

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

CRIMINAL WRIT PETITION NO. 998 2018

Gajanan s/o Ramrao Kadam,
Age 35 years, Occ. Agril. & Business,
R/o. Kondha, Tq. Ardhapur, Dist.
Nanded. ... **Petitioner.**

VERSUS.

1. The State of Maharashtra,
Through Basmat Police Station,
Basmat, Tq. Basmat, Dist. Hingoli.
2. Ramprasad s/o Limbaji Pawar,
Age 42 years, Occ. Agriculture,
R/o. Shahar Peth, Vasmat, Dist.
Hingoli. ... **Respondents.**

...

Mr. Gadegaonkar Bharat N., Advocate for petitioner.
Mr. M. M. Nerlikar, A.P.P. for respondent No. 1.
Mr. S.P. Katneshwarkar, Advocate for respondent No. 2.

**CORAM : T.V. NALWADE &
MANGESH S. PATIL, JJ.**

DATE : 18th MARCH, 2019

JUDGMENT (PER MANGESH S. PATIL, J.) :

1. Heard.
2. Rule. Rule is made returnable forthwith. Learned APP waives service of notice for respondent No. 1 and learned advocate Mr. Katneshwarkar waives service of notice for respondent No. 2. With the consent of both the sides the matter is heard finally at the stage of admission.

3. The petitioner who is accused No. 1 in Crime No. 30/2017 registered with Wasmat police station, District Hingoli for the offences punishable under section 306 read with section 34 of the Indian Penal Code is seeking quashment of the crime and the proceeding filed pursuant thereto in the form of charge-sheet in Reg. Criminal Case No. 70/2017.

4. The F.I.R. has been lodged by the brother of the deceased inter alia alleging that the petitioner was friend of the deceased and was in need of some money for the marriage of his niece. The deceased therefore had borrowed money from accused No. 2 Satelikar against interest and had paid an amount of Rs. 2,00,000/- to the petitioner. However, the petitioner did not repay the money while the accused No. 2 Satelikar was insisting the deceased for repayment. Accused No. 2 Satelikar was pressing hard for repayment of money and on that count the deceased was mentally disturbed. About a month prior to the deceased committing suicide the accused No. 3 and 4 had been to his house and disclosed that deceased had borrowed money from them and should refund it. When the informant made an enquiry with the deceased about it the latter is stated to have told the former about having borrowed money even from these two persons- accused No. 3 and 4 for repaying the money to the accused No. 2 Satelikar. It is thus alleged that all the accused instigated the deceased by their persistent actions to commit suicide.

5. According to learned advocate for the petitioner, there is

absolutely no element of any abetment as defined under section 107 of the Indian Penal Code. Merely because the deceased has committed suicide, the petitioner cannot be blamed for instigating him to commit suicide even on the assumption that he had failed to refund the money borrowed from the deceased. Accepting the allegations at their face value the petitioner can only be blamed for not repaying the money which he had borrowed from the deceased but that would not constitute abetment. The petitioner therefore cannot be allowed to stand to trial based on such allegations.

6. The learned APP and the learned advocate for respondent No. 2 strongly oppose the petition. They submit that during the course of investigation three chits have been recovered purportedly written by the deceased. In one such chit dated 30.01.2017 it has been specifically mentioned that the petitioner had borrowed money from the deceased and was not refunding it. At this juncture this much is sufficient to corroborate the allegations in the F.I.R. about the petitioner having instigated the deceased to commit suicide by refusing to refund the money and the petition may be rejected.

7. We have carefully perused the papers of the investigation and have thoughtfully considered the submissions of the rival sides. Apart from the chit dated 30.01.2017 there seems to be a transcript of telephonic conversation between the petitioner and the deceased. However, all such material would merely prima facie show that the petitioner had borrowed

some money from the deceased and was not refunding it and this is being relied upon as one of the circumstances which cumulatively instigated the deceased to commit suicide. We are consciously using the word 'cumulatively' since even according to the investigation this was not the only circumstance which had put the deceased to mental stress. The allegations are to the effect that even the insistence of accused No. 2 Satelkar, from whom the deceased had borrowed money, for refund was also one of the triggering factors. Similarly, even the deceased seems to have borrowed money from accused No. 3 and 4 for refunding the money borrowed by him from accused No. 2 Satelkar. This appears to be an additional circumstance which had put the deceased under stress. It is thus apparent that even according to the prosecution all these factors had cumulatively led the deceased to commit suicide.

8. Accepting such allegations at their face value, we are unable to subscribe to the arguments of learned APP and the advocate for the respondent No. 2 that mere non repayment of the money borrowed by the petitioner from the deceased would constitute abetment within the meaning of section 107 of the Indian Penal Code. It describes an abetment by instigation, intentional aid or conspiracy. Though the prosecution has been alleging that all the accused had shared a common intention, we are unable to comprehend as to how the petitioner being the borrower of the money from the deceased can be said to have shared any intention either with the accused No. 2 Satelkar or the two other accused much less to instigate the

deceased to commit suicide. It would be far-fetched to imagine that the petitioner was intending by refusing to refund the money that the deceased should end his life.

9. Therefore, accepting the allegations in the F.I.R. at their face value and even accepting the material collected during the course of investigation to substantiate the allegations, the ingredients for constituting the offence punishable under section 306 of the Indian Penal Code are not made out. The case is squarely covered by category 1 and 3 from the case of **State of Hariyana and Ors V/s. Bhajan Lal and Ors., AIR 1992 Supreme Court 604.**

10. The writ petition is, therefore, allowed in terms of prayer clause 'A' and the rule is accordingly made absolute in those terms.

(MANGESH S. PATIL, J.)

(T.V. NALAWADE, J.)

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