

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.2661 OF 2018

Suresh Hindurao Patil,

Maitri CHS, Building No.24-A,

Flat No.303, Bimbisar Nagar,

Goregaon (E),

Mumbai – 400 065.

... Petitioner

Versus

1. State of Maharashtra

(At the instance of Police Inspector
of Shivajinagar Police Station,
Ambarnath (E), Thane.

2. Madukar Keru Saware

R/o. Sainath Co-op. Hsg. Soc.,
Room No.3, Shivajinagar,
Bhandup (West),
Mumbai – 400 068.

... Respondents

Mr. Umesh H. Pawar for the petitioner.

Ms. Sangita Shinde, A.P.P. for the State.

Mr. Sachin B. Chandan for respondent No.2.

**CORAM : RANJIT MORE &
SMT.BHARATI H. DANGRE, JJ.**

DATED : 16th July, 2019

JUDGMENT : (Per Smt. Bharati H. Dangre, J.)

1. Rule. Rule made returnable forthwith. Heard finally by consent of learned counsel appearing for the parties.

2. The petitioner, who is arraigned as an accused in C.R. No.131 of 2018 registered at Shivajinagar Police Station, Ambernath (East), Thane for offences punishable under Section 306 read with Section 34 of the IPC, has invoked the writ jurisdiction of this Court under Article 226 of the Constitution of India along with Section 482 of the Cr.P.C. praying for quashing and setting aside of the FIR registered against him.

3. We have heard Mr. Pawar, learned counsel for the petitioner as well as Mr. Chandan, learned counsel for respondent No.2 and Ms. Shinde, learned A.P.P. for the State.

4. The facts narrated in the petition divulge that the petitioner is working as Airport Service Manager and he is in-charge of the affairs of one SITA Information Networking Computing based at Abudhabi. In the said capacity, he is responsible for managing SITA services at

the Airports located at Abudhabi, Al Ain and Sharjah International Airports. The work entrusted to the petitioner involves providing of services at the Airports to keep all the computers and printers in working condition around the clock. For the said purpose, SITA Company has recruited its own staff and it has also appointed employees on contractual basis, who are recruited through one Prime Technology System.

5. The deceased Sachin Saware was one of the contractual employees engaged through Prime Tech System. It is the specific case of the petitioner that the deceased had no privity of contract with SITA Company or with the petitioner as his principal employer - Prime Tech System was responsible for his service conditions, medical insurance, salary, leave, etc.

6. The petition discloses that on 15/09/2017, deceased Sachin Saware called upon the petitioner and informed his inability to resume his duty on account of sickness. On the same day, he resigned from the job and accordingly he was relieved by his principal employer. The petitioner has placed reliance on an email addressed to him by the Manager of Prime Tech Services dated 17/09/2017 by which he was officially informed that Sachin Saware

had resigned from services on account of his health problem and his resignation was accepted and the petitioner's company would be provided with a replacement candidate at the earliest.

7. Perusal of facts disclose that an FIR came to be lodged on 15/05/2018 in Shivajinagar Police Station, Ambernath (E), Thane by one Mr. Madhukar Saware, thereby informing that his son Sachin Saware had committed suicide on 03/05/2018. The complainant in the said FIR had alleged and made a reference to marital discord of deceased Sachin Saware with his wife Swati. He also made a reference to the suicide note which was pasted on the wall of the room where he committed suicide. The said suicide note makes a reference to the petitioner and it is alleged that the Airport Manager of SITA Company at Abudhabi is responsible for his death as he was the person who had tortured him while he was not keeping well and compelled him to submit his resignation. Apart from this, he also held his wife and mother-in-law responsible for his act of commission of suicide. Based on this allegation, offences punishable under Section 306 read with Section 34 of the IPC came to be registered against the petitioner and, by the present petition, he prays for quashing and setting aside of the said FIR registered against him.

8. Mr. Pawar, learned counsel would submit that the chronology of events would show that there is no proximity and connection between the act of deceased committing suicide in the month of May, 2018 and his resignation in September, 2017. He would submit that the deceased resigned from his job in September, 2017 and left for India and, thereafter, there was no contact between the deceased and the petitioner. He would also submit that the petitioner had no privity of contract with the deceased and his resignation was a matter between his employer viz. Prime Tech Services and, the petitioner was only informed about the resignation by the Prime Tech Services. In any contingency, merely because the suicide note implicates the petitioner, according to learned counsel, the petitioner cannot be charged with the offence under Section 306 of the IPC as it involves an element of intention to aid or instigate or to abet suicide. The suicide note cannot be conclusively taken to establish any such instigation or abetment in absence of any co-relation between the deceased and the petitioner.

Learned counsel has placed reliance on the judgment of the Apex Court in Madan Mohan Singh v. State of Gujarat & Anr. reported in (2010) 8 SCC 268 as well as the judgment delivered by

this Court to which one of us (Ranjit More, J.) was a party, in the case of *Kishor Dattatraya Shinde v. State of Maharashtra*, reported in *2016 All MR (Cri.) 333*.

9. We have perused the petition along with its annexures and have also carefully considered the arguments advanced by the petitioner as well as learned counsel for Respondent No.2 and learned A.P.P. for the State.

10. It is to be noted that by Order dated 21/01/2019, this Court, while issuing notice, had directed continuation of investigation, but had restrained the police from filing charge-sheet. On perusal of the facts, it is clear that the petitioner was working in SITA Company, which was responsible for maintaining the Information Network Computing System at various Airports and in discharge of its functions, the Company had recruited its own staff or was taking the assistance of the contractual employees recruited by Prime Tech Systems. The deceased was recruited by Prime Tech Systems and he was attached to the petitioner's Company as a contractual employee. The petitioner in his capacity as Airport Service Manager of SITA Company was not in a supervisory capacity, competent to take any decision qua the employees of the principal employer though it may

be true that there was some issues between the deceased and the Prime Tech System as is apparent from the emails placed on record. However, in any case, the petitioner or his company cannot be said to be responsible for the death of the deceased as the correspondence exchanged were in regard to the service stipulations sought to be enforced by Prime Tech System. The principal employer intimated the petitioner about the resignation of the deceased and acceptance of his resignation and intimated that he would be replaced by a suitable employee. There is no existence of any contractual relationship between the petitioner and the deceased and it is absurd to think that the act of suicide of the deceased can, in any way, attributed to the ill-treatment meted out to him by the petitioner.

11. By now it is settled position of law that for establishing an offence under Section 306 of the IPC, there has to be proof of specific abetment as contemplated by Section 107 of the IPC on the part of the accused with an intention to bring about the suicide of the person concerned and what is the focal point is the intention of the accused to aid or to instigate or abet the deceased to commit suicide. In *Madan Mohan Singh (supra)*, the Apex Court had an opportunity to deal with somewhat similar situation where an

employee, who was a driver had committed suicide and it was alleged that the superior officer had abetted the commission of suicide. In the said judgment, the Apex Court observed as under:

“12. In order to bring out an offence under [Section 306, IPC](#) specific abetment as contemplated by [Section 107, IPC](#) on the part of the accused with an intention to bring out the suicide of the concerned person as a result of that abetment is required. The intention of the accused to aid or to instigate or to abet the deceased to commit suicide is a must for this particular offence under [Section 306, IPC](#). We are of the clear opinion that there is no question of there being any material for offence under [Section 306, IPC](#) either in the FIR or in the so-called suicide note.

*13. It is absurd to even think that a superior officer like the appellant would intend to bring about suicide of his driver and, therefore, abet the offence. In fact, there is no nexus between the so called suicide (if at all it is one for which also there is no material on record) and any of the alleged acts on the part of the appellant. There is no proximity either. In the prosecution under [Section 306, IPC](#), much more material is required. The Courts have to be extremely careful as the main person is not available for cross- examination by the appellant/accused. Unless, therefore, there is specific allegation and material of definite nature (not imaginary or inferential one), it would be hazardous to ask the appellant/accused to face the trial. A criminal trial is not exactly a pleasant experience. The person like the appellant in present case who is serving in a responsible post would certainly suffer great prejudice, were he to face prosecution on absurd allegations of irrelevant nature. In the similar circumstances, as reported in *Netai Dutta Vs. State of W.B.* [2005 (2) SCC 659], this Court had quashed the proceedings initiated against the accused.*

14. As regards the suicide note, which is a document of about 15 pages, all that we can say is that it is an anguish expressed by the driver who felt that his boss (the accused) had wronged him. The suicide note and the FIR do not impress us at all. They cannot be depicted as expressing anything intentional

on the part of the accused that the deceased might commit suicide. If the prosecutions are allowed to continue on such basis, it will be difficult for every superior officer even to work.”

12. The position of law as enunciated by the Apex Court has subsequently followed by a series of judgments delivered by this Court and counsel for the petitioner has rightly relied on the judgment of this Court in *Kishor Dattatraya Shinde (supra)*. Abetment involves a mental process – *a mens rea* – without a positive act on part of the accused to aid or instigate suicide, a charge under Section 306 cannot be sustained. In the case of *State of Kerala & Ors. v. Unnikrishnan Nair & Ors.* reported in *AIR 2015 SC 3351*, the Hon'ble Apex Court dealt with the case of a Chief Investigating Officer who had committed suicide pending investigation in a murder case. In the suicide note, he alleged that two of his subordinates were responsible for the situation which had prompted him to commit suicide. Some allegations were also levelled against the Chief Metropolitan Magistrate and one advocate. The Kerala High Court quashed the FIR and, being aggrieved, the State had approached the Apex Court. While dismissing the appeal, the following observations came to be made by Their Lordships and we reproduce the same:

“13. As we find from the narration of facts and the material brought on record in the case at hand, it is the suicide note which forms the fulcrum of the allegations and for proper appreciation of the same, we have reproduced it herein-before. On a plain reading of the same, it is difficult to hold that there has been any abetment by the respondents. The note, except saying that the respondents compelled him to do everything and cheated him and put him in deep trouble, contains nothing else. The respondents were inferior in rank and it is surprising that such a thing could happen. That apart, the allegation is really vague. It also baffles reason, for the department had made him the head of the investigating team and the High Court had reposed complete faith in him and granted him the liberty to move the court, in such a situation, there was no warrant to feel cheated and to be put in trouble by the officers belonging to the lower rank. That apart, he has also put the blame on the Chief Judicial Magistrate by stating that he had put pressure on him. He has also made the allegation against the Advocate.”

13. The present case is one such cases, which was decided by the Apex Court, and we find that except a bald statement that the petitioner was harassing the deceased and meted out ill-treatment to him, there is no other allegation. We have already observed that the petitioner had no role to play in the governing service conditions of the deceased and, therefore, whatever unpleasant situation which had occasioned out of the employment, the petitioner in, no way, was responsible for the same.

14. The ingredients to prove an offence of suicide is conspicuously absent in the present case as the intention to bring about the suicide of the deceased is not made out in the FIR nor can it be said to be made out from the suicide note. Perusal of the FIR filed by the father of the deceased makes a reference to the proximate discord of the deceased with his wife and the deceased had committed suicide in the month of May, 2018, approximately after 7 months of his return to India from Abudhabi. The complainant did not make any reference in the FIR except that he was resigned from service and for seven months he was staying at the given address. There appears to be some discord between the deceased and his wife and it appears from the complaint that it had aggravated since he left his job at Abudhabi. In any contingency, the FIR does not allege anything against the petitioner except the contention in the suicide note. Since we fail to note any allegations in the FIR attributing a specific role of the petitioner in abetting the suicide of the deceased, we are of the considered opinion that the petitioner would suffer a serious and great prejudice if he is made to face the prosecution on absurd, vague and irrelevant allegations. We do not expect the petitioner to undergo the rigmarole of the trial.

We are prima facie satisfied that continuation of the proceedings against the petitioner will amount to abuse of process of

law and to secure justice, we are inclined to exercise our inherent jurisdiction conferred under Section 482 of the Cr.P.C. and quash and set aside the subject FIR dated 15th May 2018 registered with Shivajinagar Police Station, Ambernath (E), Thane.

15. Resultantly, we allow the writ petition in terms of prayer clause (b) of the petition. Rule is made absolute.

(SMT.BHARATI H. DANGRE, J.)

(RANJIT MORE, J.)