

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.941 OF 2018

Sandesh Sakharam Salunke and others	 Applicants
Versus	
The State of Maharashtra and another	 Respondents

....
Mr. Sunny Waskar, Advocate for the Applicants.
Mr. J.P. Yagnik, APP for Respondent No.1 -State.
....

**CORAM : NITIN JAMDAR AND
SARANG V. KOTWAL, JJ.**

DATE : 13 OCTOBER 2021

P.C.

The Applicants have sought quashing of the FIR No.177/2018 registered with Powai Police Station, Mumbai for the offence punishable under Sections 306, 506 read with 34 of the Indian Penal Code.

2. At the outset, after perusal of the FIR, we had put a query to the learned counsel for the Applicants that in the facts of the case as to the Applicants can avail of the statutory remedy under the Code of Criminal Procedure to seek discharge before the concerned Court. The learned counsel for the Applicants states that the

Applicants have chosen to invoke Section 482 of the Code of Criminal Procedure before this Court and, therefore, the Applicants are not desirous of approaching the concerned Court under the Code for discharge. Therefore, we should consider the matter.

3. The FIR is lodged on 27 March 2018 by the wife of the deceased Datta Dnyandeo Khandole. The FIR states that the deceased Datta was in a partnership and before the incident that took place on 27 March 2018, a couple of months prior, the deceased was under mental stress. A month prior thereto, in the evening, three persons came to their residence and demanded certain monies that were stated to be due. The Applicants had demanded money and also asked for the title documents of the dwelling house. All the three Applicants stated that they will return so that the title papers of the dwelling house can be made in their favour. A week before the incident, the Applicants by calling the deceased on phone had threatened him to make the payment. Because of which, the deceased went in further stress. It is stated in the FIR that in view of this position and the harassment meted out, on 27 March 2018 the deceased committed suicide.

4. The learned counsel for the Applicants submitted that there is no ingredient of Section 306 of IPC made out and seeks to rely upon a decision of the Nagpur Bench of this Court in the case of *Imran Masood Khan and another Vs. The State of Maharashtra and another*, passed on 29 March 2019 in Criminal Application

No.391 of 2018. The learned counsel for the Applicants submitted that in this case the statements have been recorded and in the present case the deceased had borrowed money from other lenders as well. The learned counsel submitted that even for Section 506 of IPC, no ingredients have been made out.

5. As regards the decision in the case of *Imran Masood Khan* (supra), what persuaded the Court to hold in favour of the Applicants before it, was that the deceased therein was indebted to various persons and there were number of the prosecutions initiated against the deceased under Section 138 of the Negotiable Instruments Act. The deceased was having financial transactions with many persons. In the case at hand, the ingredients are that apart from lending money to the deceased threatening on phone and a threat of selling the house of the deceased and to take the title papers. So it was not a case of only demand of return of money that tormented the deceased but the loss of dwelling house. Therefore, the facts in the present case are different than in the case of *Imran Masood Khan* (supra).

6. Even assuming the contention of the learned counsel for the Applicants as regard Section 306 of IPC is to be accepted, the ingredients of Section 506 of IPC whereby the deceased has been threatened, are made out. Therefore the FIR cannot be quashed in a piecemeal. Even for Section 306 of IPC, there are series of events whereby continuous threats and stress put on the deceased of loss of

shelter for the family and the degree of this harassment will be a matter of evidence at the trial.

7. In these circumstances, we are not inclined to exercise our discretionary jurisdiction. This case cannot be called as rarest of rare case. The Application is accordingly rejected.

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(SARANG V. KOTWAL, J.)

(NITIN JAMDAR, J.)

Deshmane (PS)