

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 3791 OF 2016

Bhagwan s/o Ansaram Bodhare,
Age 46 years, Occupation Private Service,
R/o Lane No.12, Gajanan Nagar,
Garkheda, Aurangabad,
Tq. Dist. Aurangabad. ...Applicant

Versus

- 1) The State of Maharashtra,
Through the Police Inspector,
Begampura Police Station,
Aurangabad Tq. Dist. Aurangabad.
- 2) Sachin s/o Haridas Dawange,
Age 24 years, Occupation Private Service,
R/o Plot No.104 Lane No.12, Pundlik
Nagar, Gajanan Nagar, Garkheda,
Aurangabad Tq. Dist. Aurangabad. ...Respondents

Mr. R. S. Deshmukh, Advocate for applicant.
Ms. D. S. Jape, Addl. Public Prosecutor, for respondent No.1/
State.
Mr. D. R. Adhav, Advocate for respondent No.2.

WITH
CRIMINAL APPLICATION NO. 4416 OF 2016

Sujata w/o Nitin Dhakne,
Age 23 years, Occupation Household,
R/o New Hanuman Nagar, Matoshri
Chowk Galli, Aurangabad. ...Applicant

Versus

- 1) The State of Maharashtra,
Through the Police Inspector,

Begampura Police Station,
Aurangabad Tq. Dist. Aurangabad.

- 2) Sachin s/o Haridas Dawange,
Age 24 years, Occupation Private Service,
R/o 104, Pundlik Nagar, Gajanan Nagar,
Garkheda Area, Aurangabad Tq. Dist.
Aurangabad.

...Respondents

Mr. S. S. THombre, Advocate for applicant.

Ms. D. S. Jape, Addl. Public Prosecutor, for respondent No.1/
State.

Mr. D. R. Adhav, Advocate for respondent No.2.

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

DATE : 23-10-2018.

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

1. Rule. Rule made returnable forthwith. Heard both sides for final disposal.
2. Both the applications have been filed by the accused persons for quashing the First Information Report vide Crime No. 85 of 2016, dated 15-05-2016, registered with Begumpura Police Station, Aurangabad Tq. Dist. Aurangabad for the offence punishable under Section 306 read with 34 of the Indian Penal Code.
3. Respondent No.2 / original informant is the son of the deceased. Informant with his father was residing at Plot No. 104, Galli No.12, Garkheda Parisar, Pundlik Nagar, Aurangabad.

Informant is doing the work of light fitting. When he came home after finishing of his work on 16-04-2016, his father told him that the drinking water had come at about 02.00 p.m. and at that time he was sitting on the raised platform in front of house of one Shivaji Bhadak, opposite house of present applicant. At that time applicant No.2 Dhaknebai asked him as to why he is staring at her. His father told that, he is not staring and she should not blame him. After this information was passed to the informant, informant told father that, he should not pay much attention to whatever Dhaknebai has stated and they would talk with her to remove the misunderstanding. The said fact was also told by the deceased to his brother. Brother of deceased contacted applicant Bodhare and called a meeting in the house of the informant on 30-04-2016 at about 12.00 p.m. Accordingly the meeting was organised which was attended by the deceased, his brother, informant and both the present applicants. Brother of the deceased told Bodhare that his tenant Dhaknebai is unnecessarily harassing deceased and thereby defaming him. Bodhare told that, he is working with an advocate and therefore he has knowledge about the law, they can do whatever they want and he is also knowing good persons, thereby he gave threat and thereafter both the applicants left. Since then deceased was under mental tension and he was not talking with anybody. Informant was on his duty on 03-05-2016, at that time he was informed by his aunt

at about 3.25 p.m. that the deceased has been admitted to hospital and therefore he should immediately come. Accordingly informant and his contractor went to hospital. It was told to him that, due to the harassment by both the applicants, deceased had consumed some poisonous substance and was found unconscious below a tree in front of District Superintendent of Police Office. During the treatment deceased expired on 14-05-2016 at about 11.00 a.m., thereafter the First Information Report has been lodged.

4. Both the applicants are contending that, they have been falsely implicated. They have not committed any offence, they never abetted the suicide of the deceased.

5. The application has been objected by respondent No.2 by filing affidavit-in-reply which is nothing but the repetition of his FIR, and therefore the contents are not repeated.

6. Heard learned advocate Mr. R. S. Deshmukh and Mr. S. S. Thombre for respective applicants. Learned Addl. Public Prosecutor Ms. D. S. Jape for respondent No.1 – State and learned advocate Mr. D. R. Adhav appearing for respondent No.2 in both the matters. Perused the papers of investigation. The learned advocate appearing for the applicants relied on ;

- 1) Supreme Court (2015) Vol.9 Page No.639, State of Kerala and others Vs. S. Unnikrishnan Nair and others,

2) 2010 All MR (Cri) 3298 (S.C.) S.S. Chheena Vs. Vijay Kumar Mahajan and Another,

3) AIR 2010 Supreme Court 327, Gangula Mohan Reddy Vs. State of A.P.

4) 2010 (8) S.C.C. 628, Madan Mohan Singh Vs. State of Gujrat and others,

5) 2002 Cri.L.J. 2796, Sanju alias Sanjay Singh Sengar Vs. State of M.P.

7. The plain reading of the FIR would also show that, there was some dispute between Dhaknebai and deceased which is only on the count that Dhaknebai was under impression that, deceased was staring at her. Thereafter, there was an attempt to removal of misunderstanding but it appears that it was not successful. But no action appears to have been taken by Dhaknebai against the deceased. Except the said incident, there is nothing that has been reported in the FIR. He does not say that, thereafter there were talks between both the applicants as well as the deceased. The alleged meeting was organised on 30-04-2016 whereas the act of commission of suicide was on 03-05-2016. What happened in between 30-04-2016 to 03-05-2016 has not been stated.

8. During the course of arguments when police papers were perused, it was found that there was a report by PSI Andhale of

Cyber Crime Branch who had admitted deceased from the place he was found in unconscious state to hospital. It is stated in the report that, a police personnel informed PSI Andhale that a person is lying near a tree and murmuring that he has consumed poisonous substance. His report does not show that any other fact was revealed from him. Deceased was found having two documents. The copies of the same are in the police papers which show that, omnibus statement has been made that both the applicants harassed him by saying that he stares at women who come for fetching water on public water tap and he would be killed. He has stated that, he is under mental tension because of the same and has no option but to commit suicide. Even if his said chit is taken as it is yet it does not bear the date on which any such threat was given. He had the option of knocking the doors of Court of law if it was felt by him that he is being harassed for unnecessary reason. Without taking recourse to the legal provisions if he has taken any kind of extreme step, it cannot be stated that his suicide was abetted by the present applicants. There is no overt act attributed to both the petitioners. In *State of Kerala and others Versus S. Unnikrishnan Nair and Others*, reported in (2015) 9 Supreme Court Cases 639 (Supra) following observations are important ;

“18.....But, regard being had to the suicide note and other concomitant facts that have been unfurled, we are compelled to recapitulate the saying that suicide reflects

a "species of fear". It is a sense of defeat that corrodes the inner soul and destroys the will power and forces one to abandon one's own responsibility. To think of self-annihilation because of something which is disagreeable or intolerable or unbearable, especially in a situation where one is required to perform public duty, has to be regarded as a non-valiant attitude that is scared of the immediate calamity or self-perceived consequence."

In this case also the deceased had left a suicide note blaming the respondents No.1 and 2 therein for compelling him to commit suicide. In that case also the suicide note had not really stated about any continuous conduct of harassment. Under such circumstance the FIR was quashed and set aside.

9. Following observations from *2010 ALL MR (Cri) 3298 (S.C.) (S.S.Chhenna Vs. Vijay Kumar Mahajan and Another)* are important ;

"The word "suicide" in itself is nowhere defined in the Penal Code, however its meaning and import is well known and requires no explanation. "Sui" means "self" and "cide" means "killing", thus implying an act of self-killing. In short, a person committing suicide must commit it by himself, irrespective of the means employed by him in achieving his object of killing himself. 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.”

Note was taken in respect of deceased therein that, he was undoubtedly hypersensitive to ordinary petulance, discord and differences which happen in day-to-day life and therefore his act of suicide was not considered as abetment. Similar view was taken in, *AIR 2010 Supreme Court 327. In Madan Mohan Singh Versus State of Gujarat and Another*, reported in *2010 (8) Supreme Court Cases 628*, it was observed that, if the prosecution was allowed to continue on basis of such absurd allegations (in the suicide note) it would be difficult for every superior officer to work. Thus, merely mentioning of name and blaming someone for suicide itself is not sufficient to attract Section 306 of Indian Penal Code.

10. Statements of various witnesses residing in the neighbourhood would also show that, there used to be some dispute between Dhaknebai and deceased but except that dispute nobody else is saying that such dispute between them was continuous or a daily affair which would have caused such kind of mental tension to the

deceased to force him to commit suicide. Therefore, on the basis of available evidence it would be prejudicial to the applicants to face the trial, and therefore case is made out for invoking the inherent powers of this Court under Section 482 of Code of Criminal Procedure. This is a fit case where the principles laid down in, *State of Haryana and others Vs. Ch. Bhajan Lal and others*, reported in *AIR 1992 Supreme Court 604*, should be made applicable. Hence following order.

ORDER

- 1) Both the applications are allowed.
- 2) Relief is granted in terms of prayer clause (C) and (B) respectively.
- 3) Rule is made absolute in those terms.

(SMT. VIBHA KANKANWADI)
JUDGE

(T. V. NALAWADE)
JUDGE

vjg/-.