

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

953 CRIMINAL APPLICATION NO. 1684 OF 2021

KESHAV SONAJI PAWAR
VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

...
Advocate for Applicant : Ms Ashwini A. Lomte h/f
Mr. S. J. Salunke

AGP for Respondents-State : Mr. S. P. Deshmukh

....

CORAM : V. K. JADHAV AND

SANDIPKUMAR C. MORE, JJ.

DATED : 15th DECEMBER, 2021.

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ORDER : (PER : SANDIPKUMAR C. MORE, J.)

1. By consent of the parties, heard finally at the stage of admission.
2. The applicant is seeking quashing of FIR No. 36 of 2021 dated 16/02/2021, registered with Beed City Police Station, Beed for the offence punishable under Section 306 of IPC.
3. Respondent no.2, who is serving as PSI at the aforesaid police station, had gone to the spot of incident in connection with Accidental Death No. 4 of 2021 as per Section 174 of Cr.P.C. on 09/02/2021 at about 10.45 a.m. Prior to that, ASI Chakre had carried out inquest panchanama over the dead-body of deceased

Renuka w/o Raghunath Devkar and they were taking the said dead-body for post-mortem. When respondent no.2 / informant was carrying spot panchanama in presence of panchas, he found one chit on the cot in the said house allegedly written by deceased Renuka, wherein it was mentioned that the present applicant while selling the house, suppressed the fact of septic tank of latrine being situated in the area of one Mr. Deshpande and thereafter quarreled with them. Then said Deshpande was telling them to construct a separate tank of latrine. On this count, deceased Renuka, feeling deceived, was constrained to commit suicide. In the said chit, she held the present applicant responsible for her suicide. Informant seized the said chit and on making investigation to that effect, he found that there was no reference in the sale deed got executed by the deceased and her husband from the present applicant, that the tank of latrine was common for themselves and neighbour Shri Deshpande. Thus, the informant has lodged the present FIR.

4. Learned counsel for the applicant submits that there are no ingredients of Section 306 of IPC present in the matter. Moreover, almost all the witnesses, whose statements were recorded during the investigation of this crime, have stated that deceased Renuka was mentally ill in hereditary manner and due to that only she committed suicide. Learned counsel for the applicant also submits

that it is highly impossible for deceased Renuka to commit suicide on such silly ground as stated in the prosecution story. As such, he further submits that even though the contents of the FIR are taken as proved, then also no offence under Section 306 of IPC is made out.

5. On the contrary, learned APP strongly opposed the application and submits that the suicide note has been found immediately on the spot of incident, which leaves no doubt for any manipulation. Further, the ingredients of sale deed under which the husband of deceased had purchased the house from the present applicant, do show that the latrine tank in question was not common between the said house and the house of neighbour Shri Deshpande. Further, the hand-writing of the said suicide note prima facie appears to be of deceased Renuka. As such, he prayed for dismissal of the application.

6. On perusal of the aforesaid FIR and investigation papers produced by respondent no.2 investigating officer, admittedly it appears that Renuka committed suicide by hanging herself on 09/02/2021 around 7.00 a.m. in her house. Further, the spot panchanama also discloses about the presence of chit allegedly written by deceased Renuka, on the cot in the said room. However,

if we perused the statements of family members of deceased Renuka including her husband, it reveals that husband of Renuka has stated that she was happy during her marital life and she was not subjected to any ill-treatment during the same. However, Renuka's own uncle Ankush Babasaheb Ingle has stated in his statement that his niece Renuka was mentally ill and that's why she might have committed suicide. He has further stated that his son-in-law i.e. husband of deceased, has also told him that the applicant never cheated them in any manner, but Renuka on account of her mental illness, might have committed suicide and had written such suicide note. Even brother of deceased Renuka has also stated so. Almost all the witnesses, whose statements were recorded by the investigating officer on 09/02/2021 i.e. on the day of incident, have stated that Renuka might have committed suicide on account of her mental illness. Though the witnesses in their supplementary statements have made accusation against the applicant being the person responsible for suicide of Renuka later on, but on the day of incident itself they have attributed the commission of suicide by deceased Renuka to her mental illness.

7. The Hon'ble Apex Court in the case of ***Chitresh Kumar Chopra vs. State (Government of NCT of Delhi)*** reported in ***(2009) 16 SCC 605***, has held in para 11 and 13 as below :

"11. Section 306 of the IPC reads as under:

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."

From a bare reading of the provision, it is clear that to constitute an offence under Section 306 of IPC, the prosecution has to establish: (i) that a person committed suicide, and (ii) that such suicide was abetted by the accused. In other words, an offence under Section 306 would stand only if there is an "abetment" for the commission of the crime".

"13. As per the Section, a person can be said to have abetted in doing a thing, if he, firstly, 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 to Section 107 states that any wilful misrepresentation or wilful concealment of material fact which he is bound to disclose, may also come within the contours of "abetment". It is manifest that under all the three situations, direct involvement of the person or persons concerned in the commission of offence of suicide is essential to bring home the offence under Section 306 of the IPC".

Thus, as per the aforesaid observations, the prosecution for making out case under Section 306 of IPC, has to establish that the suicide committed by a person was abetted by the accused and such abetment must be in form of direct involvement of the accused. Further, the Hon'ble Apex Court in many other judgments, has held that to constitute an abetment or instigation, it must be established that the accused must have played a positive act and has direct role in the commission of such suicide.

8. However, in the present matter, the prosecution is claiming that as the applicant cheated Renuka and her husband by suppressing the fact that there was a common latrine tank to their house and adjacent house of Shri Deshpande, Renuka committed suicide. Such reason by itself does not appear to be a reason on which one can commit suicide. Further, it is extremely important to note that the sale deed under which deceased Renuka and her husband had purchased the house is dated 05/03/2020 and the incident of commission of suicide by Renuka has taken place on 09/02/2021 i.e. almost one year after. Thus, it appears that Renuka and her husband were aware about the suppression of alleged fact at the hands of applicant much prior to the incident. Therefore, considering such time gap of almost one year, it appears highly unbelievable that Renuka would commit suicide on such flimsy

ground. On the contrary, her own close relatives on the day of incident, itself, had stated that Renuka was mentally ill and due to the same, she might have committed suicide by writing such chit. There appears no proximity between the alleged cheating by the applicant and the actual commission of suicide by deceased Renuka.

9. The Hon'ble Apex Court in the case of ***Gian Singh vs. State of Punjab and others***, reported in ***(2012) 10 SCC 303***, has already observed that if the allegations made against the accused are absurd in nature, then inherent powers under Section 482 of Cr.P.C. can be exercised to avoid the abuse of process of law. In the instant case, the close relatives of Renuka, themselves have stated on the day of incident that due to mental illness, Renuka committed suicide. Moreover, there is no proximity between the alleged cheating as mentioned in the suicidal note and the purchase of house by Renuka and her husband from the applicant. Therefore, in view of our discussion and ratio laid down by the Hon'ble Apex Court mentioned above, we are of the considered opinion that it would be an abuse of process of law if the present proceedings are allowed to be continued against the applicant. The instant matter is, therefore, fit for exercising powers under Section 482 of Cr.P.C. for quashing of FIR. Therefore, we pass the following order.

O R D E R

- I) The criminal application is hereby allowed in terms of prayer clause “ B & C .”
- II) The criminal application accordingly stands disposed of.

(SANDIPKUMAR C. MORE, J.)**(V. K. JADHAV, J.)**

vsm/-