

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.4681 OF 2017

Arun Ambadas Pawar,
Age-54 years, Occu:Agriculture,
R/o-Karanjkalla, Tq-Kallam,
Dist-Osmanabad.

...APPLICANT

VERSUS

- 1) The State of Maharashtra,
Through Police Station,
Dharur, Dist-Beed,
- 2) Rushikesh Dnyanoba Nakhate,
Age-22 years, Occu:Business,
R/o-C/o-Balu Laxman Maikar,
Deokheda(Nandur), Tq-Majalgaon,
Dist-Beed.

...RESPONDENTS

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Mr.A.V. Lavte Advocate h/f. Mr. S.J. Salunke
Advocate for Applicant.

Mr.A.R. Kale, A.P.P. for Respondent No.1.
Notice of Respondent No.2 awaited (affidavit
of service filed).

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CORAM: S.S. SHINDE AND
MANGESH S. PATIL, JJ.

DATE : 10TH OCTOBER, 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.146 of 2017 registered on 15th June, 2017 with Police Station, Dharur for the offence punishable under Section 306, 506, 34 of the Indian Penal Code, qua the Applicant.

3. It is the case of the Applicant that Dnyanoba Nakhate, father of Respondent No.2, on 13th June, 2017 at 5.00 p.m. committed suicide by hanging himself in a pick-up van in front of his house. It is claimed that deceased Dnyanoba left behind two suicide notes naming six persons, namely, Pramod Shingare, Laxman Shingare, Bhimrao Tidke, Balasaheb Farke, Ramesh Farke and Indu w/o

Balasaheb Farke. It is the case of the Applicant that the First Information Report discloses that deceased Dnyanoba was under debt and took the money on interest from co-accused Pramod Shingare, Laxman Shingare and Bhimrao Tidke. Though the said amount was repaid with interest by disposing of the landed property, said accused persons were still demanding money from deceased Dnyanoba. It is alleged in the First Information Report that deceased Dnyanoba had given hand loan of Rs.4,00,000/- to accused Balasaheb Farke, Ramesh Farke and Indu Farke for the education of their children. The deceased was insisting for repayment of said amount but said accused were not paying the same amount and they threatening to kill Dnyanoba and also harassing him. Due to said harassment, Dnyanoba committed suicide. On the said information, crime was registered with police station, Dharur vide Crime No.146 of 2017.

4. Relying upon the grounds taken in the Application, learned counsel appearing for the

Applicant submits that the Applicant is not named in the FIR, neither his name is reflected in alleged suicide notes. It is submitted that only being distant relative of co-accused Ramesh and Balasaheb, the Applicant was arrested by police, on the allegation that Applicant told the co-accused Balasaheb and Ramesh not to repay the amount to deceased. Learned counsel further submitted that Applicant is the resident of village Karanjikalla, Tq-Kallam and he had neither any concern nor had any monetary transactions with the deceased or the informant. Though no allegations are made against the Applicant in the FIR or alleged chits written by deceased, the Applicant was arrayed as accused in the crime.

5. Learned counsel further submitted that the Applicant has no nexus with the alleged offence. Deceased committed suicide on 13th June, 2017 and the FIR has been lodged on 15th June, 2017. The delay in lodging in the FIR is not at all explained by the informant, which prima facie

shows that the allegations are after thought, concocted and the result of imagination. It is submitted that the allegations at its face are so absurd that no prudent person can believe the same. It is unimaginable that the deceased by taking the amount on interest from the co-accused, given the hand loan to Balasaheb, Ramesh and Indu and Applicant restrained them from repaying the said amount. The allegations made in the FIR are vague and sweeping in nature.

6. Learned counsel further submitted that the three co-accused namely, Balasaheb, Ramesh and Indu Farke, against whom it was alleged that they had borrowed hand loan from deceased and Applicant restrained them from repayment of the said amount, have filed Criminal Application No.3202 of 2017 for quashing the FIR to their extent in this Court, and this Court (CORAM: S.S. SHINDE AND A.M. DHAVALA, JJ.) and by Judgment and order dated 14th August, 2017 the said Application came to be allowed.

7. Learned counsel further submits that the the FIR does not constitute any prima facie case or spell out commission of any offence, and hence the same should be quashed by exercising the jurisdiction under Section 482 of the Code of Criminal Procedure. Learned counsel submitted that the ingredients of the alleged offence are not at all attracted, and as such the FIR itself is vague and as such the FIR deserves to be quashed and set aside qua Applicant, by allowing the Application.

8. On the other hand, learned A.P.P. appearing for the State relying upon the investigation papers submits that the prosecution agency has collected sufficient material and on the basis of said material trial can proceed against the Applicant. Learned A.P.P. submits that the Application deserves to be dismissed.

9. Though notice was served upon Respondent

No.2 by the Applicant and to that effect affidavit of service is filed, none appears for Respondent No.2.

10. We have given anxious consideration to the submissions of the learned counsel appearing for the Applicant and learned A.P.P. appearing for the State. With their able assistance, we have carefully perused the contents of the First Information Report and also the investigation papers made available by the learned A.P.P., and the contents of two chits allegedly written by deceased Dnyanoba before committing suicide.

11. Upon careful perusal of the contents of the FIR and the contents of said two chits alleged to have been written by deceased Dnyanoba before committing suicide, the name of the present Applicant is nowhere reflected. Apart from it, we have perused the investigation papers, and it appears that nothing incriminating has been revealed against the Applicant during the course

of the investigation. It is alleged against the Applicant that, deceased Dnyanoba had given hand loan of Rs.4,00,000/- to co-accused Balasaheb, Ramedsh and Indu Farke and present Applicant restrained the said co-accused from repaying the said amount of hand loan. If the allegations against the Applicant are taken as it is, it cannot be said that the Applicant acted, instigated or intentionally aided in commission of suicide by Dnyanoba (deceased). Considering the circumstances brought on record and also upon perusal of the investigation papers, it cannot be said that Dnyanoba had no option but to commit suicide due to the alleged act of the Applicant of restraining co-accused from repaying the hand loan amount to Dnyanoba. 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. In order to constitute offence under Section 306 of the Indian Penal Code, the prosecution must show that there was

instigation or intentional aid or conspiracy for commission of suicide by the person who has committed suicide.

12. The Supreme Court in the case of S.S. Cheena V/s Vijay Kumar Mahajan and another¹, observed that, the abetment involves mental process of instigating a person or intentionally aiding a person in doing of a thing. 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 leads 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 commits suicide.

¹ (2010) 12 SCC 190

13. At this juncture, it would be useful to make a reference to the Judgment of the Supreme Court in the case of Madan Mohan Singh V. State of Gujarat and another.² In said case, the deceased therein was working as driver under the Ex. Officer i.e. appellant therein. The said driver allegedly committed suicide due to harassment and insulting behaviour by the appellant therein. He left the suicide note alleging therein that, the appellant therein asked the driver to keep the keys of the vehicle on the table and not to take away them. The Supreme Court in the facts of aforesaid case, while explaining the scope of Sections 306 and 294 vis-a-vis, 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

2 2010 AIR SCW 5101

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."

14. In the facts of the present case also, there is no nexus between so called suicide and any of the alleged acts on the part of the Applicant. There is no proximity either. Even in the alleged suicide notes, the Applicant is not even named.

15. In the case of of Dilip s/o Ramrao

Shirasao and others vs. State of Maharashtra and another (Criminal Application No.332 of 2016) dated 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."

16. Therefore, in the light of discussion in foregoing paragraphs, we are of the opinion that, considering the allegations against the Applicant it cannot be said that the Applicant intended or abetted or instigated the deceased Dnyanoba to commit suicide. Unless there is clear *mes 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 Indian Penal Code, would be an abuse of process of law. Further it is to be noted that Dnyanoba committed suicide on 13th June, 2017 and the FIR has been lodged on

15th June, 2017. Thus, there is two days delay in lodging the FIR, therefore we find considerable force in the argument of learned counsel appearing for the Applicant that possibility of concoction and false implication cannot be ruled out.

17. As rightly, submitted by learned counsel appearing for the Applicant, Criminal Application No.3202 of 2017 filed by the co-accused in the present crime, namely, Balasaheb Farke, Ramesh Farke and Indu w/o Balasaheb Farke, for quashing the FIR to their extent, has been allowed by this Court (CORAM S.S. SHINDE AND A.M. DHAVALA, JJ.), vide Judgment and order dated 14th August, 2017. For the reasons stated while allowing the said Criminal Application No.3202 of 2017, this Application also deserves to be allowed.

18. In that view of the matter, the Application succeeds. The Criminal Application is allowed. The criminal proceeding arising out of F.I.R. No.146 of 2017 registered on 15th June,

2017 with Police Station, Dharur, Dist-Beed for the offence punishable under Section 306, 506, 34 of the Indian Penal Code is quashed and set aside, to the extent of present Applicant - Arun Ambadas Pawar.

19. Rule is made absolute in above terms. The Application is allowed and stands disposed of, accordingly.

[MANGESH S. PATIL, J.]

asb/OCT17

[S.S. SHINDE, J.]