

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 171 OF 2018

1. Sumedh S/o Vithalrao Dhavan,
age 33 years, occ. service,
R/o House No. B-1/26, N7,
CIDCO, Aurangabad.
 2. Amit S/o Vithalrao Dhavan,
age 29 years, occ. business,
R/o House No. B-1/26, N7,
CIDCO, Aurangabad.
- ...Petitioners

versus

1. The State of Maharashtra
 2. The Incharge Officer,
Police Station Ashti,
Tq. Partur, Dist. Jalna.
 3. Keshav S/o Sukhlal Chavan,
age 52 years, occ. service as
Police Head Constable,
C/o Police Station, Ashti,
Tq. Partur, District Jalna.
- ...Respondents

.....
Mr. Ashok A. More, advocate for the petitioner
Mr. S. Y. Mahajan, A.P.P. for respondent-State
.....

**CORAM : S. S. SHINDE AND
V. K. JADHAV, JJ.**

**Date of Reserving
the Judgment : 28.06.2018**

**Date of pronouncing
the Judgment : 05.07.2018**

JUDGMENT (PER V.K. JADHAV, J.) :-

1. Rule. Rule made returnable forthwith and heard finally by consent of the learned counsel for the parties.

2. This petition is filed by the petitioners praying therein to quash and set aside the First Information Report No. 0157, offence Registration No. 95 of 2017 dated 26.11.2017 registered against them with Police Station, Ashti, Taluka Partur, District Jalna for the offence punishable under Sections 306 and 34 of the Indian Penal Code.

3. Brief facts giving rise to the present petition are as under:

a. The petitioners were having real aunt (sister of their mother) namely Surekha. She was married to Dnyandeo Ramrao Gaikwad and was residing with him at Aurangabad. On 24.06.2004, petitioners aunt Surekha died in an accident which took place at TV center at Aurangabad to the motor cycle which was ridden by their uncle Dnyandeo Gaikwad and said Surekha was the pillion rider. At the time of her demise, she left two sons and one daughter begotten out of her wedlock with Dnyandeo Gaikwad, namely Harsha, who was 17 years of age, Ashish, who was 12 years of age and daughter Shrawasti, who was 10 years old. After one year of her demise,

petitioners' uncle has got married to one Sneha and they are having a daughter out of the said wedlock. The petitioners stopped visiting the house of their uncle after death of their aunt. However, petitioners' cousin brothers and sister used to visit petitioners' house rarely alongwith their father Dnyandeo.

b. On 06.11.2015, Dnyandeo visited petitioners' house between 7.00 am to 8.45 am and informed their parents that engagement of marriage of his daughter Shrawasti was cancelled by the family of the boy with whom her engagement of marriage was proposed. As per the step-mother of Shrawasti, she left home on 06.11.2015 at about 5.30 am for study center at Gaware Community Center, however, did not reach there. Said fact was also informed by Dnyandeo subsequently on telephone to the parents of the petitioners. On the same day, i.e. on 06.11.2015, at about 11.00 am, an accident took place in which Shrawasti purportedly jumped from the running train at Satona (Bu.) area, District Jalna. She was taken to Primary Health Center at Satona and from there to a private hospital at Parbhani by one Mr. Ashok Shinde. Subsequently, Shrawasti was admitted in Apex Hospital, Aurangabad where she died after about two months from the date of accident.

c. On 26.11.2017, First Information Report No. 0157, offence No. 95/2017 came to be registered with the Police Station, Ashti, Taluka Partur, District Jalna for the offence punishable under Sections 306 and 34 of the Indian Penal Code against the petitioners on the basis of a hand-written chit purportedly recovered by the Police from the Primary Health Center/hospital where the deceased was first admitted. Hence this petition.

4. The learned counsel for the petitioners submits that the contentions and contents of the FIR are based on hearsay information and without cogent proof about Shrawasti herself jumping out of the train and committing suicide. The FIR is lodged on 26.11.2017 i.e. after lapse of more than two years and no explanation is tendered for the delay, which suggests that the FIR is an afterthought or tutored one. The belated lodging of FIR is an attempt on the part of the Police to harass the petitioners for the reasons best known to them. There is no evidence, much less a reason for the petitioners to have met or contacted Shrawasti and to have troubled her. The possibility of frustration out of cancellation of her engagement of marriage could not be ruled out. However, the said fact of cancellation of her engagement of marriage is nowhere mentioned in the FIR. When deceased Shrawasti was admitted in private hospital at Parbhani, parents of the petitioners visited the said

hospital. Upon inquiry, they got the knowledge that one Ashok Shinde, who is from Nanded, had admitted Shrawasti to the said hospital. Said Ashok Shinde is not their relative. He is an unknown person. Dnyandeo (father of the deceased) also paid an amount of Rs.9,000/- to said Ashok Shinde in cash in presence of petitioners' parents in the hospital at Parbhani. However, presence of said Ashok Shinde alongwith the deceased and his receiving an amount of Rs.9,000/- from the father of the deceased while she was admitted in the private hospital at Parbhani is missing in the FIR which creates suspicion about death of Shrawasti.

5. The learned counsel for the petitioners further submits that not a single blood stain was found on the chit purportedly received from the doctor at Primary Health Center at Satona, which is highly improbable and suspicious as Shrawasti sustained grave injuries on her person. Absence of blood stains on the chit speaks volumes about truthfulness of the story put forth in the FIR lodged against the petitioners. Contents of the said chit are vague and there is not a single incident mentioned about alleged trouble at the hands of the petitioners. There is mention about other things as well in the said chit which find no place in the FIR, which is indicator of police acting suspiciously. The contents of the FIR and the chit are vague and they could not form the basis for the offence as has been projected

against the petitioners. Deceased Shrawasti, during her lifetime, had never made any complaint to her parents or the parents of the petitioners about the alleged trouble at the hands of the petitioners, neither any complaint was lodged with any police station about the same. False and frivolous allegations on the petitioners and their unnecessary implication in the alleged offence would lead to mental harassment to the petitioners despite they having no concern with the alleged incident and having no reason to trouble their cousin sister Shrawasti. Thus, the learned counsel appearing for the petitioners submits that the criminal writ petition deserves to be allowed.

6. The learned APP appearing for the respondent State, on the other hand, submits that the allegations in the FIR are supported by the chit recovered from the doctor at the Primary Health Center, Satona, in which it is clearly mentioned by the deceased that the petitioners are responsible for her death and therefore, the prayer of the petitioners for quashing of the F.I.R. may not be favourably considered.

7. We have given careful consideration to the submissions made by the learned counsel appearing for the petitioners and the learned APP appearing for the State. With their able assistance, we have

perused the averments in the petition, grounds taken therein, annexures thereto and the First Information Report.

8. On careful perusal of the investigation papers, it appears that deceased Shrawasti died by fall from moving train on the route from Aurangabad to Parbhani. She was admitted in government hospital at Satona, Taluka Partur, District Jalna and thereafter shifted to a hospital in Parbhani. She was thereafter taken to the Apex Hospital, Aurangabad wherein she died on 11.01.2016. Initially AD No. 5/2016 came to be registered. During the course of inquiry of the said AD, statement of father of the deceased and other witnesses came to be recorded. The aforesaid AD came to be registered on the basis of the statements of the eye witnesses reporting to the police that deceased had accidentally fallen out from the moving train. On 26.11.2017, Police Head Constable Keshav Sukhlal Chavan has lodged a complaint on behalf of the State and accordingly, present crime no. 95/2017 came to be registered for the offence punishable under Section 306 r/w 34 of IPC against the present petitioners. The Police Head Constable Keshav Chavan has lodged the said complaint mainly on the basis of the suicidal chit allegedly left by deceased Shrawasti. During the course of inquiry of the AD, father of the deceased had stated that marriage of deceased Shrawasti was settled with one Kiran, however, said Kiran subsequently conveyed

that he is not ready for the marriage. Father of the deceased has further stated in his statement that deceased Shrawasti had lost her mental balance and left the house on the date of incident without informing anybody.

9. Apart from the aforesaid factual aspect, we find one seizure panchanama date 15.03.2016, on perusal of which it appears that the said Head Constable Keshav Chavan has seized the suicidal chit left by deceased Shrawasti and the said chit was in possession of Dr. Golegaonkar, Medical Officer, Civil Hospital Satona. The said suicidal chit was produced by Dr. Golegaonkar of Government Hospital, Satona before the Police on 15.03.2016. On 06.11.2015, immediately after the accident, deceased Shrawasti was taken to the Government Hospital, Satona and thereafter to Parbhani and lastly to the Apex Hospital, Aurangabad. Deceased Shrawasti died on 11.01.2016 in the Apex Hospital, Aurangabad. On 15.03.2016, the Medical Officer Dr. Golegaonkar has produced before the police the said suicidal chit. We are unable to understand as to why Dr. Golegaonkar has kept the said suicidal chit with him for such a long period without producing the same before the police and what further led him to produce the same on 15.03.2016. It is pertinent that father of the deceased has not made any allegations against the petitioners.

10. At the outset, it would be appropriate to reproduce hereinbelow the contents of the suicidal note which read thus:

“माझ्या मरणाला जबाबदार माझ्या मावशीची दोन मुले आहेत. सुमेध विठ्ठलराव धवन आणि अमित विठ्ठलराव धवन पत्ता एन – ७, औरंगाबाद.

जग खूप सुंदर आहे पण मला ते जगता येत नाहीये. खूप त्रास होतोय भूतकाळ आठवून. आता कुठे लग्न जमलं होतं माझं. आता कुठे नवी स्वप्न रंगवायला लागले होते. पण नशिबात तेही नाही. नकोस झालाय हे जगणं. कालच पप्पा काही कारणाने ओरडले. खूप चिडले. माझी काहीही चूक नसताना मला ऐकावं लागलं. माझ्यावर कोणाचाही विश्वास नाही. मग काय करायचं असं आयुष्य.

मम्मी मी येतेय तुझ्याकडे. तू नाहीस तर जगणं अवघड होऊन बसलय माझं.

तुमची – स्वीटी

श्रावस्ती ज्ञानदेव गायकवाड

प्लॉट न. ५ – C वैशाली नगर

औरंगाबाद ”

11. It has been simply mentioned in the said suicidal chit, which is procured belatedly under suspicious circumstances as referred in the foregoing paragraphs, that the present petitioners are responsible for her death. We could not find anything in the so-called suicidal note suggesting abetment to commit suicide on the part of the present petitioners. In the first place, we find the reporting of accidental death

of Shrawasti by the eye witnesses to the police and secondly, after a long gap, under suspicious circumstances, the medical officer of Government Hospital, Satona has produced the alleged suicide note before police wherein there is only reference that the present petitioners are responsible for the death of deceased Shrawasti. Even though whatever allegations made in the suicidal note and also the facts transpired during the course of investigation, we do not find any case made out against the petitioners.

12. The Supreme Court, in the case of ***Madan Mohan Singh vs. State of Gujarat and another***, reported in ***2010 A.I.R. S.C.W. 5101***, 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 by 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.”

13. 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, the Division Bench of 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 be 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.”

14. In the case of ***Dilip s/o Ramrao Shirasao and otehrs vs. State of Maharashtra and another (Criminal Application No. 332 of 2016)*** decided on 5th August 2016, the Division Bench of the Bombay High Court, Bench at Nagpur considered various judgments of the Supreme 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 person 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 of process of law.”

15. Therefore, in the light of the discussion in the foregoing paragraphs and the acts/allegations attributed to the present petitioners, we do not find that the present petitioners intended or abetted or instigated deceased Shrawasti to commit suicide. Thus, in our considered opinion, the trial against the petitioners under Section 306 r/w 34 of IPC would be an abuse of process of law. In that view of the matter, the petition succeeds. The criminal writ petition is allowed in terms of prayer clause “b” and disposed of accordingly. Rule is made absolute accordingly

(V. K. JADHAV, J.)

(S. S. SHINDE, J.)

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