

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

942 CRIMINAL APPLICATION NO.2461 OF 2020

DEVANAND BASAPPA PATRE AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicants: Mr S S Kulkarni h/f Ingole G R
APP for Respondents : Mr. M M Nerlikar
Advocate for Respondent 2: Mr. V.D. Solanke (appointed)

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CORAM : V.K. JADHAV & SHRIKANT D. KULKARNI, JJ.
Dated : August 26, 2021

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PER COURT :-

1. Learned counsel for the applicants, on instructions, seeks leave to withdraw this criminal application to the extent of applicant no.1-Devanand Basappa Patre, with liberty to applicant no.1 to file an application for discharge before the trial court after filing of the charge-sheet.

2. Leave granted. Criminal application is dismissed as withdrawn with the liberty to the applicant no.1-Devanand Basappa Patre to file an application for discharge before the trial court after filing of the charge-sheet.

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3. Heard finally with the consent of the parties, at admission stage.

4. Learned counsel for the applicant submits that though name of the present applicant no.2/original accused no.2-Shivanand Basappa Patre is mentioned in the FIR, however, allegations have been made mainly against co-accused Devanand Patre, whose application seeking quashing of the FIR came to be withdrawn today. Learned counsel submits that, as per the allegations made in the complaint, co-accused Devanand Patre has availed loan to the tune of Rs.15.00 Lakhs from one Private Finance Company, for which the deceased stood as guarantor orally. It is further alleged in the complaint that, co-accused Shivanand Patre has not repaid the said loan amount and on the other hand, he left his house alongwith his family members and his whereabouts are not known since one year prior to the death of the deceased. It has further alleged that persons from the said private finance company started harassing the deceased Ratnakar on account of said

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repayment of the loan. Consequently, when the informant, who happened to be the wife of the deceased, went on morning walk and when she returned to the home, she found that her husband had committed suicide by hanging himself to the ceiling fan. Learned counsel submits that, it has simply alleged in the FIR that, the applicant-Shivanand Patre, who happened to be the real brother of co-accused Devanand Patre failed to give the address of co-accused Devanand either to the deceased or to the finance company persons and he directed the finance company persons to visit to the house of the deceased for repayment purpose. Learned counsel submits that, even nothing has been revealed during the course of the investigation as against the applicant. There is no evidence about abetment of commission of suicide by the deceased as against the applicant. Learned counsel submits that, the applicant has no concern with the said transaction in any manner and he has been simply arraigned as an accused person for the reason that he is the brother of co-accused Devanand.

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5. Learned counsel for respondent no.2 submits that, there are specific allegations against the applicant for not giving the information as to the whereabouts of co-accused Devanand to the deceased and so also the persons from Finance Company. On the other hand, he has directed the persons from Finance Company to visit the house of the deceased for recovery of the loan amount. Learned counsel for respondent no.2 submits that, this is nothing but abetment of commission of suicide. The deceased had committed suicide on account of the harassment at the hands of the Finance Company people for recovery of the amount, for which he is not responsible.

6. Learned APP submits that prima facie, there is a case against the applicant-Shivanand. The applicant has abetted the commission of suicide by taking finance persons to the house of the deceased for the purpose of recovery of the loan, which his brother has availed. The applicant being the brother of co-accused Shivanand was knowing the whereabouts and even he has

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deliberately not furnished the address of co-accused Devanand Patre either to the finance persons or to the deceased.

7. In a case **Binod s/o Ratan Sarkar and others Vs. The State of Maharashtra** reported in **2014 ALL MR (Cri) 1216** the Division Bench of this Court in identical facts, has observed that there must be proof of direct or indirect acts of incitement to commission of suicide. In paragraph no.14 of the Judgment, the Division Bench of this court has made following observations :-

“14. By now, in a catena of judgments, the Apex Court has considered the scope and meaning of "abetment" under [Sections 107](#) and [306](#) of the Indian Penal Code to find out whether the charge and conviction for an offence under [Section 306](#) of the Indian Penal Code can be sustained merely on the allegations of harassment of the deceased and whether the ingredients of abetment are attracted on the basis of the statement of the deceased.”

8. In a case of Shabbir Hussain Vs. The State of Madhya Pradesh and others in Petition for Special Leave to appeal (cri) 7284 of 2017, the Supreme Court has observed that “in order to prefer a case within the provisions of section 306 of IPC, there must be a case of

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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 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.”

9. In the instant case, though we find the name of the applicant is mentioned in the FIR, however, the allegations are restricted to the extent that he has not given address of his brother co-accused Devanand Patre to the deceased or to the finance company people. Except those allegations, there are no further allegations against him nor anything has been revealed during the investigation to indicate that the applicant has abetted commission of suicide either directly or indirectly. We have also perused the suicide note. It has specifically stated in the suicide note that co-accused Devanand is

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responsible for the death and so far as the present applicant is concerned, his role is supportive to some extent. Thus, considering the same and in terms of the ratio laid down the Supreme Court and by the Division Bench of this Court in the aforesaid cases, we proceed to pass the following order.

O R D E R

- I. Criminal application is allowed in terms of prayer clause "C" to the extent of applicant no.2 - Shivanand Basappa Patre.
- II. Criminal application accordingly disposed off.
- III. Since Mr. Solanke is appointed to represent the cause of respondent no.2, we quantify his legal fees and expenses at Rs.2,000/- (Rs. Two thousand) to be paid by the High Court Legal Services Sub-Committee, Aurangabad.

(SHRIKANT D. KULKARNI, J.) (V.K. JADHAV, J.)

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