

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 3472 OF 2006

Sheelratna s/o Baburao Suryawanshi,
Age 38 years, Occupation Service,
R/o Labour Colony, Latur
Dist. Latur.

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr. Jyodeep Chatterji, Advocate for applicant.
Mr. A. A. Jagatkar, Addl. Public Prosecutor, for respondent/
State.

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

DATE : 24-11-2018.

ORAL JUDGMENT : (Per SMT. VIBHA KANKANWADI, J.)

1. At the outset learned counsel for the applicants seeks permission to amend the prayer clause and to add the prayer of quashment of FIR and all further proceeding.
2. Permission granted.
3. Amendment be carried out immediately.
4. Rule. Rule made returnable forthwith. By consent, heard both

the sides for final disposal.

5. Present application has been filed by original accused person invoking the inherent powers of this Court under Section 482 of the Code of Criminal Procedure in order to quash the First Information Report vide Crime No. 49 of 2006, registered with Shivajinagar Police Station, Latur, Dist. Latur for the offences punishable under Section 306 read with 34 of the Indian Penal Code.

6. Prosecution has come with a case that FIR has been lodged by A. S. I. Nagargoje of Shivajinagar Police Station stating that a complaint application was filed by one Sayyad Nasikabi Shaikh Ali that her husband Sayyad Sher Ali Shoukat Ali was serving as Line Helper with Maharashtra State Electricity Board. He went missing since 13-03-2006. Missing report was filed on 15-03-2006 and inquiry was taken up by Police. Brother of Sayyad Sher Ali Shoukat Ali had given report that when he went near a well in a field opposite School, when people had gathered; he found that dead body of his brother was floating. On the basis of said information, accidental death was reported and inquiry was carried out. A bag was found near the well and it was identified by his brother as belonging to deceased. Three chits were found in the said bag. It was written in the said chits that he is committing suicide and for that one S. B. Suryawanshi (present applicant) J. E. and one Mahavir Vaishnav are

responsible. Hence, FIR was lodged on behalf of State.

7. The applicants have contended that, he is working as Junior Engineer with M. S. E. B. He was posted at Latur. Deceased was working in Kasargaon unit, which was under the control of applicant. Deceased was in habit of remaining absent from his duty without prior intimation. Many times he used to come on duty under the influence of liquor. Applicant had served many memos on him and had also informed the higher authorities regarding the behaviour of deceased. Applicant had issued memo on 07-11-2005 to deceased asking him to give explanation for his absence from duty on 05-11-2005. Executive Engineer had taken cognizance of correspondence made by applicant and issued notice to deceased expressing that deceased appears to be not interested in work. Deceased did not attend the duty nor tendered explanation. Taking into consideration the complaints of the public, applicant gave additional charge to one Mahavir Vaishnav on 11-11-2005. Deceased was transferred to another unit, which was at a distance of 8 k.m. from Latur and 5 k.m. from Kasargaon. Even after transfer, deceased continued his old habit of remaining absent from work without intimation. He was absent on 13-3-2006. Thereafter, his relatives started making inquiry with him on 14-3-2006. Applicant informed about his absence to his superior on 16-3-2006. Dead body of Sayyad was found on 19-3-2006. He has not abetted suicide by Sayyad. He was

doing his work. There was no intention of his part to instigate Sayyad to commit suicide. He has been falsely implicated. Ingredients of offence punishable under Section 306 of Indian Penal Code are not at all attracted. Therefore, they have prayed for quashment of the FIR.

8. Heard learned Advocate Mr. Joydeep Chatterji appearing on behalf of applicant, learned Addl. Public Prosecutor Mr. A. A. Jagatkar for respondent No. 1- State. Perused the police papers and copies of official record of M. S. E. B., produced by applicant.

9. It is to be noted that the FIR has been filed by A. S. I. Nagargoje on behalf of State. He has no personal knowledge. His FIR is based on the statements made to him by the relatives of deceased and the alleged suicide note. Admittedly, Sayyad was missing since 13-03-2006. His dead body was found on 19-03-2006. It appears that he had not taken leave. That means, he was absent from his duty without obtaining prior permission from the office. The official documents produced by applicant would also show that in the past also he had remained absent and therefore memos were given to him. There appears to be substance in the say of applicant. If we peruse the suicide note, as it appears, yet it does not disclose abatement in any manner. He has stated that, "I am committing suicide and two persons are responsible for the same. 1)

S. B. Suryawanshi J. E. and 2) Mahavir Vaishnav because I am doing my service unblemished at Medical College. They have transferred me at different place and because of that he has suffered huge financial loss. I had given intimation about it to Karad Saheb.". Thus, he considered applicant as responsible person for his transfer. It is to be noted that he was transferred at a distance of 5 k. m. away from his earlier unit. What kind of financial loss he would have incurred ? Further, he can not claim any right to work at a particular place, when his service is transferable.

10. Applicant was superior to deceased. If deceased was in habit of remaining absent and applicant was issuing memos to him, seeking his explanation, then such action on the part of applicant can not amount to "abatement". If such acts are considered as an abatement, then it would be difficult for superiors to get work done from subordinates. In *Madan Mohan Singh v/s State of Gujrat and another*, reported in **(2010) 8 SCC 628** it has been held that, "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 about the suicide of the person concerned 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. Further in *S.S. Chheena v/s. Vijay Kumar Mahajan* reported in **2010**

All MR (Cri) 3298 (S.C.) it has been 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 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".

11. Thus, the facts of the case would show that there was no question of abatement or instigation by the applicant to the deceased forcing him to commit suicide. It would be futile exercise to ask applicant to face trial. Reliance can be placed on the judgment of the Hon'ble Apex Court in the matter of *State of Haryana and ors. vs. Ch. Bhajanlal and ors.*, reported in **AIR 1992 SC 604** for invoking the powers of this Court. Considering all the above referred facts, we are of the opinion that case is made out by the applicant to exercise powers of this Court under Section 482 of Code of Criminal Procedure. Hence, following order:

ORDER

1. Relief of quashing of FIR is allowed to be mentioned in the application. Amendment to be carried out immediately.
2. The application is allowed.
3. Relief is granted in terms of prayer Clause "AA".
4. Rule made absolute in aforesaid terms.

(SMT. VIBHA KANKANWADI)
JUDGE

(T. V. NALAWADE)
JUDGE

vjg/-.