

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 911 OF 2018

- 1) Kamalbai w/o Ashokrao Dhosane,
Age 45 years, Occupation Service,
(Anganwadi Sevika),
R/o Kabnur Tq. Mukhed Dist. Nanded.
- 2) Balaji s/o Ashokrao Dhosne,
Age 25 years, Occupation Service,
(Data Collector),
R/o Kabnur Tq. Mukhed Dist. Nanded.
- 3) Maroti s/o Anandrao Deshmukh,
Age 24 years, Occupation Agriculture,
R/o Kabnur Tq. Mukhed Dist. Nanded. ...Petitioners

Versus

- 1) State of Maharashtra,
Through Police Station Mukhed,
Dist. Nanded.
- 2) Gavalnbai w/o Ramgir Giri,
Age 38 years, Occupation Household,
R/o Kabnur Tq. Mukhed Dist. Nanded. ...Respondents

Mr. Akash Gade, Advocate holding for Mr. S. J. Salunke,
Advocate for petitioners.

Mr. M. M. Nerlikar, Addl. Public Prosecutor for respondent
No.1/ State.

Mr. G. R. Syed, Advocate (Appointed) for respondent No.2.

**CORAM : T. V. NALAWADE &
SMT.VIBHA KANKANWADI. JJ.**

DATE : 05-09-2018.

ORAL JUDGMENT : (Per Smt. Vibha Kankanwadi, J.)

1. Rule. Rule made returnable forthwith. Heard both sides for final disposal by consent.

2. Present petition has been filed by original accused for quashment of First Information Report (FIR) No. 106 of 2018 lodged against them by invoking powers of this Court under Articles 226 and 227 of Constitution of India.

3. Respondent No. 2 is resident of village Kabnur, Tal. Mukhed, Dist. Nanded. She resides with her husband Ramgir Gangair Giri, son Gangagir and daughter Sonyabai. Her husband had collected the garbage from the cremation ground of Gosawi Community situated in their village. He had put fire to the collected garbage. It had caused damage to the window of the school of Anganwadi due to the flames. There was dispute between Ramgir and family with Kamalbai Dhosane i.e. Present applicant No.1. Applicant No.1 had therefore, lodged a report against Ramgir with Mukrabad Police Station for the offences punishable under Section 436, 427 of Indian Penal Code as well as Section 3 and 4 of Maharashtra Damage to Public Property Act. Since the lodging of FIR, Ramgir was restless and it has affected his mental peace. He had not returned to house since many days. Applicant had taken help of Maroti Deshmukh in lodging the

said offence. The said offence was intentionally lodged in order to harass Ramgir. He was fed up with the quarrels and harassment. Hence he went to Tahsil Office on 18-04-2018 and consumed poison around 02.00 to 02.30 p. m. He was then admitted with Government Hospital, Mukhed. He was unconscious. He was then taken to Government Hospital, Nanded for further treatment. Ramgir expired on 19-04-2018 around 08.30 a. m. Report was lodged stating that he has committed suicide due to the harassment by accused i.e. present applicants.

4. Applicants have contended that, they have been falsely implicated. Ramgir had committed the offence and it was witnessed by petitioners No.2 and 3. Petitioner No.1 is serving in the Anganwadi School. The grave yard is adjacent to the school. There is long standing dispute between the school and Gosavi community. When deceased had tried to put the school to fire, petitioner No.1 had lodged report. There was no question of *mens rea* on the part of the petitioners to abet the suicide. The contents of the FIR will not attract the offence. Hence, they have prayed for quashment of the FIR.

5. Heard learned Advocate Shri. Akash Gade h/f Advocate Shri. S. J. Salunkhe for applicants, learned Addl. Public Prosecutor Shri. Shri. M. M. Nerlikar for State and learned Advocate Shri. G. R. Syed

for respondent No.2. Perused the police papers made available.

6. It appears from the police papers that, a written communication was given by the deceased to the Tahsildar as dying declaration after consuming poison. He has alleged that petitioners had implicated him in the allegations of fire case. He was defamed as the news was published in news paper. He had therefore, decided to end his life by consuming poison. He has given the details of the dispute between the Community and school. If the said letter is perused, even then it can be seen that the dispute is in existence since 2001. Therefore, accused/ petitioners can not be held responsible for the same. He has made allegations about the illegal activities of petitioners. However, those activities cannot be said to be the acts of abatement. It appears that he was agitating the acts of petitioners with Police but they were not taking cognizance. However, it appears that he had not knocked the doors of Court of Law. If any action was not taken by Police against petitioners, that does not mean that petitioners had any way abated the commission of suicide by Ramgir. In fact, as per the FIR, he had not returned to house for many days. That means, informant had no knowledge about the activities of her husband as well as that of petitioners just prior to consuming poison by her husband. Reliance can be placed on the judgment of the Hon'ble Supreme Court in case of *Amalendu Pal @ Jhantu v/s. State of West Bengal*, reported in 2010 AIR (SC)

512, and submitted that,

"The Hon'ble Supreme Court has held that, harassment must be coupled with some positive action proximate to time of occurrence. In absence of proof of such proximate positive action, on the part of the accused, accused cannot be convicted U/Sec. 306 of Indian Penal Code. In the instant case the prosecution has utterly failed to establish its case by bringing on record the positive evidence that the appellant herein had any positive act abating commission of suicide proximate to the time of occurrence."

In the case of *S. S. Chheena Versus Vijay Kumar Mahajan and Another*, reported in [(2010)12 SCC 190], the Apex Court has observed that,

"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 case decided by this Court is clear that in order to convict a person under Sec. 306 of 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".

In the present case, except allegations of previous dispute, there is nothing. Under such circumstance, it would be a futile exercise to

ask the accused/ petitioners to face trial. Hence, following order:

ORDER

1. Writ Petition is hereby allowed.
2. Relief is granted in terms of prayer clause 'C'.
3. Rule is made absolute on above terms.

(SMT. VIBHA KANKANWADI)
JUDGE

(T. V. NALAWADE)
JUDGE

vjg/-.