

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO. 87 OF 2019

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|----|------------------------------------|---|-----------------|
| 1. | Sachin Ramu Gawli |] | |
| | |] | |
| 2. | Vaibhav Ramu Gawli |] | |
| | |] | |
| 3. | Rohan Ramu Gawli |] | |
| | |] | |
| 4. | Surekha Ramu Gawli |] | |
| | Applicant No. 1 to 4 R/o. |] | |
| | Murugan Mandir, 129, Vidya Nagar, |] | |
| | J.N. Road, Mulund (West), |] | |
| | Mumbai- 400080. |] | |
| | |] | |
| 5. | Pakhiraj Wilson Nadar |] | |
| | R/. Near Dattatrya Juice Center |] | |
| | Room No. 110, Indira Sahkar Nagar, |] | |
| | J.N. Road, Mulund (West), |] | |
| | Mumbai- 400080. |] |APPLICANTS |

VERSUS

The State of Maharashtra	]	
(At the instance of Mulund Police	]	
Station).	]	RESPONDENT

.....

Mr. Prashant Pandey, Advocate for Applicants.
Mrs. M.R. Tidke, APP for Respondent/State.

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CORAM : S. S. SHINDE J.
DATE : 6th August 2019.

JUDGMENT

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

2. Brief facts leading for filing the present application are as under:-

The husband of first informant namely Umesh Bombale has committed suicide on 28.09.2014 due to the insulting treatment and threats by the accused persons for recovery of money from him. It is alleged by first informant Sunita Bombale that her husband Umesh was having business of selling cutlery on the footpath. The said Umesh has started some 'Bhishi' by collecting money from persons of their community. As Umesh was illiterate his cousin brother Pradip Bhaskar Bombale used to look after the accounts of the Bhishi. Many of the Bhishi members took the money and ran away and avoided to make the contribution and therefore, Umesh was required to take loan. Accused No. 1 Gurunath Gawli has given amounts to Umesh from time to time and as such, Umesh has borrowed total Rs. 18 lacs from accused no. 1. Similarly, he also borrowed Rs. 10 lacs from another accused Sachin Gawli. However, Umesh could not repay said loan along with the interest to the accused persons. Hence, about 3-4 months prior to committing suicide by the Umesh, accused nos. 1 and his wife

i.e. accused no. 2 had visited the place of work of Umesh as well as the residence in presence of the first informant. They demanded money from him. Accused used to give abuses as well as beating to Umesh on such occasions. Due to such frequent incidences Umesh got frustrated and become addicted to liquor. Umesh attempted to commit suicide earlier due to harassment caused by the accused. However, the first informant had rescued him. The first informant had also alleged that, on the specific day of suicide i.e. on 28.09.2014, accused Sachin and other concerned have again given abuses and assaulted Umesh and thrown away his cutlery articles by demanding money. Umesh has also lodged police complaint about it. However, by getting annoyance by reasons of the police complaint said Sachin Gawali and others visited the residence of Umesh in the afternoon on 28.09.2014 and gave abuses and threats to him. Umesh annoyed and frustrated by act of accused left the residence. Thereafter, first informant was informed on phone about 6.45 p.m., that her husband has taken keys of residence and therefore, she immediately went to her residence at 7 p.m. and found that, Umesh had got himself strangled to the ceiling fan in kitchen by means of nylon rope, and he was taken to the hospital and the doctor declared him dead.

Thereafter, charge sheet came to be filed against the accused persons for offences punishable under Sections 306, 323, 504, 506, 427 read with 34 of

Indian Penal Code (for short “IPC”) as well as Section 32 and 33 of the Bombay Money Lenders Act. Thereafter, the present applicants preferred an application for discharge under Section 227 of Code of Criminal Procedure (for short “Cr.P.C.”) before the Hon'ble Sessions Court vide Exh. 9 & 14 in Sessions Case No. 680 of 2015 alongwith Sessions Case No. 278 of 2016, but the said application was partially allowed vide order dated 22.02.2017. Being aggrieved by the order dated 22.02.2017 present application is filed.

3. It submitted that, the learned Additional Sessions Judge, Mumbai has partly allowed the application preferred by the applicants by discharging the Applicant No. 2 to 4 from the ambit of Section 306, 323, 427 read with 34 of IPC and Section 32 B and 33 of Bombay Money Lenders Act, whereas, the Applicant No. 1 is discharged from the ambit of Section 427 read with 34 of IPC and 32 B of Bombay Money Lenders Act, whereas Applicant No. 5 is discharged from the ambit of Sections 306, 427 read with 34 of IPC and Section 32 B and 33 of Money Lenders Act. It is further submitted that, the learned Additional Sessions Judge has only unashamed the Applicant No. 1 under the provisions of Section 306 of IPC whereas, freed the other Applicants from the offence of 306 of IPC only because Applicant No. 1 had lent a sum of Rs. 10 lakhs to the deceased persons. The prosecution has failed to establish that, there was continuous harassment at the hands of Applicant No. 1, which constrained the deceased person to take such

a stern step. The prosecution relied on the incident dated 28.09.2014, when Applicant No. 1 and 5 encountered the deceased person and asked for repayment of the money accompanied with physical abuse. Also, the Applicant No. 2 to 4 are alleged to have visited the house premises of deceased on 28.09.2014, and happened to threaten the deceased person. The aforesaid allegations does not constitute an offence of Section 306 of IPC, and also the said allegations are an afterthought by the wife of the deceased to seek revenge and free herself from the liability of paying back the loan amount.

Learned counsel appearing for the applicants relied upon following judgments in support of his contention that, none of the alleged offences are disclosed and applicant's deserves to be discharged-

1. *Ramesh Kumar Vs. State of Chattisgarh*¹.
2. *Madan Mohan Singh Vs. State of Gujarat*².
3. *Suresh Vs. State of Maharashtra*³.
4. *Mr. Arjunan Vs. State*⁴.
5. *Dr. Mrs. Seema Ajay Bhoosreddy Vs. The State of Maharashtra*⁵.
6. *Akash Kumar Gupta Vs. The State of Madhya Pradesh*⁶.
7. *S.S. Cheena Vs. Vijay Kumar Mahajan & Anr*⁷.
8. *Ramesh Banshakaar @ Manju Banshakaar Vs. The State of Madhya Pradesh*⁸.

1(2001) 9 SCC 618

2(2010) 8 SCC 628

3(2001) 3 SCC 703

4 (2019) 3 SCC 315

5 Criminal Revision Application No. 265 of 2011.

6 (CRR-03071-2017)

7 Criminal Appeal No. 1503 of 2010.

8 (CRR-1677-2015)

4. Learned counsel appearing for the applicants submit that, applicants never intended death of Umesh. It is submitted that, the presumption like under Section 113 A of the Evidence Act, is not available in the facts of the present case. Learned counsel submits that, the impugned judgment records reasons by prima facie test, whereas under Section 227/228 of Cr.P.C., a different test is contemplated. It is submitted that, the Hon'ble Supreme Court in the case of **Suresh Vs. State** (supra) held that, the test at the Section 227/228 Cr.P.C. stage is the test of "sufficient ground for proceeding" and not "prima facie" test which is a test employed at the Section 204 Cr.P.C. State.

5. Learned counsel relying upon the averments and grounds taken in the application, annexures thereto and ratio laid down in the aforementioned judgments submits that, provisions of Section 107 of the Indian Penal Code are not attracted in the facts of the present case. It is also submitted that, consequently the ingredients of Section 306 are clearly not attracted and therefore, alleged offences are not disclosed. If the entire charge-sheet and accompaniments are considered in its entirety, there is no material to proceed against the applicants, therefore the trial cannot proceed against the applicants. Hence, application deserves to be allowed.

6. On the other hand, learned APP appearing for the State submitted that, within the proximate date and time of alleged commission of suicide, there are positive acts attributed qua the applicants, which lead to commission of suicide by Umesh. That Umesh could not return back the amount borrowed from the accused, therefore he was beaten, humiliated and insulted by the accused on very same date of commission of offence by accused persons. That statements of witnesses clearly revealed such incidences of persistent harassment. It is submitted that, substantial evidence is collected by the prosecution and it can not be discarded in toto. Learned APP appearing for the State invites attention of this Court to the reasons assigned by the Sessions Court while rejecting the application filed by the applicants and submits that, application may be rejected.

7. Heard learned counsel appearing for applicant and learned APP for the State at length. With their able assistance perused averments in the application, grounds taken therein and annexures thereto. I have carefully perused the reasons assigned by the Sessions Court in Para 8 of the impugned judgment, and those reasons appears to be inconsonance with the evidence on record. Umesh committed suicide on 28.09.2014, it is alleged that, on very same day applicant no. 1 and other two accused and accused no. 5 assaulted Umesh, and within few hours Umesh committed suicide. If the statement of eye witnesses

namely Nagesh Bombale, Arun Bombale, Vijay Patel, Pradip Bombale, Datta Bajantri and Shailendra Rokade are considered in its entirety, they have named the applicant no. 1 Sachin and applicant No. 5/co-accused i.e. Pakhiraj, and stated that other two accused were also involved in said incident. Applicant No. 2 and 3 herein are brothers of the applicant. There is overwhelming material collected by the prosecution that, within the proximate time and date of the alleged offence, the applicant no. 1 and other three accused went to the Umesh and assaulted him, and on very same day Umesh committed suicide. Applicant No. 2 Vaibhav and Applicant No.3 Rohan are the real brothers of Sachin. It is not necessary to elaborate the reasons, since Applicants No. 1, 2, 3 & 5 will have to face the trial. Applicants No. 1 and 5 have been named by some of the eye witnesses. There are other allegations which needs no mention, since elaborate reasons are given by the Sessions Court while rejecting the application of the applicants for discharge. Suffice it to say that, there is sufficient evidence/material collected by the Investigating Officer as against Applicants No. 1, 2, 3 and 5 and on that basis trial can proceed against them.

8. So far as Applicant No. 4 i.e. Surekha Ramu Gawli is concerned the allegation against her is that, she accompanied with Applicant No. 2 and 3 and they went to the house of the Umesh. Being a women and there is no sufficient

material collected by the Investigating Officer against her, her application deserves to be allowed.

9. In the light of discussion made in the foregoing paragraphs, application of Applicant No. 4 Surekha Ramu Gawli is allowed. So far application of Applicant No. 1 Sachin Ramu Gawli, Applicant No. 2 Vaibhav Ramu Gawli, Applicant No. 3 Rohan Ramu Gawli and Applicant No. 5 Pakhiraj Wilson Nadar is concerned, same stands rejected. Application is partly allowed and stands disposed of accordingly. Rule made absolute to the aforesaid extent.

[S.S. SHINDE, J.]