

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Criminal Application (APL) No.575/2021

Sakshi @ Saroj d/o Ishwar Mesare,
Aged about 22 years, Occ.-Student,
R/o.-Karlar Road, Pawarleout, Wardha, Dist. Wardha. ... Applicant

Versus

State of Maharashtra,
through P.S.O. Police Station Kalmeshwar, Dist. Nagpur. ... Non-applicant.

Ms. Amruta Gupta, Advocate for applicant.
Shri. I.G. Damle, APP for State.

**CORAM : V.M. DESHPANDE &
PUSHPA V. GANEDIWALA, JJ.
DATE : 13-10-2021.**

ORAL JUDGMENT (Per Pushpa V. Ganediwala, J.)

Rule. Rule made returnable forthwith. Heard finally with the consent of both the parties.

2. Applicant Sakshi @ Saroj Mesare, by way of this application filed under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'Cr.PC.'), is seeking quashment of the First Information Report (FIR) registered vide Crime No.44/2021 Station Kalmeshwar, District Nagpur for the offence punishable under Section 306 of the Indian Penal Code.

3. The facts in nutshell may be stated as under :-

The applicant is the student pursuing her Air Hostess Training (Cabin Crew Course) at Fly Fin Institute situated at Lucknow since the year 2019. Simultaneously, she is also pursuing her B.Com. from the Yeshwantrao Open University at Selu, District Wardha.

4. It is stated that the applicant and the deceased Pranay More were in love affair since 2018. For Air Hostess training, the applicant had to move to Lucknow in 2019. It is stated that the deceased was of suspicious nature and suspected that after moving to Lucknow, the applicant has love affair with some other boy. The applicant tried to convince him that she does not have any love affair with anyone else but the deceased was not ready to accept the same.

5. It is further stated that on 11-02-2020, the applicant appeared for walk in interview at Lucknow, for placement at Vistara Airlines. After her interview, she started for Nagpur by train and on 12-02-2020 she reached Nagpur at 11.00 am. The deceased had come to pick up her. The deceased took her at his rented accommodation at 14th Mile on his motorcycle.

6. It is further stated that due to long journey the applicant took rest and felt asleep. But at about 3.00 pm suddenly she woke up after hearing noise of glass falling on the floor and was surprised to see deceased Pranay More hanging himself to the ceiling fan with a wire. The applicant immediately called

close friend of deceased namely Rohit Ranjari. The information reached to other friends of the deceased and they came to the spot.

7. On the report of one Sunil Borkar, Police Station Kamleshwar, registered Marg Entry No.11/2020 under Section 174 of the Cr.P.C. The Police reached the spot and brought down the dead body and after completing formalities sent the dead body for *post mortem*. It is stated that the Police also seized mobile of the deceased and the applicant and draft suicide notes dated 25-11-2019 and 12-02-2020 saved in the mobile of the deceased.

8. It is further stated that after lapse of about one year from the date of incident of 23-01-2021 the non applicant registered Crime No.44/2021 against the applicant for the offence punishable under Section 306 of the Indian Penal Code (for short, 'I.P.C.'). On 09-02-2021, the applicant came to be arrested and on 12-02-2021, she came to be released on regular bail by the Court of Additional Sessions Judge, Nagpur.

9. It is stated that the registration of FIR No.44/2021 against the applicant cannot be justified unless the preliminary enquiry disclosed some positive act or conduct of applicant which might have compelled the deceased to commit suicide. Bare perusal of FIR does not disclose commission of any act on the part of the applicant that she abetted the deceased to commit suicide.

10. It is further stated that the trial Court while granting bail has mentioned that perusal of the suicide note in the case diary, merely it reveals that the deceased was having sincere love for the applicant and he was disappointed feeling that the applicant deceived him. Lastly, it is submitted that there is no direct or indirect or omission on the part of the applicant so as to abet the deceased to commit suicide.

11. In response to the notice issued by this Court, the non-applicant-State filed affidavit in reply. A perusal of the same, it would reveal that on the report of Chandrashekhar Sawad, Head Constable, FIR came to be registered as FIR No.44/2021 for the offence punishable under Section 306 of the IPC. It is stated that the applicant and the deceased were having love affair from last 2/3 years and both had filed one affidavit before the Court of Marriage Registrar, Wardha that they are willing to marry with each other and applied for Marriage Certificate before the Executive Magistrate, Wardha. It is stated that thereafter the deceased came to know that the applicant was having love affair with another boy since last six months, for that reason the deceased was under tremendous mental stress which culminated in the commission of suicide by the deceased on 12-02-2020.

12. It is further submitted that from the suicide note of the deceased, it is revealed that the present applicant instigated the deceased for suicide. During investigation, the statements of witnesses have been recorded and from material collected during the investigation, it transpired that the present applicant was

present at the time of suicide and due to the present applicant's instigation, the deceased had taken the extreme step of hanging himself.

13. Learned Counsel for the applicant Ms Amruta Gupta reiterated the contents in the application and submitted that after one year of the incident, the FIR came to be registered. Furthermore, the allegations in the FIR even if taken to be true, a case for commission of a cognizable offence is not made out. Learned Counsel further submits that only because the applicant was present and she could not resist the deceased from hanging himself, the inference of direct instigation or abetment of suicide cannot be drawn. The learned Counsel urged to quash and set aside the FIR No.44/2021 registered against the applicant.

14. On the contrary, learned APP on behalf of the State opposed the application mainly on the ground that during investigation ample material has been collected by the investigating agency against the applicant and the applicant has failed to make out any case in which exceptions carved out by the Hon'ble Supreme Court in the case of State of Haryana and others V Ch. Bhajan Lal and others, reported in AIR 1992 SC 604. It is further submitted that the applicant has also failed to make out any case for exercise of jurisdiction under Section 482 of the Cr.P.C. by this Court.

15. We have considered the rival submissions and perused the record. We have also perused the police case diary. At the outset, it is well settled legal

position that the High Courts are sparingly and consciously exercise the power under Section 482 of the Cr.P.C. to prevent miscarriage of justice.

16. In the case of State of U.P. vs O.P. Sharma, reported in (1996) 7 SCC 705, three Judges Bench of the Hon'ble Apex Court reviewed the entire case law on the exercise of power by the High Court under Section 482 of the Cr.P.C. to quash the complaint or the chargesheet or the First Information Report and held that the High Court would be loath and circumspect to exercise its extraordinary power under Section 482 of the Cr.P.C. or under Article 226 of the Constitution. The Court would consider whether the exercise of the power would advance the cause of justice or it would tantamount to abuse of the process of the Court.

17. The Hon'ble Apex Court in number of cases has laid down the scope of ambit of Courts's powers under Section 482 of the Cr.P.C. Every High Court has inherent power to act *ex debito justitiae* to do real and substantial justice for the administration of which alone it exists, or to prevent abuse of the process of the Court.

18. In R.P. Kapur Vs State of Punjab reported in AIR 1960 SC 866 the Hon'ble Apex Court *inter alia* held that the inherent power can and should be exercised to quash the proceedings where the allegations in the First Information Report or complaint taken at their face value and accepted in their entirety do not constitute the offence alleged.

19. In State of Karnataka vs L Muniswami and others, reported in (1977) 2 SCC 699, the Hon'ble Apex Court observed that the wholesome power under Section 482 of the Cr.P.C. entitles the High Court to quash a proceeding when it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that ends of justice require that the proceeding ought to be quashed.

20. In Zandu Pharmaceutical Works Ltd and others vs Mohd Sharaful Haque and another, reported in (2005) 1 SCC 122 the Hon'ble Apex Court observed that it would be an abuse of process of the Court to allow any action which would result in injustice and prevent promotion of justice.

21. Now coming to the facts of the case, the love affair between the applicant and the deceased is not disputed. It is also not disputed that at the time of incident the applicant was present in the rented accommodation of the deceased. Initially Marg report was registered as to cause of death and FIR came to be registered after around one year of the incident on the advice received from the District Government Pleader. A perusal of the FIR would reveal that the deceased came to know about love affair of the present applicant with some other boy and therefore the deceased was under mental stress and committed suicide. A perusal of suicide note would reveal that the deceased was blaming himself for his love for the applicant and he was feeling sorry that he did not listen to his mother.

22. At this juncture, it would be advantageous to refer to Section 306 of the IPC which provides that if any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment. The ingredients of abetment are set out in Section 107 of the IPC which reads as under :

"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.

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23. In the case of Ramesh Kumar vs State of Chhattisgarh, reported in (2001) 9 SCC 618, three Judges Bench of the Hon'ble Apex Court interpreted the word 'instigation' in paragraph 20 which reads as under :-

"20. Instigation is to goad, urge forward, provoke, incite or encourage to do "an act". To satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt

out. The present one is not a case where the accused had by his acts or omission or by a continued course of conduct created such circumstances that the deceased was left with no other option except to commit suicide in which case an instigation may have been inferred. A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation."

24. Keeping in mind the aforesaid ratio of the Hon'ble Apex Court, now we propose to examine the case before us. Admittedly, the direct or positive act of instigation on the part of the applicant to commit suicide by the deceased is conspicuously absent in the FIR or other police papers collected during investigation. The standalone allegation is that the applicant was present when he committed suicide and she failed to resist him. By no stretch of imagination, the applicant can be fastened with the offence of commission of abetment of suicide. The present case is not a case where the applicant by her acts or omissions or by a continued course of conduct created such circumstances that the deceased was left with no other option except to commit suicide in which case an instigation may have been inferred. What is transpired from the record is only that the deceased was sincerely loving her and when he came to know about her affair with some other boy, the deceased could not bear the same and took the extreme step.

25. Most importantly, even from the suicide note the prosecution could not point out any direct or indirect allegation of instigation on the part of the present applicant. She may not be very honest to keep her promise of love with the deceased and deceased may be feeling himself very honest and sincere for his love

with the applicant and feeling himself deceived in this bargain, he committed suicide. The applicant cannot be held responsible for the extreme step of the deceased. Considering the overall view of the matter, we are of the considered view that the commission of the cognizable offence is not made out and therefore the continuation of the criminal proceeding against the present applicant who has taken training of Air Hostess and has great future, would be a futile exercise and a sheer abuse of process of the Court.

26. In this view of the matter, we are inclined to allow the application and pass the following order :

- (i) The Criminal Application (APL) No.575/2021 is allowed.
- (ii) The First Information Report No.44/2021 registered on 23-01-2021 against the applicant with the non applicant-Police Station Kalmeshwar for the offence punishable under Section 306 of the IPC is quashed and set aside.
- (iii) Rule is made absolute in the above terms. Pending application(s), if any, stand(s) disposed of.

(Pushpa V. Ganediwala, J.)

(V.M. Deshpande, J.)