

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2661 OF 2018

Deepraj s/o Subhash Waghela,
Age 33 years, Occupation Private Service,
R/o Prabhudhanagar, Nagardevale,
Alamgir, Bhingar, Tq. Dist. Ahmednagar. ...Applicant

Versus

- 1) The State of Maharashtra,
Through its Investigation officer,
Bhingar Camp Police Station,
Ahmednagar Tq. Dist. Ahmednagar.
- 2) Dipak s/o Omprakash Kandare,
Age 30 years, Occupation Gym Trainer,
R/o Nagar Club, Shahu Maharaj
Housing Society, House No.29,
Bhingar Tekadi, Bhingar
Tq. Dist. Ahmednagar. ...Respondents

Mr. N. B. Narwade, Advocate for applicant.
Mr. R. V. Dasalkar, Addl. Public Prosecutor, for respondent
No.1 / State.
Mr. S. A. Deshmukh, Advocate for respondent No.2.

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

DATE : 29-11-2018.

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

1. Rule. Rule made returnable forthwith. By consent, heard both the sides for final disposal.
2. 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. 125 of 2018, registered with Bhimnagar Camp Police Station, Ahmednagar, Dist. Ahmednagar for the offences punishable under Section 306 read with 34 of the Indian Penal Code.

3. Prosecution has come with a case that FIR has been lodged by respondent No. 2 – brother of deceased Mahesh Omprakash Kandare. He has contended that he resides with parents and Mahesh. His father was watchman and brother used to do labour work. Applicant resides in the opposite lane. Applicant and one Abhilekh Dharmendra Waghela had unnecessarily abused and assaulted Mahesh at about 7.30 p. m. on 20-03-2018, when deceased was walking near Bhingar Tekadi road. He was threatened with dire consequences. Mahesh had lodged report with police station in respect of said incident on the same day at 22.25 hrs. Father of informant and deceased received mental shock because of assault to Mahesh. He suffered attack on 08-04-2018 around 9.30 a. m. He was therefore admitted in hospital with Dhoot Hospital around 6.30 p. m. He was then shifted to Booth Hospital, Ahmednagar for better treatment on 11-04-2018. Informant was stopped by Abhilekh Waghela and his three friends around 8.30 p. m. on 11-04-2018, when he was taking tiffin for his father in hospital. They gave threat to him on the count that Mahesh has lodged report. Informant did

not give report about that incident as he was give tiffin to his father. Mahesh came to hospital on 15-04-2018 around 9.30 p. m. He was under tension as he was given threat by Subhash Nanaji Waghela. He informed the said fact to informant. Informant advised him and promised to look at the matter, after recovery of father. Informant went home by asking Mahesh to stay with father. Their maternal uncle re-leaved Mahesh on next day morning. There was no talk between informant and Mahesh on 16-04-2018. Mahesh was at home whole day. Informant found him sleeping in the house around 9.30 p. m. Informant took dinner and went to hospital around 10.15 p. m. He received phone call from maternal uncle around 10.45 p. m. informing him that Mahesh has committed suicide by hanging. Mahesh was taken to Shreedeeep Hospital, but was declared dead. His last rites were over, but informant's mental condition was not proper. He then gave FIR on 27-04-2018, stating that Mahesh had committed suicide due to the harassmt by applicant and Abhilekh.

4. The applicant has contended that, he has not committed any offence. There is no direct or indirect evidence showing that in any way he had abated the commission of suicide by Mahesh. There is inordinate delay in lodging the FIR, which has not been properly explained. FIR has been lodged with malafide intention to harass him. The N. C. was given by Mahesh against him on 20-03-2018 and he has committed suicide on 16-03-2018. There is no connection

between the incidents. Applicant himself was in deep grief as his sister had passed away on 09-03-2018. It was impossible for him to instigate Mahesh 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.

5. Heard learned Advocate Mr. N. B. Narwade appearing on behalf of applicant, learned Addl. Public Prosecutor Mr. R. V. Dasalkar for respondent No. 1- State and learned Advocate Mr. S. A. Deshmukh for respondent No. 2. Perused the police papers.

6. The first and the foremost fact that is required to be noted is that as per the FIR some incident had taken place on 20-03-2018 with deceased Mahesh involving present applicant. Mahesh had taken legal action in respect of the same. Thereafter informant says that, he was threatened by Abhilekh Waghela and his three friends on 11-04-2018. Present applicant was not at all involved in that incident. Further on 15-04-2018 it was informed by Mahesh to Deepak that one Subhash Nanji Waghela gave him threat but he has not stated that it was at the instance of present applicant. Though it appears that, Subhash is the father of present applicant, no inference can be drawn in respect of the same. It is to be noted that, the complaint which was given by Mahesh on 20-03-2018

against present applicant and Abhilekh was non-cognizable. Except the same no further action was taken by Mahesh against applicant and Abhilekh. Then why the other side would tried to give threats to Mahesh is a question. Another fact that is further required to be considered is that, on 15-04-2018 it is alleged that, threat was given by Subhash but the suicide is stated to have been committed on 16-04-2018. What happened in between 15-04-2018 to 16-04-2018 that is for about 24 hours has not been told. Further it appears from the complaint that, through out the day Mahesh was in his house. If the present applicant had not contacted Mahesh then how he could have stated to have abetted the commission of the suicide. For merely lodging a non-cognizable offence against him it is hard to believe that, the Mahesh would have been harassed to such an extent to drive him to commit suicide. Further there is delay in lodging the FIR though it has been tried to be explained by the informant. Suicide was committed on 16-04-2018 and the FIR is lodged on 27-04-2018. Definitely after the suicide would have been reported to the police, police would have come and A.D. would have been registered under Section 174 of Cr.P.C. It appears that, during the course of inquiry some statements would have been recorded which have not been produced by the prosecution for perusal. Taking into consideration the delay, the possibility of implication cannot be ruled out. No specific act immediately prior to the suicide

has been attributed to the applicant. Therefore, there is no case made out for causing abetment.

7. 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".

8. 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. Application is allowed.
2. Relief is granted in terms of prayer Clause 'B'.
3. Rule made absolute in afore-said terms.
4. Fees of the learned appointed counsel is quantified @ of Rs.3000/- (three thousand only) which is to be paid through High Court Legal Services Sub-Committee, Aurangabad.

(SMT. VIBHA KANKANWADI)
JUDGE

(T. V. NALAWADE)
JUDGE

vjg/-.