

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

CRIMINAL APPLICATION NO. 3959 OF 2019

Balaji S/o Rajkumar Kamble
Age: 32 years, Occu: Service & Agril.,
R/o. New Renapur Naka, Latur,
Tq. and Dist. Latur.

... Applicant

Versus

1. The State of Maharashtra
Through the Police Station Officer,
Gandhi Chowk Police Station,
Latur
2. Sachin S/o Dnyanoba Shinde
Age: 25 years, Occu: Private Service,
R/o Srikrishna Nagar, Latur,
Tq. & Dist. Latur

... Respondents

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Mr. N.D. Kendre, Advocate for the Applicant
Ms. Preeti V. Diggikar, A.P.P. for Respondent No.1 / State
Mr. S.S. Panale, Advocate for Respondent No.2

**CORAM : V. K. JADHAV AND
SHRIKANT D. KULKARNI, JJ.**

DATE : 05th AUGUST, 2021

FINAL ORDER (PER SHRIKANT D KULKARNI, J.):

1. Heard finally at admission state with consent of both the sides.
2. By this application under Section 482 of the Code of Criminal Procedure, the applicants are seeking the following substantive prayers.

“C. The First Information report bearing Crime No.561 of 2019 dated 26 October, 2019 registered with Gandhi Chowk Police Station, Latur, Tq. and Dist. Latur under section 306 r/w 34 of the Indian Penal Code may kindly be quashed.

C-1 The Regular Criminal Case No. 20 of 2020 arising from the Crime No.561 of 2019 registered with Gandhi Chowk Police Station at Latur, Dist. Latur on 26 October, 2019 under Section 306 r/w. 34 of the Indian Penal Code, and pending in the court of Id. Chief Judicial Magistrate, Latur, Tq. And Dist. Latur against the applicant may kindly be quashed and set aside.

Factual Scenario

2. Dnyanoba Shinde (deceased) was the father of first informant Sachin Shinde, resident of Srikrishna Nagar, Latur. Late Dnyanoba Shinde, in the year 2018 had agreed to purchase one plot from the applicant for Rs.18,05,000/-. Late Dnyanoba Shinde had given an earnest money of Rs.03,05,000/-in three installments. The said transaction came to be cancelled for want of clearance from the town planning department. Late Dnyanoba Shinde requested to the applicant to repay the earnest money. Part of the amount of earnest money was paid to Late Dnyanoba Shinde. For the remaining balance amount, the applicant had issued the cheque dated 22.10.2019. The

applicant alleged to have avoided to make payment of balance amount. The cheque given by the appellant came to be dishonoured. The applicant alleged to have avoided to make payment of the balance amount of the transaction due to which mental condition of the father of the first informant was disturbed.

3. On 25.10.2019, father of the first informant left the house in the morning and committed suicide by hanging. One suicide note was found in the pocket of the deceased, wherein the name of the applicant and others were mentioned making them responsible for such suicide.

4. On the basis of the first information report lodged by the son of the deceased namely Sachin Dnyanoba Shinde, crime no.561 of 2019 came to be registered under section 306 read with section 34 of the Indian Penal Code with Gandhi Chowk Police Station, Latur. After the inquest panchanama, the dead body was sent to Government Medical College and Hospital at Latur for postmortem examination. The medical officer who has conducted autopsy given probable cause of death in the case "Asphyxia due to hanging, viscera preserved for chemical analysis".

5. The investigating officer has completed the investigation and filed the charge-sheet against the applicant and others in the Court of Chief Judicial Magistrate, Latur, which is in the process of committal.

6. In the above background, the applicant is before us with a prayer for quashing of first information report / crime no. 561 of 2019 and consequent filing of charge-sheet registered vide Regular Criminal Case No.20 of 2020 pending on the file of learned Chief Judicial Magistrate, Latur.

7. Heard Mr. N.D. Kendre, learned counsel for the applicant, Ms. P.V. Diggikar, learned APP for respondent No.1 / State and Mr. S.S.Panale, learned counse for respondent no.2 / first informant.

Submissions of learned counsel for the applicants

8. Mr. N.D. Kendre, learned counsel for the applicant vehemently submitted that the crime is registered only to harass the applicant. There is no *prima facie* material to attract Section 306 of the Indian Penal Code. The alleged suicide note is not written by the deceased as revealed during the course of investigation. The alleged sale transaction between the parties was of purely civil nature. There is no iota of evidence to show that the applicant has instigated to deceased to commit suicide. The first informant has put the criminal law in

motion only to pressurize the applicant. Mr. Kendre, learned counsel for the applicant urged to quash the first information report and consequent charge-sheet.

9. Mr. Kendre, learned counsel for the applicant has placed his reliance on the following stock of citations.

1. ***S.S. Chheena Vs. Vijay Kumar Mahajan and another*** reported in ***(2010) 12 SCC 910***.
2. ***Madan Mohan Singh Vs. State of Gujrat and another*** reported in ***(2010) 8 SCC 628***
3. ***Shabbir Hussain Vs. The State of Madhya Pradesh and others*** (Special Leave to Appeal (Criminal) No. 7284 of 2017 Supreme Court dated 26.07.2021.)

10. Per contra, Mr. S.S. Panale, learned counsel for respondent no.2 / first informant submitted that there is a *prima facie* material against the applicant to attract Section 306 of the Indian Penal Code. The father of the first informant has left behind a suicide note. The name of the applicant is mentioned in the suicide note. The applicant and his associates avoided to make payment of the remaining balance amount of transaction in question. The cheque issued by the applicant came to be dishonoured. The father of the first informant was mentally disturbed since he could not get the remaining amount involved in the transaction and ultimately committed suicide. The

applicant and his associates are responsible for suicidal death of the father of the first informant.

11. Mr. Panale, learned counsel for respondent no.2 / first informant submitted that considering the above factual scenario, the allegations made against the applicant in the F.I.R., suicide note and evidence collected by the investigation agency, it is not a fit case to quash the F.I.R. and consequent filing of charge-sheet.

Submissions of learned A.P.P. for the State

12. Ms. P.V. Diggigakar, learned A.P.P. for respondent no.1 / State echoed the argument advanced by Mr. Panale, learned counsel for the first informant. She submitted that it is not a fit case to invoke the provisions of Section 482 of the Code of Criminal Procedure to quash the proceedings.

13. The factual scenario as appearing from the record is not disputed. The father of the first informant has committed suicide by hanging. The prosecution story rests upon the alleged suicide note left behind by the deceased coupled with alleged harassment caused by the applicant and his associates, which led to unnatural death of the father of the first informant falling in the category of suicidal death.

14. On perusing the documents produced by the applicant and respondent no.2 as well, it is evident that there was an agreement for sale between them to purchase one plot for consideration of Rs.18,05,000/- and an amount of Rs.03,05,000/- was given to the applicant by way of earnest money and remaining amount was to be paid. Due to certain difficulties, the transaction could not be completed and ultimately it came to be cancelled. It is material to note that the applicant has repaid part of the earnest money to the deceased, which shows his intention to repay the remaining balance amount. It was a purely civil transaction between the parties. Even if, the cheque given by the applicant came to be dishonoured, the legal remedy was available to the deceased and first informant as well to initiate appropriate proceedings to recover balance amount of the transaction.

15. On careful study of the first information report and papers annexed with the charge-sheet, if the allegations made in the F.I.R. and the charge-sheet against the applicant even if they are taken at their face value and accepted in its entirety, *Prima facie* does not constitute a cognizable offence against the applicant. The criminal proceedings seems to have been initiated by the first informant against the applicant with an intention to get back the earnest amount

of Rs.03,05,000/- given to the applicant to purchase one plot from the applicant. The criminal proceedings initiated at the instance of the first informant is instituted with malice and with an ulterior motive for wreaking vengeance on the applicant and with a view to spite him due to the private and personal grudge. There is absolutely no material, which may focus on any positive action on the part of the applicant, which led to the suicide of father of the first informant.

16. According to the provisions of Section 306 of the Indian Penal Code, in order to bring a case of suicide, 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 certain act to facilitate the commission of suicide. The instigation can be inferred where the accused had, by his acts or omission created such circumstances that the deceased was left with no option except to commit suicide. The allegations levelled against the applicant if carefully examined with the material placed on record in the charge-sheet, there is no active part or role on the part of applicant, which led to the suicidal death of the deceased. Mere dishonour of cheque and refusal to pay remaining balance amount involved in the transaction does not amount to abetment to commit suicide.

17. In case of ***Madan Mohan Singh Vs. State of Gujrat and another*** (supra), it is held by the Hon'ble Supreme Court that intention of accused to aid or to instigate or to abet the suicide must be proved. Merely because a person had a grudge against his opposite person and committed suicide on account of that grudge, it would still not be a proper allegation for basing a charge under Section 306 of the Indian Penal Code. It is further held by the Hon'ble Supreme Court that in the suicide note, there must be *prima facie* ingredient to show that there was proximity or nexus in the so-called suicide and any of the alleged acts on the part of applicant.

18. In case of ***S.S. Chheena Vs. Vijay Kumar Mahajan and another*** (supra), the Hon'ble Supreme Court has reiterated about ingredients to attract the offence of abetment to commit suicide for the offence punishable under Section 306 of the Indian Penal Code.

19. The Hon'ble Supreme Court in a recent judgment in case of ***Shabbir Husaain Vs. The State of Madhya Pradesh and others*** (supra), held as under:

“ 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.

Mere harassment 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 [Amalendu Pal V. State of West Bengal (2010) 1 SCC 707].

Abetment by a person is when a person instigates another to do something. Instigation can be inferred where the accused had, by his acts or omission created such circumstances that the deceased was left with no other option except to commit suicide. [Chitrewsh Kumar Chopra v. State (Government of NCT of Delhi) (2009) 16 SCC 605].”

20. Having regard to the legal position laid down by the Hon’ble Supreme Court, if the allegations levelled against the applicant in the first information report and material collected during the course of investigation are examined and taken at its face value, no material to attract Section 306 of the Indian Penal Code.

21. The prosecution case is based upon the suicide note, wherein the name of the applicant is figured. It is important to note that alleged suicidal note is itself in doubt. There is a big question mark about the genuineness of suicidal note. According to the first informant, suicide note is written by his father. On the other hand, it

is disclosed during the course of investigation that one Sopan Nagorao Mandale resident of Rahul Nagar, Latur has written that note and handed over to the deceased. Thus, it is clear that the very foundation of the prosecution case is shaky. It seems that by way of adopting pressurize mode, the first informant has put the criminal law in motion to implicate the applicant. No material is on record to attract Section 306 of the Indian Penal Code.

22. In exercise of powers vested in us under section 482 of the Code of Criminal Procedure, we arrived at the conclusion that allowing the criminal proceedings against the applicant to continue would be an abuse of the process of the Court and the ends of justice require that the proceedings ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution.

23. The criminal prosecution launched at the instance of the first informant seems to be predominantly of civil dispute. It stands on a different footing. It seems to be an attempt made by the first

informant to teach a lesson to the applicant by taking undue advantage of unfortunate death of his father.

24. Having regard to the above reasons, we conclude that there is no propriety to continue the criminal proceedings against the applicant and put him on trial in the above factual scenario. There is no point to ask the applicant to face the trial. It would be an abuse of the process of the Court and Court machinery and waste of valuable time of the Court. The first information report and consequential charge-sheet filed against the applicant needs to be quashed.

25. In the result, we proceed to pass the following order.

ORDER

- (i) The criminal application is allowed in terms of prayer clauses “C”, and “C-1”.
- (ii) The criminal application is accordingly disposed of.

(SHRIKANT D. KULKARNI)
JUDGE

(V. K. JADHAV)
JUDGE

S.P Rane