

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.3865 OF 2016

- 1) Suhas @ Pappu s/o Sarjerao Kakade,
Age-35 years, Occu:Business,
R/o-Bank Colony, Basmathnagar,
Tq-Basmathnagar, Dist-Hingoli,
- 2) Sachin s/o Vithalrao Dagdu,
Age-35 years, Occu:Business,
R/o-Power Loom, Basmathnagar,
Tq-Basmathnagar, Dist-Hingoli.

...APPLICANTS

VERSUS

- 1) The State of Maharashtra,
Through Police Station
Basmathnagar, Tq-Basmathnagar,
Dist-Hingoli,
- 2) Jitendra s/o Ramesh Kamlu,
Age-28 years, Occu:Education,
R/o-Ganesh Peth, Basmathnagar,
Tq-Basmathnagar, Dist-Hingoli.

...RESPONDENTS

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Mr. S.R. Bagal Advocate for Applicants.
Mr. S.P. Deshmukh, A.P.P. for Respondent No.1.
Mrs. Savita P. Kakade Advocate for Respondent
No.2.

...

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

DATE OF RESERVING JUDGMENT : 7TH MARCH, 2017.

DATE OF PRONOUNCING JUDGMENT: 15TH MARCH, 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. This Application is filed by the Applicants praying therein to quash and set aside the First Information Report bearing Crime No.75 of 2016 registered against them on 24th May, 2016 at Police Station Basmathnagar for the offence punishable under Section 306 read with 34 of the Indian Penal Code.

3. It is the case of the Applicants that they are partners of Bhagyalaxmi Finance

Corporation, Basmathnagar. They are license holder for doing the business of finance i.e. money lending. The counsel appearing for the Applicants invites our attention to the copy of license, which is placed on record. It is the case of the Applicants that brother of informant i.e. deceased Surendra obtained loan of Rs.4,00,000/- from the Applicants on 8th November 2014 and again obtained loan of Rs.4,00,000/- on 17th November 2014. The Applicants advanced the loan as said Surendra had on earlier three occasions obtained loan from them and also repaid the same without any default. Thus out of trust and faith, the Applicants have advanced loan of Rs.8,00,000/- in all to deceased Surendra. The Applicants paid the loan by two cheques in the name of deceased after completing all the formalities. Since the deceased Surendra did not repay the loans, the Applicants requested him for repayment of the loan and deceased gave cheque of Rs.8,43,396 bearing No.873039 dated 19th March 2015 in the name of Bhagyalaxmi Finance

Corporation. Upon presentation for encashment, the said cheque was dishonoured for the reason of "funds insufficient" and therefore the Applicants resorted to legal proceedings against the deceased Surendra by filing complaint under Section 138 of the Negotiable Instruments Act on 1st June 2015 before the learned J.M.F.C. Basmathnagar. The learned J.M.F.C. by its order dated 29th October 2015 issued process against Surendra. It is the case of the Applicants that they never threatened Surendra nor caused any harassment. The Applicants were pursuing legal remedies available to them as per law but unfortunately Surendra committed suicide on 24th May 2016. Brother of deceased Surendra lodged complaint with police station, Basmathnagar for the offence punishable under Section 306 read with 34 of the Indian Penal Code against in all five persons who offered loan to the deceased. The Applicants are amongst those five persons named in the First Information Report. The informant complained that Surendra

committed suicide as those five persons were threatening and harassing Surendra on the count of repayment of loan. It is the case of the Applicants that they have not committed any offence and they are falsely implicated in alleged offences and therefore the present Application is filed seeking quashment of the complaint/ F.I.R.

4. Learned counsel appearing for the Applicants submits that the Applicants are innocent persons and they have not committed any offence as alleged in the First Information Report. The First Information Report is lodged with a view to cause harassment to the Applicants and to avoid repayment of loan amount. The complaint is vague and no any overt act proximate to date and time of alleged commission of suicide is alleged, but general allegations are made against all the persons who advanced loan to Surendra. He further submits that though the offence is registered under Section 306 of the

I.P. Code, but in fact the ingredients of Sections 306 and 107 are not attracted and therefore the cognizable offence ought not to have been registered at all. The Applicants are the licensed financier and money lenders and paid loan to deceased Surendra by completing all the required formalities. The amount of said loan was paid through cheque in the name of Surendra, and there is entry about the same in the bank account of Bhagyalaxmi Finance Corporation, and therefore an allegations in the First Information Report are false and concocted on the face of it. It is submitted that, false case is filed to avoid proceedings that may be taken out against informant and to avoid repayment of loan.

5. Learned counsel appearing for the Applicants further submits that bare reading of the complaint shows that there was no abetment to commit suicide at the hands of the Applicants. The loan was advanced in November 2014, the complaint

under Section 138 of the Negotiable Instruments Act was filed on 1st June 2015, in the said case the process was issued on 29th October 2015, and Surendra committed suicide on 24th May 2016, and therefore there is no immediate and proximate abetment to suicide. An ingredients in the complaint do not show that Surendra was not having any option but to commit suicide. From the year 2014 till 24th May 2016 Surendra has never made any grievance against the Applicants nor he ever alleged that the cheque was misused by the Applicants by mentioning exaggerated amount.

6. Learned counsel appearing for the Applicants further submitted that a false complaint is lodged by alleging an inherently improbable story, and thus the continuance of proceedings based on the said First Information Report would be abuse of process of law. Lastly, the learned counsel appearing for the Applicants prayed to quash and set aside the First

Information Report against the Applicants.

7. Learned counsel appearing for the Applicants submits that the Supreme Court in the case of **Madan Mohan Singh vs. State of Gujarat and another**¹, while dealing with the similar fact situation like in the present case, has taken a view that the intention of the accused to aid or to instigate or to abet the deceased to commit suicide is a must for offence under Section 306 of the I.P. Code. It is further observed by the Supreme Court that the Courts have to be extremely careful as the main person is not available for cross-examination by the accused. Unless there is specific allegation and material of definite nature, it would be hazardous to ask the accused to face the trial. Learned counsel appearing for the Applicants further placed reliance on the ratio laid down by the Supreme Court in the case of **State of Kerala and others vs. S. Unnikrishnan**

¹ 2010 A.I.R. S.C.W. 5101

Nair and others². Learned counsel, in support of his submissions also placed reliance on the ratio laid down by the Bombay High Court, Bench at Nagpur in the case of **Binod s/o Ratan Sarkar and others vs. State of Maharashtra and another³**. In support of his submissions, learned counsel also placed reliance on the ratio laid down by the Bombay High Court, Bench at Aurangabad in unreported Judgments in the case of **Tushar s/o Mahadeorao Arsul vs. State of Maharashtra and another (Criminal Application No.3683 of 2012)** decided on 26th November 2012, **Mahesh s/o Shashikant Jape and others vs. the State of Maharashtra and another (Criminal Application No.4362 of 2015)** decided on 11th December 2015. Learned counsel further placed reliance on the ratio laid down by the Bombay High Court, Bench at Nagpur in the unreported Judgment in the case of **Dilip s/o Ramrao Shirasao and others vs. State of**

2 (2015) 9 Supreme Court Cases 639

3 2014 ALL M.R.(CRI) 1216

Maharashtra and another (Criminal Application No.332 of 2016) dated 5th August 2016. Learned counsel appearing for the Applicants submits that the Application deserves to be allowed.

8. Learned A.P.P. appearing for the State, on the basis of investigation papers, submitted that the allegations in the First Information Report are supported by the statement of the witnesses and therefore the prayer of the Applicants for quashing the First Information Report may not be favourably considered.

9. Learned counsel appearing for Respondent No.2 invited our attention to the reply filed by Respondent No.2 and submitted that Surendra committed suicide due to harassment of the Applicants. It is submitted that Surendra has not at all borrowed any loan from said finance company, but the Applicants used fabricated documents in order to show that Surendra has

obtained loan from said finance company. It is further submitted that in order to find out the truth, investigation and trial is must in the present matter. The Application is premature in as much as remedy is available to the Applicants to file application for discharge before the concerned Court after filing of the charge-sheet. Learned counsel for Respondent No.2 further submitted that Surendra on various occasions stated to Respondent No.2 that, he has not at all obtained loan from the Applicants and he has been cheated, and therefore thorough inquiry is must, and therefore the proceedings may not be quashed. The Applicants are politically influenced persons, and they are trying to destroy the evidence against them. It is submitted that the Applicants are running business of money lending without following due procedure of law and they have harassed and threatened Surendra to such an extent that he has no option than to commit suicide.

10. Learned counsel appearing for Respondent No.2 relying on the contentions of the additional affidavit in reply filed by Respondent No.2 submitted that the Applicants have fabricated the documents which is apparent from the fact that the finance company issued two recovery letters to Surendra wherein no date was mentioned. After receipt of such notice Surendra got confused as he had not at all taken any loan from said finance company and therefore Surendra gave one complaint to Assistant Registrar, Co-operative Societies and also to District Co-operative Registrar for inquiry of said loan which was not taken by Surendra but no inquiry was made in the same. Learned counsel for Respondent No.2 invited our attention to the complaint dated 9th April 2015, copy of which is placed on record. In respect of the contention of the Applicants about payment of previous loan to the deceased Surendra, learned counsel invited our attention to the copy of pass book of Surendra and submitted that page No.25 of

LBD Ledger of finance company do not match with pass book of Surendra and he was not at all paid previous loan of Rs.1,00,000/-.

11. The learned counsel appearing for Respondent No.2 placed reliance on the reported Judgment of the Supreme Court in the case of **Amit Kapoor vs. Ramesh Chander and another**⁴ in support of her submissions that whether an offence has been disclosed or not, must necessarily depend on the facts and circumstances of each case. If on consideration of the relevant materials, the Court is satisfied that an offence is disclosed, it will normally not interfere with the investigation into the offence and will generally allow the investigation into the offence to be completed in order to collect materials for proving the offence. The learned counsel submitted that considering the facts of the present case, it is apparent that offence is disclosed which needs

⁴ (2012) 9 S.C.C. 460

investigation.

12. Learned counsel appearing for Respondent No.2 lastly submitted that considering the peculiar facts and circumstances of the present case, the Criminal Application is devoid of merit and deserves to be rejected.

13. We have given careful consideration to the submissions made by the learned counsel appearing for the Applicants, learned A.P.P. appearing for the State and learned counsel appearing for Respondent No.2 and with their able assistance, perused the averments in the Application, grounds taken therein, annexures thereto, the First Information Report, reply and additional reply filed by Respondent No.2 and the exposition of law in the reported and unreported Judgments relied on by the learned counsel appearing for the respective parties.

14. At the outset, it would be appropriate to reproduce herein below the relevant portion/ gist of the allegations made in the First Information Report:-

"....माझा भाऊ सुरेन्द्र याने पप्पु काकडे व सचिन विठठल दगडु यांचेकडे बिसी काढली होती त्या बिसी चे व्यवसायासाठी तीन लाख रुपये उचलले होते. त्या बिसी चे काही हप्ते भरले व काही हप्ते बाकी राहील्याने वरील दोघे मी व माझा भाऊ सुरेन्द्र असे हॉटेलवर असताना काही दिवसांपूर्वी बिसी चालक पप्पु काकडे व सचिन दगडु असे आले व त्यांनी पैशाच्या कारणावरून माझे भावाशी वाद घालून पैसे देत नसला तर चेक दे असे म्हणुन माझ्या भावाकडून दोन कोरे चेक सहया करून घेतले व त्याच्या फायनान्सची उचल म्हणुन दाखवली. त्यानंतर माझे भावाला हॉटेलवर येवुन तुझे किती पैसे वसुल करतो ते बघ असे म्हणुन तीन लाख रुपयांची परस्पर भाऊ सुरेन्द्र याने दिलेल्या को-या चेकवर आठ लाख रुपये टाकुन हैद्राबाद बँकेत वटविण्यासाठी टाकल व त्यानंतर ते न वटल्याने कोर्टात केस दाखल केली त्यानंतर सुध्दा हॉटेलवर येवुन पैशाच्या कारणावरून शिवीगाळ करून मानसिक त्रास देत होते त्यांना माझा भाऊ दररोज पैसे देत होता.

15. Upon careful perusal of the annexures to the Application, it appears that the Applicants are licensed financiers doing the business of finance under the name and style as "Bhagyalaxmi Finance Corporation". It is the case of the Applicants that on earlier occasions they had advanced loan to Surendra (deceased) and he repaid the loan amount promptly, which is evident from the copies of cheques placed on record. It further appears from the perusal of documents placed on record that Applicants have advanced an amount of Rs.8,00,000/- by way of loan to Surendra and due to non-payment of the said amount, which was due and payable by the deceased as per the say of the Applicants, Criminal Case No.191 of 2015 was initiated against Surendra under the provisions of Section 138 of the Negotiable Instruments Act. When such legal proceedings were initiated by the Applicants, it was open for Surendra (deceased) to contest the said proceedings and put forth his contentions. It appears that Surendra committed

suicide on 24th May 2016. If the Applicants have initiated legal proceedings for recovery of money advanced by them to Surendra, it cannot be said that they acted, instigated or intentionally aided in commission of suicide by Surendra (deceased). By any stretch of imagination it cannot be said that the act of the Applicants to give notice under the provisions of the Negotiable Instruments Act or further taking out legal proceedings against Surendra (deceased) by filing complaint under Section 138 of the Negotiable Instruments Act, was abetment, instigation or intentionally aiding in commission of the suicide. Considering the circumstances brought on record and also upon perusal of the investigation papers, it cannot be said that Surendra had no option but to commit suicide due to either notice given by the Applicants or for insisting Surendra (deceased) to repay the amount of loan, which was due and recoverable as per the say of the Applicants. In absence of any abetment, instigation or

intentional aid for commission of suicide in proximate time and date of the alleged commission of suicide, the Applicants cannot be forced to face the trial. The complaint under Section 138 of the Negotiable Instruments Act was filed by the Applicants on 1st June 2015 and Surendra (deceased) committed suicide on 24th May 2016. In the first place, initiation of legal proceedings by the Applicants under the provisions of Negotiable Instruments Act and the act of Surendra to commit the suicide has no any nexus and secondly, after gap of almost one year of initiation of legal proceedings Surendra has committed the suicide and said act cannot be said to be in proximate date and time of initiation of such legal proceedings.

16. The Supreme Court in the case of **Madan Mohan Singh** (supra), while considering the prayer of the appellant therein for quashing the F.I.R., has made reference to the suicide note written by

the deceased who was driver on the official vehicle of the appellant therein, in Para 5 of the Judgment. It appears that, in that case the deceased who was driver, committed suicide by writing suicide note in following words:-

"I am going to commit suicide due to his functioning style. Alone M.M. Singh, D.E.T. Microwave Project is responsible for my death. I pray humbly to the officers of the department that you should not cooperate as human being to defend M.M. Singh. M.M. Singh has acted in breach of discipline disregarding the norms of discipline. I humbly request the Enquiry Officer that my wife and son may not be harassed. My life has been ruined by M.M. Singh."

. The Supreme Court considered the contents of the said suicide note and in Para 8 of the Judgment, observed thus:

"We could not find anything in the FIR or in the so-called suicide note which could be suggested as abetment to commit suicide. In such matters there must be an allegation

that the accused had instigated the deceased to commit suicide or secondly, had engaged with some other person in a conspiracy and lastly, that the accused had in any way aided any act or illegal omission to bring about the suicide. In spite of our best efforts and microscopic examination of the suicide note and the FIR, all that we find is that the suicide note is a rhetoric document in the nature of a departmental complaint. It also suggests some mental imbalance on the part of the deceased which he himself describes as depression. In the so-called suicide note, it cannot be said that the accused ever intended that the driver under him should commit suicide or should end his life and did anything in that behalf. Even if it is accepted that the accused changed the duty of the driver or that the accused asked him not to take the keys of the car and to keep the keys of the car in the office itself, it does not mean that the accused intended or knew that the driver should commit suicide because of this. In order to bring out an offence under Section 306, IPC specific abetment as contemplated by Section 107, IPC on the part of the accused with an intention to bring out the suicide of the concerned person as a result

of that abetment is required. The intention of the accused to aid or to instigate or to abet the deceased to commit suicide is a must for this particular offence under Section 306, IPC. We are of the clear opinion that there is no question of there being any material for offence under Section 306, IPC either in the FIR or in the so-called suicide note."

. The Supreme Court in Para 9 of the Judgment observed that:

"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."

17. In the case of **Tushar s/o Mahadeorao Arsul (supra)**, the Division of the Bombay High Court, Bench at Aurangabad, in para 6 of the Judgment observed that:

"We are of the considered view that the act or acts of accused to insult do not by themselves constitute abetment. It has to be shown from a statement in the complaint that these accused have actually instigated and aided in the victim's act of committing suicide. In absence of any such description, the FIR is liable to be viewed as a text which does not contain the ingredients of offence."

18. In the case of **Dilip s/o Ramrao Shirasao**

(supra), 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."

19. The First Information Report, if considered in proper perspective, would go to show that according to the prosecution the present Applicants and three other persons were persistently demanding moneys from Surendra (deceased). In our considered view such demand made from time to time would not amount to abetment. If according to Surendra (deceased) he had paid substantial amount to the Applicants and if the Applicants were demanding moneys from him, it was open for Surendra to institute a criminal complaint either at the Police Station or to the Court in order to ventilate his grievances. Suicide could not be considered as answer to the said persistent demands.

20. Therefore, in the light of discussion in foregoing paragraphs, we are of the opinion that

all the acts/ allegations attributed to the Applicants are in respect of their prosecuting legal remedies for recovery of money. The material placed on record unequivocally indicates that the Applicants initiated legitimate legal proceedings for recovery of money, which were due and recoverable from Surendra, as per the claim of the Applicants. By any stretch of imagination it cannot be said that the Applicants intended or abetted or instigated the deceased Surendra to commit suicide. We are of the view that the ingredients of abetment are totally absent in the present case for the offence punishable under Section 306 of the I.P. Code. 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 Applicants under Section 306 of the I.P. Code, in our considered view, would be an abuse of process of law.

21. In that view of the matter, the Application succeeds. The Criminal Application is allowed in terms of Prayer Clause (C) to the Application. Rule made absolute in above terms.

[K.K. SONAWANE, J.]

asb/MAR17

[S.S. SHINDE, J.]