

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Criminal APPLICATION (APL) NO.411 OF 2017
(Khemraj s/o. Manik Patre and Ors. vs. State and another)

 Office notes, Office Memoranda of
 Coram, appearances, Court's orders
 or directions and Registrar's orders.

Court's or Judge's Orders

Mr.R.R.Vyas, Advocate for the Applicants.
Mr.A.M.Deshpande, A.P.P. for the Respondent
No.1/State.
Mr.N.N.Thengre, Advocate for the Respondent No.2.

**CORAM : SMT. VASANTI A NAIK &
 M. G. GIRATKAR, JJ.**

DATE : 18.8.2017.

The Criminal Application is admitted and heard finally with the consent of the learned Counsel for the parties.

By this Criminal Application, the applicants seek the quashing and setting aside of F.I.R. No.46 of 2016 registered against the petitioner for the offences punishable under Sections 306, 143, 147, 323 and 504 of the Penal Code.

It is alleged in the complaint filed by the respondent no.2 that when the respondent no.2 and his family members were erecting the compound wall in their house on 16.5.2016 at 4.00 p.m., the applicants came near the house of the complainant and after abusing and assaulting the complainant and his brother and father, asked them to demolish the compound wall. It is alleged in

the complaint filed by the respondent no.2 that after the applicants left the place, the father of the complainant i.e. Mr.Vithoba Thakare consumed insecticide and committed suicide at about 5.00 p.m. It is alleged in the complaint that the father of the complainant had committed suicide as he was abused and assaulted by the applicants. On the basis of the report filed by the respondent no.2, the F.I.R. was registered against the applicants for the offences punishable under Sections 306, 143, 147, 323 and 504 of the Penal Code.

Mr.R.R.Vyas, learned Counsel for the applicants states that the applicants would not press for quashing of the F.I.R. insofar as the offences under Sections 143, 147, 323 and 504 of the Penal Code are concerned. It is stated that the applicants would seek the quashing of the F.I.R. against the applicants for the offence punishable under Section 306 of the Penal Code only.

It is stated on behalf of the applicants that the F.I.R. could not have been registered against the applicants for the offence punishable under Section 306 of the Penal Code. It is stated that a F.I.R. could be registered against any person for abetment of suicide only if the said person abets the commission of suicide. It is stated that even if the allegations in the complaint are accepted at their face value, in the entirety, an offence under Section 306 of the Penal Code cannot be made out against the applicants. It is stated that for attracting the provisions of Section 306 of the Penal Code, there must be an allegation of direct or indirect acts of incitement of suicide. It is stated that there should be clear mens rea to commit an offence under Section 306 of

the Penal Code and if the said ingredient cannot be prima facie made out from the complaint-report lodged by the complainant and the F.I.R., the F.I.R. is liable to be quashed and set aside. The learned Counsel for the applicants relied on the Judgment of the Hon'ble Supreme Court in the case of M. Mohan .vs. State reported in 2011 (3) SCC 626 and the Judgment of this Court reported in 2014 ALL MR (Cri) 1216, Binod s/o. Ratan Sarkar and Others .vs. The State of Maharashtra and another to substantiate his submission. It is submitted that, by considering the principles laid down in the celebrated Judgment in the case of State of Haryana and Others .vs. Bhajanlal and Others reported in 1992 SCC (Cri) 426 and the subsequent Judgments of the Hon'ble Supreme Court reported in 2005 (1) SCC 122, Zandu Pharmaceutical Work Ltd. vs. Mohd. Sharaful Haque and 2004 (6) SCC 522, State of A.P. vs. Gokonda Linga Swamy and another, it would be necessary to quash and set aside the F.I.R. against the applicants, so far as it is registered for the offence punishable under Section 306 of the Penal Code.

Mr.A.M.Deshpande, the learned Additional Public Prosecutor appearing for the respondent no.1 has submitted that, on the basis of the report lodged by the respondent no.2, the F.I.R. was registered against the applicants for the offence punishable under Section 306 of the Penal Code. It is stated that the applicants had gone to the house of the complainant and his father and brother and had abused and assaulted the complainant and his family members, as a result of which, the father of the complainant namely Mr.Vithoba Thakare had consumed

insecticide. The learned Additional Public Prosecutor sought for dismissal of the Criminal Application.

Mr.Thengre, the learned Counsel for the respondent no.2 submitted that time and again the applicants were involved in threatening the complainant and his family members and on every occasion, they were abused and assaulted. It is stated that, on 16.5.2016, the father of the complainant was compelled to consume insecticide in view of the Criminal acts on the part of the applicants.

On a reading of the F.I.R., we find that the F.I.R. could not have been registered against the applicants for the offence punishable under Section 306 of the Penal Code. It is only alleged in the complaint filed by the respondent no.2, on the basis of which the F.I.R. was registered that, while the complainant, his brother and his father Vithoba Thakare were constructing the compound wall, the applicants went to the said spot, abused the complainant and his family members, assaulted them and asked them to demolish the compound wall. It is stated in the report that as soon as the applicants left the spot, Vithoba Thakare consumed the insecticide and committed suicide because the applicants had abused and assaulted the complainant, his father and brother. Even if the allegations in the F.I.R. are accepted at their face value, in the entirety, no offence could be prima facie made out against the applicants under the provisions of Section 306 of Penal Code. It is held by the Hon'ble Supreme Court in the Judgment reported in 2011 (3) SCC 626 that there should be a clear mens rea to commit the offence under

Section 306 of the Indian Penal Code as, for the commission of the said offence, direct or active act by the accused is required, which leads the deceased to commit suicide and see no other option and that such an act must be initiated to push the victim into the position that he should commit suicide. In the instant case, there are no allegations of instigation attributable to the applicants nor is there a single attributable instigation to the applicants for the commission of suicide by the father of the complainant. Since for attracting the provisions of Section 306 of the Penal Code there should be an allegation of direct or indirect act of incitement to commit suicide and since in the instant case such material is absent, it would be necessary to quash and set aside the F.I.R. filed against the applicants u/s.306 of the Penal Code by applying the principles of law laid down by the Hon'ble Supreme Court in the case of State of Haryana vs. Bhajanlal (supra), since the ingredients of the offence u/s.306 of the Penal Code cannot be made out even if the allegations in the F.I.R. are accepted at their face value in entirety. The F.I.R. is liable to be quashed and set aside so far as the offence u/s.306 of the Penal Code is concerned.

Hence, for the reasons aforesaid, the Writ Petition is partly allowed. The F.I.R. registered against the applicants bearing No.46 of 2016 is quashed and set aside insofar as the commission of offence under Section 306 of Penal Code is concerned. Order accordingly.

JUDGE

JUDGE

**jaiswal*