

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.554 OF 2019

AMIN ABDUL KADER MEMON

)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA

)...RESPONDENT

Mr.Dinesh Tiwari i/b. Mr.Osman Chisty, Advocate for the Applicant.

Mr.Amit Palkar, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 7th OCTOBER 2019

PC :

1 Heard finally.

2 By this application under Section 482 of the Code of Criminal Procedure, the applicant/accused Amir Abdul Kader Memon is praying for quashing and setting aside order dated 14th March 2019 passed by the learned Additional Sessions Judge, Kalyan, below his application for discharge in Sessions Case No.91

of 2017 and his seeking discharge from the Sessions case No.91 of 2017 registered against him in pursuant to Crime No.322 of 2015 for the offence punishable under Section 306 of the Indian Penal Code.

3 Heard the learned counsel appearing for the applicant/accused. He argued that even if the suicide note of deceased Dinesh and statement of his brother are accepted as it is, then also no case for the offence punishable under Section 306 of the Indian Penal Code is made out. The deceased has made allegations against several persons including the present applicant/accused and statement of accounts of the applicant/accused shows that he had discharged all his liability in the matter. My attention is drawn to the whatsapp communication and it is argued that just twenty-eight days prior to the incident, deceased Dinesh had thanked the applicant/accused for the favour done by the applicant/accused to him.

4 To buttress his contention, the learned counsel for the applicant/accused placed reliance on following judgments :

- a) **Mahendra Singh and Another vs. State of M.P.**¹
- b) **Ramesh Someshwarrao Tayde & Ors. vs. State of Maharashtra and Others**²
- c) **Imran son of Masood Khan and Another vs. The State of Maharashtra and Another**³ decided by Division Bench of this court at Nagpur.

With the aid of these judgments, it is argued that ingredients of the offence punishable under Section 306 of the Indian Penal Code are not made out, even if the charge-sheet is accepted in its entirety.

5 The learned APP opposed the application by contending that statement of employees of the deceased are clear and those demonstrate instigation by the applicant/accused to the deceased for committing suicide.

1 1995 Supp (3) Supreme Court Cases 731

2 MANU/MH/2789/2016

3 Criminal Application [APL] No.391 of 2018 decided on 29th March 2019

6 I have considered the submissions so advanced and also perused the charge-sheet. The applicant/ accused has resorted to Section 482 of the Code of Criminal Procedure for challenging the order rejecting his discharge by the learned trial court. It is well settled that provisions of Section 482 of the Code of Criminal Procedure are invoked for securing ends of justice and such powers are required to be exercised sparingly and with due caution, in rarest of the rare case.

7 In the case in hand, Dilip Pawar – brother of deceased Dinesh Pawar had lodged First Information Report (FIR) on 27th October 2015. It is case of the prosecution as reflected from the charge-sheet that deceased Dinesh Pawar was doing the work of installing fire fighting equipments and he was having a firm named Anpra Enterprises Solution of Fire. He went missing on 26th October 2015 and ultimately, his dead body was found in his car which was standing at Nashik-Mumbai Highway. Dinesh died by consuming some poison.

8 During the course of investigation, the prosecution has recovered suicide note allegedly written by deceased Dinesh. He had pointed finger at the present applicant/accused so also against Prakash Patil, Harishrrao and Shafiullah Khan as the persons, on whose behest, he ended his life. So far as the applicant/accused is concerned, the deceased has written that he was in depression and therefore, he was taking the step of self-effacement. It is averred by the deceased that the applicant/accused is owner of a firm named Garment Developers and he had taken the work of installation of fire fighting equipment in that firm. According to the deceased, the applicant/accused, since last two months was insisting him to complete the work or else was threatening to kill him. The deceased has averred that he had informed this fact to one Rashid Bhai.

9 During the course of investigation, statement of employees of the deceased are recorded by the Investigator. They

are Sham Ratansingh Jadhav, Sanjay Joshi, Arun Rathod, Littha Joy and others. All these employees, in their statement, had disclosed to the Investigator that deceased Dinesh Pawar had informed them that the applicant/accused, since last two months, was extending threats to kill him. These witnesses have stated that deceased Dinesh Pawar had taken the work of installation of fire fighting equipment in the building owned by the applicant/accused for a consideration of Rs.45 lakh. Statements of these witnesses show that the applicant/accused had not paid the deceased for the work which was actually done by him and was insisting him to complete the work.

10 Instigating a person to commit the act of crime amounts to abetment and such aid is required to be intentional. The matter is required to be viewed from the angle whether the accused persons could reasonably foresee result of their act and whether they could apprehend that such an act, which is attributed to them, is sufficient to propel or impel the person to commit suicide. In the case in hand, according to the prosecution

case, the applicant/accused had not paid to the deceased, but was insisting him to complete the work of installing fire fighting equipment. He was extending threats to the deceased to kill him. Prima-facie, it is seen that, with such act of the applicant/accused, so also of other persons, the deceased had committed suicide. Whether these acts would amount to intentional aid and instigation with requisite mensrea or not, is a matter of trial. However, at the pre-trial stage, while exercising powers under Section 482 of the Code of Criminal Procedure, it cannot be said that there is no iota of evidence to proceed against the applicant/accused for framing the Charge for the offence punishable under Section 306 of the Indian Penal Code.

11 In the matter of **Ramesh Someshwarrao Tayde (supra)** the learned Division Bench of this court had proceeded on facts of the case in that matter. Son of the non-applicant no.2 had borrowed some amount from the applicant no.2 and in that matter, a notice had been issued by one Nilesh Bhetalu seeking repayment of Rs.70,000/-. Coupled with that, threats of life were

given. In the matter of Imran son of Masood Khan and Another (supra), the dispute was between lender and borrower. In the matter of Mahendra Singh (supra) wife had committed suicide and the Honourable Supreme Court has held that her statement does not amount to intentionally aiding the deceased to commit suicide by her in-laws. All these cases had proceeded on their own facts.

12 During the course of trial, considering the nature of evidence collected by the prosecution, it will have to be looked into whether the act was with requisite mensrea and threat extended to kill the deceased was sufficient to construe as an instigation to him, to commit the act of suicide. However, as there is prima facie evidence collected by the prosecution, no case for interference is made out by invoking powers under Section 482 of the Code of Criminal Procedure.

13 The application is, therefore, rejected.

14 Needless to mention that all these observations are prima facie in nature and shall have no bearing on trial of the case.

(A. M. BADAR, J.)