

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 3315 OF 2018

Sojan Puthenparampil John and Others. ..Petitioners.

Versus

State of Maharashtra & Another. ..Respondents.

Mr. Aniket Nikam, Vivek Arote, Piyush Thshnival I/b Aashish Satpute
for the Petitioner.

Mr. F. R. Shaikh, APP for the Respondent-State.

Mr. Vijay J. Shiktode for Respondent No.2.

Coram : RANJIT MORE &
SMT. BHARATI H. DANGRE, JJ.

Date : **October 26, 2018.**

P. C. :

1. Rule. Rule is made returnable forthwith. By consent,
taken up for final hearing.

2. Heard Mr. Nikam, the learned counsel for the Petitioner,
Mr. Shiktode, the learned counsel for Respondent No.2 and Mr.
Shaikh, learned APP for the Respondent-State. The petition is filed for
quashing and setting aside FIR bearing CR. No. 404 of 2018 registered
with Dehu Road Police Station at the instance of Respondent No.2 for
offence punishable under section 305 read with 34 of the Indian Penal
Code, 1860.

3. Petitioner No.1 is the principal of Kendriya Vidyalaya No.
2, Ordinance Factory, Dehu Road, Pune. Petitioner No.2 is the physical

education teacher whereas Petitioner Nos.3, 4 and 5 are the teachers in the said school teaching Hindi, Maths and English subjects respectively. The said school is affiliated to the CBSE Board and is part of Kendriya Vidyalaya Sangathan. It is an autonomous body under the Department of Education, HRD Ministry. Master Shubham - the son of Respondent No.2 was taking education in the said school and he was in 10th standard.

4. It is the case of the Petitioners that on 2nd July 2018 a complaint was received by Petitioner No.1 from one Mukesh Sinha wherein it was mentioned that son of Mukesh Sinha, i.e., Harsh, who was studying in standard 10th in the school, was beaten up by deceased Shubham and other boys. After receipt of the said complaint, on 3rd July 2018, four students including Shubham were suspended from the school till 7th July 2018 as it was found that these four students had assaulted Hash Sinha. While suspending these students for the period of four days, Petitioner No.1 Principal had also taken into consideration other oral complaints against these four students.

5. It is the case of the complainant that on 3rd July 2018, his

son Shubham had gone for attending tuitions and after it was over he made a telephonic call to his father informing him that tuitions are over and he is going to home. After some time, the complainant received a phone call from one Jagdish, the friend of Shubham that Shubham has jumped into a pit. Thereafter complainant and his wife reached the spot and body of Shubham was searched. However it was recovered only on the next day at 9.00 a.m.

6. It is the case of Respondent No. 2 that they found suicide note in the school bag of Shubham, which mentioned that he is committing suicide as he was suspended from the school by the school authorities. In the light of above facts, the subject FIR came to be registered against the Petitioners.

7. Mr. Nikam, learned counsel for the Petitioner invited our attention to the decision of Madan Mohan Singh v. State of Gujarat [(2010) 8 SCC 628] and the decision of division bench of this Court in Dilip Ramrao Shirsao v. State of Maharashtra [2016(4) Bom C. R. (Crim) 197] and submitted that in order to bring about 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 about the

suicide of the person concerned must be established. 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. He submitted that there is neither in the FIR nor in the investigation carried out, disclose abetment on the part of the Petitioners.

8. The learned counsel for Respondent No.2 opposed the petition very vehemently. He submitted that the son of Respondent No. 2 was humiliated by the Petitioners, namely, Principal and school teachers and thereafter he was suspended and on account of humiliation suffered by him he committed suicide and therefore the Petitioners are responsible for his death. He therefore, prays that petition deserves dismissal.

9. Mr. Shaikh, learned APP adopted the arguments advanced on behalf of Respondent No. 2 and prayed for the dismissal of writ petition.

10. Having heard learned counsel appearing for the respective parties and having gone through FIR and material collected during the investigation as well as decisions cited at bar, we find

substance in the contention of Shri. Nikam. The contention of the Petitioners that deceased – Shubham (son of Respondent No. 2) was suspended for the period of 4 days from the school because he along with three other boys had assaulted the fellow school-mate by name Harsh Sinha, is supported by the documents on record. It is specific case of the Petitioners that earlier also there were complaints against Shubham which constrained them to take a step for suspension of these four students for the period of four days.

11. The observations of the Apex Court in the case of Madan Mohan (supra) are relevant, which are to the following effect :

“In order to bring out an offence under section 306 IPC specific abetment as contemplated by section 107 IPC on the part of 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. We are of the clear opinion that there is no question of there being any material for offence under section 306 IPC either in the FIR or in the so-called suicide note.”

12. Further the Division Bench of this Court in the case of Dr. Mrs. Seema Ajay Bhoosreddy vs. State of Maharashtra [in Criminal Revision Application No. 265 of 2011 decided on 4th August 2011] , relying upon the judgment of the Apex Court as observed thus :

“28. 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 thje deceased into such a position that he committed suicide.”

13. Thus, it is necessary for the prosecution to at least prima facie establish that accused had an intention to aid or instigate or to abet the deceased to commit suicide. In the absence of availability of such material, the accused Petitioners cannot be compelled to face the trial under section 307 of IPC. The offence of abetment involves 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, the said person cannot be compelled to face trial. Unless there is a clear *mens rea* to commit the offence or 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 drive him to suicide, in our view, the trial against the the Petitioners for the offence punishable under section 305 and 306 would be abuse of the process of law.

13. Having gone through the FIR and relevant proposition, in our opinion, there is absolutely no material to show that the intention or *mens rea* on the part of the the Petitioners. There is also nothing to show that the Petitioners abetted or instigated the deceased – Shubham to commit the suicide. It is unfortunate that young Shubham committed suicide. It is a great loss to his parents since he was their only child. However, in our opinion, the Petitioners cannot be said to be responsible for the same. Taking into consideration the totality of the facts and circumstances of the case, we are of the opinion that FIR deserves to be quashed and set aside. Hence, Rule is made absolute in terms of prayer clause (b).

[SMT. BHARATI H. DANGRE, J.]

[RANJIT MORE, J.]