

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 316 OF 2021

Hafizur Rahman Sheikh,
Age 40 years, Occu. Business,
R/o City House, 55, Maruti Lane,
Near Handloom House,
Fort, Mumbai

..Applicant

Versus

1. The State of Maharashtra,
Through Karmad Police Station,
Taluka and District Aurangabad
2. Mrs Gayatri Keshav Wankhede,
Age 33 years, Occu. Household,
R/o Isapur Ramna,
Taluka and District Hingoli,
At present Taluka Colony,
Sai Sankalp Building No.7,
Old Panvel

..Respondents

Mr V.D. Sapkal, Senior Advocate i/b Mr S.R. Sapkal along with Mr T.M. Shaikh,
Advocates for applicant
Mr Anand S. Shinde, A.P.P. for respondent no.1/State
Mr Vishnu Patil Advocate (appointed) for respondent no.2

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

**JUDGMENT RESERVED ON : 17.08.2021
JUDGMENT PRONOUNCED ON : 30.08.2021**

JUDGMENT (Per Shrikant D. Kulkarni, J.)

1. Heard finally at admission stage with consent of both the sides.
2. By this application under Section 482 of Cr.P.C., the applicant is seeking relief of quashing of F.I.R. vide C.R.No.31 of 2020, registered with Basamba Police Station, District Hingoli, for the offences punishable under Sections 306, 506 read with Section 34 of the Indian Penal Code.

3. Keshav Babhnaji Wankhede (since deceased) was serving as Police Constable in Mumbai Police. Gayatri Keshav Wankhede/respondent no.2 (first informant) happened to be his wife. Keshav along with his friends Suhas Bhise, Rahul Bhise, Vinod Patil, Satish Chavan, one Mr. Talbhandare and Sunil Shirke had purchased one plot each in the year 2008 at village Devat near Panvel. They sold their respective plots and they had purchased two acres of land at village Vihighar from Mr Shailesh Dawda (accused no.2).

4. During this time, deceased met with applicant. The applicant informed the deceased that he was willing to purchase adjoining land and further shown readiness to make construction thereon together. Mr Shailesh Dawda played role as a broker and took Rs.7 lakhs from them. The applicant has paid Rs.1 Crore to deceased Keshav and then deceased purchased adjoining land from Shailesh Dawda. They formed company in the name of first informant under name and style as "Icon Builders and Developers".

5. The applicant alleged to have started harassing deceased by making demand of money, which was paid to deceased Keshav for purchase of land. About one and half years before, applicant alleged to have forcibly got transferred both the plots in his name by threatening the husband of the first informant.

6. Keshav started business of share trading and marketing and invested amount in Ventura Company of accused no.3/Jayant Patil by collecting money from various persons. Accused no.3/Jayant Patil initially gave good returns to deceased Keshav, however, later on, after four months, accused Jayant Patil ran away from the said business, due to which Keshav sustained huge loss in his business.

7. It is further alleged that deceased Keshav had earlier purchased construction office from accused no.2/Shailesh Dawda for an amount of Rs.1 Crore by a registered sale-deed. But, the said office was found already mortgaged with the Bank and that fact was suppressed by accused no.2. Deceased Keshav was continuously under tension due to abovesaid events. He fell ill and he was hospitalised on 5.1.2020 in Life Care Hospital at Panvel.

8. In the month of February 2020, mother-in-law of the first informant was not feeling well. Therefore, Keshav and his wife/first informant along with children went to village Isapur Ramna. On 12.2.2020, first informant went to her parental house at village Satamba. Whereas, Keshav was at village Isapur Ramna. On 13.2.2020, Dr. Sarang (nephew of deceased Keshav) informed the first informant that her husband has committed suicide by hanging himself to a tree in agricultural land.

9. On 20.2.2020, Gayatri Keshav Wankhede (respondent no.2) came to Basamba Police Station, District Hingoli and lodged F.I.R. against the applicant and three others. She alleged that her husband has committed suicide due to harassment caused by the applicant and co-accused. Her husband was continuously in stress because of huge losses suffered in the business of plotting and construction. It is alleged that applicant and his associates caused harassment and by using influence and pressure, got transferred the landed property standing in the name of first informant and her husband. The applicant alleged to have refused to execute agreement relating to the plots and caused mental torture. According to the first informant, her husband Keshav has committed suicide due to continuous harassment and torture caused by the applicant and his two associates.

10. On the basis of F.I.R. lodged by Gayatri (respondent no.2), Crime No.31 of 2020 came to be registered with Basamba Police Station, District Hingoli, for the offences punishable under Sections 306, 506 read with Sec. 34 of the Indian Penal Code against the applicant, Shailesh Dawda, Jayant Patil and Suresh Thombre.

11. Heard Mr V.D. Sapkal, learned Senior Counsel instructed by Mr S.R. Sapkal along with Mr T.M. Shaikh, learned Advocates for applicant, Mr Anand S.Shinde, learned A.P.P. for respondent no.1/State and Mr Vishnu Patil, learned Advocate for respondent no.2/first informant.

12. Perused copy of F.I.R. bearing Crime No.31 of 2020 registered with Basamba Police Station, District Hingoli, copies of registered documents executed between the parties etc.

13. Mr V.D. Sapkal, learned Senior Counsel for the applicant vehemently submitted that abovesaid crime is registered only with a view to harass the applicant. There is no prima facie material to attract Section 306 of the Indian Penal Code as well as other penal sections. There were transactions of land dealing, plots and construction activities between the deceased Keshav, applicant and co-accused at Panvel. All the documents were registered as per the provisions of Registration Act. Deceased Keshav was serving in Police Department. He was very well knowing about the land dealings as well as activities of construction company. He sustained loss in his share marketing business for which applicant is not responsible. Mr Sapkal, learned Senior Counsel submitted that entire F.I.R. is silent about the allegation of Section 306 of Indian Penal Code. Except vague and omnibus allegations about some transaction which is by executing registered instrument, no specific role is

ascribed against the applicant in alleged instigation which would have driven the deceased to commit suicide. He submitted that there was not a single complaint lodged against the registered deed of cancellation of development agreement dated 26.6.2018 by the first informant and her deceased husband. It is only after the occurrence of incident dated 13.2.2020, the applicant is falsely roped in the present crime. The F.I.R. does not give any particulars as to the alleged role of the applicant in the commission of alleged offences.

14. Mr Sapkal, learned Senior Counsel submitted that the alleged incident of suicide was occurred on 13.2.2020 and F.I.R. came to be registered on 21.2.2020. There is enormous delay of ten days in lodging the F.I.R. and the same is not at all explained. The foundation of the F.I.R. is itself on doubtful platform. He submitted that even if the allegations levelled against the applicant in the F.I.R. are taken at its face value, no cognizable offences are disclosed against the applicant. It would be an abuse of process of the Court, if criminal prosecution is continued. He submitted that applicant had demanded certain amount to the deceased, which does not amount to abetment of suicide.

15. Mr Sapkal, learned Senior Counsel has placed his reliance on following stock of citations :

- (i) **Dayanand Tanaji Mohre Vs. State of Maharashtra,** reported in **2017 (6) LJSOFT 132;**
- (ii) **Suhas @ Pappu Sarjerao Kakde & Ors. Vs. State of Maharashtra,** reported in **2017 (8) Ijsoft 77;**
- (iii) **Munshiram Vs. State of Rajasthan and ors.,** reported in **(2018) 5 SCC 678;**
- (iv) **Binod s/o Ratan Sarkar & Ors., Vs. The State of Maharashtra and Anr.,** reported in **2014 ALL MR (Cri) 1216;**

- (v) **Netai Dutta Vs. State of West Bengal**, reported in **2005 (1) B Cr C 666**;
- (vi) **Pandhari s/o Narayan Somwanshi and anr., Vs. State of Maharashtra and anr.**, reported in **2011 (4) B C R (Cri) 309**;
- (vii) **M.Mohan Vs. The State**, reported in **2011 (2) Mah.L.R.1 SC**;
- (viii) **Deepak Prabhakar Rao Chondekar Vs. State of Maharashtra**, reported in **2012 (1) Mh.L.J. (Cr 432)**;
- (ix) **Madan Mohan Singh Vs. State of Gujarat and anr.**, reported in **2010 (4) B Cr C 284 SC**;
- (x) **M. Arjunan V. State** reported in **AIR 2019 SC 43**;
- (xi) **Sopan s/o Angad Rao Akele Vs. The State of Maharashtra and anr.**, reported in **2017 ALL MR (Cri) 1829**

16. Mr Sapkal, learned Senior Counsel, by taking help of abovesaid citations submitted that criminal prosecution launched against the applicant is liable to be quashed when there is no material on record to speak about intention of applicant to aid or to instigate or to abet the deceased to commit suicide. The deceased was mentally disturbed and was not in a fit state of mind and committed suicide. There is no material to attract Section 506 of Indian Penal Code.

17. Per contra, Mr Anand S. Shinde, learned A.P.P. for respondent No.1/State submitted that if the allegations levelled in the F.I.R. against the applicant are examined carefully, it would be clear as to the role played by the applicant. He submitted that the deceased was continuously harassed by the applicant and his associates for non payment of amount. The applicant has

played active role in the commission of abetment of suicide by the deceased. The investigation is in progress. He submitted that the manner in which the deceased has committed suicide, it needs detail and thorough investigation.

18. Mr Vishnu Patil, learned Counsel for respondent no.2/first informant argued on the lines of argument advanced by learned A.P.P. He submitted that it is not a fit case to quash the F.I.R. when investigation is in progress. There is prima facie material against the applicant regarding abetment of suicide. The deceased was continuously harassed and tortured by the applicant for payment of money though applicant was knowing about financial crisis of the deceased. He submitted that applicant instigated the deceased to commit suicide as per the contents of the F.I.R. Mr Patil submitted that the applicant has not made out a case to quash the F.I.R. He has placed reliance on following citations in support of his argument :

- (i) **Jayshri Vs. The State of Maharashtra and Ors.**, reported in **2021 ALL MR (Cri) 1640**;
- (ii) **Chitresh Kumar Chopra Vs. State (Govt. of NCT of Delhi)**, reported in **(2009) 16 SCC 605**

19. We have considered the submissions of learned Senior Counsel Mr Sapkal for the applicant, Mr A.S. Shinde, learned A.P.P. for respondent no.1/State and Mr Vishnu Patil, learned Advocate for respondent no.2/first informant. We have also perused stock of citations relied upon by both the sides in the background of their submissions.

20. '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."

21. 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.

22. Now coming back to factual compass of the case in hand. It is evident from the documents produced by the applicant that there were transactions between the applicant, co-accused and the deceased since the year 2016 in respect of dealing of lands, plots and building construction activity. All the transactions taken place between the parties are duly registered. One civil suit between the parties is also pending in the Court of Civil Judge, Senior Division

at Panvel. On careful examination of the contents of the F.I.R., two important things are noticed by us, (i) the deceased was under tremendous financial stress and (ii) he seems to have mentally disturbed due to loss in the business. On careful scrutiny of the F.I.R., it is very much difficult to gather that the applicant has abetted or instigated the deceased to take extreme step of suicide. There is no material in the F.I.R. to show that the applicant and his associates hatched conspiracy in order to do thing of illegal omission. It is further difficult to gather that the applicant, either prior to or at the time of commission of an act, did anything in order to facilitate commission of the act of suicide by the deceased.

23. Merely because the applicant was insisting for his money on account of dealings between the parties does not mean to abetment of suicide. There must be proof of direct or indirect acts of incitement to the commission of suicide, as held in case of **Binod s/o Ratan Sarkar Vs. State of Maharashtra** (supra).

24. All the transactions had taken place between the parties with regard to land dealings, plots and construction development activities at Panvel and Navi Mumbai. It is important to note that all the transactions were duly registered between the parties and first informant was also knowing about the same. If applicant and his associates alleged to have used any influence or used unlawful means to pressurise the decease for demand of money or otherwise, the deceased being a Police Constable was knowing very well to resort to legal remedy. It is difficult to accept that because of money dispute on account of certain dealings, it amounts to instigating or intentionally aiding to commit suicide by the deceased.

25. Upon microscopic examination of the contents of the F.I.R., it is difficult to gather ingredients of offence of abetment of suicide and criminal intimidation. The ingredients are absent to attract abetment of suicide and criminal intimidation against the applicant.

26. On perusing the police papers made available by the learned A.P.P., it is revealed that deceased had committed suicide at his native place Isapur Ramna. As per post mortem report and provisional cause of death certificate, "death of Keshav Babhnaji Wankhede is due to hanging". There are certain statements of witnesses in the nature of hearsay and no incriminating material seems to have been collected by the Investigating Officer to attract Section 306 and 506 of the Indian Penal Code against the applicant.

27. Mr Vishnu Patil, learned Advocate for respondent no.2 has placed his reliance on **Jayshri Vs. The State of Maharashtra and Ors.** (supra) and argued that it is not a fit case to quash F.I.R. On perusing the facts of said case, we noticed that two suicide notes were left behind by the deceased. Such is not the position in the case in hand. The said citation does not render any help. Mr Patil has also referred the citation in case of **Chitresh Kumar Chopra Vs. State (Govt. of NCT of Delhi)** (supra). On going through the same, it is revealed that it is in respect of evaluation of evidence at the time of framing of charge. It is held by the Hon'ble Supreme Court that there was sufficient material on record to frame charge under Section 306 of the Indian Penal Code and trial Court has not committed any error in framing charge punishable under Section 306 read with Sec. 34 of the Indian Penal Code. Again, the facts are distinguishable and said decision is not anyway helpful to the first informant. We are dealing with quashing of F.I.R. by invoking inherent powers under Section 482 of Cr.P.C.

28. On careful examination of the F.I.R., if the allegations made in the F.I.R. even if they are taken at their face value and accepted in its entirety, prima facie does not constitute offence punishable under Section 306 and 506 of the Indian Penal Code. The criminal proceedings seems to have been initiated by the first informant/respondent no.2 against the applicant with some oblique motive to get back the money or some monetary benefits.

29. 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]".

30. Having regard to the legal position reiterated by the Honourable Supreme Court in the case of **Shabbir Hussain Vs. State of M.P. and ors** (supra), it is difficult to attract Section 306 of Indian Penal Code against the applicant. There is no sufficient material on record to attract Section 306 and 506 of Indian Penal Code.

31. By invoking powers vested in us under Section 482 of Cr.P.C., the criminal proceedings against the applicant needs 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. 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.

32. In view of the above, there is no propriety to continue the criminal prosecution against the applicant and put him 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 applicant to face the trial.

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

ORDER

1. The Criminal Application stands allowed in terms of prayer clause (B).
2. The professional fees of Mr Vishnu Patil, learned Advocate appointed for respondent no.2 is quantified at Rs.2,000/- (Rs.Two thousand). The Secretary, High Court Legal Services Sub-Committee at Aurangabad shall pay the same to the learned Advocate Mr Vishnu Patil.

(SHRIKANT D. KULKARNI, J.)

(V. K. JADHAV , J.)