

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

CRIMINAL APPLICATION NO. 5283 OF 2016

Dadarao S/o Hausaji Dakore,
Age : 51 years, Occ : Service - Working
as Executive Engineer at Zilla
Parishad, Yavatmal,
R/o : Nanded, Dist. Nanded. ...APPLICANT

Versus

1. The State of Maharashtra,
Through Secretary,
Home Department, Maharashtra
State, Mantralaya, Mumbai-32.
2. Police Inspector,
Police Station Vajirabad,
Nanded, Dist. Nanded.
3. Gangadhar S/o Sakharam Shinde,
Age : 46 years, Occ : Service - Police
Head Constable, PS - Vajirabad.
Nanded, Dist. Nanded.

...RESPONDENTS

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Advocate for applicants: Mr.M.V. Salunke holding
for Mr. V.D. Salunke
APP for Respondent/State : Mr. S.P. Deshmukh

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

RESERVED ON : 24th February, 2017

PRONOUNCED ON : 6th March, 2017

JUDGMENT : (PER S.S. SHINDE, J)

Rule. Rule made returnable forthwith

and heard finally with the consent of the learned counsel appearing for the parties.

2. The brief facts as disclosed in the application, are as under:-

The applicant is working on the post of Executive Engineer, Water Supply, Department, Zilla Parishad, Yavatmal. Earlier the applicant was posted as Executive Engineer, Zilla Parishad, Nanded from 12.07.2012 till 31.07.2015. The applicant was transferred from Nanded to Yavatmal on 31st July, 2015. After transfer of the applicant from Nanded, one Shri Navdunge resumed the duties as Executive Engineer at Nanded. He issued the work order on 7th May, 2016, and allotted some work to one Vitthal Maruti Waghmare (deceased), who was working in Sub-Division, Minor Irrigation on CRT basis.

Shri Nivdunge, Executive Engineer

came to be arrested on 10th August, 2016 in ACB trap while accepting bribe of Rs.50,000/- and accordingly, Crime No. 78/2016 came to be registered against him at Vajirabad Police Station, Nanded. One Shri Waghmare Vithal (deceased) was doing the work along with said Nivdunge during the relevant period and hence, ACB Officer had called Shri.Vithal Waghmare (deceased) for interrogation and he was asked to submit files regarding the offence registered against Shri Nivdunge.

It is alleged that, on 22nd August, 2016, Vitthal Maruti Waghmare, committed suicide by hanging himself in the office of Executive Engineer, leaving behind Suicide Note, thereby stating that he was working on CRT basis in Sub Division, Minor Irrigation and he was assigned heavy workload, which he was unable to carry out. It is alleged that,

he has no grudge or complaint against anybody. It is alleged that, he has committed the suicide on his own, and nobody can be held responsible for his act of suicide. After receiving information of commission of suicide by Vithal Waghmare, his relatives and the workers gathered on the spot and pressurized the police officers to register the offence against Chief Executive Officer, Zilla Parishad. So also the relative of the deceased refused to take dead body of Waghmare unless the offence is registered. It is the case of the applicant that the police department, under political pressure registered the offence at about 23.05 hours on 23rd August, 2016 i.e. after 48 hours, which is after thought, wherein one Police Constable namely Gangadhar Sakharam Shinde i.e. respondent No.3, is shown as complainant. When applicant came to know

through newspaper that such offence is registered against him, he filed the application for anticipatory bail before the Sessions Judge, Nanded and the Sessions Judge granted anticipatory bail on 6th September, 2016.

3. The learned counsel appearing for the applicant submits that, the applicant is working as Executive Engineer in Water Supply Division. Said deceased Vithal Waghmare was not working directly under the control of the applicant and no work was allotted to said Waghmare by the applicant. The learned counsel submits that, as the deceased Waghmare was not subordinate to the applicant, therefore, there was no occasion to allot some work to him or to extract some work from him. The learned counsel further submits that, even reading of the suicide note as it is, it does not disclose any

grudge and grievance against the present applicant nor it discloses any cognizable offence, more particularly, the offence under section 306 of the IPC. The learned counsel submits that, lodging of the complaint is only misuse of process of law, particularly by the Police Officer so as to run away from the public pressure and to save the skin of police department. The learned counsel further submits that, the import of total complaint does not fulfill the ingredients of section 306 of Indian Penal Code. There is no complaint alleged by anybody including the family members of the deceased.

4. The learned counsel appearing for the applicant invites our attention to the contents of the suicide note and submits that, even upon reading the contents of the said suicide note, no offence is disclosed against the applicant. He invites our

attention to the provisions of Sections 107 and 306 of the Indian Penal Code and submits that, the ingredients of the said offences are not attracted, and therefore, no offence is disclosed against the present applicant. The learned counsel appearing for the applicant, therefore, submits that the application deserves to be allowed.

5. On the other hand, the learned A.P.P. appearing for the respondent/State and the learned counsel appearing for respondent no.2 jointly submit that, there is suicide note and also during investigation the Investigating Officer has collected sufficient material, which would clearly disclose the alleged offences against the applicant. Therefore, it is submitted that, the application may be rejected.

6. We have given careful consideration

to the submissions advanced by the learned counsel appearing for the applicant, the learned A.P.P. appearing for respondent/State and the learned counsel appearing for respondent no.2. We have also perused the allegations in the first information report and also investigation papers, which are made available for perusal. The relevant portion of the suicide note written by deceased Waghmare reads thus :-

“eh ekÖ;kdMs rRdkyhu dk;Zdkjh
vfHk;ark Jh-Mkodksjs lkgsc ;kaP;k
rksaMh @ ys[kh lqpuso:u ns.;kr vkysys
dke gs vfr >kY;keqGs R;kpk ifj.kke
ekÖ;k eukoj gksoqu R;kpk rku iMr
vIY;keqGs eh ek>s ftou laior vkgs-”

7. Upon careful perusal of the aforementioned contents of the suicide note, it reveals that, Vithal Waghmare committed suicide on 22nd August, 2016. It appears from

the factual position brought on record that, the present applicant was transferred on 31st July, 2015, from Nanded to Yavatmal as Executive Engineer, Zilla Parishad, Yavatmal. Therefore, keeping in view the time gap between the alleged incident and transfer of the applicant from Nanded to Yavatmal, it is not possible to hold that, the applicant instigated, abetted or intentionally aided in commission of the suicide by Waghmare.

8. 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 anr.**¹ 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

¹ 2010 AIR SCW 5101

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. It was further stated that, "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 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 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 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."

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 if the allegations in the suicide note are read in its entirety, the same would not even remotely suggest that, the applicant abetted, intentionally aided or instigated in an alleged suicide by Vithal Waghmare.

9. The Supreme Court in the case of **S.S. Chheena V/s Vijay Kumar Mahajan and another²**, in para 25 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,

2 (2010) 12 SCC 190

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 IPC 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 committed suicide.

10. We have carefully scrutinized the documents placed on record, in the light of the settled legal position, we are of the opinion that, further continuation of the investigation/proceedings on the basis of the F.I.R. bearing Crime no. 136 of 2016 registered with Vajirabad Police Station, Nanded under section 306 of the Indian Penal

Code qua the applicant would be abuse of process of law. Hence the same is quashed and set aside. The application is allowed in terms of prayer clause `B' and the same stands disposed of. Rule made absolute accordingly.

(K.K. SONAWANE, J.)

(S.S. SHINDE, J.)

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