

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

CRIMINAL APPLICATION NO. 39 OF 2019

1 Subhash S/o Balbhim Deshmukh,
Age : 38 years, Occupation: Agril.,
R/o: Moha, Tq. Parali (V), Dist. Beed.

2 Manik s/o Balbhim Deshmukh,
Age-43 years, Occupation-Agril.,
R/o: As above.

3 Laxman S/o Balbhim Deshmukh,
Age-45 years, Occupation-Agril.,
R/o : As above.

..APPLICANTS
(Original Accused)

VERSUS

1 The State of Maharashtra,
Through Police Station Officer,
Police Station Sirsala,
Tq. Parli (V), Dist. Beed.

2 Pramod S/o Balasaheb Bhise,
Age-28 years, Occupation-Agriculture,
R/o: Moha, Tq. Parli(V),
Dist. Beed.

RESPONDENTS

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Mr. Akash D. Gade, Advocate for Applicants.
Mrs. V.S. Chaudhary, APP for Respondent No. 1
Mr. M.V. Ghatge, Advocate for Respondent No. 2

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**CORAM : T.V. NALAWADE &
K. K. SONAWANE, JJ.**

DATED : 23rd JULY, 2019.

ORAL JUDGMENT :- (Per: K.K.SONAWANE, J.)

1. Rule. Rule made returnable forthwith. Heard finally, with the consent of learned counsel for parties.

2. The applicants - original accused preferred present application under Section 482 of the Code of Criminal Procedure ("Cr.P.C.") seeking relief to quash and set aside the First Information Report ("FIR") bearing No. 0257 of 2018 registered at Shirsala Police Station, Taluka Parli, District Beed for the offence punishable under Sections 306, 504 and 506 read with Section 34 of Indian Penal Code ("IPC") as well as the criminal proceeding bearing Regular Criminal Case No. 33 of 2019 filed pursuant to aforesaid Crime.

3. Prosecution case in short compass is that the deceased Balasaheb was the father of first-informant Pramod Balasaheb Bhise, Resident of Moha, Taluka Parli, District Beed. The Santosh and Dnyaneshwar are the brother of first informant. They all are earning livelihood by doing agricultural labour work. It has been alleged that in the intervening night of 29-09-2018 and 30-09-2018, the Dnyaneshwar, brother of first-informant, had taken away the girl Harshada, daughter of neighbour - applicant Subhash Balbhim Deshmukh. Therefore, the applicant Subhash and his brothers applicants - Manik and Laxman, under the pretext of kidnapping of daughter Harshada, insisted the first-informant and his deceased father to get mutated the agricultural land of first-informant in the name of applicant. They used to give threats of dire consequences to the deceased father of first informant Pramod. There was meeting on 05-10-2018 in the village at the house of cousin uncle Dnyanoba Bhise and in the meeting the father of first informant shown inclination to mutate the land of son Dnyaneshwar in the name of girl Harshada. But, the applicants became furious and they started abusing to the deceased Balasaheb filthily. These

applicants also uttered the derogatory and disgusting words for the womenfolk of the family of first-informant. It has caused mental shock and trauma to the father of Balasaheb.

4. It has been alleged that the deceased Balasaheb, on 06-10-2018, in the morning left the house for going to field. But, he did not return to home. The first-informant and other family members launched massive search for the father - deceased Balasaheb. Eventually, on 08-09-2018, they came across with the dead body of father Balasaheb found suspending to the tree in the field. The information was given to the police. The dead body of Balasaheb was removed from the tree. The police drawn panchnama and referred the mortal remains to the Government Hospital for autopsy. After post-mortem, the last rites were performed on the dead body of deceased Balasaheb. Thereafter, on the following day, i.e. on 09-10-2018, the first-informant Pramod Bhise lodged the first information report and blamed the applicant accused for the suicidal death of his father Balasaheb.

5. Pursuant to FIR, the Police of Shirsala Police Station, Taluka Parli, District Beed, registered the Crime vide No. 0257 of 2018, under Sections 306, 504 and 506 read with Section 34 of IPC and set the penal law in motion. Pending investigation, applicants moved the present application by invoking remedy under Section 482 of Cr.P.C. for relief to quash and set aside the offence registered against them. Meanwhile, the Investigating Officer carried out the investigation. He recorded statement of witnesses acquainted with facts of the case. He collected relevant documents. After completion of investigation,

Investigation Officer filed the charge-sheet against the applicant-accused vide RCC No. 33 of 2019, which was pending before the learned Judicial Magistrate, First Class, Parli, District Beed. As the offence under Section 306 of IPC is exclusively triable by the Court of Sessions, the learned Magistrate wisely committed the proceeding to the Court of Additional Sessions Judge, Ambajogai, for trial of the accused within ambit of law. The proceeding came to be registered as Sessions Case No. 39 of 2019. The applicants also prayed to exonerate from the charges pitted against them by quashing and setting aside the proceeding bearing Sessions Case No. 39 of 2019 (RCC No.33 of 2019) pending before the learned Additional Sessions Judge at Ambajogai, District Beed.

6. Learned counsel for applicants vehemently submitted that the entire allegations nurtured on behalf of prosecution all are false, baseless and fabricated one. The applicants are innocent of the charges pitted against them and they have no concern with the alleged suicidal death of deceased Balasaheb. The allegations cast against applicants are general and omnibus in nature. According to learned counsel Shri. Gade, the younger son of Dnyaneshwar of deceased Balasaheb abducted the minor daughter Harshada, 13 years old of the applicant Subhash Deshmukh. The Crime No. 255 of 2018 came to be registered against the Dnyaneshwar – son of deceased Balasaheb, under Section 363, 366-A and 376 of IPC and also under Sections 3 and 4 of the Protection of Children from Sexual Offences (POCSO) Act, 2012. He produced the copy of FIR on record (Exhibit-B). The learned counsel further submits that only to give counter blow to the criminal

proceeding filed against Dnyaneshwar, the present false complaint is being filed against the present applicant, following suicidal death of Balasaheb. The applicant has no concern or nexus with the alleged cause of death of deceased Balasaheb. Learned counsel for the applicants in support of arguments placed reliance on the Judgments of this High Court and Apex Court, in the cases - viz - (1) *Dilip s/o. Ramrao Shirasao and others Versus State of Maharashtra and another*, reported in, 2016 All MR (Cri) 4328, (2) *S. S. Chena Versus Vijay Kumar Mahajan and another*, reported in, 2010 All MR (Cri) 3298 (S.C.), (3) *Sanju alias Sanjay Singh Sengar Versus State of M.P.*, reported in, 2002 Cri. L.J. 2796 (S.C.), (4) *Anand Kumar Mohatta and another Versus State (Govt. of NCT of Delhi) Department of Home and another*, reported in, AIR 2019 Supreme Court 210, and (5) *Swamy Prahaladdas Versus State of M.P. and another*, reported in 1995 Supp (3) Supreme Court Cases 438.

7. The learned APP for respondent No.1 - State and learned counsel for respondent No.2 - first informant raised the objections to the contentions propounded on behalf of applicants-accused. According to them, the allegations made in the FIR are sufficient to attract the offence under Section 306 of IPC against applicants. They are only responsible for suicidal death of deceased Balasaheb.

8. We have given anxious consideration to the arguments advanced on behalf of both sides. We have also delved into the investigation papers of the proceeding of Sessions Case No. 39 of 2019. It is not put into controversy that the death of deceased Balasaheb was occurred

due to hanging. There were ligature marks at the neck of deceased Balasaheb. His dead body was also found suspending to the tree with rope. There is no doubt that it was an suicidal death. There were no allegations about homicidal or accidental death of deceased Balashaeb.

9. Now, the crucial issue to be ponder over is whether the applicants-accused have any nexus or proximity with the alleged cause of suicidal death of deceased Balasaheb. According to prosecution, the son - Dnyaneshwar of deceased Balasaheb abducted the minor daughter of applicant - Subhash. The Crime No. 255 of 2018 came to be registered against son - Dnyaneshwar. Taking umbrage of abduction of minor daughter, the applicant Subhash and his brothers insisted to get mutate the agricultural land of deceased Balasaheb in their name. It has also alleged that applicant uttered the derogatory and disgusting words about the womenfolk of the family of deceased Balasaheb and feeling humiliation and insult, there was mental shock and trauma to the deceased Balasaheb, which resulted into his suicidal death.

10. In this case, the applicant-accused are arraigned for the offence punishable under section 306 of IPC for abetment of suicide. Now, the pivotal issue of law, which arise in the present proceeding is, whether in the facts and circumstances of the matter, the applicants-accused are prima facie to be held guilty under Section 306 of IPC for the act of abetment of suicide. The provisions of Section 306 of IPC, is reads as under :-

"306. Abetment of suicide.—If any person

commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

11. The process of Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. The law postulate that without a positive act on the part of accused to instigate or aid in committing suicide, the conviction can not be sustained. The "Abetment of a thing" has been defined under Section 107 of IPC, which is reproduced as under :-

"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."

12. This Court, in the case of **Dilip Ramrao Shirasrao** (*supra*) had an occasion to deal with the issue of application of Section 306 of IPC in the cases of suicidal death. This Court (Coram : B. R. Gavai and V. M. Deshpande, JJ.) extensively scrutinized the circumstances in the light of various expositions of law delineated by the Hon'ble Apex Court and held in paragraph No. 20 that :-

"20. As has been held by Their Lordships of the Apex Court that for permitting a trial to proceed against the accused for the offence punishable under

Section 306 of the Indian Penal Code, it is necessary for the prosecution to at least prima facie establish that the accused had an intention to aid or instigate or abet the deceased to commit suicide. In the absence of availability of such material, the accused cannot be compelled to face trial for the offence punishable under Section 306 of the Indian Penal Code. As has been held by Their Lordships of the Apex Court that abetment involves mental process of instigating a person or intentionally aiding a person in doing of a thing and without a positive act on the part of the accused in aiding or instigating or abetting the deceased to commit suicide, the said persons cannot be compelled to face the trial. Unless there is clear mens rea to commit an offence or active act or direct act, which led the deceased to commit suicide seeing no option or the act intending to push the deceased into such a position, the trial against the accused under Section 306 of the Indian Penal Code, in our considered view, would be an abuse of process of law."

13. In view of aforesaid proposition of law, in the instant case whether it can be said that the allegations levelled against the applicants-accused would *prima facie* attract any one of ingredients of Section 107 of IPC.

14. As per clause firstly of Section 107 of IPC, a person can be said to have abetted in doing of a thing who "instigate" any person to do that thing. The expression "instigate" is not defined in the Code. However, the Hon'ble Apex Court in the case of - **Ramesh Kumar Versus State of Chhattisgarh**, reported in, **(2001) 9 SCC 618**, elucidated the word "Instigation" in paragraph 20 as belows:

"20. Instigation is to goad, urge forward, provoke, incite or encourage to do 'an act'. To satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. The present one is not a case where the accused had by his acts or omission or by a continued course of conduct created such circumstances that the deceased was left with no other option except to commit suicide in which case an instigation may have been inferred. A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation."

15. In the matter in hand, there are allegations that the applicants – accused under pretext of kidnapping case of their daughter insisted the deceased Balasaheb to get mutate his land in their favour and deceased Balasaheb was agreed for the same. But, thereafter, the applicants uttered the derogatory and disgusting words towards womenfolk of family of deceased Balasaheb. This utterance on the part of applicants caused humiliation, insult and mental shock to Balasaheb, and eventually, he took the drastic step of commission of suicide. The intense scrutiny of the circumstances reflects that these allegations are not sufficient *prima facie* to attract ingredients of Section 306 of IPC. It would be hazardous to draw an inference that applicants-accused had an ill intention to goad or incite the deceased Balasaheb to commit suicide. It cannot be said that the utterance of filthy words towards womenfolk of family of deceased – Balasaheb would create such a situation that he would feel himself frustrated for commission of suicide. It would be cumbersome to appreciate that the alleged act of applicants-accused

led the deceased Balasaheb to commit suicide seeing no option and the applicants-accused intentionally pushed him into such a position that there was no option but to commit suicide. Therefore, after careful consideration of entire factual aspects, we are of the opinion that applicants-accused *prima facie* cannot be blamed for suicidal death of deceased Balasaheb. The humiliation and insult in the society owing to crime of kidnapping of minor girl of neighbour registered against younger son might be the cause for suicidal death of Balasaheb. We find that the present crime registered against applicant-accused is nothing but an abuse of process of law. There is least possibility of success of prosecution in this case to bring home the guilt of accused.

16. At this juncture, it would be profitable to make a reference of Judgment of Honourable Apex Court in the case of **Madhavrao Jiwaji Rao Scindia and another Versus Sambhajirao Chandrojirao Angre and others**, reported in **AIR 1988 SC 709**, categorically elucidated in paragraph No. 7 as under:

"7. The legal position is well-settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction is bleak and, therefore, no useful purpose is

likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage."

17. The Honourable Apex Court in the case of **State of Haryana and others Vs. Ch. Bhajan Lal and others** reported in **MANU/SC/0115/1992 : 1991(1) RCR(Cri), 383 (SC)** held that "*where the proceedings is instituted with an ulterior motive or were the allegations made in the complaint are absurd and improbable, the Court would be within its power to quash the complaint/FIR*". Moreover, if the allegations in the FIR against the applicants are taken at their face value and accepted the same in its entirety would not constitute any offence or make out case against applicants, in such circumstances, there would not be any propriety to allow the prosecution to proceed further into the matter.

18. In the light of aforesaid expositions of law, in the instant case, it would be unjust and improper to allow the prosecution to proceed further against applicants. It would be an futile efforts and would cause injustice to them, if they are compelled to face agony of trial before criminal Court. It would also dissipate the precious time of Court of law as the possibility of their ultimate conviction is totally bleak. The ends of justice would be served by ensuring that the applicants may not be forced unnecessarily to go on litigation before the Criminal Court. Hence, penal proceeding initiated against these applicants deserves to be quashed and set aside. Therefore, we

proceed to pass following order :

ORDER

- i. The Criminal Application is allowed.
- ii. The penal proceeding initiated against present applicants bearing FIR/Crime No. 255 of 2018, for the offences punishable under Sections 306, 504 and 506 read with Section 34 of IPC, registered with Shirsala Police Station, Taluka Parli(V) District Beed, as well as criminal proceeding bearing Regular Criminal Case No. 33 of 2019 pursuant to aforesaid crime, is ordered to be quashed and set aside.
- iii. Rule is made absolute in terms of prayer clause "B and C-1".
- iv. The Criminal Application is disposed of in above terms.
- v. No order as to costs.

[K. K. SONAWANE]
JUDGE

[T.V. NALAWADE]
JUDGE

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