

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 3785 OF 2018

1. Nivrutti Haribhau Agale,
Age 64 years, Occu. Labour,
R/o. Newasa Khurd, Tq. Newasa,
District Amednagar.
 2. Machindra Haribhau Agale,
Age 66 years, Occu. Pensioner,
R/o. As above.
 3. Ushabai Machindra Agale,
Age 63 years, Occu. Household,
R/o. As above.
 4. Surendra Machindra Agale,
Age 6634 years, Occu. Pensioner,
R/o. As above.
At present Nerul State Bank Colony,
New Mumbai.
 5. Dattatrya Yamaji Lokhande,
Age 54 years, Occu. Service,
R/o. Takalibhan, Tq. Shrirampur,
District Ahmednagar.
 6. Sanjaykumar Shankar Lad,
Age 42 years, Occu. Service,
R/o. Dedgaon, Ta. Newasa,
District Ahmednagar.
 7. Archana Sanjaykumar Lad,
Age 42 years, Occu. Service,
R/o. As above.
 8. Meghana Dnyaneshwar Harer,
Age 37 years, Occu. Household,
R/o. Samarthnagar, S.T. Colony,
Aurangabad, Taluka and
Dist. Aurangabad.
-Applicants.**

Versus

1. The State of Maharashtra

Through : The Police Inspector,
Newasa Police Station, Newasa,
Tq. Newasa, District Ahmednagar.

2. Lazras Gangadhar Dethe,
Age 52 years, Occu.
R/o. Near Dnyanda High School,
Newasa, Tal. Newasa,
District Ahmednagar.

....Respondents.

Mr. V.D. Sapkal and Mr. A.B. Jagtap, Advocate for applicants.

Mr. M.M. Nerlikar, APP for respondent No. 1/State.

Mr. C.T. Jadhav, Advocate for respondent No. 2.

**CORAM : T.V. NALAWADE AND
S.M. GAVHANE, JJ.**

DATED : 04/12/2019.

JUDGMENT : [PER T.V. NALAWADE, J.]

1) Rule. Rule made returnable forthwith. By consent, heard both the sides for final disposal.

2) The proceeding is filed for relief of quashing and setting aside C.R. No. 699/2018 registered with Newasa Police Station, District Ahmednagar for the offences punishable under sections 306, 323 r/w. 34 of Indian Penal Code (I.P.C.) and the proceeding, if any, filed on the basis of said crime. The crime is registered on the basis of report given by respondent No. 2 Lazras Dethe on 2.11.2018. In the F.I.R., he has made allegations against the present applicants that due to harassment of the applicants his son Pappu alias Shashwat Dethe committed suicide by hanging himself in the house on 6.9.2018 prior to 7.50 a.m.

3) It is the contention of the informant that though the incident took place on 6.9.2018, on 9.9.2018 he found a suicide note left behind by deceased and in the suicide note, the deceased had disclosed that he was committing suicide due to the persons of Agale family and if anybody can be blamed for his suicide, only the members of family of Agale can be blamed. He had mentioned in suicide note that he was feeling insulted due to the offence registered under section 302 of I.P.C. He had written that he had guilty mind as he was leaving the company of his father. He had expressed love for his wife and he had put signature under the aforesaid matter. Due to this suicide note, the informant approached police and gave report.

4) In the report, the informant has further mentioned that on 19.6.2016 one incident had taken place in which a person from family of applicant No. 1 viz. Babu alias Mahendra Machindra Agale had entered the house of informant in the night time and when he was noticed, he had run away. He contended that on that night he had gone to the house of applicant Nos. 1 and 2 to inform about the incident to them and then the wife of Babu had informed that he had left home with scarf. Search was taken to find Babu on that night and then they had noticed dead body of Babu at the compound of Dnyanodai School. His dead body was hanging at the compound grill and out of that incident report was given by Machindra Agale,

applicant No. 2 in police station on 23.6.2016 against the deceased and the informant and the crime at C.R. No. 169/16 was registered for the offences punishable under sections 302, 201 and 34 of I.P.C. It is contended by informant in the present matter that in the said crime the deceased, first informant and other members of his family were called to police station and they were released after making some inquiry. It is contended that due to registration of crime, deceased Shashwat was in depressed condition of mind.

5) The informant has also contended in the present F.I.R. that due to the aforesaid incident of death of Babu, the persons of family of applicants were harassing him and were insulting him. On 13.11.2016 even beating was given to deceased Shashwat by the persons of Agale family. It is contended that about 2 to 3 days prior to the incident in question, the water channel taking out the drain water from the house of informant was closed by the family of Agale and due to that also there was dispute. It is contended that due to all the aforesaid incidents, the deceased committed suicide. In the report, the names of all the eight applicants are mentioned as the persons who are responsible for the suicide of Shashwat.

6) In view of nature of allegations, this Court had asked the learned APP to show the record of C.R. No. 169/16. In the papers, there is the P.M. report showing that the ligature mark of 'O' shape around the neck of the size of 33 x 2 c.m. and there are fractures of

hyoid bone, there were other injuries like abrasions over right elbow and left elbow. In the P.M. report, the cause of death is given as death due to cardiorespiratory arrest due to strangulation. Though such P.M. report is there, subsequently again opinion was obtained from Rural Hospital Newasa and in that opinion dated 5.7.2016 the opinion was given that the strangulation can be due to suicide or also due to homicide. Below such opinion it is mentioned that there were injuries at both elbows and there were ligature mark of 'O' shape. It appears that on that night Babu had entered the house of present informant and then some incident had taken place and after that the dead body of Babu was found. The F.I.R. was given only after P.M. report and not immediately on the same night and the crime came to be registered due to aforesaid circumstances. Giving of such report against the deceased cannot be treated as abetment of suicide of the deceased. In view of the aforesaid circumstances, the crime for the offence of murder came to be registered against the deceased and others. Such circumstance cannot bring even the informant under section 306 of I.P.C. as intention as required under section 107 of I.P.C. is required to be shown. It can be said that it was not within the knowledge of deceased as to who had given report or who had given statement before police. In the F.I.R., it is not mentioned that Shashwat was arrested in the said crime. Chargesheet is not yet filed in that crime and so, it cannot be said that all the applicants had given statements against Pappu alias

Shashwat and that was within the knowledge of Pappu alias Shashwat.

7) In the suicide note, it is mentioned that members of family of Agale need to be held responsible for his suicide for involving him in offence of murder of Babu. It is already observed that it cannot be said that all the applicants had involved the deceased Shashwat in the offence of murder. At the most, applicant No. 2 who had given report could have been within the knowledge of the deceased as the person who had given information against him to police. The residential places of applicant Nos. 4 to 8 are different from the place of residence of applicant Nos. 1 to 3. It can be said that only applicant Nos. 1 to 3 were neighbours and were living in the vicinity of the house of deceased. Applicant No. 4 is resident of New Mumbai. The surnames of applicant Nos. 5 to 8 are Lokhande, Lad and Harer. They cannot be called as members of family of Machindra or Nivrutti. In the suicide note, it is mentioned that members of family of Agale need to be held responsible. This disclosure is very vague. No particular incident against any of the applicants is mentioned in the so called chit, dying declaration. Only due to mention of the crime of murder, it can be said that he was blaming Machindra, but for that also due to aforesaid circumstances, it is difficult to infer that Machindra intentionally abetted the suicide of Shashwat.

8) The learned counsel for informant submitted that in the past, in the year 2016 Shashwat had given report against Meghana Harer and Archana Harer in respect of incident dated 13.11.2016 that they had given abuses to him by taking the name of his caste. Though such submission was made, there is no record to show that on the basis of that report dated 14.11.2016 any action was taken by police against them. He had tried to implicate those ladies and also others in a case which could have been filed under the provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. It can be said that this attempt was not successful.

9) In view of the aforesaid circumstances, this Court holds that it is not possible to infer that any of the applicants intentionally abetted the suicide of Shashwat. It will be abuse of process of law if they are asked to face the trial for aforesaid offences. In the result, the application is allowed. Relief is granted to all the applicants in terms of prayer clause 'B'.

Rule is made absolute in those terms.

[S.M. GAVHANE, J.]

[T.V. NALAWADE, J.]

ssc/