

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 97 OF 2020

1. Balasaheb s/o Sambhajirao Kharat,
Age : 30 years, Occ : Government Service,
R/o. Ambad Road, Gokuldharm Society,
Indewadi Row House, Near Water Tank,
Jalna, Taluka and District Jalna.
2. Sambhajirao s/o Baburao Kharat
Age: 54 years, Occu: Agriculture
R/o: As above. ...Applicants

Versus

1. The State of Maharashtra,
Through Railway Police Station,
Aurangabad, District Aurangabad.
2. Anjanabai Asaram Ingle,
Age: 69 years, Occu: Household,
R/o: Rahul Nagar, Near Railway Flyover,
Jalna, District Jalna. ...Respondents

Mr S.S. Gangakhedkar and Mr R.G. Nirmal, Advocates for Applicants
Mr G.O. Wattamwar A.P.P. for Respondent No.1-State
Mr R.A. Tambe, Advocate for Respondent No. 2

**CORAM : V.K. JADHAV AND
SHRIKANT D. KULKARNI, JJ.**

DATE : 5th OCTOBER, 2021

ORAL JUDGMENT : (PER SHRIKANT D. KULKARNI, J.)

1. Rule. Rule made returnable forthwith. With the consent of both the sides, heard finally at admission stage.
2. The applicants are seeking relief of quashing of First Information Report vide C.R. No. 564/2019 registered against the applicants with Railway Station Police Station, Aurangabad and

consequent filing of charge sheet vide proceedings of R.C.C. No. 142/2020 for the offence punishable under section 306 read with section 34 of the Indian Penal Code.

3. Anjanabai Asaram Ingle is resident of Rahul Nagar, Near Railway Flyover, Jalna. Kailas (since deceased) was her son and Ashabai is her daughter-in-law. On 21.10.2019, there was quarrel between her son Kailas and daughter-in-law Ashabai and that quarrel was further aggravated. Kailas assaulted his wife Ashabai and in the said incident, Ashabai sustained head injury. Ashabai was admitted in the Deepak Hospital at Jalna. The complaint to that effect came to be lodged at Kadim Jalna Police Station, Jalna. The applicants alleged to have threatened Kailas.

4. On 01.11.2019, the applicants had been to the house of respondent No.2/Anjanabai and threatened Kailas with dire consequences.

5. On 02.11.2019, Kailas committed suicide on the railway track. Respondent No.2/Anjanabai came to Railway Police Station, Aurangabad and lodged F.I.R. alleging that the applicants had instigated her son Kailas to commit suicide by giving life threats. The applicants are responsible for the death of her son Kailas. On the basis of the F.I.R. lodged by respondent No.2/Anjanabai, C.R. No. 564/2019 came to be registered at Aurangabad Railway Police station under section 306 read with section 34 of I.P.C. dated 06.11.2019.

6. The Investigating Officer after completing all the procedural aspects, submitted the charge sheet which is registered as R.C.C. No. 142/2020 and the same is in the process of committal.

7. Heard Mr S.S. Gangakhedkar, learned counsel for the applicants, Mr G.O. Wattamwar, learned A.P.P. for State/Respondent No.1 and Mr R.A. Tambe, learned counsel for respondent No.2/first informant.

8. Mr S.S. Gangakhedkar, learned counsel for the applicants submitted that the story tried to be put forth by the prosecution through the first informant about alleged life threats given by the applicants and in view of apprehension to the life, Kailas committed suicide, has no foundation at all. The prosecution story is concocted and fabricated. He submitted that F.I.R. in question did not clearly spell out any direct role alleged against the applicants attributing commission of an offence under section 306 of I.P.C.. He submitted that even if allegations levelled against the applicants in the F.I.R. accepted at its face value, do not constitute an offence under section 306 of I.P.C. He submitted that there is absolutely no material placed on record with the charge sheet to speak about intention of the applicants to aid or to instigate or to abet the deceased to commit suicide. He submitted that it is brought on record through the statement of wife of deceased that he was mentally disturbed and not in a fit state of mind. He was not doing any work and in a disturbed state of mind. The deceased had committed suicide. Mr S.S. Gangakhedkar, learned counsel submitted

that criminal prosecution launched against the applicants is liable to be quashed. It would be an abuse of process of law in asking the applicants to face the trial when there is no iota of evidence to attract section 306 of I.P.C.

9. Mr S.S. Gangakhedkar, learned counsel for the applicants has placed his reliance on the following citations :-

- (i) ***Gurucharan Singh Vs. State of Punjab reported in (2020) 10 SCC 200***
- (ii) ***Sanju alias Sanjay Singh Sengar Vs. State of M.P. reported in AIR 2002 SC 1998***

10. Mr G.O. Wattamwar, learned A.P.P. for the State/Respondent No.1 submitted that there is sufficient evidence against the applicants to attract section 306 read with section 34 of I.P.C. He submitted that the applicants had given life threats to the deceased. The deceased could not bear the same and in apprehension of his life threat, he has committed suicide. The Investigating Officer has collected sufficient material during the course of investigation. It is not a fit case to quash the proceedings. The applicants are liable to face the trial.

11. Mr Tambe, learned counsel for respondent No. 2/first informant strongly opposed to allow this application. He argued on the lines of submissions advanced by the learned A.P.P. Mr Tambe, learned counsel submitted that there is enough evidence on record against the applicants.

12. We have considered the submissions of Mr S.S. Gangakhedkar, learned counsel for the applicants, Mr G.O. Wattamwar,

learned A.P.P. for the State/Respondent No.1 and Mr R.A. Tambe, learned counsel for respondent No.2/first informant.

13. Perused a copy of the F.I.R. bearing Crime No. 564/2019 registered with Railway Police Station, Aurangabad and copy of charge sheet and annexures thereto.

14. It is undisputed position that before the unfortunate incident of committing suicide by Kailas on 02.11.2019, there was quarrel between Kailas and his wife Ashabai. The deceased had assaulted his wife Ashabai. Ashabai sustained serious head injury and she was admitted in Deepak Hospital at Jalna.

15. There are allegations in the F.I.R. that the applicants had given life threats to Kailas due to the incident of beating to Ashabai. The applicants alleged to have given life threats to the deceased on 21.10.2019 and the deceased had committed suicide on 02.11.2019. Even for the sake of argument, if it is accepted that the applicants had given life threats to the deceased due to beating to their sister Ashabai (wife of Kailas), can it be said to be abetment. Applicant No.1 is brother and applicant No. 2 is father of Ashabai.

16. 'Abetment of a thing' has been defined under Section 107 of the Indian Penal Code, which reads thus :

"107. *Abetment of a thing - A person abets the doing of a thing, who -*

First - Instigates any person to do that thing; or

Secondly - Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly - Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 2 which has been inserted along with section 107 reads as under :

Explanation 2 - Whoever either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitate the commission thereof, is said to aid the doing of that act."

17. In view of citation in case of **M. Mohan Vs. State, represented by the Deputy Superintendent of Police, 2011 (3) Mh.L.J. (Cri.) 1271**, abetment is the 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.

18. We have gone through the statements of witnesses and other materials filed along with the charge sheet. Most of the statements of witnesses fall in the category of hearsay regarding life threats allegedly given by the applicants. The statement of wife of deceased is important. On perusing the same, it is revealed that her husband Kailas was mentally ill person and even before their marriage, his treatment was going on. The conduct of her husband was abnormal and once her

husband Kailas had left house by saying that he would commit suicide. She came to know about suicidal death of her husband when she was fully recovered.

19. On going through the material placed on record along with the charge sheet by the investigating agency, there is no iota of evidence to attract section 306 of I.P.C. against the applicants. There is no material on record to show that the applicants instigated the deceased either by act of omission or commission or persistent harassment. There is no *mens rea* to commit the said crime.

20. In case of ***Gurucharan Singh Vs. State of Punjab*** (supra), it is held by the Hon'ble Supreme Court that in order to give finding of abetment under section 107 of I.P.C., accused should instigate a person either by act of omission or commission, and only then a case of abetment is made out. In order to prove *mens rea*, there has to be something on record to establish or show that accused had guilty mind and in furtherance of that state of mind, he abetted crime. Ingredient of *mens rea* cannot be assumed to be ostensibly present but have to be visible and conspicuous.

21. In case of ***Sanju alias Sanjay Singh Sengar Vs. State of M.P.*** (supra) held in given facts that accused telling deceased 'to go and die'. That itself would not constitute ingredient of 'instigation' - Presence of *mens rea* is necessary concomitant of instigation.

22. The Hon'ble Supreme Court in a recent judgment in case of **Shabbir Hussain Vs. The State of Madhya Pradesh and others** (Special Leave to Appeal (Criminal) No.7284 of 2017 SC dated 26.7.2021 has held as under :

" In order to bring a case within the provision of Section 306 IPC, there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigating or by doing a certain act to facilitate the commission of suicide.

Mere harassment without any positive action on the part of the accused proximate to the time of occurrence which led to the suicide would not amount to an offence under Section 306 of IPC [Amalendu Pal V. State of West Bengal (2010) 1 SCC 707].

Abetment by a person is when a person instigates another to do something. Instigation can be inferred where the accused had, by his acts or omission created such circumstances that the deceased was left with no other option except to commit suicide. [Chitresh Kumar Chopra v. State (Government of NCT of Delhi) (2009) 16 SCC 605]".

23. The law on quashing of first information report/criminal proceedings is well settled in view of the landmark decision of the Hon'ble Supreme Court in case of **State of Haryana Vs. Bhajan Lal and others** reported in **A.I.R. 1992 S.C. 604**. The Hon'ble Supreme Court has set out the categories of cases in which the inherent powers under section 482 of

the Criminal Procedure code can be exercised. Seven categories are laid down, wherein inherent powers under section 482 of the Criminal Procedure Code can be exercised by the High Court. The guidelines laid down by the Hon'ble Supreme Court in case of ***State of Haryana Vs. Bhajan Lal and others*** (supra) are followed in subsequent decisions even in the recent case of ***M/s. Neeharika Infrastructure Pvt. Ltd. Vs. State of Haryana*** reported in ***2021 SC 1918***.

24. On careful examination of the F.I.R. and the evidence collected during the course of investigation, even if they have taken at their face value and accepted in its entirety, *prima facie* does not constitute an offence punishable under section 306 of I.P.C. against the applicants. The criminal proceedings seems to have been initiated by the first informant/respondent No.2 against the applicants only because her son has committed suicide. It is by way of vengeance.

25. By invoking powers vested in us under Section 482 of Cr.P.C., the criminal proceedings against the applicants need to be quashed. If it is allowed to continue, would be an abuse of process of the Court and the ends of justice require that the F.I.R. and charge-sheet ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose, which is that a Court proceedings ought not to be permitted to degenerate into a weapon of harassment or persecution.

26. In view of the above, there is no propriety to continue the criminal prosecution against the applicants and put them on trial in the

above factual scenario. It would be an abuse of the process of the Court and machinery and waste of valuable time of the Court in asking the applicants to face the trial.

27. In the result, we proceed to pass the following order :

ORDER

(I) The Criminal Application stands allowed in terms of prayer clause (B).

(II) Rule made absolute in above terms.

[SHRIKANT D. KULKARNI, J.]

[V.K. JADHAV, J.]

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