

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.3401 OF 2018

Rushikesh s/o Hanumant Sutar,
Age-20 years, Occu:Education,
R/o-Korfale, Tq-Barshi,
Dist-Solapur.

...APPLICANT

VERSUS

- 1) The State of Maharashtra,
Through the Principal Secretary,
Home Department, Mantralaya,
Mumbai-32,
- 2) The Police Inspector,
Police Station, Vashi,
Dist-Osmanabad,
- 3) Sanjay s/o Nilkanthrao Lakhe (Patil),
Age-51 years, Occu:Agri and Business,
R/o-At Post-Lakhangaon, Tq-Vashi,
Dist-Osmanabad,
Also R/o- In front of Jalna Sahakari
Sakhar Karkhana, Ram Nagar, Jalna,
Dist-Jalna.

...RESPONDENTS

...

Mr.Nikhil S. Tekale Advocate for Applicant.
Mr.D.R. Kale, A.P.P. for Respondent Nos.1 and 2
Mr.V.D. Gunale Advocate for Respondent
No.3 (**Absent**).

...

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

DATE OF RESERVING JUDGMENT : 10TH JANUARY, 2019

DATE OF PRONOUNCING JUDGMENT: 16TH JANUARY, 2019

JUDGMENT [PER S.S. SHINDE, J.] :

1. Rule. Rule made returnable forthwith and heard finally with the consent of the learned counsel appearing for the parties.

2. This Application is filed by the Applicant praying therein to quash and set aside the First Information Report and further Criminal Proceedings in C.R. No.0145 of 2018 registered against him on 26th August, 2018 at Police Station, Vashi, Dist-Osmanabad, for the offences punishable under Sections 306, 323, 504, 506 and 34 of the Indian Penal Code.

3. It is the case of the Applicant that after completing higher secondary education, he had taken admission to the Hotel Management course at United Education Institute, Shivaji Nagar, Pune in the year 2017. The Applicant had completed his first year with good rank and is now studying in 2nd year of the said course.

4. It is the case of the Applicant that accused No.2 i.e. Rajashri More is his aunt, accused No.1 is uncle and accused No.3 is cousin of the Applicant. The Applicant is accused No.4. The Applicant is resident of village Korfale in Barshi Taluka, whereas his aunt and uncle reside at Lakhegaon in Vashi Taluka.

5. It is the case of the Applicant that the students of Hotel Management are required to undergo training programme in the second year of their course and for the said training the

students may go abroad or in any reputed institution or hotel throughout the country. It is the case of the Applicant that as he is willing to go abroad, he had applied for passport and after detail inquiry and process, his passport came at Chousala Post Office, Tq. and Dist-Beed. The Applicant therefore came to collect the passport at village Chousala and collected the same on 16th July, 2018. As the aunt of the Applicant insisted to come home and stay for the day, he went to his aunt's house at village Lakhegaon at about 6.00 p.m. in the evening on 16th July, 2018, and on the next day, came back to Pune.

6. It is the case of the Applicant that Respondent No.3 lodged the aforesaid false report against the accused implicating the Applicant as well. In fact the Applicant is not even aware about the alleged incident of quarrel. It is the case of the Applicant that it is alleged in the

report that deceased Nilkanth Lakhe was father of informant. On 16th July, 2018, at about 8.30 p.m. when the informant was at Mumbai, his niece informed him on telephone that quarrel was going on between accused and the deceased and the accused were abusing and beating the deceased. Thereafter cousin of the informant namely, Dhananjay and his son Vaibhav have taken the deceased to home. At about 1.00 to 1.30 a.m. in the morning, said Vikas called informant and told that his father had consumed some poisonous medicine. Thereafter, deceased was taken to rural hospital, Vashi then to Sushrut Hospital, Barshi for further treatment. However, Nilkanthrao Lakhe died at about 8.30 in the morning of 17th July, 2018. Informant came from Mumbai in the evening and found suicide note in the pocket of deceased, wherein the deceased held accused and other four persons responsible for his death. It is further alleged that the deceased was beaten by accused on

account of demand of Rs.7500/- made by deceased to accused, which was due from accused and thus the accused are responsible for the death of his father and other four persons named in the suicide note are not responsible. On the basis of said information, police registered Crime No.0145 of 2018 for the offence punishable under Section 306, 323, 504, 506 and 34 of the Indian Penal Code (for short "I.P. Code") against the Applicant including other three accused. Hence this Application is filed by the Applicant.

7. Learned counsel appearing for the Applicant submits that bare perusal of the First Information Report (FIR) reveals that the allegations levelled against the Applicant are not enough to make out a prima facie case under Section 306, 504, 506 and 34 of the I.P. Code, for commission of the offence. The allegations are absolutely false and frivolous and the Applicant

has not at all quarreled with deceased Nilkanthrao Lakhe. It is submitted that the allegations in the FIR even if taken as it is, the same are not even prima facie sufficient to hold that the essential ingredients of the offence under Section 306 of the I.P. Code i.e. instigation, conspiracy or intentional aid for suicide are fulfilled. It is submitted that the Applicant has been falsely implicated in the crime and there is absolutely no relation or concern of the Applicant with the deceased or informant and the Applicant even did not know either deceased or informant.

8. Learned counsel further submits that the alleged incident took place on 16th July, 2018 and report is lodged on 26th August, 2018 and thus there is an inordinate delay in lodging the FIR, which is not at all explained by the informant or the prosecution. In such circumstances, prima facie allegations made and offences levelled

against the Applicant appears to be after-thought and concocted. Learned counsel further submits that the Applicant is not resident of village Lakhangaon but it is his aunt's residential place, where the Applicant visited once or twice only, that too for a day or two. Therefore, it is hard to believe that Applicant was anyway connected or having disputes with deceased, as alleged. It appears that the deceased had consumed poisonous substance in the night of 16th July, 2018, due to some family issues or old age sufferings.

9. Learned counsel further submits that as per the FIR itself, the informant arrived from Mumbai on 17th July, 2018, in the evening and by that time post mortem was already conducted on the body of deceased. Therefore, it is submitted that, in such scenario the alleged suicide note found to be in the pocket of clothes of deceased, is not at all reliable and possibility of subsequent

plantation of the said note to rope the Applicant cannot be ruled out. It is submitted that in the alleged suicide note, the Applicant has not been specifically named. Even though in the alleged suicide note names of eight persons are mentioned, the FIR is registered only against four persons including the Applicant, and it is mentioned in the said FIR that other named four persons are not at all responsible for the suicide committed by the deceased. Learned counsel therefore submits that possibility of false implication cannot be ruled out and alleged suicide note is not at all reliable.

10. Learned counsel further submits that the FIR speaks about some transaction between family of aunt of the Applicant and deceased, and alleged quarrel on that count. The Applicant not being the member of the family and not resident of the village, cannot be said to have any concern with

either deceased or alleged transaction. It is submitted that the Applicant, aged about 20 years, is a student, prosecuting his studies of Hotel Management at Pune. The Applicant is not having any concern with the informant, deceased or any differences between deceased and accused Nos.1 to 3. The Applicant does not have any idea about the alleged transactions. It is submitted that the Applicant is having bright future and false implication and subsequent trial will ruin entire career of the Applicant. The Applicant was willing to go abroad for training, however only due to pendency of this concocted proceedings, the College has refused to send the Applicant for training.

11. Learned counsel further submitted that, even considering the facts and circumstances of the case, the ingredients of the alleged offences are not at all attracted as the FIR itself is

concocted one, and therefore the FIR deserves to be quashed and set aside as against the present Applicant. Learned counsel therefore prayed that the Application may be allowed.

12. On the other hand, learned A.P.P. appearing for the State, relying upon the investigation papers and in particular contents of the suicide note, submits that the allegations in the FIR are supported by the statement of witnesses. It is further submitted that the prosecution agency has collected sufficient material and on the basis of said material trial can proceed. Learned A.P.P. therefore submitted that the prayer of the Applicant for quashing the FIR may not be favourably considered.

13. We have given careful consideration to the submissions made by learned counsel appearing for the Applicant and learned A.P.P. appearing for

the State, and with their able assistance we have perused the averments in the Application, grounds taken therein, annexures thereto, the First Information Report and the investigation papers. It is true that during investigation, suicide note alleged to have been written by deceased Nilkanth was seized. It appears from the contents of the FIR that father of Respondent No.3, i.e. Nilkanth committed suicide on 16th July, 2018 and left a chit. In the said chit, it is written that following eight persons are responsible for the death of Nilkanth:

- 1) Ankush Kashinath Sutar,
- 2) Wife of Ankush,
- 3) Elder son of Ankush,
- 4) Brother of Ankush, residing at Korfal,
- 5) Bhaqwat Anna Lakhe, former teacher of Gramin Vidyalaya, Lakahngaon,
- 6) Maruti Ashruba Lakhe,

7) Dilip Sukhdeo Lakhe

8) Aabasaheb Sukhdeo Lakhe.

14. Thus, it appears that, in the said suicide note, the deceased has made allegations against as many as eight persons, whose names are mentioned above, and stated that they are responsible for his death. However, if the FIR is perused, it is stated by the informant that though deceased has named other four persons i.e. the persons named at Sr. Nos.4 to 8, the said persons were not present on the spot when the alleged incident took place and they had nothing to do with the alleged incident of quarrel. It is specifically stated in the FIR by the informant that he does not know the reason why the names of said persons are written in the chit by his father, and that he has no complaint against those persons, and only the persons named at Sr.Nos.1 to 4 in the chit are responsible for the death of

his father. Thus, it appears that the informant has adopted 'pick and choose' policy while naming the accused persons and therefore the possibility of false implication cannot be ruled out. Further, it is significant to note that Applicant has not been specifically named in the said chit and it is cursorily written as 'brother of Ankush from Korfal'.

15. The FIR shows that the alleged incident took place in the night of 16th July, 2018, and Nilkanth died at about 8.30 a.m. on 17th July, 2018, and for the said incident, the FIR is lodged on 26th August, 2018. Thus, there is delay of about 39 days in lodging the FIR itself. As observed earlier, the Applicant is neither specifically named in the FIR nor in the alleged suicide note. No specific role is attributed to the Applicant.

16. It is stated in the FIR that there was

some transaction between accused Nos.1 to 3 and the deceased, therefore deceased went to the house of accused Nos.1 to 3 for demanding Rs.7500/-, but the accused persons refused to pay the said amount, but abused and assaulted the deceased and therefore he consumed some poisonous substance and committed suicide. No specific role is attributed to the Applicant who is accused No.4. Only general statement is made that all accused persons abused and assaulted deceased. Considering the circumstances brought on record and also upon perusal of the investigation papers, it cannot be said that Nilkanth had no option but to commit suicide due to the act of the Applicant. In absence of any abetment, instigation or intentional aid for commission of suicide in proximate time and date of the alleged commission of suicide, the Applicant cannot be forced to face the trial. The Applicant has placed on record sufficient documents showing that he is

prosecuting his studies of Hotel Management course at United Education Institute, Shivaji Nagar, Pune. In the circumstances, if the Applicant-student is forced to face the trial on false implication, his entire career would be ruined. In order to constitute offence under Section 306 of the I.P. Code, the prosecution must show that there was instigation or intentional aid or conspiracy for commission of suicide by the person who has committed the suicide.

17. The Supreme Court in the case of S.S. Cheena vs. Vijay Kumar Mahajan and another¹, 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

¹ (2010) 12 SCC 190

legislature and the ratio of the cases decided by this 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.

18. In the case of of Dilip s/o Ramrao Shirasao and others vs. State of Maharashtra and another (Criminal Application No.332 of 2016), dated 5th August 2016, the Division Bench of the Bombay High Court, Bench at Nagpur has considered 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."

19. So far as the offence under Section 323, 504, 506, 34 of the I.P. Code is concerned, perusal of the FIR and the documents placed on record shows that only general allegations are made against the Applicant and no specific role is attributed to him and therefore ingredients of the alleged offences are not at all attracted. The contents of the FIR shows that the alleged incident took place at village Lakhangaon, Tq-Vashi, Dist-Osmanabad and the documents placed on record unequivocally shows that the Applicant is resident of village Korfale, Tq-Barshi, Dist-Solapur, and at the relevant time he was prosecuting his studies of Hotel Management at Pune. Therefore, we find considerable force in the argument advanced by learned counsel appearing for the Applicant that the Applicant has no nexus with the alleged incident which took place at village Lakhangaon on the count of some monetary transactions between the deceased and accused

Nos.1 to 3. Therefore, the possibility of false implication cannot be ruled out.

20. In the light of discussion in foregoing paragraphs, we are of the opinion that all the acts/ allegations attributed to the Applicant are general in nature and no specific overt act is attributed to him. By any stretch of imagination, it cannot be said that the Applicant intended or abetted or instigated the deceased Nilkanth to commit suicide. Unless there is clear mes 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 I.P. Code, in our considered view, would be an abuse of process of law. Further it is to be noted that Nilkanth committed suicide on 16th July, 2018, and the First Information Report was lodged on 26th August, 2018.

Thus, there is an inordinate delay in lodging the First Information Report. As observed earlier, though the deceased has stated names of as many as eight persons in the alleged suicide note, who were responsible for his death, the First Information Report was lodged only against four persons, including the present Applicant. Therefore, we find considerable force in the argument advanced by learned counsel appearing for the Applicant that possibility of concoction and false implication cannot be ruled out.

21. In that view of the matter, the Application succeeds. The criminal proceeding arising out of FIR bearing C.R. No.0145 of 2018 registered with Police Station Vashi, Dist-Osmanabad, dated 26th August, 2018, for the offence punishable under Section 306, 323, 504, 506 and 34 of the Indian Penal Code is quashed and set aside, to the extent of present Applicant only.

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

23. We make it clear that the other co-accused will not be entitled to derive any benefit from the observations made herein before. We also make it clear that the observations made herein above are prima facie in nature, confined to the adjudication of the present Application and the trial Court shall not get influenced by the said observations during the course of the trial as against the co-accused.

[R.G. AVACHAT, J.]

asb/JAN19

[S.S. SHINDE, J.]