

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

CRIMINAL APPLICATION NO. 1161 OF 2020

Prashant S/o Uttamrao Gawale,
Age: 30 years, Occup. Service,
R/o. CIDCO N-7, Police Colony,
Aurangabad.

... APPLICANT

VERSUS

1. The State of Maharashtra,
Through: Karmad Police Station,
Tq. and Dist Aurangabad.

2. Bhausahab S/o Sambhaji Borde,
Age: 60 years, Occu. Laborer,
Ashoknagar (Sindhi Ban)
R/o: Masnatpur, MIDC Chikalthana,
Tq and Dist. Aurangabad.

... RESPONDENTS

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Mr. V. D. Sapkal, Senior Counsel h/f Mr. S. R. Sapkal, Advocate for
Applicant.

Mr. P. G. Borade, APP for Respondent No.1 / State.

Mr. Durrani, Advocate for Respondent No.2

Mrs. Ashlesha Kulkarni, Advocate for Respondent No.2 (Appointed).

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

DATE : 08th October, 2020.

JUDGMENT: (Per T. V. Nalawade, J.)

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

2 The present proceeding is filed for relief of quashing and setting aside the entire case bearing RCC No.1905 of 2019, which is filed in CR No.391 of 2018. The crime was registered in Karmad Police Station, Tahsil and District Aurangabad, for the offences punishable under Sections 306, 323 and 506 of the Indian Penal Code and charge-sheet is also filed for these offences.

3 The crime was registered on the basis of report given by one Bhausahab Borde, resident of Masnatpur, MIDC, Chikalthana, Tahsil and District Aurangabad. Deceased Sachin Borde was his son and he was married. Sachin was working in Bajaj finance, office of which was situated at Seven Hills Aurangabad and he was working there for about three months prior to the date of incident. Persons like Aakash Khandagle and Pappu Giri were working with Sachin Borde and Vicky @ Prashant Gawale was their Manager in this office. On 17th November, 2018 at about 09:00 am, when Sachin was at home, Vicky visited his house. The informant and other members of the

family were also at home. It is contended by informant that Vicky told the deceased that the superior officer had come near Chikalthana Airport and he had called Sachin there. Sachin went there on his own motorcycle.

4 At about 03:15 pm of the same day, Sachin called Bhausahab on phone and informed that he had handed over Rs.100/- to the mother for expenses. Sachin disconnected the phone after giving this information. At about 06:00 pm of the same day, it was informed to Bhausahab that Sachin had met with an accident and he was taken to Government Hospital, Jalna. Bhausahab went there with some relatives and he realized that due to dash given by train, he had sustained injuries. Sachin died due to injuries and the death had taken place prior to reaching Sachin to the hospital. Postmortem was conducted on the dead body on the same day. The dead body was taken to the village by Bhausahab and funeral was performed on the dead body.

5 It is the contention of Bhausahab that two days prior to the date of FIR, he made inquiry with the wife of Sachin and with mother of Sachin as to why Sachin had committed suicide and after that it was informed to him that Vicky Gawale was harassing Sachin and

Vicky was saying that Sachin had not deposited Rs.80,000/-, which was collected for finance company by Sachin. It was informed to him that due to the harassment of Vicky, Sachin was under mental stress.

6 On 7th December, 2018, Bhausahab made inquiry with other persons like friends of Sachin by name Aakash Khandagle and Pappu Giri and they informed that there was some dispute between Manager Vicky and Sachin on the count of recovery of loan amount, which was to be made by Sachin and the Manager was saying that Sachin had recovered the amount of Rs.80,000/- from the debtors, but he had not deposited that amount in the office. They informed that the Manager was insisting Sachin to deposit that amount and Sachin was saying that, that much amount was not recovered and so he was under stress. It was informed that the Manager was insisting to deposit the amount from his own pocket to Sachin.

7 According to Bhausahab, incident dated 17th November, 2018 was also disclosed to him by aforesaid two friends of Sachin and they informed that in one hotel situated near Chikalthana Airport, there was quarrel between Sachin and the Manager and during the quarrel Sachin had said that he had not recovered anything and due to that the Manager had thrown one pot of water at Sachin and had said that

Sachin should deposit the amount, which was recovered by him otherwise the office will approach the police against Sachin. These friends informed that as such threat was given by the Manager, Sachin said that the Manager was insulting him in the presence of his friends and in anger he left the place on his motorcycle. This information was specifically given by Aakash and due to that Bhausahab felt that Sachin had committed suicide due to the harassment, which he was receiving from the hands of Manager Vicky. He approached police on 8th December, 2018 and gave report against Manager Vicky, present Applicant and the crime came to be registered for aforesaid offences.

8 Police have filed charge-sheet and so the statements of aforesaid witnesses were available for perusal. The statements came to be recorded on 9th January, 2019. This Court has carefully gone through the statement of Aakash Khandagle, who has described the aforesaid incident, which had taken place in one hotel situated near the Chikalthana Airport. In addition to the aforesaid contentions made by Bhausahab, Aakash has contended that on that day at about 05:45 pm he had received call from Sachin and Sachin had informed that he was committing suicide by jumping in front of train due to the harassment, which he was receiving from Manager Vicky Gawale and

afterwards he learnt at 07:15 pm that Sachin had met with an accident and train was involved in the accident and he was dead. The statement of Rahul Sonawane, another friend of Sachin, is similar to the contentions made by Bhausahab and there are similar statements of Sharad Gaikwad and Pappu Giri. Pappu Giri also says that at about 05:45 pm he received phone call from Sachin and to him also Sachin had informed that he was committing suicide by jumping in front of train due to harassment of Manager Vicky. The statement of Manager of hotel Shaikh Ahmed is there showing that some incident did take place in his hotel and Sachin had left the hotel after quarrel with Manager Vicky. There are statements of mother and widow of Sachin, but they are on the basis of information received by them and they are similar to the information given by Bhausahab.

9 There are statements of witnesses like Rahul, Sharad and Aakash recorded under Section 164 of the Code of Criminal Procedure. They are not in detail and in those statements, only Aakash has given particulars, but Aakash has stated in his statement that after the quarrel with Manager Vicky, Sachin received a phone call and he told to Manager Vicky that he will go to a customer to collect money and he will return back with the money. He has contended that as Sachin did not return to the hotel for some time, he

contacted Sachin and Sachin informed that he was near Gandhi Statue with customer. However, he informed that in the evening of 17th November, 2018 Sachin contacted him on phone and he could hear the noise of running train and Sachin had requested only to pay attention to his family. Thus, in the statement under Section 164 of the Code of Criminal Procedure, he did not say that Sachin had expressed that he was committing suicide due to harassment of Manager Vicky. The statements of other witnesses recorded under Section 164 of the Code of Criminal Procedure are not in that detail and they show that Sachin had left hotel by saying that he would go to some place and he will return there for giving money to the Manager.

10 The learned senior counsel for the Applicant submitted that even if the aforesaid record is considered and accepted as it is, that material is not sufficient to make out offence of abetment of suicide. He submitted that “instigation”, which prosecution will be required to prove in the case, cannot be made out in the present matter on the basis of this material. He submitted that if Sachin had not deposited the amount recovered from debtors of the finance company, then the Manager had every right to make demand of that money and by making demand of the money and also by expressing that office will be required to approach police, he did not commit any

offence much less the offence of abetment of suicide.

11 On the other hand, the learned counsel for informant submitted that there was harassment from the Manager, present Applicant and only due to the harassment, Sachin committed suicide. He submitted that the defence of the Applicant cannot be considered at this stage and only during trial the things can be appreciated by the Trial Court.

12 The learned senior counsel for Applicant placed reliance on observations made in some reported cases and they are as under:

- a) *AIR 2011 Supreme Court 1238, (M. Mohan Vs. State Represented by the Deputy Superintendent of Police);*
- b) *2013 (3) Mh.L.J.(Cri) 418, (Binod s/o. Ratan Sarkar & Ors. Vs. State of Maharashtra & Anr.);*
- c) *2019 (1) Bom.C.R.(Cri.) 884, (Rushikesh Hanumant Sutar Vs. State of Maharashtra and others);*
- d) *Criminal Application No.1095 of 2020, (Akshay s/o. Maroti More and others Vs. The State of Maharashtra and another)* decided at this Bench on 14th August, 2020; and

e) **Criminal Writ Petition No.999 of 2019**, (G. Balareddy s/o. Innareddy Vs. The State of Maharashtra and another) decided at this Bench on 4th September, 20219.

13 In the case of *M. Mohan (supra)*, the Apex Court has made the following observations in respect of abetment mentioned in Section 107 of the Indian Penal Code:

“Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. The intention of the Legislature is clear that in order to convict a person under Section 306, IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and this act must have been intended to push the deceased into such a position that he/she committed suicide.”

14 These observations are used by this Court in two cases decided at this Bench and cited supra. In the present matter also, even if the material discussed above is accepted as it is, inference is not possible that there was “*mens rea*” of the present Applicant to

commit the offence. This conduct was not such as to drive Sachin to commit suicide. Apparently, Sachin was at fault as he had not deposited the money recovered from the customers of finance company. The statements show that he had not turned up to resume the duty for many days and that is why the Manager was required to go to Sachin. The intention of the Manager was only to see that the amount recovered from the customers was deposited with finance company and that way he was discharging his duty. The other employees, colleagues of Sachin have given different versions on two occasions. Further, during AD inquiry, no such suspicion was expressed by the father of the deceased. The papers of AD inquiry were collected by this Court by giving direction. A copy of statement of Bhausahab dated 17th November, 2018 is present in the AD inquiry. He had informed to police that his family has no enmity with anybody and there was no reason for the deceased also to jump in front of train. However, he had expressed that there was some foul play and there was possibility of murder and so he had requested to make detail inquiry. The material already mentioned shows that the friends of Sachin first learnt about the incident and after that the information was passed to the father. Due to all these circumstances, this Court holds that subsequently for some reason, which is not brought to the notice of this Court, such allegation came to be made against the

Manager. This Court holds that it will be abuse of process of law if the present Applicant is asked to face the trial for aforesaid offences. Nothing can be achieved by trying the Applicant for aforesaid offences in view of the nature of material, which is collected against the Applicant. In the result, the following order is passed:

ORDER

- I. The application is allowed.
- II. Relief is granted in terms of prayer clause (B).
- III. The fees of the appointed counsel is quantified as Rs.4,000/- and it is to be paid through the High Court Legal Services Sub-Committee, Aurangabad.
- IV. The learned counsel appointed by the informant was also allowed to argue the matter.
- V. Rule is made absolute in those terms.

[M. G. SEWLIKAR, J.]

[T. V. NALAWADE, J.]

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