

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.4195 OF 2016

Sopan s/o Angadrao Akele,
Age-44 years, Occu:Service,
R/o-Deoni, Tq-Deoni,
Dist-Latur.

...APPLICANT

VERSUS

- 1) The State of Maharashtra,
Through the Police Station Officer,
Police Station, Udgir (City),
Tq-Udgir, Dist-Latur,
- 2) Payal w/o Vivekanand Shirse,
Age-30 years, Occu:Household,
R/o-Vikas Nagar, Udgir,
Tq-Udgir, Dist-Latur.

...RESPONDENTS

...

Mr.M.S. Deshmukh Advocate h/f. Mr. U.L.
Momale Advocate for Applicant.
Mr.P.G. Borade, A.P.P. for Respondent No.1.
Mr.A.R. Nikam Advocate for Respondent No.2.

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

DATE OF RESERVING JUDGMENT : 28TH FEBRUARY, 2017

DATE OF PRONOUNCING JUDGMENT: 8TH 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 Applicant praying therein to quash and set aside the First Information Report No.137 of 2016 registered against him on 5th July 2016 at Udgir (City) Police Station for the offence punishable under Section 306 of the Indian Penal Code.

3. It is the case of the Applicant that he is presently working as Block Development Officer at Deoni Panchayat Samitee, District-Latur. Deceased Vivekanand Yuvraj Shirse was working as junior clerk at Deoni Panchayat Samitee. During his service tenure at Udgir, Vivekanand Shirse (deceased) was found guilty for misappropriation of amount of Rs.53,204/-. Therefore, the Chief

Executive Officer, Zilla Parishad, Latur initiated departmental enquiry against Vivekanand Shirse. Thereafter Vivekanand Shirse filed various leave applications from time to time and remained absent from duties. As Vivekanand Shirse was continuously availing leave and remaining absent from duties, the Applicant, on 29th June 2016, issued show-cause notice to Vivekanand Shirse as to why action should not be taken against him under the provisions of the Maharashtra Zilla Parishad Services Act and asked explanation from Vivekanand Shirse. On 5th July, 2016, Vivekanand Shirse committed suicide at his residence by hanging himself to ceiling fan. The wife of Vivekanand Shirse informed the police station, Udgir (City) and on the basis of said information police registered Crime No.137 of 2016 for the offence punishable under Section 306 of the Indian Penal Code (for short "I.P. Code") against the Applicant.

4. Learned counsel for the Applicant submits that bare perusal of the complaint reveals that the allegations leveled against the Applicant are not enough to make out a prima facie case under Section 306 of the I.P. Code for the commission of the offence. The allegations are absolutely false and frivolous. The Applicant has not at all abused Vivekanand Shirse in any way and in fact it is pertinent to note that Vivekanand Shirse was facing departmental inquiry for misappropriation of the amount. Vivekanand Shirse himself was disturbed by his own acts because of dereliction of duties. As departmental inquiry was pending against Vivekanand Shirse, his guilty conscious mind might have compelled him to take such drastic step of commission of suicide. The learned counsel further submits that ingredients for commission of the act of suicide are not attracted against the Applicant and even there is no incriminating material on record to attribute requisite intention on the part of the Applicant.

5. Learned counsel appearing for the Applicant further submitted that in leave note dated 5th May 2016 Vivekanand Shirse has mentioned that due to sad demise of his wife he needs leave for some days and in fact the complaint has been registered by his wife, which itself shows that Vivekanand Shirse was mentally disturbed.

6. Learned counsel for the Applicant further submits that the Applicant had issued show-cause notice to Vivekanand Shirse on 29th June 2016, as to why departmental action should not be taken against him. Such act was part and parcel of duty of the Applicant and the said show-cause notice was issued by the Applicant in his official capacity. In fact Vivekanand Shirse himself was guilty of misconduct and worried for consequences of his misdeeds and his guilty mind might have tempted Vivekanand Shirse to commit suicide.

7. Learned counsel for the Applicant further submits that elder brother of Vivekand Shirse is standing Taluka President of one political party and he used his political pressure and compelled the police authorities to lodge false complaint. Though the incident took place in the morning of 5th July 2016, crime has been registered at 7.15 p.m. It is further submitted that ingredients of Section 306 of the I.P. Code are not at all attracted. No suicide note was found. Statement of informant nowhere shows that Applicant has abetted in commission of suicide by Vivekanand Shirse. Lastly, learned counsel for the Applicant submits that the First Information Report registered against the Applicant deserves to be quashed and set aside.

8. Learned counsel appearing for the Applicant submits that the Supreme Court in the case of **Madan Mohan Singh vs. State of Gujarat and**

another¹, 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 Applicant further placed reliance on the ratio laid down by the Supreme Court in the case of **State of Kerala and others vs. S. Unnikrishnan Nair and others**². 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**

1 2010 A.I.R. S.C.W. 5101

2 (2015) 9 Supreme Court Cases 639

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

9. 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 Applicant for quashing the First Information

Report may not be favourably considered.

10. Learned counsel appearing for Respondent No.2 submitted that present Applicant is working as Block Development Officer at Panchayat Samitee Deoni, Dist-Latur and the deceased Vivekanand Shirse was working as junior clerk. Vivekanand Shirse committed suicide on 5th July, 2016 at his residence by hanging himself on ceiling on account of mental harassment caused by the Applicant. Therefore Respondent No.2 filed complaint bearing Crime No.137 of 2016 at Udgir police station against the Applicant for the offence punishable under Section 306 of the I.P. Code. It is further submitted that the allegations of misappropriation leveled against Vivekanand Shirse were baseless and those were never proved in the inquiry.

11. Learned counsel appearing for Respondent No.2 further submitted that the deceased Vivekanand Shirse submitted an application for

leave for the period from 20th April, 2016 to 4th May, 2016 due to death of his first wife who was suffering from some blood disease. It is submitted that Vivekanand Shirse filed an application for sick leave on 21st June, 2016 to the present Applicant as he was not feeling well. Instead of granting leave to Vivekanand Shirse, the Applicant issued show-cause notice to Vivekanand Shirse on 29th June, 2016 making allegations that Vivekanand Shirse filed application for sick leave and remained absent from duties behind back of the Applicant. It is alleged in the said show-cause notice that deceased has not filed medical certificate along with leave application and has not disclosed the period of sick leave. The Applicant has also made allegation that Vivekanand Shirse has not prepared the salary bill of the employees and not forwarded to the head office. Learned counsel appearing for Respondent No.2 submits that all the allegations made by the Applicant in show-cause notice dated 29th June,

2016 are false.

12. The learned counsel appearing for Respondent No.2 further submitted that the Applicant has directed the deceased Vivekanand Shirse to give reply of show-cause notice within twenty four hours, which was absolutely wrong and with a view to pressurize Vivekanand Shirse. The said show-cause notice was not issued with good intention but to give mental harassment to Vivekanand Shirse. Therefore, Vivekanand Shirse made complaint to his second wife i.e. the informant that Applicant has harassed him mentally and due to his persistent harassment, Vivekanand Shirse committed suicide on 5th July, 2016.

13. Learned counsel appearing for Respondent No.2 placed reliance on the reported Judgment of the Supreme Court in the case of **Chitresh Kumar Chopra vs. State (Govt. of NCT of Delhi)**³ and submitted that the Supreme Court has explained

³ 2010 A.I.R.(S.C.) 1446

Section 306 read with 107 of the Indian Penal Code. It is submitted that from a bare reading of the provision it is clear that to constitute an offence under Section 306 of the I.P. Code, the prosecution has to establish that a person committed suicide, and that such suicide was abetted by the accused. Offence under Section 306 of I.P. Code would stand only if there is an abetment for the commission of crime. It is submitted that the facts of the present case coupled with the investigation papers, would unequivocally indicate that the Applicant abetted and aided in the act of commission of suicide by Vivekanand Shirse.

14. Learned counsel appearing for Respondent No.2 further placed reliance on the reported Judgment of the Supreme Court in the case of **Pravin Pradhan vs. State of Uttarakhand and others⁴**, wherein the Supreme Court observed that

⁴ 2012 ALL M.R.(Cri) 4124

instigation has to be gathered from circumstances of a particular case and no straight jacket 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 person felt totally frustrated and committed suicide. It is submitted that, in the present case also Applicant intentionally harassed and tortured the deceased Vivekanand Shirse and issued show-cause notice and compelled him to give explanation within twenty four hours and therefore Vivekanand Shirse left with no option but to commit suicide.

15. Learned counsel appearing for Respondent

No.2 also placed reliance on the reported Judgment in the case of **State of Haryana and others vs. Bhajan Lal and others**⁵ and submitted that, the Hon'ble Supreme Court held that if the allegations in complaint clearly constitutes cognizable offence then quashing of First Information Report is not justified.

16. Learned counsel appearing for Respondent No.2 further submitted that on 4th July, 2016 Vivekanand Shirse has informed to his wife that, the Applicant is persistently harassing and mentally torturing him since last six months and from last fifteen days compelled him to take leave and therefore, Vivekanand Shirse has no alternative except to commit suicide. Vivekanand Shirse has also disclosed the said fact of harassment by the Applicant to other family members and accordingly the Investigating Officer has recorded statements of the concerned persons.

5 1992 A.I.R. (S.C.) 604

In the show-cause notice dated 29th June, 2016 issued by the Applicant to Vivekanand Shirse it was mentioned that the Chief Executive Officer, Zila Parishad, Latur, has instructed Applicant to take action against Vivekanand Shirse and the deceased Vivekanand was asked to give explanation in writing within twenty four hours. Considering the nature and contents of the show-cause notice, the Applicant has unnecessarily put blame on deceased about his performance in duty. In respect of the allegations regarding misappropriation of the amount, it is submitted that the Block Development Officer, Udgir has given in writing that, there is no recovery of amount pending with Vivekanand Shirse and therefore, the stand taken by the Applicant has no substance. The Applicant has no authority to take cognizance of alleged misappropriation. It is submitted that compelling the deceased Vivekanand Shirse to go on leave and further compelling him to give reply of show-cause notice within twenty

four hours, covers the ingredients of offence under Section 306 read with 107 of the I.P. Code.

17. 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.

18. We have given careful consideration to the submissions made by the learned counsel appearing for the Applicant, 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 filed by Respondent No.2 and the exposition of law in the reported Judgments relied on by the learned counsel appearing for the respective parties.

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

"फिर्यादीचे पती विवेकानंद युवराज शिरसे यांना पंचायत समिती देवणी येथील बी.डी.ओ. यांनी कार्यालयीन कामकाजाबाबत गेले ६ महिन्यांपासून सतत मानसिक व शारीरिक छळ करून मागील १५ दिवसांपासून सक्तीची रजा घेण्यास भाग पाडल्याने फिर्यादीचे पतीने बी.डी.ओ देवणी यांच्या मानसिक त्रासामुळे आज दि. ०५.०७.२०१६ रोजी त्यांचे राहते घरी गळफास घेऊन आत्महत्या केली वगैरे फिर्यादी मजकूर वरून गुन्हा दाखल. त्यांचे आत्महत्येस बी.डी.ओ. देवणी कारणीभूत झाले."

20. Upon careful perusal of the annexures to the Application, it appears that Vivekanand Shirse (deceased) did file number of applications praying therein to grant him leave. Such applications were filed on 20th April 2016, 21st June 2016, 1st July 2016, and as contended by the Applicant on every occasion application for leave was favourably considered and leave was granted to Vivekanand

Shirse (deceased). However, it is apparent from perusal of the contents of the show-cause notice issued by the Applicant on 29th June 2016 that, on 21st June, 2016 Vivekanand Shirse (deceased) filed application for leave and without waiting for sanction of leave, remained absent from duties. Therefore, said show-cause notice was issued seeking explanation of Vivekanand Shirse (deceased). It was also mentioned in the said show-cause notice that due to frequent absence of Vivekanand Shirse the office work has suffered, the pay bills were not prepared within time and therefore the Chief Executive Officer, Zilla Parishad, Latur has expressed displeasure and Vivekanand Shirse was asked to explain in writing why appropriate action should not be initiated against him under the provisions of Maharashtra Zilla Parishad Services (Discipline and Appeal) Rules, 1964 and under the provisions of Rule 3 of Maharashtra Zilla Parishad Services (Conduct) Rules, 1967. When such notice was issued by the

superior officer to Vivekanand Shirse, it was open for him to file reply. It appears that Vivekanand Shirse committed suicide on 5th July, 2016. The act of the Applicant to issue show-cause notice, was in his official capacity. As already observed, it was possible for Vivekanand Shirse (deceased) to reply the said show-cause notice and put forth his contentions for his absence from the duties with effect from 21st June, 2016. If the Applicant has acted in his official capacity and issued the show-cause notice to the employee working under his supervision, it cannot be said that he acted, instigated or intentionally aided in commission of suicide by Vivekanand Shirse (deceased). By any stretch of imagination it cannot be said that the act of the Applicant to give such show-cause notice or to ask Vivekanand Shirse to perform his official duties, 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 Vivekanand Shirse had no option but to commit suicide due to either show-cause notice given by the Applicant or for insisting Vivekanand Shirse (deceased) to perform the official work. 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 Applicant cannot be forced to face the trial. The show-cause notice was issued on 29th June, 2016 and Vivekanand Shirse (deceased) committed suicide on 5th July, 2016. In the first place, the issuance of show-cause notice or contents of the show-cause notice and the act of Vivekanand Shirse to commit the suicide has no any nexus and secondly, after gap of six days of issuance of such show-cause notice Vivekanand Shirse has committed the suicide and said act cannot be said to be in proximate date and time of issuance of such show-cause notice.

21. 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."

22. 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."

23. 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."

24. Therefore, in the light of discussion in foregoing paragraphs, we are of the opinion that all the acts/ allegations attributed to the Applicant are in his official capacity. The material placed on record unequivocally indicates that the Applicant, in discharge of his official duties, had issued show-cause notice to Vivekanand Shirse (deceased). By any stretch of imagination it cannot be said that the Applicant intended or abetted or instigated the deceased Vivekanand

Shirse to commit suicide. 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 Applicant under Section 306 of the I.P. Code, in our considered view, would be an abuse of process of law.

25. 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.]