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

CRIMINAL REVISION APPLICATION NO. 178 OF 2016

Shri Vijay S/o Bhalchandra Mahendru
Age: 59 years, Occupation: Retired as
a General Managar (Production)
K.S.P.G.Automotive India Pvt.Ltd.,
A-3, M.I.D.C. Ahmednagar, Maharashtra

Permanent Resident of

Plot No.6/2, Survey No 86-B, Veer Sawarkar Marg,
Vasant Tekadi, Savedi, Ahmednagar,
Maharashtra – 414 003

..APPLICANT

VERSUS

1. The State of Maharashtra
Through
The Police Inspector, Kotwali Police Station,
Ahmednagar, Dist. Ahmednagar

2. Prakash Johra Wagh
Age: Major, Occ: Service,
Age: 61 approx.
R/o Kedgaon, Eknathnagar,
Near P.W. Workshop,
A/P Kedgaon,
Dist. Ahmednagar,
Maharashtra

..Respondents

Mr A.D. Ostwal, Advocate for applicant;
Mrs P.V. Diggikar, A.P.P. for respondent no.1;
Mr A.K. Bhosale, Advocate for respondent no.2;

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CORAM : PRASANNA B. VARALE, J.

DATE : 15th April, 2019

ORDER :

By the instant revision application, the applicant challenges the correctness, legality and propriety of the order dated 11th May 2016, passed by learned Additional Sessions Judge, Ahmednagar, below Exh.4, in Sessions Case No.42 of 2013, thereby rejecting the prayer of the applicant for discharge under Section 227 of the Code of Criminal Procedure.

2. The facts, as are necessary for the decision of the instant revision application, are as under :-

On the basis of the first information lodged by one Prakash Johara Wagh, father of deceased Rushikesh, resident of Kedgaon, with Kotwali Police Station, Ahmednagar, an offence bearing C.R. No.I-243 of 2012, punishable under Section 306 of the Indian Penal Code, came to be registered against the applicant. It was alleged in the first information report that the applicant was working as General Manager (Production) with K.S.P.G.

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Automotive India Pvt. Ltd. at Ahmednagar . It was further alleged on 7th May, 2012 deceased Rushikesh was appointed in K.S.P.G. Automotive India Pvt. Ltd. as a Trainee Engineer. It was alleged that the informant got knowledge that the deceased was not satisfied with his job and on account thereof he used to remain upset for a long period. It was further alleged that on 30th May 2012 the deceased had told the informant that his superior i.e. the applicant herein was illtreating him as also causing insult to him. It was alleged that the informant convinced the deceased on 30th May 2012 and two days thereafter i.e. on 1st June 2012 the deceased committed suicide by hanging. On 2nd June 2012 the informant had filed an application with Kotwali police station against the applicant alleging that due to illtreatment and harassment at the hands of the applicant, the deceased i.e. son of the informant had committed suicide. On the basis of the said application/complaint, as stated above, C.R. No.243 of 2012, for offence punishable under Section 306 of the Indian Penal Code came to be registered against the applicant on 31st July 2012.

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3. The applicant preferred Criminal Misc. Application No.902 of 2012 before learned Sessions Judge seeking grant of bail in the event of his arrest. Initially the applicant was granted ad interim bail which came to be confirmed by learned Additional Sessions Judge, Ahmednagar by order dated 22nd August 2012. After completion of necessary investigation, charge-sheet came to be filed against the applicant before Judicial Magistrate First Class, Ahmednagar, who in turn committed the case to the Court of Session, which came to be registered as Sessions Case No.42 of 2013.

4. The applicant preferred application Exh.4 in Sessions Case No.42 of 2013, invoking the provisions of Section 227 of the Code of Criminal Procedure, seeking his discharge on the ground that there is no sufficient material to frame charge against him and to hold the trial. The application was resisted on behalf of the prosecution by filing reply Exh.6, *inter alia* contending that the applicant was working as a Manager, he insulted the deceased at many a times and gave mental illtreatment, as a result of which he (deceased) committed suicide. There is evidence against the

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applicant to connect him with the crime. After hearing the parties, by order dated 11th May, 2016, learned Additional Sessions Judge, Ahmednagar rejected application Exh.4, thereby refusing to discharge the applicant from the offence in question. Learned Additional Sessions Judge observed that the material produced by the prosecution indicates strong suspicion about the complicity of accused in the crime.

5. This Court, while issuing notice to the respondents, by order dated 3rd October, 2016 had granted ad interim relief in terms of prayer clause (g), thereby staying further proceedings in Sessions Case No.42 of 2013.

6. Mr Ostwal, learned Counsel appearing on behalf of the applicant vehemently urged that even if the allegations made against the applicant are taken at their face value, they do not raise suspicion much less grave suspicion against the applicant and *prima facie* no offence punishable under Section 306 of the Indian Penal Code is made out against the applicant. He further urged that the material placed on record does not justify framing of

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charge against the applicant. He urged that since the deceased had not left any suicide note and allegations of harassment/illtreatment to deceased are baseless, it cannot be said that the commission of suicide was abetted by the applicant. He urged that upon perusal of the entire material on record the applicant cannot be attributed requisite *mens rea* to hold him guilty as abettor. He further urged that the incident is alleged to have taken place on 1st June 2012 and the offence came to be registered on 31st July, 2012. Thus, there is inordinate and unexplained gross delay in registering the offence and no reason is forthcoming for the same.

7. Learned Counsel appearing on behalf of the applicant urged that the learned Additional Sessions Judge himself has observed at para 4 of the impugned order that the material produced by the prosecution indicates strong suspicion about the complicity of the accused. In view of such observations, the learned Additional Sessions Judge ought to have allowed application and ought to have discharged the applicant from the offence in question. Learned Additional Sessions Judge, in the peculiar facts of the instant case, committed grave error of law and thus, the order

impugned herein needs to be set aside by allowing the discharge application Exh.4.

8. In support of his submissions, learned Counsel appearing on behalf of the applicant has placed heavy reliance on the following judgments of the Honourable the Apex Court and this Court :

- i) Vaijnath Kondiba Khandke vs. State of Maharashtra & anr., 2018 SCC OnLine SC 545;
- ii) S.S. Cheema vs. Vijay Kumar Mahajan, (2010) 12 SCC 190;
- iii) Amalendu Pal alias Jhantu vs. State of West Bengal, (2010) 1 SCC 707;
- iv) Kishori Lal vs. State of M.P., (2007) 10 SCC 797;
- v) State of Kerala vs. S. Unnikrishnan Nair, (2015) 9 SCC 639;
- vi) Ramesh Kumar vs. State of Chattisgarh, 2001 Cri. L.J. 4724;
- vii) Madan Mohan Singh vs. State of Gujarat, (2010) 8 SCC 628;
- viii) Gangula Mohan Reddy vs. State of A.P. (2010) 1 SCC 628;
- ix) M. Mohan vs. State, (2011) 2 SCC 626;
- x) Sohan Raj Sharma vs. State of Haryana, AIR 2008 SC 2108;

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- xi) Sanju vs. State of M.P., (2002) 5 SCC 371;
- xii) Sonti Rama Krishna vs. Sonti Shanti Sree, (2009) 1 SCC 554;
- xiii) Netai Dutta vs. State of W.B., AIR 2005 SC 1775;
- xiv) Chanchal Kumaria vs. U.T., AIR 1986 SC 752;
- xv) Vijay @ Munna Bharat Gurkhude vs. The State of Maharashtra, 2016 ALL MR (Cri.) 2566;
- xvi) Dilip s/o Ramrao Shirasao & ors. vs. State of Maharashtra & anr., 2016 ALL MR (Cri.) 4328;
- xvii) Deepak vs. State of M.P., 1994 Cri. L.J. 767;
- xviii) Rajendra Paulat Salve vs. State of Maharashtra, [2006 (1) Mah.L.J. (Cri.) 1170;
- xix) Cyriac s/o Devassia vs. Sub-Inspector of Police, Kaduthuruthy, 2005 Cri.L.J. 4322.

9. Smt. Diggikar, learned Addl. Public Prosecutor appearing on behalf of respondent no.1 – State urged that there is sufficient material on record to frame charge and to hold trial against the applicant for offence punishable under Section 306 of the Indian Penal Code. Perusal of the material on record goes to show that the applicant has abetted commission of suicide by the deceased and, therefore, the learned Additional Sessions Judge was justified in rejecting the application for discharge. She, therefore, prayed for

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dismissal of the revision application.

10. Mr Bhosale, learned Counsel appearing on behalf of respondent no.2 – informant strenuously urged that having regard to the material available on record it can safely be inferred that the applicant is responsible for commission of suicide by the deceased. The delay caused in registering the offence has been satisfactorily explained. Perusal of the material on record indicates that the ingredients of offence punishable under Section 306 of the Indian Penal Code have been made against the applicant. He, therefore, supported the order impugned herein and prayed for dismissal of the revision application.

11. Upon hearing the learned Counsel appearing on behalf of the respective parties, on perusal of the entire material available on record and having regard to the law laid down by the Honourable the Apex Court and this Court in the cases cited supra, I have no hesitation to hold that there is no sufficient material against the applicant to frame the charge for offence punishable under Section 306 of the Indian Penal Code and to proceed against the applicant.

Perusal of the material on record clearly shows that even if the allegations made against the applicant are taken at their face value, they do not raise suspicion much less grave suspicion and *prima facie* no offence punishable under Section 306 of the Indian Penal Code is made out against the applicant. It is not in dispute that the deceased had not left any suicide note and having regard to the allegations of harassment/illtreatment caused to deceased, it cannot be said that the commission of suicide was abetted by the applicant. It is to be noted from the record that no *prima facie* case is made out that the applicant had an intention to aid, instigate or abet the deceased to commit suicide. Having scanned the entire material on record, in my considered opinion, the applicant cannot be attributed requisite *mens rea* to hold him guilty as abettor and ingredients of offence punishable under Section 306 of the Indian Penal Code are not made out. Thus, the material placed on record does not justify framing of charge and proceeding further against the applicant. It is to be noted that the incident is alleged to have taken place on 1st June 2012 and the offence came to be registered on 31st July, 2012 i.e. exactly after two months of commission of suicide by the deceased. There is no justification or explanation for

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such inordinate and unexplained gross delay in registering the offence.

12. From the facts and circumstances of the instant case, it appears that the informant had merely raised suspicion against the applicant that because of illtreatment and harassment/insult caused to the deceased, he (deceased) committed suicide. Perusal of the impugned order shows that the learned Additional Sessions Judge himself has observed at para 4 of the impugned order, that the material produced by the prosecution indicates strong suspicion about the complicity of the accused. Learned Additional Sessions Judge failed to keep in mind the trite position of law that suspicion, howsoever, strong cannot take the place of proof. Learned Additional Sessions Judge further failed to consider that in cases of abetment of suicide, there must be a *prima facie* case of direct or indirect acts incitement to commission of suicide. In the instant case, having considered the entire material placed on record, I am of the considered opinion that there is absolutely no material on record even to infer that the applicant in any manner instigated the deceased or intentionally aided by any act or illegal

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omission in abetting the deceased to commit suicide. The principle laid down in the case law relied upon on behalf of the applicant squarely applies to the facts of the instant case. In that view of the matter, the learned Additional Sessions Judge ought to have allowed application at Exh.4 thereby discharging the applicant from the offence in question. Consequently, the order impugned herein warrants interference.

13. In the light of the foregoing discussion, I pass the following order:-

Criminal Revision Application stands allowed.

The order impugned herein is set aside. Application Exh.4 preferred by the applicant in Sessions Case No.42 of 2013 stands allowed. The applicant stands discharged from the offence punishable under Section 306 of the Indian Penal Code.

(PRASANNA B. VARALE, J.)

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