

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

Criminal Application No. 04038 of 2011

District : Ahmednagar

1. Shilpa Waman Bahadure,
Age : 27 years,
Occupation : - ,
R/o. Building No. 66-1980,
Pant Nagar, Ghatkopar,
Mumbai.
2. Poonam Ravindra Chavan,
Age : 27 years,
Occupation : - ,
R/o. N.L.I.B. Building No.88,
Room No.1, Sector-10,
Nerul, New Mumbai.
3. Namita Baban Raut,
Age : 27 years,
Occupation : - ,
R/o. C-12-Aditya Darshan,
Anandnagar, Dombiwali (W),
Mumbai.

.. Applicants.

versus

1. The State of Maharashtra.
2. Mohan s/o. Anandrao Bhoi,
Age : 47 years,
Occupation : Service,
R/o. 364, Bhoi Galli,
Baramati,
District Pune.

.. Non-applicants.

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

*Mrs. M.A. Deshpande, Addl. Public Prosecutor,
for non-applicant no.01.*

*Mr. Joydeep Chatterji, Advocate, for
non-applicant no.02.*

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CORAM : PRASANNA B. VARALE, J.

DATE : 09TH JANUARY 2018

ORAL JUDGMENT :

01. Heard Adv. Mr. N.S. Ghanekar for the applicants, learned APP Mrs. M.A. Deshpande for non-applicant no.01 - State of Maharashtra, and Adv. Mr. Joydeep Chatterji for non-applicant no.02.

02. The applicants are before this Court, seeking quashment of the first information report lodged at Sangamner City Police Station, District Ahmednagar, vide Crime No. I-171/2007, for offences punishable under Section 306 read with Section 34 of the Indian Penal Code and Sections 3 and 4 of the Maharashtra Prohibition of Ragging Act, 1999, as well, quashment of the proceedings in Sessions Case No. 59 of 2007, arising out of the above referred crime, before the learned Sessions Judge, Sangamner.

03. Mr. Ghanekar, learned Counsel for the applicants, submitted that taking the case as reflected in the report and in the other material collected by the investigating agency in the process of investigation, as it is, even without adding or subtracting anything to it, falls too short to hold these applicants responsible for any criminal act,

leave aside the offences alleged against these applicants. Mr. Ghanekar submitted that though these applicants approached the learned Sessions Judge seeking their discharge and submitted that the material against these applicants falls too short to even frame charge against these applicants, the learned Sessions Judge only on a technical consideration, rejected the application filed by these applicants.

04. Mr. Ghanekar further submitted that the applicants were the fellow students with the deceased. They were the roommates i.e. occupying the same room in a hostel by the deceased. Mr. Ghanekar submitted that the report and the material clearly show that the applicants were having no personal animus against the deceased and it was only certain trifling acts which can be termed as the acts in the nature of regular wear and tear. Mr. Ghanekar then submitted that in the report itself, it is submitted that the deceased was a girl of very sensitive nature. He submitted that the deceased being a girl of sensitive nature and probably under the heat of passion, was not adjusted to a life away from family members and took an extreme step. Mr. Ghanekar then submitted that the allegations against these applicants are of only not permitting the deceased to put on the light in the late hours and not permitting the deceased to use mobile charging point. Mr. Ghanekar submitted that considering these acts, these acts would not drive a person to take extreme step of

committing suicide nor these acts alleged against these applicants call for any action under the anti-ragging Act. The submission of Mr. Ghanekar is, these applicants were prosecuting their studies in the last year of degree course and the prosecution launched on such material and the proceedings on the basis of such ambiguous material would nothing but an abuse of process of law. Mr. Ghanekar then submitted that the case of the applicants clearly falls under the settled guidelines of the Hon'ble Apex Court reflected in the judgment in the case of *State of Haryana & others Vs. Ch. Bhajan Lal & others* [AIR 1992 SC 604]. Mr. Ghanekar has also placed heavy reliance on the judgment of Division Bench of this Court in the case of *Dilip s/o. Ramrao Shirasao & others Vs. State of Maharashtra & another* [2016(5) Mh.L.J.(Cri.) 323 = 2016 ALL M.R. (Cri.) 4328], in support of his submissions.

05. Per contra, Mrs. M.A. Deshpande, learned Addl. Public Prosecutor, for non-applicant no.01, as well, Mr. Joydeep Chatterji, learned Counsel appearing for non-applicant no.02, vehemently opposed the application. The submission of the learned Counsel appearing for the non-applicants is, there is sufficient material collected by the investigating agency and the acts of these applicants is reflected in the material.

06. With the assistance of Mr. Ghanekar, learned Counsel for the applicants; Mrs. Deshpande, learned

Addl. Public Prosecutor, for non-applicant no.01, as well, Mr. Chatterji, learned Counsel for non-applicant no.02, I have gone through the material placed on record.

07. On perusal of the material placed on record, including statements of the witnesses recorded by the investigating agency, I find considerable merit in the submissions advanced by Mr. Ghanekar, learned Counsel for the applicants. Mr. Ghanekar was justified in submitting that bare perusal of the report would show that the acts attributed against these applicants are such trifling nature, that these acts themselves fall too short to constitute any offence against the applicants. Perusal of the report shows that the deceased girl Gauri sought admission in a private dental college, namely, Sau. Mathurabai Bhausaheb Thorat Dental College, Sangamner, after passing her 12th standard examination. The report further shows that for the first three years of the degree course, nothing wrong was observed by the deceased girl, either in her study course or in the hostel. It is stated in the report, that for the first three years, deceased Gauri even did not make any mention about any ill-treatment or ill-act by any fellow student or hostel-mate to her parents who were in touch with Gauri regularly by way of telephonic conversation. The allegations of ill-treatment at the hands of these applicants are stated to be caused in the fourth year of the degree course.

08. The nature of allegation, as submitted by Mr. Ghanekar, learned Counsel for the applicants, is that these applicants were not permitting the deceased to study in the late hours of night. The allegations then include not permitting the deceased to use mobile charging point and not permitting the deceased to turn the lights on whenever the deceased wanted to study in the late hours of night. It is stated in the report, that deceased Gauri used to make complaints to her parents whenever they used to visit Gauri in the hostel. Even in the report, it is stated that the parents used to pacify Gauri, asking Gauri to take some initiative for adjusting with the hostel-mates. It is stated in the report, that the parents informed about these acts to one Mr. Deshpande. In the report, it is not stated, what position Mr. Deshpande was occupying in the college, either he was warden of the hostel or any member of the students' committee or a teacher in the course in which the deceased and the applicants were studying. Any way, the reference is to disclosure of complaints made by Gauri to Mr. Deshpande. It is stated that as no heed was paid by the college authorities, the parents informed the complaints of Gauri to Dean of the college.

09. The report then states that from 26.09.2007, deceased Gauri was to appear for the examination and was busy with her studies. The report then states that on 30.09.2007, father of Gauri received call on his mobile from Gauri, requesting him to take away

from the hostel. The father assured that he will come to the hostel as soon the examination gets over. Then he informed about phone call received by him to younger brother Dr. Bapurao. Dr. Bapurao also made phone call to Gauri. The complainant - informant i.e. father of Gauri requested his wife Usha to visit Gauri at Sangamner and also requested his younger brother Dr. Bapurao to accompany Usha as she is proceeding to Sangamner alone. Then he made request to his superior officer for grant of permission and after seeking permission, the family members, namely wife of complainant, Usha, younger brother Dr. Bapurao, his wife Vidya, niece Pooja departed from Baramati. The complainant met the family members at Ahmednagar. All of them proceeded from Rahuri to Sangamner. On the way, Usha received a call on her mobile from friend of Gauri, that Gauri suffered a fracture due to fall. They also received a call on mobile from Dr. Deshpande, that Gauri is shifted from Tambe Hospital to a hospital at Nashik. Thereafter, they went to college at Sangamner but could not acknowledge information about Gauri. Then family members reached Nashik at about 07.00 p.m. and found that Gauri was admitted in intensive care unit in Lifeline Hospital at Nashik. Before they could visit Gauri, it was informed that Gauri was no more. In the report, then it is stated that Gauri was consistently ill-treated by his roommates and as the ill-treatment became unbearable, Gauri committed suicide by jumping from terrace of the hostel. Then it is stated that the hostel-mates also caused

defamation of Gauri, saying that there was some affair.

10. On receiving the report, the investigating agency was set in motion. Material was collected by the investigating agency and on conclusion of the investigation, charge-sheet is also filed. On going through the charge and more particularly, statements collected by the investigating agency, the charge includes inquest *panchanama* drawn by the investigating agency and the statements of witnesses, as well, applications moved by Gauri to the college authorities. The charge-sheet also includes *post mortem* notes. Perusal of the post mortem notes show that in view of the injuries suffered by the deceased, the Medical Officer opined that the probable cause of death of Gauri was haemorrhagic shock due to polytrauma.

11. On perusal of the other material, it reveals that deceased Gauri requested the college authorities for grant of a room, more particularly, room no.121 in the senior students' hostel. Application dated 26.07.2007 show that Gauri was allotted room no.128 but she wanted to change the room and made a request for change of room from room no.128 to room no.120. On the application, the college authorities allotted room no.120 to Gauri as per her request. Thus, the material clearly show that the college authorities considered the request of Gauri and accordingly also allotted room in the hostel of her choice to Gauri.

12. Perusal of statements of the fellow students of Gauri and some girls occupying the hostel show that the only nature of complaints against these applicants was not permitting Gauri to turn the lights on in late hours. As such, Gauri was unable to study in the late hours. The statement of one student, Snehal Palve, show that Gauri disclosed to Snehal, that her roommates i.e. these applicants are not permitting Gauri to study and then there is reiteration of the allegation of switching off the lights and not permitting Gauri to use mobile charging point. It is then stated that Gauri made such complaints to Mr. Deshpande and it was her grievance that she made a request for change of room but the college authorities are not taking any steps. The other statements of the students are in chorus with Snehal. As stated above, request of Gauri for change of the room in the hostel was already considered by the college authorities and accordingly the authorities allotted the room of her choice to Gauri on 26.07.2007 itself.

13. Considering this material, I find merit in the submission of Mr. Ghanekar, that deceased Gauri was a girl of very sensitive nature and even though her request for change of room was allowed and room of her choice was allotted to her, in heat of passion or under depression, Gauri took an extreme step. Mr. Ghanekar was also justified in submitting that considering whole material collected by the

investigating agency, it falls too short to make out any case against these applicants for attributing the act, as alleged against them and more so, act of criminal offence under the Indian Penal Code, as well, offence under Maharashtra Prohibition of Ragging Act, 1999.

14. The Hon'ble Apex Court in the case of *Chitresh Kumar Chopra Vs. State (Govt. of NCT of Delhi)* [(2009) 16 SCC 605] was pleased to observe, that *"The Court dealt with the dictionary meaning of the words "instigation" and "goading". The Court opined that there should be intention to provoke, incite or encourage the doing of an act by the latter. Each person's suicidability pattern is different from the other. Each person has his own idea of self-esteem and self-respect. Therefore, it is impossible to lay down any straitjacket formula in dealing with such cases. Each case has to be decided on the basis of its own facts and circumstances".* The Apex Court further observed, that *"In the instant case, the deceased was undoubtedly hypersensitive to ordinary petulance, discord and differences which happen in our day-to-day life. Human sensitivity of each individual differs from the other. Different people behave differently in the same situation."* The Apex Court then observed, that *"When we carefully scrutinize and critically examine the facts of this case in the light of the settled legal position the conclusion becomes obvious that no conviction can be legally sustained without any credible evidence or material on record against the appellant. The order of framing a charge under Section 306 IPC against the appellant is palpably erroneous and unsustainable. It would be travesty of justice to compel the appellant to face a criminal trial without any credible material whatsoever."*

15. Mr. Ghanekar was also justified in placing reliance on the judgment of Division Bench of this Court, in the case of *Dilip s/o. Ramrao Shirasao & others (supra)*. This Court, relying on the judgment of the Hon'ble Apex Court in the case of *Chitresh Kumar Chopra (supra)* observed in para 20 of the judgment thus :

" As has been held by Their Lordships of the Apex Court that for permitting a trial to proceed against the accused for the offence punishable under Section 306 of the Indian Penal Code, it is necessary for the prosecution to at least prima facie establish that the accused had an intention to aid or instigate or abet the deceased to commit suicide. In the absence of availability of such material, the accused cannot be compelled to face trial for the offence punishable under Section 306 of the Indian Penal Code. As has been held by Their Lordships of the Apex Court that abetment involves mental process of instigating a person or intentionally aiding a person in doing of a thing and without a positive act on the part of the accused in aiding or instigating or abetting the deceased to commit suicide, the said persons cannot be compelled to face the trial. Unless there is clear mens rea to commit an offence or active act or direct act, which led the deceased to commit suicide seeing no option or the act intending to push the deceased into such a position, the trial against the accused under Section 306 of the Indian Penal Code, in our considered view, would be an abuse of process of law. "

16. Learned Counsel for the applicants was justified in submitting that initiation of the prosecution against these applicants and further continuation of proceedings against the applicants would be nothing but an abuse of process of law. Considering facts and circumstances of the case, I am

of the opinion that the learned Counsel for the applicants made out a case for quashment of FIR in question and proceedings in pursuance thereof.

17. In the result, the application is allowed.

The First Information Report registered vide crime no. I-171/2007, with Sangamner City Police Station, District Ahmednagar, for offences punishable under Section 306 read with Section 34 of the Indian Penal Code and Sections 3 and 4 of the Maharashtra Prohibition of Ragging Act, 1999, as well as proceedings in Sessions Case No. 59 of 2007, pending before learned Sessions Judge, Sangamner, are quashed and set aside.

(Prasanna B. Varale)
JUDGE

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