegations in the First Information Report will have to be taken as it is and can be tested only during trial. It is submitted that in

⁴ 2014 All M.R.(Cri.) 1216.

the suicide note the deceased has named the Applicants. It is submitted that the Investigating Officer has recorded statements of various witnesses during the course of investigation and also collected incriminating material and on the basis of said material trial can proceed. Therefore, he submits that the Application may be rejected.

13. Learned counsel appearing for Respondent No.2 submits that, an allegations in the First Information Report will have to be taken as it is and appreciation of those allegations or statements of witnesses even in a summary manner is not permissible, when there is a prayer for quashing the First Information Report. He invites our attention to the affidavit in reply filed on behalf of Respondent No.2 and submits that the Application filed by the Applicants is absolutely erroneous, illegal and same is not maintainable at all. Applicants have incorporated factual points in the Application, and those points unless

subjected to the test in the trial can not be decided in either way. Therefore he submits that in view of the position of law, the Application deserves to be dismissed in limine. It is further submitted that the deceased Chandrakant prior to the registration of crime, has lodged a complaint with the Police Station, Osmanpura, Aurangabad against the Applicants and others complaining about the harassment and threats given to him. It is further submitted that deceased Chandrakant left a suicide note, which prima facie indicates the commission of cognizable offence. It is further submitted that the decision over the facts involved, needs full fledged trial. The complaint cannot be thrown away at the threshold and that too by using the extra ordinary and/or inherent powers by this Court. In support of contentions raised during the course of arguments, learned counsel appearing for Respondent No.2 placed reliance upon the judgments of the Supreme Court in the cases of (i) **Didigam Bikshapathi and anr**

V/s State of A.P.⁵, (ii) The State of Punjab V/s Iqbal Singh and others⁶, (iii) Surender V/s State of Haryana⁷, (iv) Kishori Lal V/s State of M.P.⁸, (v) Brij Lal V/s Prem Chand and another⁹, and (vi) Dammu Sreenu V/s State of A.P.¹⁰.

Therefore, relying upon the averments in the affidavit in reply, annexures thereto and also investigation papers, learned counsel submits that the Application may be rejected.

14. We have given careful consideration to the submissions advanced by learned counsel appearing for the Applicants, learned A.P.P. appearing for Respondent No.1/State and learned counsel appearing for Respondent No.2. With their able assistance, we have carefully perused the averments and grounds taken in the application, contents of the first information report, reply filed by Respondent No.2 and investigation papers.

5 2008 Cri. L.J. 724

6 1991 Cri. L.J. 1897

7 2007 Cri. L.J. 779

8 AIR 2007 SC 2457

9 AIR 1989 SC 1661

10 2009 Cri.L.J. 3728

Upon careful perusal of the contents of the first information report and also the chit recovered from the pocket of deceased Chandrakant, it is abundantly clear that, the names of Applicant no.1 – Ravindra Bhimrao Khillare and Applicant no.3 – Deepak Bhimrao Khillare are mentioned in the first information report. Not only that, it is stated in the said chit that, due to severe harassment given by the accused, he is committing suicide. There is specific overt act attributed to Applicant No.3 – Deepak Bhimrao Khillare that, on 4th April, 2016, he snatched mobile phone from the custody of Chandrakant (deceased) and Chandrakant committed suicide on 5th April, 2016.

15. Respondent No.2 has filed affidavit in reply and along with the said affidavit in reply, there is one application addressed by Chandrakant (now deceased) to the Police Inspector, Osmanpura Police Station, Aurangabad. In the said application, the name of present Applicant No.3 – Deepak Bhimrao Khillare is mentioned. It further

appears that, on the basis of the said application, Crime No.333/2014 came to be registered with Police Station, Osmanpura, Aurangabad (City) on 29th November, 2014 at 11.30 a.m. Therefore, the question of entertaining the application of Applicant No.3 Deepak Bhimrao Khillare does not arise. So far as Applicant No.1 – Ravindra Bhimrao Khillare is concerned, he is specifically named in the note written by Chandrakant before committing suicide. Therefore, the application of Applicant No.1 – Ravindra Bhimrao Khillare deserves no consideration.

16. So far as Applicant No.2 – Seema Ravindra Khillare and Applicant No.4 – Kalpana Deepak Khillare are concerned, their names are not mentioned in the first information report. It is only mentioned that, they are wife of Ravindra Bhimrao Khillare and wife of Deepak Bhimrao Khillare, respectively. There is no specific overt act attributed to them. Upon careful perusal of the entire investigation papers, except statements

of the witnesses, that too without mentioning the names of the Applicant No.2 and Applicant No.4, there are general allegations against them. Upon close scrutiny of the allegations in the first information report, contents of the chit i.e. Suicide Note, and investigation papers, so far as Applicant No.2 Seema Ravindra Khillare and Applicant No.4 Kalpana Deepak Khillare are concerned, there is no nexus between so called commission of suicide by Chandrakant and the general allegations made against them. Therefore, there is no material suggesting any instigation, abetment or intentional aid on the part of Applicant Nos.2 and 4 in commission of suicide by Chandrakant.

17. The Supreme Court in the case of **S.S. Chheena V/s Vijay Kumar Mahajan and another**¹¹, in para 25 observed that, the abetment involves mental process of instigating a person or intentionally aiding a person in doing of a thing.

¹¹ (2010) 12 SCC 190

Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. The intention of the legislature and the ratio of the cases decided by this Court is clear that in order to convict a person under Section 306 of the I.P. Code there has to be a clear *mens rea* to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and that act must have been intended to push the deceased into such a position that he/she committed suicide.

18. The Supreme Court in the case of **Madan Mohan Singh V. State of Gujarat and another**¹², while explaining the scope of Sections 306 and 294, in the facts of that case, in para 9 held thus:-

"It is absurd to even think that a superior officer like the appellant would intend to bring about suicide of his driver and,

therefore, abet the offence. In fact, there is no nexus between the so-called suicide (if at all it is one for which also there is no material on record) and any of the alleged acts on the part of the appellant. There is no proximity either. In the prosecution under Section 306, IPC, much more material is required. The Courts have to be extremely careful as the main person is not available for cross-examination by the appellant/accused. Unless, therefore, there is specific allegation and material of definite nature (not imaginary or inferential one), it would be hazardous to ask the appellant/accused to face the trial. A criminal trial is not exactly a pleasant experience. The person like the appellant in present case who is serving in a responsible post would certainly suffer great prejudice, were he to face prosecution on absurd allegations of irrelevant nature."

19. In the case of **Dilip s/o Ramrao Shirasao and others vs. State of Maharashtra and another (Criminal Application No.332 of 2016)** decided on 5th August, 2016, the Division Bench of the Bombay High Court, Bench at Nagpur considered the various

Judgments of the Supreme Court and the High Court and in Para 20 of the Judgment, held thus:

"20. As has been held by Their Lordships of the Apex Court that for permitting a trial to proceed against the accused for the offence punishable under Section 306 of the Indian Penal Code, it is necessary for the prosecution to at least prima facie establish that the accused had an intention to aid or instigate or abet the deceased to commit suicide. In the absence of availability of such material, the accused cannot be compelled to face trial for the offence punishable under Section 306 of the Indian Penal Code. As has been held by Their Lordships of the Apex Court that abetment involves mental process of instigating a person or intentionally aiding a person in doing of a thing and without a positive act on the part of the accused in aiding or instigating or abetting the deceased to commit suicide, the said persons cannot be compelled to face the trial. Unless there is clear *mens rea* to commit an offence or active act or direct act, which led the deceased to commit suicide seeing no option or the act intending to push the deceased into such a position, the trial against the accused

under Section 306 of the Indian Penal Code, in our considered view, would be an abuse or process of law."

20. Therefore, viewed from any angle, there is no positive act of instigation, abetment or intentional aiding attributed to applicant nos.2 and 4, within the proximity of commission of suicide by Chandrakant. In that view of the matter, the first information report qua Applicant Nos.2 and 4 deserves to be quashed and set aside. Hence, we pass the following order :-

ORDER:-

(i) The Criminal Application is partly allowed. The F.I.R. bearing C.R. No.78 of 2016 registered on 15th April, 2016 with Police Station, Osmanpura, Aurangabad is quashed and set aside in respect of Applicant No.2 - Seema W/o Ravindra Khillare and Applicant No.4 - Kalpana W/o Deepak Khillare.

(ii) The Criminal Application, so far as

Applicant No.1 – Ravindra S/o Bhimrao Khillare and
Applicant No.3 – Deepak S/o Bhimrao Khillare,
stands rejected. The prosecution can proceed
against them.

21. Rule made absolute on above terms. The
Criminal Application stands disposed of
accordingly.

22. An observations made hereinabove are
prima facie in nature and confined to the
adjudication of the present Application only.

[K.K. SONAWANE, J.]

[S.S. SHINDE, J.]

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