

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

Criminal Application No. 0033 of 2018

District : Dhule

Girish Bhaurao Salunke,
Age : 44 years,
Occupation : Private Coaching
Classes,
R/o. 63, Pramod Nagar,
Sector-2, Deopur, Dhule.

.. Applicant
(Original accused
no.01)

versus

1. The State of Maharashtra.

2. Sanjay Vasant Mahale,
Age : 52 years,
Occupation : Secondary
Teacher,
R/o. 10, J.K. Nagar,
Nizampur, Taluka Sakri,
District Dhule.

.. Non-applicants
(No.02 - Original
first informant)

.....

Mr. Joydeep Chatterji, Advocate, for the applicant.

*Mr. K.S. Patil, Addl. Public Prosecutor, for
non-applicant no.01.*

*Mr. U.A. Bhadgaonkar, Advocate, for non-applicant
no.02.*

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With

Criminal Application No. 0497 of 2018

District : Dhule

Narendra Gorakh Mahale,
Age : 35 years,
Occupation : Private Classes,

R/o. 203, Animesh Apartment,
Rajguru Nagar, Walwadi, Deopur,
Dhule, Taluka & Dist. Dhule.

.. Applicant
(Original accused
no.01)

versus

1. The State of Maharashtra,
Through West Deopur
Police Station, Dhule,
Taluka & District Dhule.

2. Sanjay Vasant Mahale,
Age : 52 years,
Occupation : Teacher,
R/o. 10, J.K.Nagar,
Nizampur, Taluka Sakri,
District Dhule.

.. Non-applicants
(No.02 - Original
informant)

.....

Mr. Babasaheb S. Bhale, Advocate, for the applicant.

*Mr. K.S. Patil, Addl. Public Prosecutor, for
non-applicant no.01.*

*Mr. U.A. Bhadgaonkar, Advocate, for non-applicant
no.02.*

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**CORAM : PRASANNA B. VARALE &
SMT. VIBHA KANKANWADI, JJ.**

DATE : 07TH MARCH 2018

JUDGMENT [Per Smt. Vibha Kankanwadi, J.] :

01. Rule. Rule made returnable forthwith. By
consent, heard finally.

02. Both these applicants have been filed for
quashing the first information report lodged at the
instance of non-applicant no.02 bearing

C.R.No.136/2017 registered with West Deopur Police Station, Dhule, for offences punishable under Sections 305, 306, read with Section 34 of the Indian Penal Code, Section 3(2)(v) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989, and Section 4(i)(r) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015.

03. Both the applicants run coaching classes. The applicant in criminal application no. 0033 of 2018 runs a coaching class by name, Sankalp Classes, in which he deals with physics subject. He has eight batches a day comprising of 60 boys and girls each. The applicant in criminal application no. 0497 of 2018 runs coaching classes for NEET examinations and he deals with chemistry subject.

04. Respondent no.02 - informant has lodged the report stating that he resides at Nizampur, Taluka Sakri, District Dhule. He himself is a teacher by profession. His son takes education at Nashik in engineering faculty. His daughter, Unnati, was aged 17 years and was taking education in XIIth standard in Jaihind College at Dhule. Unnati was residing with her friend Aakansha by taking premises on rent in plot no. 18-A, Sector 2, Pramodnagar, Deopur, Dhule. Unnati had joined the classes of Girish Salunke (applicant in criminal application no. 033 of 2018) for biology and the class of Narendra Mahale (applicant in criminal application no. 0497 of 2018)

for chemistry and she had also joined the class of one Wadile for mathematics.

05. The FIR further disclosed, that on 27.11.2017 at about 10.30 a.m., when the informant was in the school at Nizampur, when he was working, Aakansha gave a phone call and told that Unnati is inside the house and she is not opening the door. All the friends were calling her but she is not opening the door and, therefore, he should give a phone call to Unnati and ask her to open the door. Thereafter, the informant gave call on mobile to Unnati but she could not pick up. Therefore, he gave phone call to one Satish Wagh, his distant relative, asked him to go to the room of Unnati and see what has happened. Thereafter, the informant and his wife started their journey to Dhule. Before they reached Dhule, they received phone call from Satish Wagh, stating that Unnati has committed suicide by hanging herself and the friends have opened the door and brought her back. She was admitted to hospital. The informant and his wife reached Dhule at about 01.30 p.m. His relatives had gathered there. They met Satish Wagh who told that Unnati had expired and her dead body has been kept in *post mortem* room. The informant and his wife saw the dead body and they saw the ligature mark.

06. The informant has further stated that though Unnati had joined the class of applicant - Narendra Mahale, she had stopped going to the class since

about 15 days and, therefore, Narendra Mahale had insulted her in the presence of boys and girls. Narendra Mahale was not giving satisfactory replies if Unnati had any difficulty in the academic subject. He was also saying that he would not pass Unnati in the examination. Applicant - Girish Salunke was also insulting Unnati on one pretext or the other. Unnati had complained the informant about the same personally as was as on phone. At that time, the informant had given an understanding to Unnati, not to pay attention towards behaviour of Professors and she should pay attention towards her studies. A day before lodging the report i.e. on 26.11.2017 at 08.30 p.m., when the informant had made phone call to Unnati for asking her diet and health, at that time also, she made complaint to the informant about insulting treatment being given by present applicants, namely, Girish Salunke and Narendra Mahale.

07. The FIR further disclosed, that the informant had identified the handwriting of Unnati in her notebook which was seized during *panchanama* made by police. In the written text therein, Unnati had stated about applicants Girish Salunke and Narendra Mahale, that "*Girish Salunke sir speaks much more though he was not knowing anything about anybody. She was only knowing the trouble of soul, head, stomach and eyes. A girl had died because of them. They had made her to die. They had made her aware that she could not study if the class remained*

unattended by her. They must ask anybody, she had not spoken bad about them and admired their classes. They could have understood her being a girl. If a girl studying day and night, though not acknowledging the study, was told that she was never studying, she could bear the words only because applicants Girish Salunke and Narendra Mahale were her teachers". The informant further stated, that due to the written text by Unnati, he became sure that Unnati was in trouble. The informant had also acknowledged from one Rashmi, that on 27.11.2017 in the morning, applicant Girish Salunke had insulted Unnati in class.

08. The informant further stated, that as Unnati unattended the class of NEET examination conducted by applicants Girish Salunke and Narendra Mahale, on account of said anger in their mind, so also, knowing well that Unnati was belonging to caste Chambhar, applicants were insulting her in class from time to time before others. The informant has complained that due to annoyance at the instance of applicants Girish Salunke and Narendra Mahale, on 27.11.2017 at about 10.30 a.m., Unnati committed suicide by noosing in the room where she was residing.

09. Both the Advocates appearing for the respective applicants have submitted that even if the allegations in the FIR are taken as it is, they do not constitute offence punishable under Section 306 read with 34 of the IPC and Section 3(2)(v) of the

Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 [For short, "**Atrocities Act**"]. Both the applicants were teachers of the deceased and they could not have contemplated death of the student merely because she is of a particular caste. Further, it has been submitted by the applicant in criminal application no. 0497 of 2018, that he himself by birth belongs to Scheduled Tribe category and, therefore, the provisions of the Atrocities Act are absolutely not attracted against him. The girl had stopped the NEET class about 15 days prior to the incident. Therefore, there was no proximity between her death and the alleged instigation if at all to be considered. It is also stated in the FIR, that applicant Girish Salunke was insulting the deceased on one or the other pretext but exact words have not been stated even in the suicide note. If we consider the contents of the suicide note which have been reproduced in the FIR, it would show that the applicants, who were the teachers of the deceased, were more concerned about her study. If they would have scolded the student for not doing their studies or remaining absent for the tuition classes, then it will not amount to any kind of instigation. The note of all these facts were taken by this Court when the bail applications filed by both the applicants i.e. criminal application no. 0582 of 2017 and criminal application no. 0585 of 2017 were decided on 19.12.2017.

10. Respondent no.02 has filed affidavit in

reply which is nothing but the reproduction of the FIR. Taking into consideration those contents, it has been submitted on behalf of the respondents, that there is *prima facie* material against the present applicants. Unfortunately, a young girl has expired due to the insulting treatment given to her and, therefore, the FIR cannot be thrown away at this stage.

11. We have perused the FIR which also contains the contents of suicide note allegedly written by deceased Unnati. The contents of the said FIR, including the suicide note, have been reproduced by us in para nos. 05 and 06. We do not want to reproduce it here but take the discussion further. It appears that the only material for registering the FIR is the suicide note and the alleged information regarding the treatment given to Unnati by her friends to the informant. Therefore, taking into consideration this background, it is necessary to consider whether the provisions of Section 107 of the IPC, which relate to abetment of an act or a thing are attracted. Even for invoking Section 305 or Section 306 of the IPC, we will have to consider the provisions of Section 107 of the IPC which runs as follows :-

"Abetment of a thing.— A person abets the doing of a thing, who—

First.— Instigates any person to do that thing; or

Secondly.— Engages with one or more other person or

persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly.— Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1.— A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Explanation 2.— Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitate the commission thereof, is said to aid the doing of that act. "

Thus, Section 107 of the IPC, which defines abetment to mean that a person abets the doing of a thing, if he firstly, instigates any person to do that thing; or secondly, engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or thirdly, intentionally aids, by any act or illegal omission, the doing of that thing.

12. In the matter of *Sanju @ Sanjay Singh Sengar Vs. State of M.P* [2002 SCC (Cri.) 1141], when a quarrel had taken place between the appellant and deceased in which appellant was said to have told the deceased "to go and die" and the deceased found dead two days later, it has been held by the Hon'ble Apex Court, that the suicide was not proximate to the quarrel though the deceased was named in the suicide note. It was also

observed that the suicide was not the direct result of the quarrel when the appellant used abusive language and told the deceased "to go and die". Here, in this case also, since when the applicants were allegedly insulting deceased, has not been made clear. As regards, applicant Narendra Mahale is concerned, the deceased was not attending his class since 15 days prior to the date of incident. Therefore, there is absolutely no proximity. The informant has not stated that just immediate prior to the incident, he had come across a specific incident of applicant Girish Salunke insulting deceased.

13. In the matter of *S.S. Chheena Vs. Vijay Kumar Mahajan & another* [2010 ALL MR (Cri.) 3298 (S.C.)], the Hon'ble Apex Court has held thus :-

" The word "suicide" in itself is nowhere defined in the Penal Code, however its meaning and import is well known and requires no explanation. "Sui" means "self" and "cide" means "killing", thus implying an act of self-killing. In short, a person committing suicide must commit it by himself, irrespective of the means employed by him in achieving his object of killing himself. Abetment involves a 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, 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. "

14. It is held by the Hon'ble Apex Court, in the judgment in the case of *M. Mohan Vs. State* represented by

Deputy Superintendent of Police, reported in (2011) 3 SCC 326, that abetment involves mental process of instigating or intentionally aiding a person for doing a thing. It is held by the Hon'ble Apex Court in the said reported judgment, that there be a clear *mens rea* to commit an offence under Section 306 of the Penal Code which was involved in that case. In the instant case, we are concerned with Section 305 of the Penal Code as in the instant case, a girl aged 17 years had committed suicide. It is held in the case of *M. Mohan (supra)* that abetment would require the commission of a direct or active act by the accused which would lead the deceased to commit suicide, seeing no other option and such act must be intended to put the victim into a position that he commits suicide. In the instant case, there are no instances of instigation attributable to the applicant or even an allegation thereof.

15. Similar view has also been taken by this Court, Bench at Nagpur, in Criminal Application (APL) No. 364 of 2017, in the case of *Amol s/o. Gulabrao Makode Vs. The State of Maharashtra & another*, decided on 23.08.2017, wherein in the suicide note left by a boy of 14 years of age, he had named the applicant and others to be the responsible persons. However, taking note of the above said authorities and the legal position of law, the FIR has been quashed.

16. If we consider the contents of the suicide

note allegedly left by Unnati, it is to be noted that both the applicants were concerned about the attendance of the students to the tuition classes. It also appears that the deceased was not sustaining the pressure of studies. She has not quoted any incidence of alleged insult. If the student is not attending the class and then if the teacher scolds her, it would be for the betterment of the student. Furthermore, it is also to be noted on the face of the record of the FIR, that she was not singled out by both the applicants. This Court while dealing with the bail applications of both the applicants, has made observations that it had gone through the contents of the suicide note and the statements given by many students of the class of Girish Salunke. Those statements were disclosing the general advice given by the teacher and it was for other students also. If a student when scolded for not completing study or absence from the tuition classes and then finds that it is insult, then it cannot be said that any act done by such student thereafter is the direct result of the scolding given by the teacher. Such scolding or words of advice are not synonymous to "*incitement and instigation*". The words "*incitement or instigation*" would literally mean to provoke or urge or bring about the persuasion to do a thing. When such advice would be for the betterment of the career of the student, then there is clear absence of *mens rea* to commit offence either under Section 305 or Section 306 or Section 107 of the Indian Penal Code. Therefore, even if we accept the allegations

in the FIR on the face of record, it will not attract even *prima facie* the ingredients of the offences under which the FIR is lodged.

17. Hence, for the aforesaid reasons, the criminal applications are required to be allowed and the same are accordingly allowed.

The FIR registered as Crime No. 136/2017 at West Deopur Police Station, District Dhule, for offences punishable under Sections 305, 306, read with Section 34 of the Indian Penal Code, Section 3(2)(v) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989, and Section 4(i)(r) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015, against both the applicants, so also, proceedings arising therefrom, are hereby quashed and set aside.

Rule made absolute in the above terms.

(Smt. Vibha Kankanwadi)
JUDGE

(Prasanna B. Varale)
JUDGE

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