

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 830 OF 2018

- [1] Ashok S/o Narayan Shinde, Aged 4338 Years, Occupation Medical Practitioner in Ayurvedic Medicine & Agri., **PETITIONERS**
- [2] Meenal Ashok Shinde, Age 30 Yrs, Occupation Household,
- [3] Narayan S/o Shankar Shinde, Age 81 Years, Occupation Nil,
- [4] Bhagwan Vitthalrao Rajput, Age 45 years, Occupation Agriculture,
- [5] Bhagwat S/o Girdhar Chavan, Age 72 Years, Occ. Agriculture
- All R/o. Village Waki [Bdk]
Jamner, Taluka & Dist. Jalgaon

V E R S U S

- [1] The State of Maharashtra, Through Police Station Jamner, Taluka Jamner, District Jalgaon **RESPONDENTS**
- [2] Uttam S/o Raghunath Barhat, Age 44 years, Occ. Agriculture, R/o. Village Waki, Tq. Jamner, District Jalgaon

Mr. K.C. Sant, Advocate for the petitioners
Mr. R.V. Dasalkar, APP for respondent No.1-State
Mr. Mangesh G. Patil, Advocate for respondent No.2

**CORAM : T.V. NALAWADE AND
SMT.VIBHA KANKANWADI,JJ.
DATE : 5th SEPTEMBER, 2018**

ORAL JUDGMENT [PER : T.V. NALAWADE, J.] :

Rule. Rule made returnable forthwith. By consent of both the sides, this application is taken up for final disposal. Heard both the sides.

2. The proceeding is filed under Article 226 of the Constitution of India and under Section 482 of Cr.P.C. for the relief of quashing of Crime No.18/2018, registered with Jamner Police Station, District Jalgaon for the offence punishable under Section 306 read with Section 34 of Indian Penal Code. By making amendment, relief of quashing of charge-sheet is also claimed.

3. The Crime is registered on the basis of report given by respondent No.2-Uttam Barhat. The deceased Shubham was a son of first informant. In the incident dated 31.01.2018, beating was given by petitioner No.1-Ashok to Shubham on suspicion that Shubham had committed theft of petrol in the night time from the vehicles of Ashok. Then incident of fire had happened in the house of Ashok on 01.02.2018. In the fire, the cotton stored in the go-down and the four-wheeler vehicle 'Bolero' were burnt. It is contended that initially the report of accidental fire was given by the applicants and no suspicion was expressed against anybody on 08.02.2018. Petitioner

No.2-Minal, wife of Petitioner No.1-Ashok, gave specific report against Shubham that he had set fire. It is the contention of the first informant that on that night Shubham was at home and false allegations were made in the F.I.R. dated 08.02.2018. Allegations are made by the first informant that after the date of fire incident, the petitioners were giving threats to Shubham by asking him to admit that he had set fire to their property.

4. Allegations are made by the first informant that in incident dated 09.03.2018, at about 02.30 p.m., when Shubham was returning to home, petitioner Bhagwan and Bhagwat Chavan intercepted Shubham in front of house of petitioner Bhagwan and they again asked Shubham to admit the guilt. Allegations are made that when the relatives of Shubham went there, other petitioners came there and they also gave threats by saying that Shubham needs to admit that he had set fire to the property of petitioners. First informant has contended that due to the aforesaid incidents, on 10.03.2018, at 00.10 a.m. hours, Shubham said that he was disturbed and he wanted to commit suicide. The allegations are made that on 11.03.2018 at about 02.30 to 03.00 p.m. when other members of the family were not at home, Shubham committed suicide by hanging himself.

5. The submissions made and the record show that on 02.02.2018, report was given by petitioner No.3-Narayan to police that it was probably accidental fire, no member of his family was present there and also no other person had seen the incident of setting fire and they had no suspicion against anybody. On 08.02.2018, petitioner No.2-Meenal gave report that she had personally seen the incident of the night between 01.02.2018 and 02.02.2018, and, in her presence and even when Shubham had noticed that she was witnessing the incident, he had set fire to the cotton. Due to such report, crime was registered for the offences punishable under Sections 435, 506, etc. of I.P.C. The submissions made show that on 10.03.2018, one more report was given against Shubham, but this time, about quarrel and threats of his life. Non-cognizable case was registered for the offences punishable under Sections 504, 506 and 510 of I.P.C. The incident took place on the night between 11.03.2018 and 12.03.2018.

6. Learned counsel for the applicants placed reliance on some observations made by this Court in the case reported in **2016 [5] Mh.L.J. [Cri.] 323 [Dilip S/o Ramrao Shirassao and others v. State of Maharashtra and another]**. In this case, the observations are made with regard to the requirements

which need to be fulfilled for making out offence punishable under Section 306 of I.P.C. There cannot be dispute over the proposition that the abetment as defined in Section 107 of I.P.C. needs to be made out in the case like present one. The facts and circumstances of each and every case are different. In the present matter, there are specific allegations against petitioner Nos.1 and 2 that they gave false report against deceased and due to that he was perturbed. There was possibility of his arrest. The report dated 02.02.2018 given by petitioner No.3-Narayan Shinde shows that nobody had witnessed the incident of fire and nobody had suspicion that deceased had set fire to said property. Then specific allegations were made by petitioner No.2-Meenal against deceased and petitioner No.1 gave one more report on 10.03.2018 against the deceased. He committed suicide on 11.03.2018. The abetment as defined in Section 107 of I.P.C. can be inferred on the basis of circumstances, if the accused creates a situation in which there is no other alternative before the person against whom the situation is created and he commits suicide. It can be said that, in the present matter, the material of aforesaid nature is at-least against petitioner Nos.1 and 2 and it cannot be said that there is no material at all against them. This Court holds that no relief can be granted in favour of petitioner Nos.1 and 2. However,

in view of nature of allegations made against petitioner Nos.3 to 5 and as petitioner Nos.4 and 5 have no concern with the family of petitioner Nos. 1 and 2, this Court holds that relief needs to be granted to them. Only due to the acquaintance or support of petitioner Nos.4 and 5 to other applicants, there is possibility of adding their names in the F.I.R. In the result, we proceed to pass following order :-

O R D E R

- [1] Writ Petition stands dismissed as against petitioner Nos.1 and 2.
- [2] Writ Petition stands allowed in favour of petitioner Nos.3 to 5.
- [3] Relief is granted to petitioner Nos.3 to 5 in terms of prayer clause "**B-1**".

Rule is made absolute in above terms.

[SMT.VIBHA KANKANWADI,J.]

[T.V. NALAWADE, J.]