

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

CRIMINAL APPLICATION NO.2616 OF 2018

Balasaheb S/o Sambhaji Pawar
Age- 50 years, Occ : Agri.,
R/o village Hatani, Tq. Umri,
Dist. Nanded.

..APPLICANT

VERSUS

1. The State of Maharashtra
Through the Police Sub-Inspector,
Umri Police Station,
Tq. Umri, Dist. Nanded.
2. Hanumant S/o Vyankati Pawar
Age-24 years, Occ : Labour,
R/o village Hatani, Tq-Umri
Dist. Nanded.

..RESPONDENTS

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Mr.S.N. Janakwade, Advocate for the Applicant
Mr.S.B. Joshi, APP for Respondent No.1.
Mr.K.N. Shaikh, Advocate for Respondent No.2
(Appointed)

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**CORAM: S.S.SHINDE &
R.G. AVACHAT, JJ.**

Reserved on : 30.01.2019
Pronounced on : 07.02.2019

JUDGMENT (Per S.S.Shinde, J.):

Rule. Rule made returnable forthwith

and heard finally with the consent of the parties.

2. This Application is filed by the applicant, for quashing and setting aside the First Information Report bearing Crime No.93/2018, dated 13th June, 2018 registered at Umri Police Station, Taluka-Umri, Dist. Nanded for the offence punishable under Section 306 of the Indian Penal Code and further Section 3(2)(v) of Scheduled Castes and Schedule Tribes (Prevention of Atrocities) Act. By way of amendment, the applicant has also prayed for quashing and setting aside the charge-sheet bearing No.55/2018 dated 3rd October, 2018 pending on the file of Additional Sessions Court, Bhokar, Dist. Nanded.

3. It is the case of applicant that, an

informant Hanmant Venkati Pawar filed F.I.R. bearing Crime No.93/2016 with Umri Police Station, Taluka-Umri, Dist. Nanded for the offence punishable under Section 306 of the Indian Penal Code and Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. It is alleged in the first information report that applicant, who was former Sarpanch of the village, called Vyenkati Mariba Pawar (father of informant) and told that he would manage to get sanctioned the loan under the Government scheme of goat farming from the bank. It is further alleged in the first information report that for the said purpose, the applicant demanded Rs.20,000/- and certain documents from the father of informant. After receiving documents and the amount, the applicant did nothing and avoided to meet the deceased. Neither the loan was

sanctioned nor the applicant returned the amount of Rs.20,000/-, which was paid by the deceased to the applicant. It is alleged that on 18th May, 2018, the father of the informant had consumed the poisonous substance, and therefore, he was admitted in the hospital and on 4th June, 2018 at about 10.45, father of informant died during treatment at Government Hospital, Nanded. On the basis of aforesaid allegations, the F.I.R. came to be registered at Umri Police Station against the applicant on 13th June, 2018.

4. Learned counsel appearing for the applicant submits that the applicant has been falsely implicated in the alleged offence and he has not committed any offence as alleged. It is submitted that the father of the informant consumed poisonous substance on 18th May, 2018 and died on 4th June, 2018, however,

the first information report came to be lodged very belatedly i.e. on 13th June, 2018, thereby falsely implicating the present applicant. It is submitted that during the period from 18th May, 2018 to 4th June, 2018, the deceased was taking treatment in the hospital, and when there was sufficient opportunity, no efforts were taken by the informant to lodge the first information report. It is further submitted that no suicide note was left by the deceased to show that the applicant is responsible for his suicide. It is submitted that perusal of the contents of F.I.R., charge-sheet and its accompaniments, the ingredients of alleged offences including the offences under the provisions of Atrocities Act are not attributed to the present applicant. In support of his contentions, learned counsel appearing for the applicant placed reliance

upon the exposition of law in the cases of Dilip Ramrao Shirasao and others V/s State of Maharashtra and others¹, Balasheb Ashruba Fakare and others V/s State of Maharashtra and others², Vijay @ Munna Gurkhude V/s State of Maharashtra³, Ravindra Bhimrao Khillare and others V/s State of Maharashtra and others⁴, Praveen Pradhan Vs. State of Uttaranchal and others⁵, Gangula Mohan Reddy V/s State of Andhra Pradesh⁶ and Amalendu Pal Vs. State of West Bengal⁷. Learned counsel therefore submits that the ingredients of the alleged offences are not at all attracted and as such, the FIR and the consequent charge-sheet deserve to be quashed and set aside by allowing the application.

5. On the other hand, learned A.P.P.

1 2016 ALL MR (Cri) 4328

2 2017 DGLS (Bom) 520

3 2014 ALL MR (Cri) 2566

4 2017 ALL MR (Cri) 2966

5 2012(9) SCC 734

6 2010(1) SCC 750

7 2010(1) SCC 707

appearing for the respondent/State, relying upon the allegations in the first information report, also the investigation papers and the charge-sheet and its accompaniments, submits that the alleged offences are clearly disclosed against the applicant, and therefore, the prayer of the applicant to quash the F.I.R. and consequent charge-sheet may not be entertained. Learned A.P.P. further submits that the Investigating agency has collected sufficient material against the applicant and on the basis of said material, trial can proceed.

6. Learned counsel appearing for Respondent No.2 invites our attention to the allegations in the first information report and also charge-sheet and its accompaniments, and submits that the alleged offences are clearly disclosed against the applicant. The

allegations in the first information report will have to be taken as it is. It is submitted that during the course of investigation, the Investigating Agency has recorded the statements of various witnesses, who support the prosecution case. Therefore, he submits that the Application may be rejected.

7. We have considered the submissions of learned counsel appearing for the applicant, learned A.P.P. appearing for the respondent/State and learned counsel appearing for respondent No.2. With their able assistance, we have carefully perused the contents of the first information report, charge-sheet and its accompaniments and the exposition of law in the reported judgments relied upon by learned counsel appearing for the applicant.

8. Admittedly, the father of Respondent No.2 committed suicide by consuming poisonous substance on 18th May, 2018 and he died on 4th June, 2018, however, Respondent No.2 has registered the first information report on 13th June, 2018 i.e. after 10 days from the death of his father. No reasons are forthcoming on record, why there was inordinate delay of 10 days in filing the first information report.

9. Upon perusal of the charge-sheet and its accompaniments, there is no material collected by the Investigating Officer that as a matter of fact an amount of Rs.20,000/- was paid by the father of Respondent No.2 namely Vyenkati Mariba Pawar (deceased), and such amount was accepted by the present applicant. There is no incriminating material

collected, except recording of the statements of the witnesses to support the prosecution case that Vyenkati Mariba Pawar (deceased) committed suicide due to persistent harassment by the present applicant or the applicant intended, abetted or aided to such commission of suicide. The statements of the witnesses only make reference to the facts which were stated by Respondent No.2 to them, that father of Respondent No.2 gave Rs.20,000/- to the applicant so as to get sanction to the file to purchase goats under the scheme of Government.

10. Upon careful perusal of the entire accompaniments of the charge-sheet, it appears that no suicide note was left by father of Respondent No.2 Vyenkati Mariba Pawar. It is also relevant to take into consideration that the incident of alleged

consumption of poisonous substance by father of Respondent No.2 took place on 18th May, 2018 and he died on 4th June, 2018. The cause of death also does not indicate or attribute any role to the present applicant. Even as per the allegations in the first information report, the father of Respondent No.2 consumed poisonous substance and ultimately died while taking treatment.

11. The Supreme Court in the case of S.S. Cheena V/s Vijay Kumar Mahajan and another⁸, observed that, the abetment involves 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. The intention of the legislature and the ratio of the cases decided by this

⁸ (2010) 12 SCC 190

Court is clear that in order to convict a person under Section 306 of the I.P. Code there has to be a clear *mens rea* to commit the offence. It also requires an active act or direct act which leads the deceased to commit suicide seeing no option and that act must have been intended to push the deceased into such a position that he commits suicide.

12. In the case of of Dilip s/o Ramrao Shirasao and others vs. State of Maharashtra and another (cited supra), the Division Bench of the Bombay High Court, Bench at Nagpur considered the various Judgments of the Supreme Court and the High Court and in Para 20 of the Judgment, held thus:

"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 or process of law."

13. Therefore, in the light of discussion in foregoing paragraphs, we are of the opinion that considering the allegations against the applicant, it cannot be said that the applicant intended or abetted or instigated the deceased Vyenkati to commit suicide. 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 applicant under Section 306 of the Indian Penal Code, would be an abuse of process of law. Further it is to be noted that Vyenkati committed suicide on 4th June, 2018 and the F.I.R. has been lodged on 13th June, 2018. Thus there is 10 days delay in lodging the F.I.R., therefore, we find considerable force in the argument of learned

counsel appearing for the applicant that possibility of concoction and false implication cannot be ruled out.

14. In that view of the matter, the Application succeeds. The Criminal Application is allowed. Accordingly, the First Information Report bearing Crime No.93/2018, dated 13th June, 2018 registered at Umri Police Station, Taluka-Umri, Dist. Nanded for the offence punishable under Section 306 of the Indian Penal Code and further Section 3(2)(v) of Scheduled Castes and Schedule Tribes (Prevention of Atrocities) Act and the consequent charge-sheet bearing No.55/2018 dated 3rd October, 2018 pending on the file of the Additional Sessions Court, Bhokar, Dist. Nanded, are quashed and set aside.

15. Rule is made absolute in above terms. The Application is allowed and stands disposed of, accordingly.

16. Since Mr. Shaikh Kayyam Nagir, learned counsel is appointed to prosecute the cause of Respondent No.2, his fees be paid as per the schedule of fees maintained by the High Court Legal Services Sub-Committee, Aurangabad.

[R.G. AVACHAT]
JUDGE

[S.S. SHINDE]
JUDGE

SGA/-