

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2428 OF 2018

- 1) Shravan s/o Vishwas Deshpande,
Age 23 years, Occupation Student,
R/o N-05, CIDCO, Aurangabad
Dist. Aurangabad.
- 2) Sandip s/o Laxman Bhadhke,
Age 25 years, Occupation Student,
R/o E-118/10, Shivajinagar, Aurangabad
Dist. Aurangabad.
- 3) Pratik s/o Kakasaheb Kakade,
Age 22 years, Occupation Student,
R/o Harsool, Aurangabad.
Dist. Aurangabad.
- 4) Sagar s/o Prakash Mehta,
Age 22 years, Occupation Student,
R/o Partur Tq. Partur
Dist. Jalna.

...Applicants

Versus

- 1) The State of Maharashtra,
Through The Incharge Police
Station Officer, Begumpura Police Station,
Dist. Aurangabad.
- 2) Umesh s/o Shankarrao Kopurwad,
Age 22 years, Occupation Student,
R/o Near Court, Government Quarters,
Majalgaon Tq. Majalgaon Dist. Beed.

...Respondents

Mr. G. A. Kulkarni, Advocate for applicants.

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

Mr. S. R. Palnitkar, Advocate (Appointed) for respondent No.2.

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

DATE : 02-11-2018.

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 charge-sheet itself as the charge-sheet is filed.
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 for invoking inherent powers of this Court under Section 482 of Code of Criminal Procedure, by the original accused persons for quashing and setting aside the First Information Report (FIR) vide C. R. No. 199 of 2017 registered with Begampura Police Station, Aurangabad for the offence punishable under Section 306, 506 r/w. 34 of Indian Penal Code.
6. Respondent No. 1 – First Informant has come with a case that he was prosecuting his studies in post graduation course and he has residing the room in the hostel of Dr. Babasaheb Ambedkar

Marathwada University, Aurangabad. His elder brother Ganesh was also prosecuting his studies in M.Sc. Computer Science course first year. Ganesh was sharing hostel accommodation with respondent No.2. There were other three students also accommodated in the same room. Respondent No.2 and his another room-mate went to attend the classes on 12th September, 2017. Room-mate Rahul also went to attend the class in the University. Another room-mate Walmik had gone to his native place. Thus, Ganesh was alone in the hostel room. Respondent No.2 returned at about 1.30 p. m. to hostel room and found that room was locked from inside. He knocked the door. There was no response from inside, so he peeped from the door of the room and found that bed sheet was tied to ceiling fan of the room. He apprehended untoward incident therefore called his friends. The door of the room was broke open. Respondent No. 2 found that his brother Ganesh had hanged himself. His body was pulled down and taken to the Government Medical College, Aurangabad. Doctor attached to the hospital declared him dead. The investigating agency was set in motion and on search of the room, a suicide note was found.

7. It has been further stated in the FIR that after performing last rituals of the brother, when respondent No.2 checked his mobile, he found *What's App* message and it was copy of the suicide note. It was stated in the suicide note that one girl by name Renuka

Gawarkar was continuously harassing Ganesh since about three years prior to his death. Ganesh had resisted the girl, but girl was insisting upon talking with him. One Jyoti Tangade had established contact on *Facebook* account of Ganesh. Ganesh was under impression that he was talking with Jyoti but in reality, it was other girl Renuka, who was using name of Jyoti. When he came to know this reality, Ganesh stopped conversation with the said girl. Renuka then informed her friend Snehal and in turn, she informed to her friend Akshay Gaikwad and Akshay Gaikwad gave threats of life to Ganesh. It is also stated that Ganesh was harassed on account that he was resident of Nanded. Then it is stated that some boys taking education in the same department, wherein Ganesh was prosecuting his studies, were chasing him. Ganesh had made inquiry about chasing those boys at her instance with Renuka, at that time she gave threats to him. Ganesh was under fear even for attending the classes. Ultimately Ganesh could not bear mental harassment and committed suicide. It has been stated that accused persons are responsible for the death of Ganesh.

8. Heard learned Advocate Mr. Govind Kulkarni for applicants, learned A. P. P. Ms. D. S. Jape for respondent No. 1 and learned Advocate Mr. S. R. Palnitkar for respondent No. 2. Perused the police papers.

9. Mr. Kulkarni, learned Advocate for applicants has vehemently submitted that even if the contents of the report as well as suicide note are taken as it is, the only allegation is in the nature that one girl Renuka created fake account in the name of Jyoti and she was insisting Ganesh to establish contact with her. He then submitted that with the available material with investigating agency offence punishable under Sections 306, 506 read with Section 34 of the Indian Penal Code is not at all attracted. No role is attributed to the present applicants. Vague statement is made in the note also that applicants were the persons who chased deceased. No overt act is attributed to them. It does not amount to abatement.

10. Per contra, it has been submitted on behalf of prosecution as well as respondent No. 2 that names of the present applicant has been specifically taken in the suicide note. Present applicants were helping Renuka in her design to harass Ganesh. There is material with prosecution which would show the involvement of the applicants in the crime. Therefore, FIR can not be quashed and set aside.

11. It is to be noted that the FIR has been filed by the brother of the deceased. Deceased and informant were staying together in one room; however, it appears from the FIR that he was not even knowing what is happening in the life of his brother. It also appears that deceased has not even shared his fear or apprehension with

brother. Informant does not say that when his brother has informed him about the things happening in his life, then he had tried to solve the problem. Perusal of FIR would show that deceased was chatting with one Jyoti, but later on it was transpired to him that she is not Jyoti, but Renuka. Renuka had opened fake account with *Facebook* in the name of Jyoti. Then deceased had no intention to talk to her, but Renuka was insisting. It appears from the suicide note, that deceased was under impression that Renuka had sent some boys to assault him. He has taken the names of present applicants. Except reference to their names, there is nothing in the suicide note. He has not stated that any of the applicant had ever talked to him or threatened him. Mere mentioning of their names does not amount to 'abatement'. No overt act is attributed to any of the applicants.

12. In ***Madan Mohan Singh .vs. 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."

13. 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”.

14. Here in this case, no such activity has taken place. Statement of witnesses as well as suicide note does not state that there was any type of conversation between present applicant and deceased. Statement of witnesses does not reveal any evidence which would show that because of particular acts of applicants, deceased started apprehending something. Very vague statement is made in the suicide note also. How the deceased was knowing present applicants is also a question. Whatever was alleged to be going on, was between deceased and said Renuka. How applicants were connected to that? It is pertinent to note that investigation is complete and charge-sheet is also filed. Perusal of entire charge-sheet would show that there is absolutely no material against present applicants, even

if we take the contents of the suicide note as it is.

15. Learned Advocate for the applicants was justified in placing reliance 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**. Considering all the above referred facts, we are of the opinion that case is made out by the applicants to exercise powers of this Court under Section 482 of Code of Criminal Procedure. It would be futile exercise to ask applicants to face the trial with such kind of evidence alleged against them. Hence, following order :

ORDER

1. Application is allowed.
2. Relief is granted in terms of prayer clause (C).
3. Amendment be carried out immediately to include prayer for quashing charge-sheet.
4. The case itself is also quashed and set-aside to the extent of applicants only.
5. Rule made absolute in afore-said terms.

(SMT. VIBHA KANKANWADI)
JUDGE

(T. V. NALAWADE)
JUDGE