IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.435 OF 2016

A.R. Satish
Age – 33 yrs.,
Occupation – Service,
R/at. Jai Laxmi Co-op.
Hsg. Soc., St.Anthony Road,
Poisar, Kandivali (W)
Mumbai – 500 067 .. Applicant
Vs.
State of Maharashtra
(Through Kalamboli Police Station) .. Respondent

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Mr.Niranjan Mundargi a/w. Mr.Mayur Bhojwani and Mr.Anees A. Patel i/b. M/s.Manilal Kher Ambalal & Co., Advocate for the Applicant.
Mr.A.R. Satish, Applicant, present.
Mr.A.R. Kapadnis, APP for Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

RESERVED ON : FEBRUARY 9, 2018.
DELIVERED ON : APRIL 10, 2018.

JUDGMENT :

The applicant is arraigned as an accused in the proceedings arising out of C.R.No.I-451 of 2007, registered with Kalamboli Poilce Station for offences punishable under Section 306 read with 511 of the Indian Penal Code (IPC). On completing the investigation, the charge-sheet was filed before the competent Court and the proceedings were numbered as Regular Criminal Case No.227 of 2008. The case was then committed to the Court of Sessions and numbered as Sessions Case No.31 of 2014. The applicant is aggrieved by the order dated 6thMay, 2016, passed by the Sessions Court Raigad – Alibag, rejecting the application for discharge preferred by the applicant before the said Court vide Exhibit – 9.

2 The brief facts of the prosecution case are as follows:

(a) The First Information Report (FIR) was registered at the instance of Shri Shankar Pandian Subayya Dever. The statement of the complainant was recorded on 13th October, 2007. It is alleged that the complainant is employed at Bharat Petroleum Corporation since 15 years. He is in habit of consuming liquor since long. By using his credit card of ABN Ambro Bank, he had made purchases. He is also having credit cards of ABN Ambro bank, City Bank, ICICI Bank. The complainant had purchased gold ornaments of Rs.75,000/- by using credit card of City Bank for his friend Madhavrao. He was frequently making use of his credit cards for liquor.

(b) one person, named, Satish visited his house and informed him that he has come from ICICI Bank. He insisted that the complainant should make payment of dues towards the credit cards. He threatened that in case the money is not paid, household articles from his house will be taken away. Satish used to give him calls frequently on his mobile phone and the phone at his company office and used to threaten him for paying said dues. Since he was disturbed, the complainant had consumed sleeping pills in the month of April and rat kill poison for which he was treated in the hospital at New Panvel. At that time, due to oversight he informed that he had consumed the medicine/poison on account of family reason.

(c) On 6th October, 2007, when the complainant visited his office, he was informed that there was a phone call for him from one Satish at the instance of Citi Bank. Thereafter, he again received a call on his mobile phone. He was informed that the caller had left the ICICI Bank and had joined Citi Bank. He was also informed that an amount of Rs.1,30,000/- is due and payable by him to the Citi Bank. The complainant informed the caller that he has paid entire dues of the Bank, however, he was informed that on verification of the file, it was noticed that the dues are to be paid to the Bank by him. At that time, the complainant was threatened by the accused stating that he will be traced and will be handpicked for non payment of the amount. Due to that, the complainant was under mental pressure.

(d) Due to fear, the complainant did not join his duty on 8th October, 2007. He went to his room at Panvel and, thereafter, to the dispensary of Dr.Wani. He told the doctor that he is suffering from cough and cold and obtained medicines from him. He also complained that he is not getting sufficient sleep and hence, doctor prescribed ten sleeping pills and advised him to take one pill at night. Complainant used the said prescription for purchasing sleeping pills at three different medical stores and purchased 30 sleeping pills. Thereafter, he consumed country liquor (Tadi) at the Tadi Shop and walked towards Diva side by Panvel railway line. He sat near one nullah on the side of the railway line and consumed 30 sleeping tablets along with water. Thereafter, he started walking towards Kalamboli, and on the way, he met his brother-in-law Venkatesh, who admitted him at MGM Hospital. The FIR was registered for the offence punishable under Sections 306 and 511 IPC.

3 Applicant preferred an application for discharge before the Sessions Court vide Exhibit-9. The said application was rejected by order dated 6th May, 2016. Hence, the applicant has preferred this Revision Application challenging the said order.

4 Mr.Mundergi, Learned advocate for the applicant submitted that the charge under Section 306 read with 511 of IPC is not made out against the applicant. There is no evidence to frame charge for the said offences. Even if the allegations made in the FIR and the statements of witnesses are accepted tobe true, there is no justification to prosecute the applicant for the said offence. It is further submitted that the statements recorded by the investigating agency and the documents produced before the Court do not disclose that there are suspicious circumstances against the applicant to frame charge. Trial Court has committed an error in holding that there was grave suspicion against the

applicant that due to his alleged action, the victim was forced to attempt suicide. The charge-sheet does not discloses the essential ingredients of the offence alleged therein. It is further submitted that the complainant in his statement has stated that in April 2007, he attempted to commit suicide for the first time by consuming sleeping pills along with rat poison and was hospitalized and treated for the same. It is submitted that the complainant as per his own version is alcoholic and having suicidal tendencies. It is submitted that the Sessions Court failed to appreciate that nobody would abet an attempt to commit suicide. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. There is no material on record which directly or indirectly implicate the applicant without any positive act on his part to instigate or aid in committing suicide and, therefore, the prosecution against the applicant is not sustainable. He further submitted that the intention of the legislature is clear that there has to be a clear *means rea* to commit the offence under Section 306 of IPC and upon scrutiny of facts of this case, neither of the ingredients of abetment are directed towards the applicant. Due to lack of any credible material on record against the applicant, the prosecution cannot continue. The investigating authority has mechanically applied Section 511 of the IPC. There cannot be any offence of attempting to abet suicide and, therefore, the entire prosecution stands vitiated.

5 Learned counsel relied upon the following decisions:

(i) ***S.S. Chheena Vs. Vijay Kumar Mahajan & Anr.***[1]***;***

(ii) ***M. Mohan Vs. Velmurugan & Anr.***[2]***, decided by the Supreme Court;***

(iii) ***Madan Mohan Singh Vs. State of Gujarat & Anr.***[3]

(iv) ***Sanju Alias Sanjay Singh Sengar Vs. State of M.P.***[4]

6 Learned APP submitted that there was sufficient material before the trial Court to proceed against the applicant. The statement of the complainant and other witnesses clearly establish the case for the offence alleged against the applicant. The statement of witnesses reveal that the complainant had obtained credit facility from the Citi Bank and at the instance of the said bank, the applicant–accused had threatened the complainant of dire consequences on account of non payment of the dues of the Bank. The applicant–accused was constantly

1 (2010)12 SCC 190
2 Appeal No.611 of 2011, dated 01.03.2011
3 (2010) 8 SCC 628
4 (2002) 5 SCC 371

telephoning the complainant and was intimidating him for non-payment of the alleged dues to the Bank. It is further submitted that at the stage of framing of charge, *prima facie* case is required to be made out against the accused. The material on record makes out a case for framing of charge. At the stage of framing charge, the Court cannot conduct a roving inquiry and / or appreciate the evidence on record. The submissions advanced by the applicant–accused may be considered during trial. The statement of the complainant, the statements of the witnesses and the complainant and as per law clearly depicts instigation and harassment meted out to the complainant, which is properly made to reason to suicide but luckily the complainant had survived and, therefore, the accused is not entitled for discharge. The complainant was disturbed on account of constant harassment caused to him by the accused. The statement of the wife of the complainant as well as borther-in-law supports the prosecution case. Complainant had attempted suicide only on account of the mental torture caused by the accused. Therefore, the prosecution has made out a case for framing of charge un der Sections 306 and 511 of IPC.

7 After hearing both sides and on perusal of the

documents on record in the form of charge-sheet, it appears that the accused was initially working with ICICI Bank and the complainant had utilized credit card facility of the said bank, and, was defaulter of the amount due to the said bank. According to the complainant, on the earlier occasion on account of the raids for recovery of dues of ICICI Bank and intimidation he had consumed sleeping pills and rat poison and he was admitted in the hospital for treatment. The statement of the complainant further discloses that during the course of investigation, in relation to the earlier incident due to oversight he had stated that he did so on account of family reasons. Complainant also stated that on the earlier occasion also he was threatened by the accused and, thereafter, the accused shifted to the Citi Bank. Prosecution case is that, the complainant has also used the credit card facility of Citi Bank and the said bank claimed that there were dues of Rs.1,30,000/- towards the utilization of the credit card of the said Bank which were demanded by the accused. For the purpose of recovery, accused was threatened that he will be handpicked from the premises in case he does not make payment, and, therefore, he was under fear and was required to take a drastic step of consuming sleeping pills. The statement also indicate that he had approached Dr.Wani and complained of cough and cold and had also stated that he is not getting proper sleep and, hence, Dr.Wani had prescribed ten sleeping pills to him. He purchased the tablets from three different medical stores.

8 The statement of the wife of the complainant Smt.Yangama Devar recorded on 14th October, 2007, mentions that three months ago a person named Satish had visited their residence and threatened of dire consequences in case the payment in relation to the credit card of ICICI Bank is not made. The said person then kept on calling at their residence and demanded the money. She further stated that her husband had informed her that since last 10 to 12 days the said person had telephoned him at office and insisted for payment of installments and due to that he was disturbed. Statement of Vyantakesh D. Pathros dated 8th October, 2007 indicate that he is brother-in-law of the complainant. The complainant informed him that due to oversight he had consumed excessive medicine. He was taken to the hospital for treatment. In his supplementary statement dated 14th October, 2007, however, he has stated that on inquiry being made with the complainant, he informed that the reason for consuming the sleeping pills is that he was under tension on

account of harassment caused by the accused for non-payment of the dues towards the credit card of Citi Bank. The statement of Dr.Wani refers to the treatment given to the complainant and the medicine prescribed by him. The statement of Dilip Kumar Jain mentions that he is the proprietor of jewellery shop. He stated that he is having a shop of jewellery at New Panvel and that the complainant and his friend had visited his shop one year ago for purchasing jewellery for his friend. The jewellery was sold and the balance amount of Rs.25,000/- towards the purchase is still due. He further stated that the complainant and his wife had also visited the shop and made purchases worth Rs.1,30,000/- by using credit card. The amount of Rs.75,000/- was paid towards the said purchase and the balance amount of Rs.40,000/- is still due from them. The said shopkeeper tried to approach them for recovery of money but could not succeed.

9 The prosecution is thus, relying upon the evidence in the nature of the statement of the complainant and other witnesses referred to hereinaove. Assuming that the version of the said witnesses including the complainant is true, it cannot be said that the prosecution has made out a case for framing charge against the applicant. The prosecution is trying to urge that the

victim had attempted suicide. Since the suicide was attempted on account of alleged harassment, coercion, threat etc., the accused is responsible for instigating the victim for such attempt. Hence, there was an attempt to commit suicide and since the complainant was abeted to commit such act with the aid of Section 511 of IPC, the applicant is being prosecuted. First of all, the material on record taken as it is, does not in any manner fulfill the requirement of abetment to the victim to commit the alleged act. Accused was acting at the instance of the bank for recovery of the dues of the bank. Admittedly, the victim had utilized the credit card of the Citi Bank. The bank was, thus, trying to recover an amount of Rs.1,30,000/-. Demanding the money from the complainant and assuming that he was threatened of dire consequences is in no manner can constitute an act of abetment. The Sessions Court has committed an error while rejecting the application by observing that there is grave suspicion against the accused that due to his alleged acts, the victim was forced to commit suicide.

10 In the case of ***S.C. Chheena (Supra)***, the Apex Court has 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 case decided by this Court is clear that in order to convict a person under Section 306 of 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. Applying the ratio laid down in the said decision, it will have to be held that even if the act committed by the victim would have been accomplished, it would not have been an offence under Section 306 of IPC and the question of invoking Section 511 with Section 306 does not arise. In the present case, it is also apparent that the victim had earlier attempted suicide on account of the demands towards the payment of dues of credit card of ICICI Bank. The complainant's statement also indicate that he is habitually consuming liquor and even on the date of incident he had consumed liquor followed by sleeping pills of Trica company. It appears that the victim is hypersensitive to ordinary discord and differences. In the decision referred above, the Supreme Court has taken into consideration similar conduct of the victim and has observed that, human sensitivity of each individual differs from the other. Different people behave differently in the same situation. In another decision in the case of ***M.Mohan (Supra),*** decided by the Supreme Court, similar question was considered by the Court. It was observed that, the intention of legislature and the ratio of cases decided by Court, are clear that, in order to convict a person under Section 306 IPC there has to be clear *mens rea* to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide. In the case of ***Madan Mohan Singh (Supra)***, the Supreme Court has observed that in order to bring out an offence under Section 306 of IPC, specific abetment, as contemplated by Section 107 of IPC on the part of the accused with an intention to bring out the suicide of a person concern as a result of that the abatement 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 of IPC. In the case of ***Sanju @ Sanjay Singh Sengar (Supra)***, it is observed that Section 107 of IPC define abetment to mean that a person abets the doing of a thing, if he firstly instigates a person to do that thing; or secondly, engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or intentionally aids, by any act or illegal omission, the doing of that thing.

11 In the light of the observations of the Supreme Court in the aforesaid decision, applying the said ratio in the facts of this case, it cannot be said that there was any abetment on the part of the accused as required under Section 306 of IPC. In absence of any evidence of abetment, it would be absurd to prosecute the accused by invoking Section 511 of the IPC. "Abetment" has been defined under Section 107 of the Code. It would be appropriate to reproduce the said provision, which reads as under:

> "***Section 107 in The Indian Penal Code***
>
> *107 Abetment of a thing.—A person abets the doing of a thing, who—*
>
> *First — Instigates any person to do that thing; or*
>
> *Secondly. —Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or*
> *Thirdly — Intentionally aids, by any act or illegal omission,*

the doing of that thing.

Explanation 1.—A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Illustration

A, a public officer, is authorized by a warrant from a Court of Justice to apprehend Z. B, knowing that fact and also that C is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C.

Explanation 2.—Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitate the commission thereof, is said to aid the doing of that act.”

12 On analysing the element of word “abetment”, as contemplated under Section 107 of IPC, by no stretch of imagination it can be said that, ingredients of the abetment are attracted on the basis of statement of the complainant and other witnesses. There should be intention to provoke, instigate or encourage doing of an act by the accused.

13 In the present case, the victim has survived and thereby it was construed that he had attempted suicide. Such an attempt constitute an offence under Section 309 of IPC against the person who commits such an act. No prosecution was launched against the complainant for the said offence. Shockingly, the prosecution has been launched against the applicant with the aid of Section 511 of the IPC. It would be necessary to embark upon the said provision, which reads as under:

> ***511 Punishment for attempting to commit offences punishable with imprisonment for life or other imprisonment.***—*Whoever attempts to commit an offence punishable by this Code with 1[imprisonment for life] or imprisonment, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall, where no express provision is made by this Code for the punishment of such attempt, be punished with 2[imprisonment of any description provided for the offence, for a term which may extend to one-half of the imprisonment for life or, as the case may be, one-half of the longest term of imprisonment provided for that offence], or with such fine as is provided for the offence, or with both.*
>
> *Illustrations*
>
> *(a) A makes an attempt to steal some jewels by breaking open a box, and finds after so opening the box, that there is no jewel in it. He has done an act towards the*

commission of theft, and therefore is guilty under this section.

(b) A makes an attempt to pick the pocket of Z by thrusting his hand into Z's pocket. A fails in the attempt in consequence of Z's having nothing in his pocket. A is guilty under this section.

Classification of Offence. – The offence under this section is, according as the offence is cognizable or non-cognizable; according as the offence attempted is bailable or non-bailable, non-compoundable and triable by the Court by which the offence attempted is triable."

14 The following conditions are required to constitute to justify application of Section 511 of IPC.

(a) The offender should have done some act towards commission of the main offence;

(b) Such an attempt is not expressly covered as a penal provisions elsewhere in the IPC.

It was imprudent of the investigating agency to register an FIR against the applicant charging him under Section 306 read with 511 of IPC. There is no evidence even, *prima facie,* to indicate that the offender have done any act towards commission of main offence. In the absence of any material in that regard, the question of applying Section 511 does not arise. The main offence would have been an abetment to commit suicide. There cannot be an offence of attempt to commit an offence of abetment to commit suicide. The attempt is by the victim and it was not an attempt in any manner by the accused. IPC refers to several offences relating to attempt to commit penal offences. The attempts specifically provided for are Section 121, attempt to wage war against the Government of India. Section 124, attempt wrongfully to restrain the President andother high officials with intent to induce or compel them to exercise or refrain from exercising any of their lawful powers. Section 125, attempt to wage war against the Government of any Asiatic Power in alliance or at peace with the Government of India. Section 130, attempt to rescue State prisoners or prisoners of war. Section 161, attempt by a public servant to obtain an illegal gratification. Section 162, attempt to obtain a gratification in order by corrupt or illegal means or to influence a public servant. Section 163, attempt to obtain a gratification for exercising personal influence over a public servant. Section 169, attempt to use as the evidence known to be false. Sections 198, 200, attempt to use as true a certificate or declaration known to be false in a material point. Section 213, attempt to obtain a gratification to screen an offender from punishment. Sections 239 and 240, attempt to induce a person to receive a counterfeit coin. Section 241, attempt to induce a person to receive as genuine counterfeit coin which, when the offender took it, he did not know to be counterfeit. Sections 307 and 308, attempts to commit murder and culpable homicide. Section 309, attempt to commit suicide. Sections 385, 387 and 389, attempt to put a person in fear of injury or accusation in order to commit extortion. Section 391, conjoint attempt of five or more person to commit dacoity. Section 393, 394 and 398, attempts to commit robbery. Section 460, attempt by one of many joint house breakers by night to cause death or grievous hurt. Abetment to commit suicide is an independent offence and there cannot be any attempt to abet in commission of suicide. On the contrary, the act of the victim would invite prosecution under Section 309 of IPC against him. Section 511 of IPC has been incorporated with the different purposes. The gist of Section 511 is attempt to commit an offence falling under certain categories. This section applies where no specific provision for attempt to commit an offence has been provided in the Code itself.

15 An attempt is an overt act immediately immediately connected with the commission of an offence and forming part of a series of acts which, if not interrupted or frustrated or abandoned would result in the commission of completed offence. Attempt is nothing but a preliminary crime failure to commit substantive crime. In the present case, the attempt to commit suicide is mad e by complainant. Section 511 IPC refers to attempt by the accused who fail to accomplish the crime. The words “to cause such an offence tobe committed would also not cover the situation contemplated in the present case.

16 In the case of ***Abhayanand Mishra Vs. State of Bihar***[5]. The Supreme Court has dealt with the issue whether in that case, the accused could be convicted for an offence under Section 420/511 IPC. After analysing the law relating to attempt, and referring to various decisions in paragraph 26, it was observed as follows:

> *“We may summarise our views about the construction of S.511, I.P.C. thus: A person commits the offence of 'attempt to commit a particular offence' when (i) he intends to commit that particular offence; and (ii) he, having made preparations and with the intention to commit the offence, does an act*

5 AIR 1961 SC 1698

towards its commission; such an act need not be the penultimate act towards the commission of that offence but must be an act during the course of committing that offence."

17 Thus, the accused intends to commit particular offence and having made preparation and with intention to commit the offence, does the act towards commission, whether this requirement of law can be applied in the present case. The question which arises for consideration is :

(i) Is there any intention to abet suicide?;

Was there any preparation and attempt to accomplish the crime?

18 The same principle was reiterated by Apex Court in subsequent decision in the case of ***Omprakash Vs. State of Punjab***[6] and in the case of ***Sudhir Kumar Mukherjee Vs. State of West Bengal***[7]. In the decision of ***Omprakash (Supra)*** it is observed that the expression '*whosoever attempt to commit an offence*' in Section 511 can only mean *"whoever intends to do a certain act with intent or knowledge necessary for the commission of that offence."* In the case of ***State of***

6 AIR 1961 SC 1782
7 AIR 1973 SC 2655

Maharashtra Vs. Mohd. Yakub & Ors.[8], the Supreme Court was pleased to analyse the law on attempt. It would be relevant to quote paragraphs 13 and 31 of the said judgment to understand the issue.

> *“13 Well then, what is an "attempt"? Kenny in his 'Outlines of Criminal Law' defined "attempt" to commit a crime as the "last proximate act which a person does towards the commission of an offence, the consummation of the offence being hindered by circumstances beyond his control." This definition is too narrow. What constitutes an "attempt" is a mixed question of law and fact, depending largely on the circumstances of the particular case. "Attempt" defies a precise and exact definition. Broadly speaking, all crimes which consist of the commission of affirmative acts are preceded by some covert or overt conduct which may be divided into three stages. The first stage exists when the culprit first entertains the idea or intention to commit an offence. In the second stage, he makes preparations to commit it. The third stage is reached when the culprit takes deliberate overt steps to commit the offence. Such overt act or step in order to be 'criminal' need not be the penultimate act towards the commission of the offence. It is sufficient if such act or acts were deliberately done, and manifest a*

8 AIR 1980 SC 1111

clear intention to commit the offence aimed, being reasonably proximate to the consummation of the offence. As pointed out in Abhayanand Mishra Vs. State of Bihar, (1962) 2 SCR 241 there is a distinction between 'preparation' and 'attempt'. Attempt begins where preparation ends. In sum, a person commits the offence of 'attempt to commit a particular offence' when (i) he intends to commit that particular offence; and (ii) he, having made preparations and with the intention to commit the offence, does an act towards its commission; such an act need not be the penultimate act towards the commission of that offence but must be an act during the course of committing that offence.

31 Let me now state the result of the search and research: In order to constitute 'an attempt', first, there must be an intention to commit a particular offence, second, some act must have been done which would necessarily have to be done towards the commission of the offence, and, third, such act must be 'proximate' to the intended result. The measure of proximity is not in relation to time and action but in relation to intention. In other words, the act must reveal, with reasonable certainty, in conjunction with other facts and circumstances and not necessarily in isolation, an intention, as distinguished from a mere desire or object, to commit the particular offence, though the act by itself may be merely suggestive or *indicative of such intention; but, that it must be, that is, it must be indicative or suggestive of the intention."*

19 Applying the said analogy and test laid down in the aforesaid decision, in the present case, it cannot be said that there is any abetment to commit the alleged crime or any attempt to do so. Apart from that, in my considered opinion, the accused cannot be prosecuted by involving Section 511 to be read with Section 306 IPC.

20 In the aforesaid circumstances, I do not think that there was any evidence, even, *prima facie,* to proceed against the applicant for the alleged offences, and, therefore, the applicant should have been discharged by the trial Court.

21 For the reasons stated above, the application deserves to be allowed. Hence, I pass the following order:

:: ORDER ::

(i) Criminal Revision Application is allowed;

(ii) The impugned order dated 6th May, 2016, passed by the Ad-hoc Assistant Sessions Judge–I, Raigad-Alibag, is set aside and the applicant is discharged in the proceedings arising out of Criminal Case No.100031/2014, pending before the Sessions Court at Raigad – Alibag.

(PRAKASH D. NAIK, J.)