

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

CRIMINAL APPLICATION NO.1978 OF 2020

Shaikh Alim Shaikh Rabbani,
age: 25 years, Occ: Business and
Agriculture, R/o Yewta, Post: Mohara,
Tal. Jafrabad, District Jalna.

Applicant

Versus

01 State of Maharashtra,
through Jafrabad Police Station,
Jafrabad, District Jalna.

02 Sudam s/o Kundlik Ingale,
age: 53 years, Occ: Agriculture,
R/o Aasai, Tal. Jafrabad,
District Jalna.

Respondents

Mr. Dr. S.D.Tawshikar, advocate for the applicant
Mr. Mrs. P.V.Diggikar, APP, for Respondent No.1-State.
Mr. R. B. Shingare, advocate for Respondent No.2.

**CORAM : SUNIL P. DESHMUKH &
NITIN B. SURYAWANSHI, JJ.**

DATE : 06th September, 2021.

PC :

1. By this application, the applicant seeks quashing of Sessions Case No. 43 of 2021, pending in the Court of Additional Sessions Judge-3, Jalna, registered on the basis of the First Information Report at CR. No. 0363 of 2020, registered with Jafrabad Police Station, District Jalna, for the offence punishable

under Section 306 of the Indian Penal Code.

2. The son of Respondent No.2, namely Krushna was found hanging to the tree in the field on 08.08.2020. A.D. No.22 of 2020 was registered with Jafrabad Police Station and an inquiry under Section 174 of the Code of Criminal Procedure was conducted. On 13.08.2021, First Information Report was lodged by Respondent No.2 alleging that after the *post mortem*, funeral of Krushna took place, on the same day. Thereafter, Krushna's friend Gajanan showed him (to the First Informant) a message, forwarded by Krushna, which was to the effect that the applicant is accusing that Krushna had committed theft of Rs.One lakh. It is alleged in the First Information that due to this accusation, Krushna had committed suicide.

3. Respondent No.2 – Informant, on notice, appeared and has filed an affidavit supporting the applicant, contending that in a disturbed mental condition, on the basis of hearsay knowledge, he has lodged the First Information Report against the applicant. He, therefore, averred that now, by mutual understanding, he is not willing to continue with the prosecution against the applicant.

4. Heard Mr. Tawshikar, learned Counsel for the applicant, Mrs. P. V. Diggikar, learned A. P. P. for Respondent No.1 and Mr. Shingare, learned Counsel for Respondent No.2. We have also perused the First Information Report and the material collected by the prosecution during the course of the investigation.

5. Learned Counsel for the applicant, by placing reliance upon the decisions in **Gian Singh Vs. State of Punjab & others**, 2012 (10) SCC 303; **Narindar Singh Vs. State of Punjab**, (2014) 6 SCC 466; **Parbhatbhai Aahir Vs. State of Gujrat**; and **State of Madhya Pradesh Vs. Laxmi Narayan**, (2019) 5 SCC 688, has submitted that taking into consideration the settlement arrived at between the parties, the First Information Report and consequential proceedings are liable to be quashed and set aside. He also placed reliance upon the decision in **Madan Mohan Vs. State of Gujrat**, (2010) 8 SCC 628; and **Dilip Ramrao Shirasao & others Vs. State of Maharashtra & another**, 2016 ALL MR (Cri) 4328; and submitted that even on merits, there is no material to justify continuation of the prosecution against the applicant.

6. The learned A.P.P. has opposed the prayer of the applicant contending that the material on record is sufficient to

frame charge against the applicant.

7. The learned advocate for Respondent No.2/First Informant has contended that the First Information Report was lodged due to misunderstanding in a fit of anger and Respondent No.2 has now realized his mistake. The parties have amicably settled the matter and, therefore, he has no objection if the proceedings against the applicant are quashed.

8. The legal position is well settled by catena of decisions of the Hon'ble Supreme Court that in a prosecution for offence punishable under Section 306 of the Indian Penal Code, there has to be some material to show that the suicide was abetted by intentional act on the part of the accused. In **Dilip Shirasao** (*supra*), this Court has held thus:

“11 This Court, considering the definition of ‘abetment’ under Section 107 I.P.C., found that the charge and conviction of the appellant for an offence under Section 306 is not sustainable merely on the legation of harassment to the deceased. This Court further held that neither of the ingredients of abetment are attracted on the statement of the

deceased.

20 As has been held by Their Lordships of the Apex Court that for permitting a trial to proceed against the accused for the offence punishable under Section 306 of the Indian Penal Code, it is necessary for the prosecution to at least *prima facie* established that the accused had an intention to aid or instigate or abet the deceased to commit suicide. In the absence of availability of such material, the accused cannot be compelled to face trial for the offence punishable under Section 306 of the Indian Penal Code. As has been held by Their Lordships of the Apex Court that abetment involves mental process of instigating a person or intentionally aiding a person in doing of a thing and without a positive act on the part of the accused in aiding or instigating or abetting the deceased to commit suicide, the said persons cannot be compelled to face the trial. Unless there is clear *mens rea* to commit an offence or active act or direct act, which led the deceased to commit suicide seeing no option or the act intending to push the deceased into such a position, the trial against the accused under Section 306 of the Indian Penal Code, in our considered view, would be an abuse of process of law.”

9. In **Jayashree Vs. State of Maharashtra**, 2017 (3) BCR (Cri) 113, this Court has held:

“8 From the above, it is apparent that law as to what are the requirements to constitute an offence punishable under Section 306 of the Indian Penal Code is well crystallized in the above referred authorities. In the case on hand, suicide note found on the spot shows that deceased was blamed for theft of mobile and so she committed suicide. Further from F.I.R., it can be revealed that a student has complained to the applicant that her mobile has been stolen and the said student expressed her suspicion for commission of theft on Nikita. It is not even the case of the prosecution that applicant suspected the deceased for theft of mobile of another student and she falsely blamed the deceased for the theft. Though the entire happening depicts an unhappy state of affairs, we do not find either from the allegations in F.I.R. or from the suicide note that applicant was responsible in any way for commission of suicide by Nikita. *Prima facie*, on the face value of F.I.R. and suicide note, if taken as they are, would not amount to

abetment as defined under Section 107 of the Indian Penal Code.”

10. The learned advocate for the applicant has also relied upon the decision of Division Bench of this Court in Criminal Writ Petition No.1804 of 2018, decided on 30.04.2019, (**Ramesh s/o Namdeo Patil & others Vs. State of Maharashtra**) wherein quashing of First Information Report for the offence punishable under Section 306 read with Section 34 of the Indian Penal Code was sought as the parties had settled the dispute. Though there was a suicide note on record, the Division Bench of this Court allowed the petition holding that:, “*for abetment of suicide, ingredients of Section 107 of the Indian Penal Code, are necessary*”. In para 5, it is held:

“5 The learned APP submitted that though the parties have settled the dispute, on the basis of suicide note, the Court can convict the petitioners. This contention cannot be accepted. For abetment of suicide, the ingredients of Section 107 of IPC needs to be proved. Allegations as they are, do not constitute both the abetment by instigation and abetment by intentional aid. It will be futile exercise if the petitioners are made to face the

trial for the aforesaid offences. Due to all these circumstances, this Court holds that relief needs to be granted. In the result, the petition is allowed. Relief is granted in terms of prayer clauses 'C' and 'D'."

11. In the light of the settled legal position, it is clear that in the present case, no ingredients of abetment of suicide, as contemplated by Section 107 of the Indian Penal Code are made out from the investigation papers. Taking into consideration settlement arrived at between the parties, continuation of the proceedings would amount to abuse of process of law. If the applicant is made to face the trial for the offence punishable under Section 306 of the Indian Penal Code, it would be a futile exercise as the charge under Section 306 of the Indian Penal Code is groundless and no supporting material to sustain the charge is brought on record by the prosecution. We are, therefore, of the considered view that the proceedings against the applicant are liable to be quashed in the interest of justice.

12. For the aforestated reasons, Criminal Application is allowed in terms of amended prayer clause "B". The proceedings of First Information Report at Cr. No. 0363 of 2020, registered with

Jafrabad Police Station, District Jalna, for the offence punishable under Section 306 of the Indian Penal Code and further proceedings pursuant thereto of Sessions Case No. 43 of 2021, pending in the Court of Additional Sessions Judge-3, Jalna, are hereby quashed and set aside.

(NITIN B. SURYAWANSHI)
JUDGE

(SUNIL P. DESHMUKH)
JUDGE

adb