

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

909 CRIMINAL WRIT PETITION NO. 1400 OF 2016

GAJANAN S/O TULSHIRAM MORE

VERSUS

THE STATE OF MAHARASHTR

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Advocate for Petitioner : Mr. S.S.Gangakhedkar

APP for Respondent : Mr. B.A.Shinde

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CORAM : K.L.WADANE, J.

DATED : 6th February, 2018

O R D E R :

Rule. Rule returnable forthwith. With the consent of the learned counsel for the parties, the petition is taken up for final hearing. Heard learned counsel for both sides.

2. In this petition, the petitioner challenges the impugned order, dated 3.7.2015, below Exh.18, passed by the learned Additional Sessions Judge, Basmath. By the said order, application filed by the petitioner for discharge from the offence punishable under Section 306 r/w 34 of the Indian Penal Code is dismissed.

3. One Smt. Radha Balaji Muley, widow of the complainant lodged complaint with the police station, Basmath alleging that the petitioner and other accused persons were responsible for commission of suicide by her husband. The allegations of the prosecution are that deceased Balaji had borrowed loan from the Basic Finance Company, Nanded to the tune of Rs.18,000/-. Out of the said amount, Rs. 13,000/- were handed over to another accused Sainath Agarwal by way of hand way. As per the prosecution story, deceased Balaji used to pay monthly installment towards loan availed from the Basic Finance Company. On 30.6.2011 deceased Balaji had been to the house of Sainath Agarwal and requested him to return the amount of hand loan, since loan installment was scheduled on 4.7.2011. It is further alleged that petitioner along with Sainath had abused and physically assaulted deceased and warned him that he should not go to the house of Sainath for hand loan, otherwise they will kill him.

4. Said incident was allegedly witnessed by one Hiaraman Muley. It is further alleged that due to insulting treatment given by Sainath and his family, deceased Balaji committed suicide on 1.7.2011 by setting himself on fire.

5. With the help of learned counsel appearing for the parties, I have gone through the relevant record. From the record, it appears that the wife of deceased namely Radha lodged complaint to the police station on 8.7.2011, wherein it has been stated that on 30.6.2011 deceased Balaji had been to the house of Sainath for demanding the amount which deceased had given to Saianth as hand loan. That time, Sainath and his family assaulted Balaji and threatened to kill him. It is further alleged that due to insulting treatment by accused Sainath and his family members, deceased Balaji committed suicide on 1.7.2011 at about 6.00 a.m.

6. There are two dying declarations of deceased Balaji recorded by police and the

Executive Magistrate. Both are dated 1.7.2011. In the dying declaration recorded by police, allegations seem to be against Sainath and his family. Similarly, in the second dying declaration recorded by the Executive Magistrate, allegations are against Sainath. Sainath was not refunding the amount which was paid to him and when amount was demanded from Sainath, he and his family members assaulted the deceased. So, from the contents of the complaint as well as the two dying declarations, there is absolutely no evidence against the petitioner to connect with the alleged crime.

7. Learned A.P.P. points out the statements of witnesses namely Shiwaji Muley and Hiranman Muley. Both these witnesses have stated that in the month of January, 2011 i.e. before about six months of the incident, deceased disclosed with them that accused Sainath is not repaying the amount of block insurance. Sainath instructed the deceased to repay the installment. Thereafter,

after about 2 days, the agent of the Finance Company namely More i.e. present petitioner instructed deceased to pay the installment, otherwise he will take away the tins on the house of the complainant. Same is the version of another witness Shiwaji Muley.

8. From the supplementary statement of Bhanudas Tagade, it appears that in the month of January, 2011 the present petitioner instructed the deceased to repay the installment otherwise he will take away the tins from his house. From the statement of above referred witnesses and other witnesses, it appears that petitioner is agent of the Finance Company and he was insisting deceased Balaji to repay the amount. The statements of witnesses cannot be said to be the evidence of the allegation of abetment to Balaji to commit suicide. The act of petitioner appears to be in consonance to the duty with his Finance Company, but, at no stretch of imagination, it can be said that petitioner was insisting Balaji to repay the

amount with intent to lead him to commit suicide.

9. Mr. Gangakhedkar, learned counsel points out the order passed by this Court in Criminal Writ Petition No. 991 of 2015, wherein this Court (Coram : N.W.Sambre, J.) in its order dated 21.8.2015 observed thus : -

" 9. With the assistance, I have perused the charge-sheet filed in the petition and considered the rival submissions made by respective parties. The offence punishable under Section 306 of the Indian Penal Code is punishable with imprisonment of either description for a term, which may extend to ten years and also fine. It is required to be noted that it has to be established that there is an instigation to commit the offence or suicide and there has to be a conspiracy in which the petitioners have to be engaged to commit such an offence and should have aided the commission of offence. So far as the case in hand is concerned, the important piece of evidence that is required to be considered is the statement of Hiranman Mule. The statement of said witness is required to be read as a whole and perusal thereof depicts a specific attribution against Sainath Agrawal, accused no.1 about non-repayment of installment of loan taken from Basic Finance Company, Nanded though deceased Balaji has paid Rs.13,000/- to accused no.1, Sainath. Hiranman then narrates that the

petitioners have abused deceased Balaji, which according to him, is based on the hearsay evidence, which was neither witnessed nor directly heard by him. "

10. With the above observations, the other accused persons i.e. relatives of main accused Sainath have been discharged, against which there are allegations to some extent. The case of the petitioner is on better footing. Allegation against the petitioner for insistence to pay the installment was prior to six months of the incident. It is not the fact that one or two days before the incident the petitioner had threatened the deceased to take away the tins on the house of the deceased.

11. Looking to the entire papers of investigation, I am of the opinion that there is no sufficient material against the petitioner to frame the charge. Therefore, Criminal Writ Petition needs to be allowed. Accordingly, it is allowed. The order, dated 3.7.2015, below Exh.18, in Sessions Case No. 14 of 2013, passed by the

learned Additional Sessions Judge, Basmath is
quashed and set aside to the extent of petitioner.

12. Criminal Writ Petition is disposed of. No
costs.

(K.L.WADANE, J.)

dbm