

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

**CRIMINAL WRIT PETITION NO. 1196 OF 2018**

Madhukar s/o Sahebrao Birhare,  
Age: 43 Years, Occu: Service as  
Head Master, R/o. Saraswati Bhuvan  
High School and Junior College,  
Wadod (Bazar), Tq. Phulambri,  
Dist. Aurangabad.

... **Petitioner**

**Vs.**

1. The State of Maharashtra  
Through Police Inspector,  
Police Station, Wadod Bazar,  
Tq. Phulambri, Dist. Aurangabad.

2. Haridas Sakharam Mhaske,  
Age: 45 Years,  
R/o. Wadod Bazar,  
Tq. Phulambri, Dist. Aurangabad.

... **Respondents**

WITH  
**CRIMINAL WRIT PETITION NO. 1618 OF 2018**

Amol s/o Dattatrey Bhale,  
Age: 54 Years, Occu: Social Service,  
Mayurban Colony, Himayatbagh Bus Stop,  
Delhi Gate, Dist. Aurangabad.

... **Petitioner**

**Vs.**

1. The State of Maharashtra  
Through Police Inspector,  
Police Station, Wadod Bazar,  
Tq. Phulambri, Dist. Aurangabad.

2. Haridas Sakharam Mhaske,  
Age: 45 Years, Occu. Agri,  
R/o. Wadod Bazar,  
Tq. Phulambri, Dist. Aurangabad.

... **Respondents**

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Mr. G.K. Naik-Thigle, Advocate for the Petitioner/s.  
Mr. P. G. Borade, A.P.P. for the Respondent / State.  
Mr. S.G. Kawade, Advocate for the Respondent no.2.  
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**CORAM : T.V. NALAWADE &  
MANGESH S. PATIL, JJ.**

**DATE : 22.04.2019**

**JUDGMENT :- (Per: Mangesh S. Patil, J.)**

Heard. Rule. Rule is made returnable forthwith. The learned A.P.P. waives service for the respondent no.1. Learned advocate Mr. S.G. Kawade waives service for the respondent no.2. With the consent of both the sides the matter is heard finally at the stage of admission.

2. The petitioners in both these petitions are seeking quashment of Crime No.182 of 2018 registered with Wadod Bazar Police Station, Taluka Phulambri, District Aurangabad for the offences punishable under Section 306, 504 read with Section 34 of the Indian Penal Code.

3. In an unfortunate incident, the son of the respondent no.2 aged barely 17 years committed suicide on 31.07.2018 by jumping into a well allegedly for not being able to secure admission in 11<sup>th</sup> standard of Science stream in a school of which the petitioner Madhukar Birhare was the Headmaster and the petitioner Amol Bhale was the member of the Managing Committee of the society running the school. The respondent no.2 lodged the F.I.R. alleging that whenever his son had

approached the petitioners they had insulted him by saying that he would secure admission only if an amount of Rs.5,000/- was paid for completing the process of admission. Based on that the crime was registered and the applicants are being implicated for abetting suicide.

4. The learned advocate for the petitioners submits that even if the allegations in the F.I.R. are taken to be true the offence of abetment cannot be made out. The petitioners were only insisting the deceased to pay Rupees Five Thousand for completing the admission process. No fault can be found with them in asking the deceased to complete the formalities including payment of necessary fees. The learned advocate would further point out that in fact deceased and the respondent no.2 who is his father had not registered his name for admission. He adverted out attention to a photocopy of the admission registration register showing that several students had registered themselves seeking admission which does not contain the name of the deceased. When the deceased had not participated in the registration process at all, the respondent no.2 cannot be heard. The learned advocate would point out that a notice was published by the school requiring all the aspirants seeking admission to register themselves from 18.06.2018 onwards and the last date for such registration was 29.06.2018. Still the deceased had not got himself registered and instead had taken a drastic step for which the petitioners cannot be blamed. It would be a sheer abuse of the process of law if the petitioners are made to face the charge based

on such allegations and mere suspicion.

5. The learned A.P.P. and the learned advocate for the respondent no.2 submit that there are independent witnesses who had seen the petitioners insulting the deceased which had caused the deceased mental stress which he could not sustain and committed suicide. It does constitute instigation and the petitions may be rejected.

6. We have carefully perused the charge-sheet. It is indeed unfortunate that inspite of securing 75% marks at the Matriculation level the boy aged 17 years seems to have got frustrated having failed to secure admission for the 11<sup>th</sup> standard. It is also apparent that there are few witnesses who have seen him approaching the petitioners but was apparently sent away by saying that he would have to pay Rupees Five Thousand for completing the admission process. They have also stated that because of the behaviour of the petitioners the deceased was depressed. But then even accepting all these facts at their face value one cannot comprehend as to how this conduct of the petitioners howsoever objectionable would constitute instigation within the meaning of Section 107 of the Indian Penal Code if the boy was unable to tolerate it and decided to end his life.

7. If one peruses the statements of some of the witnesses i.e. Laxman Pandharinath Mhaske, Vishnu Ananda Mhaske, Pravin Vishnu Mhaske as well as Priyanka Bhosale, that in fact the deceased was

seeking some concession in payment of fees but was sternly told that no concession was available for him and he would have to pay Rupees Five Thousand.

8. If such was the state of affairs, merely because the petitioners were asking the deceased to pay Rupees Five Thousand for completing the admission process and that he was asking for some concession and they had told him that he was not entitled to any and subsequently he committed suicide, in our considered view, the conduct of the petitioners would not constitute abetment within the meaning of Section 107 of the Indian Penal Code. No intention is attributable to the petitioners to lead the deceased to commit suicide by their alleged conduct of insisting for payment of necessary charges for completing the admission process.

9. It would be a sheer abuse of the process of law if the petitioners are made to face the charge based on such allegations. Their case is squarely covered by category nos. 1 and 3 of the **State of Haryana and Ors. V/s. Bhajan Lal and Ors.; AIR 1992 SUPREME COURT 604.**

10. The Writ Petitions are allowed in terms of prayer clauses 'B'. The Rule is made absolute in those terms.

(MANGESH S. PATIL, J.)

(T.V. NALAWADE, J.)