

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

CRIMINAL APPLICATION NO. 4085 OF 2019

Mohammad Jaleeluddin Muktar Tamboli,
Age : 48 years, Occu.: Service,
R/o.: Bhawani Nagar Old Jalna,
Tq. and District : Jalna.

... APPLICANT

VERSUS

1. The State of Maharashtra,
Through its Kadim Jalna Police Station,
Jalna.

2. Firdos Azhaer Khan,
Age : 22 years, Occu.: Housewife,
R/o.: Eatwara Gali, Near Balaji Mandir,
Kacheri Road old Jalna, Jalna.

... RESPONDENTS

....

Advocate for the Petitioner : Mr. S. G. Jadhavar
APP for Respondent no.1 : Mr. M. M. Neralikar
Advocate for Respondent no.2 : Mr. A. S. Shelke

....

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

DATE : 14/09/2021.

JUDGMENT : (PER : N. B. SURYAWANSHI, J.) :

This application filed under Section 482 of Cr.P.C. seeks quashing of the FIR at Crime No. 126 of 2018, registered with Kadim Police Station, Jalna and charge sheet filed pursuant to the

same for the offences punishable under Section 306 read with Section 34 of IPC.

2. Rule. Rule made returnable forthwith. With the consent of the parties, application is taken up for final hearing at the admission stage.

3. Respondent no.2 wife of deceased lodged the FIR in question alleging that her husband Azhar Nazir Khan was working with Sai Distributors as a medical supplier. Her husband owed Rs.20,000/- to 25,000/- to Narendra Wagh, owner of Sai Distributors. Narendra Wagh used to demand the money by calling on mobile phone of her husband. The transaction with Narendra Wagh was settled. Still Narendra Wagh used to give threats to the husband of the informant. Because of the persistent demand of money by Narendra Wagh, husband of the informant left the job of Narendra Wagh 1 to 1 & ½ months before.

4. Along with medical suppliers work, husband of the informant also used to supply Gutka as and when time permitted of Gutka supplier Mohammad Jaleeluddin Muktar Tamboli. Prior to 5 to 6 months, an amount of Rs.80,000/- towards Gutka was remained to be paid by Azhar to the applicant. Therefore, the applicant

used to come to the house of the informant and used to demand an amount of Rs.80,000/- from her husband Azhar and her father-in-law Nazir Khan. Because of the said demand, her husband was under tension. The applicant used to frequently call her husband and demand money. However, her husband did not have money to give to the applicant. The applicant always used to visit the house and demand the amount and used to abuse and give threats of life. On 15/05/2018, Azhar told informant to go to her maternal home. When she asked why, he told that Narendra Wagh, Rabbani Abdul Rahim, Mohd. Jaliloddini Muktar Tamboli are frequently calling him up since last 5 to 6 months for money and they are threatening him with life. They are also threatening him that they will kidnap their daughter Bittu and they will kill Azhar's brother Irfan Khan. Therefore, in the night at about 9.00 p.m. Azhar reached the informant to her maternal home and told her that he is disturbed and tomorrow he will send his mother to fetch her. On 16/05/2018 at 11.00 a.m. her mother-in-law came to bring her back. When they reached at their house at about 12.00 to 12.15 p.m. she saw the applicant running away from their house. When she entered the house, she saw her husband hanging with the help of her Dupatta. She, therefore, stated that her husband committed suicide because of the trouble given by Narendra Wagh, Rabbani Abdul Rahim and the applicant.

5. After registration of crime, investigation was conducted and after filing charge sheet and after committal, the case is numbered as charge sheet bearing Sessions Case No. 171 of 2019 in the Court of District and Sessions Judge, Jalna.

6. Heard learned advocate for the applicant. He submitted that the FIR as well as the material collected during investigation do not disclose any ingredients of offence punishable under Section 306 of IPC against the applicant. There is no material to indicate that the suicide of Azhar was instigated, aided and / or abetted by the present applicant. In support of his submissions, he relied on i) ***Sanju @ Sanjay Singh Sengar vs. State of M. P., 2002 (5) SCC 371*** ii) ***Madan Mohan Singh vs. State of Gujarat and another, 2010 (8) SCC 628***, iii) ***Vaijnath Kondiba Khadke vs. State of Maharashtra and another, 2018 (7) SCC 781***, iv) ***Priyanka Prakash Moholkar vs. State of Maharashtra, 2018 SCC OnLine Bom. 8032***, v) ***Ramesh Kumar vs. State of Chhattishgarh, 2001 (9) SCC 618*** and vi) ***Subhash Ramgopal Bharuka vs. State of Maharashtra, 2020 SCC OnLine Bom 2211***. He, therefore, submits that no case for framing charge under Section 306 of IPC is made out against the applicant and the proceedings against the applicant are liable to be quashed and set aside.

7. The learned APP on the other hand submitted that the FIR clearly makes out a case of abetment of the suicide on the part of the applicant. He submitted that because of constant pressure of the applicant and the others, the deceased has committed suicide. He, therefore, submits that there is no substance in the application and the application deserves to be rejected.

8. The learned advocate for respondent no.2 adopted the arguments of the learned APP and further submitted that the FIR and the material collected during the course of investigation reveals that because of the constant pestering the deceased by the applicant and two others, he was left with no option but to commit suicide. Therefore, the applicant has abetted the suicide of Azhar. According to him, there is no substance in the criminal application and the same is liable to be rejected.

9. Heard, the learned advocate for the applicant, learned APP and the learned advocate for respondent no.2 at length. We have perused the application and the charge sheet.

10. In the FIR, the informant has alleged that her husband owed Rs.80,000/- to the present applicant and the applicant was consistently demanding that amount on phone. However, since her husband did not have that sort of money, he was unable to

pay the applicant. The applicant always used to demand money by coming to their house. The applicant used to abuse her husband Azhar and used to give him threats of life. Even if these allegations are accepted as it is without adding or subtracting anything, they do not constitute an act of instigation or abetment for Azhar to commit suicide.

11. A suicide note is recovered during the course of investigation from the dead-body, wherein which is addressed by the deceased to his father and request is made to take care of his daughter Bittu, to give her good education. The deceased by mentioning the name of informant has further written that he should be pardoned. He is a very unfortunate person and the informant should take care of Bittu. In the papers of investigation, we do not find any material to justify the invocation of Section 306 of IPC against the applicant. We find that the allegations in the FIR and the material collected during the investigation are inadequate and they do not satisfy the requirement of under Section 306 of IPC.

12. In order to attract provisions of Section 306 of IPC *mens rea* on the part of the accused needs to be established. The ingredients of abetment defined under Section 107 of IPC are to be made out. Section 107, IPC reads thus :

“107. Abetment of a thing .—A person abets the doing of a thing, who –

First .—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 1 . — A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing”.

13. Going by the definition of abetment given under section 107 of IPC even if we accept the prosecution case as it is that the applicant was insisting for the amount due from the deceased Azhar and for that was repeatedly calling him up, that does not amount to instigation as contemplated under Section 107 of IPC. To constitute instigation, presence of *mens rea* is essential. Merely because the applicant was demanding his amount from Azhar , by no stretch of imagination it can be said that the demand was with an intention that Azhar should commit suicide. Merely by demanding the amount due from Azhar, it cannot be said that the applicant abetted Azhar’s suicide.

14. Legal position in respect of abetment to commit suicide is well settled in **Sanju @ Sanjay** (supra). The Hon'ble Supreme Court held thus :

“Even if we accept the prosecution story that the appellant did tell the deceased 'to go and die', that itself does not constitute the ingredient of 'instigation'. The word 'instigate' denotes incitement or urging to do some drastic or unadvisable action or to stimulate or incite. Presence of mens rea, therefore, is the necessary concomitant of instigation. It is common knowledge that the words uttered in a quarrel or in a spur of the moment cannot be taken to be uttered with mens rea. It is in a fit of anger and emotional. Secondly, the alleged abusive words, said to have been told to the deceased were on 25th July, 1998 ensued by quarrel. The deceased was found hanging on 27th July, 1998. Assuming that the deceased had taken the abusive language seriously, he had enough time in between to think over and reflect and, therefore, it cannot be said that the abusive language, which had been used by the appellant on 25th July, 1998 drove the deceased to commit suicide. Suicide by the deceased on 27th July, 1998 is not proximate to the abusive language uttered by the appellant on 25th July, 1998. The fact that the deceased committed suicide on 27th July, 1998 would itself clearly pointed out that it is not the direct result of the quarrel taken place on 25th July, 1998 when it is

alleged that the appellant had used the abusive language and also told the deceased to go and die. This fact had escaped notice of the courts below”.

15. In **Madan Mohan Singh** (supra) it is held thus :

“10. We are convinced that there is absolutely nothing in this suicide note or the FIR which would even distantly be viewed as an offence much less under Section 306 IPC. We could not find anything in the FIR or in the so-called suicide note which could be suggested as abetment to commit suicide. In such matters there must be an allegation that the accused had instigated the deceased to commit suicide or secondly, had engaged with some other person in a conspiracy and lastly, that the accused had in any way aided any act or illegal omission to bring about the suicide.

11. In spite of our best efforts and microscopic examination of the suicide note and the FIR, all that we find is that the suicide note is a rhetoric document in the nature of a departmental complaint. It also suggests some mental imbalance on the part of the deceased which he himself describes as depression. In the so-called suicide note, it cannot be said that the accused ever intended that the driver under him should commit suicide or should end his life and did anything in that behalf. Even if it is accepted that the accused changed the duty of the driver or that the accused

asked him not to take the keys of the car and to keep the keys of the car in the office itself, it does not mean that the accused intended or knew that the driver should commit suicide because of this.

12. In order to bring out an offence under Section 306, IPC specific abetment as contemplated by Section 107, IPC on the part of the accused with an intention to bring out the suicide of the concerned person as a result of that abetment is required. The intention of the accused to aid or to instigate or to abet the deceased to commit suicide is a must for this particular offence under Section 306, IPC. We are of the clear opinion that there is no question of there being any material for offence under Section 306, IPC either in the FIR or in the so-called suicide note.

13. It is absurd to even think that a superior officer like the appellant would intend to bring about suicide of his driver and, therefore, abet the offence. In fact, there is no nexus between the so called suicide (if at all it is one for which also there is no material on record) and any of the alleged acts on the part of the appellant. There is no proximity either. In the prosecution under Section 306, IPC, much more material is required. The Courts have to be extremely careful as the main person is not available for cross- examination by the appellant/accused. Unless, therefore, there is specific allegation and material of definite nature (not imaginary or inferential one), it would be

hazardous to ask the appellant/accused to face the trial. A criminal trial is not exactly a pleasant experience. The person like the appellant in present case who is serving in a responsible post would certainly suffer great prejudice, were he to face prosecution on absurd allegations of irrelevant nature. In the similar circumstances, as reported in Netai Dutta Vs. State of W.B. [2005 (2) SCC 659], this Court had quashed the proceedings initiated against the accused.

14. As regards the suicide note, which is a document of about 15 pages, all that we can say is that it is an anguish expressed by the driver who felt that his boss (the accused) had wronged him. The suicide note and the FIR do not impress us at all. They cannot be depicted as expressing anything intentional on the part of the accused that the deceased might commit suicide. If the prosecutions are allowed to continue on such basis, it will be difficult for every superior officer even to work”.

16. Applying the aforesaid ratio to the facts of the present case, it is clear that the ingredients of Section 107 of IPC are conspicuously absent from the FIR and investigation papers. Since an amount of Rs.80,000/- was due from Azhar to the applicant and he was demanding that amount, that cannot be termed as harassment and no inference can be drawn that a

situation was created by the applicant due to which no other alternatives was left with Azhar than to commit suicide. If Azhar was unable to return the amount and because of that he committed suicide, the applicant cannot be blamed for the same. In the suicide note also the deceased has not made any allegations against the applicant.

17. For the aforesaid reasons, we are of the considered view that since the ingredients of abetment as defined under Section 107 of IPC are absent in the FIR and charge sheet, the continuation of prosecution of the applicant is an abuse of process of law. We, therefore, allow the criminal application in terms of prayer clause "B" and disposed of accordingly.

18. Rule is made absolute in the above terms.

(N. B. SURYAWANSHI, J.) (SUNIL P. DESHMUKH, J.)