

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

CRIMINAL WRIT PETITION NO.999 OF 2019

G. Balareddy s/o. Innareddy,
Age : 55 years, Occ. Business,
r/o. Vivekanand Nagar, Lane No.2,
Bagh Ammer Bala Nagar Mandal,
Rangareddy District,
Telangana State

..Petitioner

Vs.

1. The State of Maharashtra,
Through P.I. Bhagyanagar,
Police Station, Nanded

2. Murli Mohan Ram Mohan
Kanagala, Age : 57 years,
Occ. Service,
r/o. Sakhi Niwas, Vidya Nagar,
Nanded

..Respondents

Mr. N.L.Jadhav, Advocate for petitioner
Mr. V.N.Patil-Jadhav, AGP for respondent no.1
Mr. G.P.Darandale, Advocate for respondent no.2
(appointed)

**CORAM : T.V. NALAWADE AND
R.G. AVACHAT, JJ.
DATE : SEPTEMBER 04, 2019**

JUDGMENT (PER R.G. AVACHAT, J.):

Heard. Rule. Rule made returnable forthwith.

Heard finally with the consent of learned Counsel for
the parties.

2. By this Writ petition under Article 226 of the Constitution of India, the petitioner seeks quashing of the FIR, being Crime No.218 of 2018, registered with Bhagyanagar Police Station, Nanded, for the offence punishable under Section 306 read with Section 34 of the Indian Penal Code and the consequential proceedings in criminal case (charge-sheet no.175 of 2018) pending before the Court of Judicial Magistrate, First Class (Court No.6), Nanded.

3. The facts necessary to dispose of this petition, are as under :-

Sumohan (deceased) shot himself dead at his residence at Sakshi Niwas, Vidyanagar, Nanded. The deceased left behind a suicide note, alleging therein to have had been under a tremendous financial stress. The applicant herein, one Chandrakant Gavane, Vinod Reddy and Jitendra Gupta are alleged to have been responsible to lead the deceased to take an extreme

decision of ending his own life. The FIR has been lodged by Murli Mohan, brother of the deceased. The allegations in the FIR indicate that the deceased had invested a huge amount in partnership firm of which Chandrakant Gavane, one of the accused, was the partner. Said Chandrakant Gavane is alleged to have duped the deceased, since he did not invest 50% of the capital in the partnership firm, as agreed. As such, Chandrakant Gavane is alleged to have reneged. The allegations in the FIR further indicate that the applicant and one Bala Reddy owed the deceased Rs.80 Lakhs. A sum of little over Rs.1 Crore was to be paid by Jitendra Gupta to the deceased. Since none of the persons named in the FIR, paid back the amount due to the deceased, he committed suicide.

4. Based on the FIR, crime came to be registered and investigated. The applicant and two others came to be proceeded against by filing the charge-sheet.

5. Mr.Jadhav, learned Counsel for the petitioner, would submit that the allegations in the FIR and the suicide note as well, do not make out an offence of abetment of suicide. If the petitioner is prosecuted, the same would amount to abuse of process of the Court. Learned Counsel also urged for allowing the petition on the ground of parity since one of the three accused have been granted the relief of quashing of the FIR and proceedings of the criminal case.

6. Learned APP and learned Counsel for respondent no.2 would, on the other hand, submit that based on the allegations in the FIR, offence has been investigated. The investigation has culminated into filing of the charge-sheet. Same indicates the petitioner to have no case for quashing of the FIR and the charge-sheet.

7. 'Abetment of a thing' has been defined under Section 107 of the Indian Penal Code, which reads thus:-

"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 pursuances of that conspiracy, and in order to the doing of that thing;

Thirdly – Intentionally aides, by any act or illegal omission, the doing of that thing. Explanation 2 which has been inserted along with section 107 reads as under :

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."

8. Abetment is 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 (*M. Mohan Vs. State Represented by the Deputy Superintendent of Police, 2011(3) Mh.L.J. (Cri.) 1271*).

9. The allegations in the FIR and averments in the suicide note, undoubtedly, indicate that the deceased was under financial stress. He had invested a hefty amount in a partnership firm. In the first part of the suicide note, the deceased exclusively blamed Chandrakant Gavane, to be solely responsible for his suicide. Chandrakant Gavane is not before this Court. The petitioner herein and another named person - Vinod Reddy are alleged to have duped the deceased for Rs.80 Lakhs. It appears from the suicide note that the duo owed Rs.80 Lakhs to the deceased for over one year. The deceased further alleged that

the financial losses and pending issues brought him under a tremendous stress for over 8 to 10 months next before he took the unfortunate decision to end his life.

10. Neither the FIR nor the suicide note attribute any intentional overt-act to the petitioner herein that led the deceased to commit suicide. We have seen the cases of debtors committing suicide. This case appears to be other way round. Here, creditor did end his life only because his debtors did not pay his dues. The deceased appeared to have been of a weak mind. He was unable to face adversities in his life. It, therefore, seems, he took the decision of committing suicide. The allegations in the FIR and the suicide note, if taken at their face value, do not constitute the offence of abetment of suicide against the petitioner.

10. The Writ Petition deserves to be allowed on one more ground namely, parity. Jitendra Gupta,

another accused named in the FIR and consequentially charge-sheeted, has been granted the relief. The case of the petitioner is at par with the case of Jitendra.

11. In view of the above, the Writ Petition succeeds. The petition is allowed in terms of prayer clause (B). Rule is made absolute accordingly.

12. Fee of learned Counsel for respondent no.2 (appointed) is quantified at Rs.3,000/- (Rupees Three Thousand), which is to be paid by High Court Legal Services Sub-Committee.

[R.G. AVACHAT, J.]

[T.V. NALAWADE, J.]

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