

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 3797 OF 2017

1) Ramrao s/o Damodhar Kanthali,
Age 68 years, Occupation Agri.,
R/o Susare Tq. Pathardi
Dist. Ahmednagar.

2) Narayan s/o Gangadhar Ithape,
Age 55 years, Occupation Agri.,
R/o Lohgaon Tq. Paithan
Dist. Aurangabad.

3) Sau. Sharda Narayan Ithape,
Age 49 years, Occupation Agri.,
R/o Lohgaon Tq. Paithan
Dist. Aurangabad.

...Applicants

Versus

1) The State of Maharashtra.

2) The Police Station Officer,
Police Station Bidkin,
Tq. Paithan Dist. Aurangabad.

3) Manisha w/o Ravindra Pankhade,
Age 22 years, Occupation Household and
Agri., R/o Rajpimpri Tq. Georai
Dist. Beed.

...Respondents

Mr. C. K. Shinde, Advocate for applicants.

Mr. S. J. Salgare, Addl. Public Prosecutor, for respondents
No.1 and 2 / State.

Mr. G. K. Naik Thigle, Advocate for respondent No.3.

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

DATE : 08-10-2018.

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

1. Present application has been filed by the original accused persons by invoking inherent powers of this Court under Section 482 of Code of Criminal Procedure for quashing charge-sheet No. 31 of 2017 filed by Police Station Bidkin Tq. Paithan Dist. Aurangabad against them for the offence punishable under Section 306 read with 34 of the Indian Penal Code. The said charge-sheet has been filed after the investigation on the basis of First Information Report lodged by present respondent No.3.

2. Applicant No.1 had two daughters by name Sharda and Pushpa. Sharda is present applicant No.3. They both were given in marriage at Lohgaon in Ithape family. Applicant No.1's another daughter Pushpa went missing since 06-08-2014. Pushpa was married to Dnyaneshwar Ithape. The missing report was lodged on 11-08-2014 vide Missing Case No. 23 of 2014. Applicant No.1 was searching for his daughter but was unable to trace out. Pushpa's husband Dnyaneshwar had second wife. The conduct of Dnyaneshwar as well his second wife were found suspicious, and therefore, applicant No.1 lodged a report on 06-09-2014 against Dnyaneshwar and his second wife as well as their relatives contending that, they have committed murder of Pushpa and caused her dead body disappear. No cognizance of the said report was

taken by the Police Station but only the missing complaint was put under enquiry. The applicants were clueless as to whether Pushpa is alive or not. Therefore, ultimately applicant No.1 filed Criminal Writ Petition No. 1187 of 2014 before this Court. However, the petition was then withdrawn with liberty to avail appropriate remedy before the appropriate Court. This Court had at that time itself made it clear that the withdrawal of the petition should not be treated as impediment to the police officer to continue further inquiry in respect of the missing report. Police had recorded statements of certain witnesses. Still the police was not coming to a definite conclusion, therefore again the applicant No.1 approached this Court by filing criminal Writ Petition No. 1363 of 2015 seeking direction to handover the investigation to any higher police officer. By way of interim relief it was directed on 07-01-2016 by this Court to D.I.G. Rural to look into the investigation and guide the investigation officer. Applicant No.1 was called to police station and thereafter his FIR was recorded on 03-02-2016 against one Badri Punjaram Dange, Jayabai Dnyaneshwar Ithape and Dnyaneshwar Murlidhar Ithape for the offences punishable under Section 302, 201 read with 34 of the Indian Penal Code. The investigation was further carried out. Police were calling Ravindra Pankhade R/o Rajpimpri Tq. Georai Dist. Beed who was the real brother of Jayabai Ithape i.e. accused No.2 in connection with the investigation. He was called by police repeatedly

to appear before them. It is further stated that, during the investigation it was revealed that, said Ravindra Pankhade had committed suicide in Gairam land Gut No. 54 of village 74 Jalgaon on the way from Dhorkin Phata to Dhakephal on 10-02-2016. Respondent No.3 lodged report stating that the applicants had caused mental and physical torture to deceased Ravindra. So also that was the complaint against the police officers and it was stated that they had abetted the commission of the suicide. News to that effect was flashed in local newspaper. Sub-Divisional Police Officer, Paithan denied all those allegations against the police officers by taking a press conference. After about two months of that incident, police registered FIR against the applicants bearing Crime No. 105 of 2016 on 03-04-2016 contending that they have abetted the commission of suicide by Ravindra.

3. The applicants are contending that the story narrated in the First Information Report is totally false. It is stated that, since offence was registered against the real sister of the deceased, deceased Ravindra was nervous and he was suspecting that the applicants are blaming him for missing of Pushpabai. It has been contended that in that FIR that Ravindra has made recording in his mobile on 01-02-2016 and he has blamed the applicants. Thus, it is said to be a dying declaration regarding the circumstances under which he was constrained to commit suicide. The applicant No.1 was

prosecuting legally those persons involved in the missing of his daughter. It cannot be stated that, he had any kind of intention to abet the commission of suicide by deceased. There is inordinate delay in lodging the report and it has not been explained either by the informant or her relative. Even if for the sake of arguments we take the contents of the FIR as it is, they do not disclose ingredients of offence punishable under Section 306 of Indian penal Code or even Section 34 of Indian Penal Code. The applicants have prayed for quashment of charge-sheet No. 31 of 2017 i.e. Sessions Case No 219 of 2017 pending before Sessions Judge, Aurangabad.

4. Heard learned advocate Mr. C. K. Shinde for the applicants, learned Addl. Public Prosecutor Mr. S. J. Salgare for respondents No.1 and 2, and learned advocate Mr. G. K. Naik Thigale for respondent No.3. Perused the copy of the charge-sheet made available. All the learned advocates have made submissions in support of their respective contentions.

5. It is to be noted that, the relationship of the applicants with the deceased is required to be considered, so also the background. The copy of the FIR vide Crime No. 32 of 2016 for the offence punishable under Section 302, 201 read with 34 of the Indian Penal Code would make it clear that, present applicant No.1 had lodged the report stating that his daughter Pushpa went missing since

06-08-2014. He collected information and reached to the conclusion that his daughter Pushpa has been murdered by Badri Punjaram Dange, Jayabai Dnyaneshwar Ithape and Dnyaneshwar Murlidhar Ithape. Further it appears that, while the investigation in respect of said offence was pending with police, deceased Ravindra was called to Police Station in connection with inquiry. He was called on 01-02-2016. After he had returned from Police Station, he had informed his wife Manisha that, when he, his brother Rameshwar and one Annasaheb were returning back, they met applicant No.2 who is the husband of applicant No.3. According to them, applicant No.2 had made inquiry with respondent No.3 that where he is going. He also made enquiry that, whether Pushpa has returned or not. At later point of time, he had given threat that, if they are unable to search Pushpa then Ravindra should face the proceeding. Thereafter, on 09-02-2016 deceased Ravindra told his wife that, he has been falsely implicated but he would be proceeding towards Lohgaon. He had handed over one mobile phone out of two which were in his possession and it was disclosed that, he would be keeping contact on phone and if she has desire to contact him, she can call him. At about 2.00 p.m. on the next day, that means on 10-02-2016, brother of Ravindra namely Annasaheb came hurriedly and took certain persons in a jeep to Lohgaon. At about 12.00 p.m. they brought the dead body of Ravindra. It was disclosed to Manisha who

is the wife of Ravindra that, due to the harassment given by Pushpa's father, Pushpa's sister and sister's husband had tortured Ravindra, and therefore he committed suicide by hanging himself to a tree. Thereafter, the mobile was searched in which the self recording was revealed. It was stated by Ravindra in two to three clips that, if anything wrong happens to him then Narayan Ithape i.e. applicant No.2 and applicant No.1 (applicant No.2's father-in-law) and the wife of applicant No.2 should be held responsible.

6. In order to see what was recorded by Ravindra, report was called regarding the transcript of what has been stated. It appears that, two recordings were done. In one of the recording it is stated that, applicant No.2 had given threat to Ravindra and in case anything happens then applicants No.1 and 2 should be held responsible. It was also stated that, on Tuesday when he had gone to Lohgaon at that time the said threat was given and again at Bidkin also the threat was given stating that he will not be left alive. If we considered these statements it can be inferred that in view of threat if the thing would have happened then these two persons were required to be held responsible. In other words if Ravindra would have been murdered then applicants No.1 and 2 could have been arrayed as accused on the basis of the said recording. But here in this case it is a suicidal death. The first recording does not show any kind of abetment that is instigation by any of the applicant

leading Ravindra to commit suicide. As regards second recording also almost same allegations have been made. It is stated that, applicant No.2 had given threat that, he would be deemed with each one of them that is from Ravindra's side, they might have kill Pushpa, and thereafter Ravindra was abused. At that time also it is stated that if anything happens to him then applicants No.1 and 2 would be held responsible. These recordings do not amount to abetment.

7. It is to be noted that, applicant No.1 was pursuing legal remedies available to him in respect of missing of his daughter. Later on he had come to the conclusion on the basis of alleged suspicion about Pushpa's husband and the second wife that they might have killed Pushpa, and therefore, he had lodged the FIR. Ravindra was called in the inquiry of said FIR to which applicants No.1 to 3 cannot be held responsible. No statement has been recorded of a witness who was present at the time of alleged threat given by applicants No.1 and 2. There was no hurdle for Ravindra to lodge any kind of report in respect of alleged threat given by applicants No.1 and 2. He was visiting police station. Under such circumstance instead of taking legal recourse it appears that for some or the other reason he committed suicide and he had left the said recording. The said recording, at the cost of repetition does not give clear picture of abetment. Another fact to be noted is that, in

the statement of one Sachin Mote it has come that informant had showed the mobile left by Ravindra. Even for booting of the mobile code number was put she exchanged the code number, and thereafter the mobile contents were seen. According to him there were two to three audio/ video recordings but when he was showing those clips one got deleted. Exactly which was deleted has not been stated by him and then he says that the other two were intact and then the mobile was handed over. Therefore, when the prosecution case appears to have been based upon the said video clipping only, the contents of the same do not attract the ingredients of Section 306 of Indian Penal Code.

8. It would be futile exercise to ask the applicants to face the trial with such kind of material. Even the statements of witnesses are only based upon the information exchanged to them. When the legal course was available to the deceased, he had not adopted and when police were asking him to remain present for the investigation, then it does not infer that the applicants were responsible or in any way abetted or instigated the commission of suicide by the deceased. For the above said reasons we pass following order.

ORDER

- 1) Application is allowed.
- 2) Relief is granted to the applicants in terms of prayer Clause "B".

- 3) Charge sheet No. 31 of 2017 filed in Sessions Case No. 219 of 2017 in the Court of learned Additional Sessions Judge, Aurangabad is quashed.
- 4) Rule is made absolute in those terms.

(SMT. VIBHA KANKANWADI)
JUDGE

(T. V. NALAWADE)
JUDGE

vjg/-.