

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

982 CRIMINAL APPLICATION NO.1095 OF 2020

1. Akshay s/o.Maroti More
Age: 25 years, Occu.: Agri.,
R/o. Pachangri, Tq.Patoda,
District Beed.
 2. Sagar S/o. Balasaheb Kolhe
Age: 24 years, Occu.: Agri.,
R/o. As above.
 3. Arjun S/o. Shirram Survase
Age: 24 years, Occu.: Agri.,
R/o. As above.
 4. Pratap S/o. Bhalchand Kolhe
Age: 25 years, Occu.: Agri.,
R/o. As above.
 5. Shubham S/o. Sunil Wagh
Age: 25 years, Occu.: Agri.,
R/o. As above.
 6. Narendra S/o. Vishnupant Kolhe
Age: 50 years, Occu.: Agri.,
R/o. As above.
 7. Niklesh Baba S/o. Maruti More
Age: 32 years, Occu.: Agri.,
R/o. As above.
- .. Applicants

Versus

1. The State of Maharashtra
Through: The Police Inspector,
Patoda Police Station, Patoda,
Tq.Patoda, District Beed.
 2. Kalayan S/o. Sahebrao Kolhe
Age: 47 years, Occu.: Agri.,
R/o. Pachangri, Tq.Patoda,
District Beed.
- .. Respondents

...
 Advocate for Applicants : Mr.A.B.Jagtap
 APP for Respondent No.1 - State : Mr. S. B. Narwade
 Advocate for Respondent No.2 : Mr.A.J. Mete
 ...

**CORAM : T. V. NALAWADE AND
M. G. SEWLIKAR, JJ.**

DATE : 14th AUGUST, 2020

JUDGMENT (PER : T. V. Nalawade, J.) :-

Rule. Rule made returnable forthwith. With consent of both the parties, heard for final disposal.

2. Present proceeding is filed for quashing and setting-aside First Information Report bearing No.86 of 2020 registered with Patoda Police Station, Patoda, District Beed, for the offences punishable under Sections 306, 323, 504, 188, 269, 270 read with Section 34 of the Indian Penal Code and under Section 51 of the Disaster Management Act, 2005. The crime is registered on the basis of report given by Kalyan Sahebrao Kolhe. The deceased Krushna was his son and he was studying in 11th standard. During the period when incident took place college was closed. The deceased had come to village and he was staying with his father.

3. On 23-04-2020, Krushna had gone to the terrace of one temple for sleeping with his friend. Other persons like Akshay Maruti More, Sagar Balasaheb Kolhe, Arjun Shriram Surwase, Pratap Bhalchandra Kolhe and Shubham Sunil Wagh were sleeping there in addition to deceased and other persons. On that night, these five boys lost their mobile hand-sets and they had suspicion that Krushna had taken their mobile hand-sets. They and other persons like Narendra Kolhe and Baba Maruti More started making inquiry with Krushna about mobile hand sets and due to that Krushna was harassed. On one

occasion, they gave beating to the Krushna and this incident was witnessed by informant. On morning of 26-04-2020, Krushna consumed insecticide to commit suicide. When informant noticed that deceased had consumed insecticide-tiktak, he shifted deceased to the Hospital, but Krushna died on 27-04-2020 in the hospital. His father gave report to the police at about 21.51 hours on 27-04-2020 and crime came to be registered for the aforesaid offence.

4. Perused the papers of investigation made available by the learned APP shows that in addition to informant some other persons like Balaji and Sandip have given statement that beating was given to the deceased Krushna by the seven persons named in the FIR. Ishwar Mundhe has given statement that Narendra Kolhe had given one slap to Krushna as Krushna was blaming son of Narendra Kolhe for the incident of theft of mobile hand-sets. Thus, record shows that many persons had suspicion against Krushna that he had committed theft of mobile hand-sets.

5. Post mortem report shows that no injury was found on the dead body. Death of deceased Krushna was took place in the private hospital due to poisoning. The history was give that deceased had consumed poison. The learned APP and learned counsel for the informant submitted that only due to the harassment which was given to the deceased by the present applicants, deceased consumed poison and committed suicide. Learned counsel for the applicants submitted that even if it is presumed that the applicants had taken suspicion against Krushna and there was one incident in which some body from applicants had given beating to Krushna, it is not possible to infer that any of the applicants had intention

to abet suicide of Krushna as provided under Section 107 of IPC. In support of this submission, learned counsel for applicants placed reliance upon the observations made by the Apex Court in the case of (i) *M. Mohan Versus State*, reported in *AIR 2011 SC 1238*, (ii) *Binod s/o. Ratan Sarkar and others Versus State of Maharashtra and another*, reported in *(2013) BCI, 875 (Bombay High Court)* (iii) *Ramanna Hanappa Choudki and others Versus State of Maharashtra and another* reported in *6 MhLJ (Cri) 248*. The Apex Court has discussed the provision of Section 107 of IPC in *M. Mohan's* case cited supra and observed that, to satisfy the requirement of instigation, there is no necessity of actual words used by the accused, but, there should be some act constituting instigation as defined under Section 107 of IPC. Similar observations are made in other cases. In the present matter, allegations if considered as they are, do not show that any of the applicants acted in such a way or in such a manner that deceased was left with no other alternative than to commit suicide. It can be said that as per our culture inquiry was made, deceased had also tried to take name of son of one of the applicants as a person, who had committed theft of mobile hand-sets. From such incident, it cannot be inferred that there was any intention of any of the applicants as defined in Section 107 of IPC. These allegations do not *prima facie* make out the offence under Section 306 of IPC.

6. Other offences mentioned in the FIR are only consequential and due to existence of circumstances which were there. The statements of some of the witnesses on record do not show that they are to the effect that unlawful gathering involving present applicants was there in breach of prohibitory order. It can be said that other offences are unnecessarily

added in the present matter. It will be abuse of process of law, if the applicants are asked to face trial for the aforesaid offence. In the result, Criminal Application is allowed. The relief is granted in terms of prayer clause 'B'. Rule is made absolute in above terms.

[M. G. SEWLIKAR]
JUDGE

[T. V. NALAWADE]
JUDGE

MTK