

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APL) NO.95 OF 2020

[Nischal s/o Sanjiv Ambala .vs. The State of Maharashtra and one]

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

CORAM : SUNIL B. SHUKRE AND
MADHAV J. JAMDAR, JJ.

DATED : MARCH 03, 2020.

Heard Shri T.G. Bansod, learned counsel for the applicant and Shri T.A. Mirza, learned Additional Public Prosecutor for non-applicant no.1-State, who appears by waiving notice.

The first contention of the learned counsel for the applicant is that the incident is of May-2011 and the FIR has been lodged on 8.11.2015 and, therefore, there is a great delay in registration of the offence punishable under Section 306 r/w 34 of the Indian Penal Code against the applicant and his associate. According to him, this delay is fatal.

Shri Mirza, learned APP points out that the complaint in this case has been filed on 5.11.2015.

On going through the complaint, we find that complaint has indeed been filed on 5.11.2015. On perusal, it reveals that the delay stands *prima facie* explained by the facts and circumstances stated therein. In this complaint it has been stated that the suicide note which incriminates this applicant in a specific manner

came into the possession of the complainant for the first time on 5.11.2015, when police, who were investigating into the suspicious death case, showed the suicide note to the brother of the complainant. From the suicide note one can see that it incriminates this applicant in a specific manner and, therefore, there was no reason for the investigating officer to have waited for a long period of time in registering the crime against the culprits, whose names have been specifically taken in the suicide note. But for the fault of investigating officer, the complainant cannot be branded as a liar or fabricator of a story against the applicant at least at this stage. This is something which would have to be properly considered on its own merits during the trial.

On going through the suicide note, we find that the deceased, who was having physical relations with the associate of the applicant, namely one M, was actually drawn into a honey trap by the associate of the applicant with the help of the applicant. This can be seen from the allegations made in the suicide note that the associate of the applicant, while engaging herself in sexual intercourse with the applicant, took initiative and video-graphed the whole act and gave a reason that she did so in order to refresh her memory, whenever she would think of the applicant. Later-on, his associate informed the deceased that this video recording fell into the hands of the applicant and sometime, thereafter, the applicant started blackmailing the deceased by asking him constantly to fulfill his demands of money. In the

suicide note, it is also alleged that the associate of the applicant was a party to these acts of blackmailing which were allegedly performed by the applicant.

It is the contention of the learned counsel for the applicant that the main accused M had approached this Court by invoking inherent jurisdiction of this court by filing Criminal Application (APL) No.323/2017 and that this Court, by the judgment delivered on 22.8.2017, allowed the application and the FIR filed against her was quashed and set aside by this Court. He submits that if the main accused has been let off by this Court by holding that no *prima facie* case whatsoever is made out against her, this application also deserves similar treatment. We would respectfully disagree with the argument.

It would be evident from the discussion that we have just made in the earlier paragraph on the allegations contained in the suicide note that the case of the applicant stands quite on different footing than the case of his associate and, therefore, at this stage, no similar treatment can be given to the applicant. The argument made in this regard is, therefore, rejected.

It is also the contention of the learned counsel for the applicant that even if the allegations made in the suicide note are accepted as they are at their face value, then it would have to be said that no *prima facie* case is made out, there being no instigation, as contemplated u/s 107 of IPC. Again we would beg to differ with the learned counsel for the applicant. The allegations are

very specific and they *prima facie* disclose consistent acts of making of illegal demands of money and issuance of threats to the deceased, if those demands were not met. The threats were to the effect that the video recording allegedly showing the deceased and the associate of the applicant in compromising position would be made public, if money was not paid. Such demands and such threats when considered together would have had *prima facie* devastating effect on the public life and image of the deceased and it is no wonder that such a person as a result had gone into a deep state of depression and frustration making him feel that if he took recourse to law, there was no assurance of help coming to him perhaps due to illicit nature of relationship and then his reputation among his relatives as well as friends would be spoiled leading to jeopardizing his job prospects. These circumstances created by the illegal demand and blackmailing tactics, allegedly adopted by the applicant, would be sufficient to hold that *prima facie* they amounted to instigation, as contemplated u/s 107 of IPC, thereby *prima facie* constituting an offence of abetment given to the deceased for committing suicide.

In the circumstances, we are not inclined to interfere at this stage. The application stands summarily dismissed.

JUDGE

JUDGE