

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

CRIMINAL REVISION APPLICATION NO.48 OF 2020

Suresh Trimbakrao Khursale & ors. ...**APPLICANTS**

VERSUS

The State of Maharashtra & anr. ...**RESPONDENTS**

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Mr. V.D. Sapkal, Senior Advocate, instructed by
Mr. S.R. Sapkal, Advocate for applicants
Mr. S.N. Kendre, A.P.P. for respondent No.1.
Mr. Mukul Kulkarni, Advocate holding for
Mr. D.R. Jethliya, Advocate for respondent No.2.

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CORAM: R.G. AVACHAT, J.

Date of reserving order : 29th June, 2021

Date of pronouncing order : 17th August, 2021

ORDER :

The challenge in this revision application is to the order passed by learned Ad-hoc District Judge-2 (Additional Sessions Judge), Aurangabad on 9/1/2020, rejecting the application (Exh.16) for discharge of the applicants – accused from Sessions Case, No.426/2012, instituted for the offence punishable under Section 306 read with Section 34 of the Indian Penal Code.

2. Heard. Perused the impugned order and the police

papers relied on. The applicants – accused are office bearers of Yogeshwari Shikshan Prasarak Sanstha, Ambajogai, which runs Swami Ramanand Teerth Mahavidyalaya (for short the College), at Ambajogai itself. Deceased Prakash had been serving as a Junior College Lecturer since 1991. he was nominated as a Member of Maharashtra State Board of Secondary and Higher Secondary Education, Aurangabad Region in 2008. Since his nomination on the Board, he was required to visit Aurangabad for attending Board meetings and other official work.

3. The deceased claimed to have had professed Congress philosophy. Since the date of his nomination on the Board, the applicants – accused started harassing him mentally and economically as well. The applicant No.2 has lodged F.I.R. bearing Crime No.266/2008 against the deceased at City Police Station, Ambajogai for offence punishable under Sections 420, 465, 471 etc. of the Indian Penal Code. The deceased was also subjected to a departmental enquiry. He was terminated from service in October 2009 on account of the charge proved in the departmental enquiry. The deceased had, therefore, been to Aurangabad to consult a legal practitioner for further course of action. The deceased committed suicide by consumption of

poison on 25/10/2009 at Aurangabad, but not before writing letters to the then Chief Minister, his wife and his sister. The father of the deceased then lodged the F.I.R., alleging the applicants to have had harassed the deceased physically and economically as well, and driven him to commit suicide.

4. On investigation of the crime, the applicants – accused came to be proceeded against by filing the charge sheet. The application (Exh.16) was moved for discharged. The trial Court rejected the same.

5. Learned Senior Advocate appearing for the applicants would submit that, the deceased would disregard the work assigned to him. He used to remain absent from duty many a time. As such, his behaviour increased beyond tolerance. It was also found that, the deceased was to attend the meeting dated 21/7/2008. He, however, remained absent from that day to 8/8/2008 for the reason of attending Board meetings. He did not stop at that. He submitted false and fabricated bills, forged letter of SSC Board in order to show to have attended the meeting during the said period of 18 days. A preliminary enquiry was, therefore, held. He was prima facie found to have been involved

in falsity. A crime was, therefore, registered against him. In a departmental enquiry, the deceased was found guilty. He, therefore, came to be terminated from his service on 12/10/2009. The deceased committed suicide 16 days thereafter, on 28/10/2009. the deceased had ample time for reflection over his termination from service and take appropriate recourse thereagainst. The deceased had in fact been to Aurangabad to consult a lawyer and charter further course of action. It appears that, the deceased was hyper sensitive. He had decided to end his life and in that fit, wrote three letters, one to his wife, second one to his parents and third one to his sister. The tenor of the letters would indicate that, he was weak and not prepared to face adversities in life.

6. The learned Senior Advocate took me through ingredients of the offence of abetment and submitted that, the police papers on record in no way suggest the applicants to have had intended and acted in pursuance of such intention and ultimately driven the deceased to commit suicide. He, therefore, urged for allowing the application with discharge of the applicants.

7. The learned A.P.P. and learned Advocate representing the respondent No.2, widow of the deceased, would submit that, for framing of charge, it is sufficient to see whether the police papers make out a prima facie case to proceed with the trial. The learned Advocate took me through the letter written by the deceased to the Chief Minister and the statements of his widow, other relations and even the staff members of the College to submit the applicants to have had made the life of the deceased miserable. They involved the deceased in a false case. The deceased had no option but to end his life. Reliance was placed on the judgment of the Apex Court in **Praveen Pradhan Vs. State of Uttaranchal 7 anr. [92012) 9 SCC 734]** to ultimately submit that no interference with the impugned order is called for.

8. Section 227 of the Code of Criminal Procedure reads:-

“227. Discharge:- If, upon consideration of the record of the case, and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.”

9. In **Yogesh Alias Sachin Jagdish Joshi Vs. State of**

Maharashtra [(2008) 10 SCC 394], the Hon'ble Supreme Court observed :-

"It is trite that the words "not sufficient ground for proceeding against the accused" appearing in Section 227 Cr.P.C. postulate exercise of judicial mind on the part of the Judge to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. However, in assessing this fact, the Judge has the power to sift and weigh the material for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine a prima facie case depends upon the facts of each case and in this regard it is neither feasible nor desirable to lay down a rule of universal application. By and large, however, if two views are equally possible and the Judge is satisfied that the evidence produced before him gives rise to suspicion only as distinguished from grave suspicion, he will be fully within his right to discharge the accused. At this stage, he is not to see as to whether the trial will end in conviction or not. The broad test to be applied is whether the materials on record, if unrebutted, make a conviction reasonably possible."

10. Section 306 of the Indian Penal Code speaks of abetment for suicide. Section 306 reads thus :-

"306. Abetment of suicide:- If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten

years, and shall also be liable to fine.”

11. While Chapter V of Indian Penal Code speaks of abetment, Section 107 defines the term ‘abetment of a thing’ to mean:-

107. 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 1.- A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

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.

12. The Apex Court, in paragraph No.20 of the judgment in case of Ramesh Kumar Vs. State of Chhatisgarh [(2001) 9 SCC 618], observed :-

“20. Instigation is to goad, urge forward, provoke, incite or encourage to do “an act”. To satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect, or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out.”

13. In case of State of West Bengal vs. Orilal Jaiswal & Anr. [(1994) 1 SCC 73], the Hon’ble Supreme Court observed:-

“If it appears to the Court that a victim committing suicide was hypersensitive to ordinary petulance, discord and difference in domestic life, quite common to the society, to which the victim belonged and such petulance, discord and difference were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the Court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty.”

14. Let us advert to the material on record to find whether the same satisfies the test as has been envisaged by the Apex Court in case of Yogesh Joshi (supra).

15. The deceased had been serving as Junior Lecturer with Swami Ramanand Teerth Mahavidyalaya. The applicants are

the office bearers of the said College and the institution that runs it. The deceased was nominated as a Member of the Board, Aurangabad Region. He was, therefore, required to attend the Board meetings, held at Aurangabad. The deceased had claimed to have professed philosophy of the Congress, a political outfit. It is the case of the prosecution that, the deceased was, therefore, harassed by the applicants mentally and economically as well. The deceased was dismissed from service. A false F.I.R. came to be registered against him at the instance of one of the applicants. The very person was the convener of the enquiry committee set up against the deceased. The same speaks in volumes. There are statements of the staff members to indicate that the deceased was not granted leave nor was he allowed to sign muster roll. The prosecution first relies on the letter dated 25/10/2019 written by the deceased to the Chief Minister. The same is prima facie required to be treated as a suicide note. The deceased wrote to the then Chief Minister as follows :-

“He (deceased) profess Congress culture. The Governor of Maharashtra nominated him on Maharashtra state Board of Secondary and Higher Secondary Education, Aurangabad Region as a member in February 2008. The deceased also claimed himself to be Press Reporter. Since his appointment on the Board, the management started harassing and ill-treating him. A false criminal

case was lodged. Domestic enquiry was initiated. The deceased was forced to give certain admissions. The one who had lodged the F.I.R. was the convener of the enquiry committee. He is Mr. Bhagwan Raghoba Katkade (applicant No.2). He (Katkade) is crooked. He runs many educational institutions. Since the deceased profess Congress philosophy, the management has dismissed him from service. As a result of the dismissal, the deceased left with no income source. The only option before him was to commit suicide. The applicants are solely responsible for his decision to commit suicide. The enquiry was set up without there being any material against the deceased. The applicant Dixit had asked the deceased to pay him Rs.10 lakhs so as to ensure his clearance from enquiry. As the deceased failed to meet the demand, he was dismissed from service. The deceased urged the Teachers' Association to raise voice with a view to avoid other teachers land in the circumstances in which the deceased was made to land. The deceased also expressed his desire that the last rites on his mortal remains be performed at the house of applicant Dr. Suresh Khursale. The deceased then requested the Chief Minister to give protection to his family members and extend financial aid from Chief Minister's Relief Fund."

16. The statements of the father, widow and other relations of the deceased are on the lines of whatever has been narrated in the suicide note-cum-letter to the Chief Minister with the slight variations here and there.

17. Then there is statement of Shri Sambhaji Bansode, a

Junior Lecturer, serving with the very institution. It is in his statement that, since the deceased was appointed a member on the SSC Board, Region Aurangabad, the Principal and Vice Principal of the College started harassing him. They would refuse him leave for attending Board meetings. He was prohibited from signing the muster roll. Because of the same, the deceased was depressed.

18. The deceased had also written letter to his wife three days before committing the suicide. The deceased expressed regret for having failed to keep his wife happy in life. He expressed to have nothing with him to give to her. He admitted that, their residential house was exclusively owned by his wife. He urged her that on her demise, whatever balance amount was in his Bank Account, be transferred in the name of his two minor children. In the letter to his sister, he urged to ensure that his parents and brother would be kind enough with his widow and children post his demise.

19. True, it is only the police papers which could be looked into to find whether there is a prima facie case for framing of a charge. An accused is not entitled to place on record any

material in his defence except one which is of impeccable and sterling quality. The Criminal Court even cannot look into the case of the deceased that he was falsely implicated in a criminal case and dismissed from service on the basis of a false charge in departmental enquiry. There are two competing facts. One, the deceased committing suicide on the ground of having been harassed. The rival claim of the applicants is that, the deceased indulged in indiscipline and even committed the offence and, therefore, F.I.R. was lodged against him and he was subjected to a departmental enquiry, wherein the charge came to be proved. The deceased, therefore, came to be dismissed from service. The entire tenor of the suicide note does indicate that the deceased could not bear his dismissal from service. Due to his dismissal, he thought that his future would be bleak. It thus appears that, the deceased was very sensitive and weak by heart. His wife has, in fact, been serving. It is fortunate that, he took such an extreme step and did end his life. It appears that, he had made up his mind to commit suicide. Admittedly, on 23/10/2009 the deceased had come down to Aurangabad to consult a lawyer to charter a further course of action against his dismissal from service. The distance between Ambajogai and Aurangabad is not of more than three and half hours drive. The

deceased remained at Aurangabad for next five days for unknown reason. During those days, he wrote letters to the Chief Minister, to his wife and sister and others as well, expressing his mind of having decided to end his life.

20. As stated above, for an offence of abetment of suicide, it should prima facie be shown that the applicants intentionally acted with the deceased with a view to drive him to commit suicide. Whether the deceased was really involved in criminal offence and his conduct was such enough to dismiss him from service is a question to be decided by different forum. Even if it is assumed that all was not well between the deceased and the applicants in their official capacity, it cannot be observed that the act of lodging F.I.R. against the deceased and initiating the departmental enquiry were aimed (intended) at driving the deceased to commit suicide. As observed hereinabove, each person has his own idea of self esteem and self respect. Each person's suicidability pattern is also different. From the suicide note, it is evident that, the deceased took his dismissal from service to his heart. He found his future to be bleak and left with no income source. He, therefore, committed suicide.

21. In my view, the material on record does not lead me to observe the applicants to have had instigated/ abetted the deceased to commit suicide. The facts of Praveen Pradhan's case (supra) are quite different. The deceased in the said case was a qualified graduate Engineer and as per the suicide note, still suffered persistent harassment and humiliation and additionally, also had to endure continuous illegal demands made by the appellants/ accused therein. He was forced continuously to work for long duration, which often went up to 16/17 hours at a stretch. It has further been observed in the very judgment that, no straitjacket formula can be laid down to find out as to whether in a particular case there has been instigation which forced a person to commit suicide.

22. It is reiterated that, the material on record does not make out more than a prima facie case to observe the applicants to have abetted suicide and, therefore, sufficient to frame the charge for the offence punishable under Section 306 of the Indian Penal Code.

23. In the result, the Criminal Revision Application succeeds. The impugned order passed by learned Ad-hoc

District Judge-2 (Additional Sessions Judge), Aurangabad on 9/1/2020 is set aside. The application (Exh.16) in Sessions Case No.426/2012 is allowed. The applicants are discharged from the said case.

(R.G. AVACHAT, J.)

fmp/-