

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

CRIMINAL REVISION APPLICATION NO. 229 OF 2019

1. Ramdas Rajaram Mohite
Age; 60 years, Occ; Pensioner,
R/o; Bhada, Tq. Ausa, Dist;Latur
2. Suryaprakash Ramgir Giri,
Age; 49 years, Occ; Service,
R/o; Bori, Tq. & Dist; Latur. ...Applicants

VERSUS

The State of Maharashtra
Through Police Station Renapur,
Dist. Latur. ...Respondent

...
Advocate for applicant : Mr. Panhale Sachin S.
APP for Respondent-State : Mr. S.N.Morampalle
...

CORAM : SURENDRA P.TAVADE , J.

**RESERVED ON : 17th August, 2021.
PRONOUNCED ON : 23rd August, 2021.**

JUDGMENT :

1. Rule. Rule made returnable forthwith. By consent of learned counsel for both the parties, heard finally at admission stage.
2. The applicants are arraigned as an accused in Crime No. 133 of 2011, registered at Renapur Police Station, District Latur for

the offences punishable under Sections 306 and 384 read with Section 34 of the Indian Penal Code (for short "IPC") at the behest of the informant Mainabai Vishnu Hanvate, resident of Sathe Nagar, Pangaon, Tq. Renapur, District Latur.

3. It is alleged by the informant that the deceased Mahadev was her son. He was prosecuted by police for the offence under Section 376 of the IPC. Said case was pending since long. On Sunday dated 18.09.2011 the applicants visited the house of the informant and informed her that a warrant was issued against her son Mahadev. The applicants directed the informant to take the date and get the warrant cancelled. They demanded Rs. 500/- from the informant, accordingly she paid it. It is also alleged that the applicants were demanding Rs. 1,000/- from the informant and on that count they harassed her. It is further alleged that on 21.09.2011 the informant and her son went to the Court but the Clerk could not trace out the file of Mahadev, hence they returned home. On the same day, at about 10.00 to 10.30 p.m. Mahadev returned home hurriedly and asked the informant to close the door of the house. Mahadev disclosed that police had come to arrest her. Thereafter Mahadev went out of the house from rear door. About 15-20 minutes thereafter, the informant came out of the house and saw that Mahadev had committed suicide by hanging himself on the

tamarind tree. With the help of neighbours, the body of Mahadev was taken on the ground and thereafter, it was taken to the Primary Health Center, Pangaon, where, doctor declared him dead, hence his body was sent for postmortem at Latur. Thereafter, FIR came to be lodged against the applicants.

4. On bare reading of the FIR it appears that the applicants had demanded money from the informant. It is not established from the contents of the FIR that at the time of visit of the applicants to the house of the informant the deceased Mahadev was present. It is also not alleged in the FIR that in the night of 21.09.2011 the applicants had gone to the house of the informant for demanding Rs. 1,000/-, in fact, it is prima-facie established from the statements of other witnesses that there was Grampanchyat election on 21.09.2011, therefore, RCP squad was deployed in the village. It is also come on record that the applicants were given the duty of making arrangement of stay and dinner of the said squad.

5. No doubt, it is in the statement of Sonali d/o Vishnu Hanvate, who is the daughter of the informant that the applicants had visited her house in the night of 21.09.2011 and they had assaulted Mahadev. But there is no whisper of the said fact in the FIR of Mainabai. The investigating Officer has recorded the

statements of friends of the deceased Mahadev namely Chhagan Hanvate, Lahu Vaijinath Upade and Raju Mane. On perusal of said statements, it appears that in the fateful night, the deceased Mahadev had consumed liquor with Ghhagan Ganvate and Lahu Upade near the house of Raju Mane. Thereafter, he went home. It also appears that at about 10.00 p.m. the deceased Mahadev took eggs from the shop of Kevalbai and went home. The said statements show that they never saw the applicant inside the house of the deceased Mahadev. Therefore, the story of Sonali Hanvate that on the night of 21.09.2011 the applicant had came to her house and assaulted deceased Mahadev appears to be after thought.

6. Even if it is presumed that the applicants had visited the house of informant, then also it does not establish that they had aided or abetted the deceased Mahadev to commit suicide. The statements of other witnesses are not helpful to prima-facie establish the visit of the applicants to the house of the informant, in the night of 21.09.2011.

7. In view of the above facts the learned counsel for the applicants submitted that the material placed on record is not sufficient to hold that the applicants had in any way aided or abetted the deceased Mahadev to commit suicide.

8. On the other hand, the learned APP for respondent submitted that the applicant No. 1 was the in-charge of the Pangaon Police Chauki. He was directed to execute the warrant against the Mahadev, therefore, he was bent upon to execute the warrant against Mahadev. He demanded money from the informant and as warrant was not cancelled, therefore he threatened and pressurized the informant and Mahadev. Thus, Mahadev committed suicide, therefore, the acts of the applicants can be called as abatement to commit suicide of the deceased Mahadev.

9. Heard Mr.Panhale Sachin S. learned counsel for the applicants and Mr. S.N.Moramalle, the learned APP on behalf of Respondent-State.

10. The learned counsel for the applicants has relied on the ratio laid down in the case of **Shabbir Hussain Vs. The State of Madhya Pradesh and Ors**, reported in Special Leave to Appeal (Cri.) No(s). 7284 of 2017 Supreme Court, dated 26.07.2021 wherein, it is held that

“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”

He also relied on the ratio laid down in the case of **Dilip s/o Ramrao Shirasao and Ors Vs. State of Maharashtra and Anr. Reported in 2016 ALL MR (Cri.) 4328**, in which this Court has observed that

“The law is very well crystallized by the Hon’ble Apex Court in the catena of cases including in the cases of Sanju alias Sanjay Singh Sengar Vs. State of Madhya Pradesh, reported in 2002 Cri.L.J. 2796; Madan Mohan Singh vs. State of Gujrat and another, reported in (2010) 8 SCC 628; (2010 ALL MR (Cri) 3245 (S.C.); and in the case of S.S. Chheena Vs. Vijay Kumar Mahajan reported in 2010 ALL MR (Cri) 3298 (S.C.)”

It is further held that

“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 establish 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 abatement 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.”

In view of the ratio laid down in the above case cited supra, I have to see whether the material placed on record establishes the act of the applicants as an intention to aid or instigate or abet the deceased to commit suicide.

11. I have already observed that the FIR is not helpful to the prosecution. In the FIR the informant simply stated that on 18.09.2011, the applicants had demanded money and asked the informant to get the warrant of her son cancelled. It is also alleged that the applicants were harassing her. Even if, the said statement is taken as it is, it does not disclose that the applicants had in any way or in any manner instigated or aided the deceased to commit suicide. In fact, there is no material on record to establish that the applicants had contacted the deceased either on 19.11.2018 or thereafter till 21.09.2018. In the statement of Sonali, it appears that the applicants had visited the house of the informant on 21.09.2011, between 10.00

to 10.30 p.m. She also alleged that the applicants assaulted the deceased Mahadev, but he ran away. Even the said fact is taken as it is, still, it cannot be said that the applicants had in any way aided or abetted the deceased Mahadev to commit suicide. There was no active or positive role played by the applicants in committing, instigating or abetting the deceased Mahadev to commit suicide. After going through the statement of the informant and the witnesses and considering the ratio laid down in the cited cases supra, I am of the opinion that the prosecution has not established that the applicants aided or instigated the deceased Mahadev to commit suicide.

12. As far as charge under Section 384 of the IPC is concerned, the statements of the informant and her daughter Sonali Vishnu Hanvate are crucial. Both of them stated that the applicants had come to their house on 18.09.2011 and demanded money and accordingly, the informant paid Rs. 500/- to them. They also demanded Rs. 1,000/- and went away. In view of the above facts I have to see the definition of the extortion which reads as under :

“383. Extortion – Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security, or anything signed or sealed which

may be converted into a valuable security, commits 'extortion'."

13. If the definition of extortion is considered, vis-a-vis, the statement of the informant and her daughter, it can be stated that the offence under Section 384 of the IPC is not prima-facie established. At the most it can be said that the applicants had demanded money for giving information of issuance of warrant against the deceased Mahadev. It appears that the deceased Mahadev was not present in the house, therefore, the applicants demanded money and went away. If these facts are taken as it is, these cannot be fall under the definition of extortion. Therefore, the offence of extortion is also not made out against the applicants. With this, in that view of the matter also I am of the considered view that the continuation of the proceedings against the applicants would result in an abuse of the process of law and as such, I am inclined to allow the application and pass following order :

ORDER

1. Application is allowed.
2. The order dated 04.05.2019 passed by the Additional Sessions Judge, Latur, on Exh. 5 in Sessions Case No. 12 of 2015, is hereby quashed and set aside.

3. The applicants are hereby discharged from the charges levelled against them.

4. Rule is made absolute.

(SURENDRA P.TAVADE)
JUDGE

mahajansb/