

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

Criminal Application No. 01974 of 2018

District : Nanded

1. Sanjay s/o. Kishanrao Hapgunde,
Age : 38 years,
Occupation : Service,
R/o. Yash Nagari, Kabra Nagar,
Nanded.

2. Pradip s/o. Mallikarjun Kalyane,
Age : 36 years,
Occupation : Business,
R/o. Ganga Nagar Society,
Sakhoji Nagar, Nanded.

.. Applicants.

versus

1. The State of Maharashtra.

2. Sunita w/o. Gangadhar
Gulzarwad,
Age : 35 years,
Occupation : Household,
R/o. Vishnu Nagar, Nanded.

.. Respondents.

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Mr. N.S. Ghanekar, Advocate, for the applicants.

*Ms. D.S. Jape, Additional Public Prosecutor,
for respondent no.01.*

*Mr. Yogesh D. Kale, Advocate (appointed), for
respondent no.02.*

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

DATE : 19TH SEPTEMBER 2018

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

01. At the outset, learned Advocate for the applicants, seeks leave to amend the application so as to add the relief of quashing the proceedings initiated pursuant to the FIR, in question, before the trial court. Leave granted.

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

03. Present application has been filed by original accused persons by invoking the inherent powers of this Court under Section 482 of the Code of Criminal Procedure, 1973, to quash the first information report vide Crime No. 0011/2018 registered with Himayatnagar Police Station, District Nanded, under Section 306 read with Section 34 of the Indian Penal Code.

04. The first information report has been given by respondent no.02 with the said police station, that she used to reside with her husband and two children. Her husband Gangadhar Gulzerwad was serving as a peon with Pratibha Niketan College, Nanded. He had agricultural land at village Mangrul which was looked after by his parents and elder brother. Her husband Gangadhar had informed her since last two months prior to 19.01.2018, that the

Lecturer Sanjay Hapgunde and his friend Pradip Kalyan were harassing him and giving threat on the count of earlier transaction with him, that they will register offence against him and he would be terminated. She had suggested her husband, that he should lodge report against them with police. Thereafter, her husband had gone to Police Station, Vazirabad on 06.01.2018 to lodge report. However, it was not taken and, therefore, it was given to the office of Police Superintendent, Nanded. Thereafter, again report was lodged with Police Station, Vazirabad, by him on 13.01.2018 against the applicants. Thereafter, her husband was under mental tension and he was not talking properly with her. He was saying that the applicants would lodge a false offence against him and he would be terminated or he would be assaulted. Her husband thereafter told her on 18.01.2018 that he would go to his native place and meet his parents. He left house around 08.30 a.m. Thereafter, on 19.01.2018, it was informed to her by one Ramdas Gulzerwad, that her husband Gangadhar has committed suicide by hanging himself to mango tree in their field. She was confirmed that the suicide has been committed by her husband due to the harassment by the applicants and, therefore, she lodged the FIR.

05. The applicants have contended that applicant no.01 has no authority to terminate service of any employee and, therefore, there was no substance in

the alleged threat regarding termination of service of the deceased. It is contended that there was a mandatory transaction between the deceased and applicant no.02. Applicant no.02 is having grocery and general shop. Deceased got acquaintance with applicant no.02 through applicant no.01. The loan to the tune of Rs. 2,30,000/- was obtained by the deceased from applicant no.02. He was not repaying the money and, therefore, when it was insisted, he gave cheque to applicant no.02. After presentation of the said cheque, it was dishonoured and, therefore, applicant no.02 had issued legal notice through advocate to the deceased. There was no enmity or dispute between the applicant and the deceased. There is no question of any conspiracy or aiding the commission of suicide by the deceased. The ingredients of Section 107 of the IPC in order to prove offence under Section 306 of the IPC are required to be proved, but they are absent in the present case. It would be a futile exercise by asking the applicants to face the trial. In fact, the said FIR is on the basis of concocted story and, therefore, they prayed for quashment of the same.

06. The application has been opposed by the respondents on the ground that the applicants were harassing the deceased and, therefore, at the time of committing suicide, he has left a suicide note which has been seized from the spot of the incident.

Deceased had also lodged complaint with the Superintendent of Police on 06.01.2018, in which he had made specific allegations that applicant no.02 used to demand the amount and for that purpose, he had assaulted the deceased. He had expressed danger to his life. Statements of witnesses have been recorded which show that there was dispute between applicant no.02 and deceased and at that time, applicant no.01 was present. It was on the count of money. Therefore, no case is made out for quashing of the FIR.

07. Heard learned Advocate Mr. N.S. Ghanekar for the applicants. Heard learned Additional Public Prosecutor Ms. D.S. Jape for respondent no.01. So also, heard learned Advocate (appointed) Mr. Y.D. Kale for respondent no.02. All of them have argued in support of their respective contentions. Perused the police papers.

08. It is to be noted that on 09.01.2018, legal notice was issued by applicant no.02 to the deceased in which he had clearly mentioned that in November 2017, deceased had taken hand loan of Rs. 2,30,000/- from applicant no.02 and thereafter he had given cheque dated 04.01.2018 drawn on Bank of Maharashtra, Old Mondha Branch, Nanded. It was presented for encashment by applicant no.02, but it was dishonoured on the ground '*referred to drawer*'. It was stated in

the notice, that if he does not comply with the notice within 15 days, applicant no.02 will take steps to institute complaint under Section 138 of the Negotiable Instruments Act. Thus, it can be said that the applicant no.02, who is admitting the financial transaction between him and deceased, had taken legal steps to recover the said amount.

09. The police papers would show that on 06.01.2018, written complaint was given by the deceased stating that on 02.01.2018, at about 1.30 to 02.00 p.m., applicant no.02 had gone to the college wherein deceased was serving and he demanded the amount. According to the deceased, applicant no.02 had abused and assaulted him. Statement of one Gautam Sarode, who is employee of the same college, would show that there was quarrel between applicant no.02 and deceased. Presence of applicant no.01 is also stated. However, according to him, applicant no.02 had asked deceased as to what happened to his amount. On that count, deceased had rushed towards applicant no.02 with plastic chair and asked as to which is the amount. Thus, it appears from the statement of the witness, that deceased had taken aggressive stand against applicant no.02. Another employee of the same college, Sanjay Randve, says that he had heard quarrel between applicant no.02 and deceased but he does not say anything about abuses or assault by applicant no.02 to the deceased. Thus,

the names of these two persons though appearing in the complaint given by the deceased on 06.01.2018, are not supporting the deceased.

10. Copy of the alleged suicidal note would show that applicant no.02 was demanding the amount from the deceased and as per the deceased, applicant no.02 has taken his cheque book. There is no date on the note and in fact, it is also not signed by the deceased. It only says, after name of both the applicants, that he is required to commit suicide. He has not blamed both the applicants in clear words.

11. Even for the sake of arguments it is accepted that there was some dispute or quarrel between applicant no.02 and deceased on 02.01.2018 and at that time, applicant no.01 was present, that will not attract the provisions of Section 107 and / or Section 306 of the IPC because what has happened between 02.01.2018 to 08.01.2018 has not been brought on record by way of statements of the witnesses. It also appears that charge-sheet is filed vide R.C.C. No. 30 of 2018 against both the applicants. That means, till the preparation of charge-sheet, there is absolutely no mention about the activities of the deceased between 02.01.2018 to 08.01.2018. There is no proximity between the alleged incident dated 02.01.2018 and the suicide that has been committed on 18.01.2018. Under the circumstance, when the

applicant no.02 was taking legal steps to recover his amount and there was an opportunity to the deceased to even deny the transaction by giving reply to the legal notice, he has not adopted the legal procedure. Therefore, applicants cannot be said to have abetted commission of suicide by the deceased. There is no such evidence which has been collected by the investigating agency to attract the provisions of Sections 107 and 306 of the IPC. It would be a futile exercise to ask the applicants to face the trial. This is a fit case within the parameters of the decision of the Hon'ble Apex Court in the case of *State of Haryana & others Vs. Ch. Bhajan Lal & others* [AIR 1992 SC 604] and, therefore, the application deserves to be allowed.

12. Hence, the following order :-

(a) The application is hereby allowed.

(b) The first information report vide Crime No. 0011/2018 registered with Himayatnagar Police Station, District Nanded, under Section 306 read with Section 34 of the Indian Penal Code, so also, proceedings consequential thereto, in Regular Criminal Case No. 30 of 2018, pending in the court of Judicial Magistrate (First Class), Himayatnagar, District Nanded, against the present applicants, are quashed and set aside.

(c) Rule made absolute in the above terms.

13. Learned Advocate Mr. Yogesh D. Kale was appointed to represent the cause of respondent no.02. His fees is quantified at Rs. 3,000/- [Rupees three thousand] which shall be payable by the High Court Legal Services Sub-Committee at Aurangabad.

(Smt. Vibha Kankanwadi)
JUDGE

(T.V. Nalawade)
JUDGE

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Govindrao
Puranik

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by Bhagwan
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2018.10.01
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