

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

CRIMINAL APPLICATION (APL) NO. 660 OF 2021

1. Santosh Dadarao Vidhate,
Aged 53 years, Occ.: Agriculturist,
R/o. Vishwaprabha Colony,
Near Kewal Colony, Amravati,
Tq. & Dist. Amravati.

2. Ramesh Bajirao Chorpagar,
Aged 60 years,
Occ. : Retired Police Constable,
R/o. Vishwaprabha Colony,
Near Kewal Colony, Amravati,
Dist. Amravati.

... APPLICANTS

----VERSUS----

1. State of Maharashtra,
Through P. S.O., Gadge Nagar,
District Amravati.

2. Manju Pravin Gwalbansh,
Aged 35 years,
R/o. Vasantpushpa Apartment,
Kewal Colony, Gadge Nagar,
District Amravati.

... NON-APPLICANTS

Shri P. V. Navlani, Advocate for Applicants.

Shri V. A. Thakare, Additional Public Prosecutor for Non-applicant/State.

**CORAM : V. M. DESHPANDE AND
AMIT B. BORKAR, JJ.**

DATE : 29.09.2021.

JUDGMENT : (PER AMIT B. BORKAR, J.)

1. Heard.

2. **Rule.** Rule is made returnable forthwith.

3. By this application under Section 482 of the Code of Criminal Procedure, the applicants are challenging registration of the First Information Report bearing No.1928/2021 dated 01.06.2021 registered with the non-applicant No.1 – Police Station for the offences punishable under Sections 306, 504 read with Section 34 of the Indian Penal Code.

4. The First Information Report came to be registered against the applicants with the accusations that the son of the complainant/non-applicant No.2 was captured while stealing the petrol from the vehicle in the Apartment of the applicants. The applicants are therefore, called son of the complainant and assaulted him. It is alleged that on the same night the son of the complainant/non-applicant No.2 committed suicide. The non-applicant No.2 therefore, filed the First Information Report against the applicants. The applicants have therefore, challenged registration of the First Information Report by way of filing the present application.

5. This Court by order dated 16.07.2021, issued notice to the non-applicants and in the meantime, directed not to file charge-sheet against the applicants.

6. The Investigating Agency in pursuance of the notice, filed its reply stating that the Investigating Agency has carried out

the investigation, it is in progress and, has recorded statements of the witnesses and collected CCTV footage. From the CCTV footage, it is clear that the son of the complainant/non-applicant No.2 was caught hold in the Apartment for more than one and half hours and the present applicants have assaulted the son of the complainant/non-applicant No.2. It is stated that therefore, the son of the complainant/non-applicant No.2 committed suicide.

7. The notice of the present application was served on the non-applicant No.2 on 02.09.2021. On 09.09.2021, neither the non-applicant No.2 nor her Advocate were present and therefore, this Court passed the order stating that if on the next date the non-applicant No.2 fails to remain present, the application shall be decided on its own merits. On 17.09.2021 also, the non-applicant No.2 remained absent and the application was adjourned with the observations that the application shall be decided on its own merits. Today, also neither the non-applicant No.2 nor her Advocate appeared and therefore, we are deciding the present application on its own merits.

8. From the allegations in the First Information Report, it appears that the only allegations against the applicants is that they assaulted the son of the non-applicant No.2 for stealing petrol and therefore, on the same night he committed suicide. The law in relation to abetment to suicide has been expounded in various

judgments by the Apex Court. The recent judgment being in case of *Kanchan Sharma Vs. State of Uttar Pradesh and Anr.* in *Criminal Appeal No.1022/2021* (decided on 17.09.2021). In the said judgment, the Hon'ble Apex Court has observed that to proceed against any person for the offence under Section 306 I.P.C. it requires an active act or direct act which led the deceased to commit suicide, seeing no option and that act must have been intended to push the deceased into such a position that he committed suicide. It is observed that it would be travesty of justice to compel the accused to face a criminal trial without any credible material whatsoever. The Hon'ble Apex Court has referred earlier judgment of the Hon'ble Apex Court in the case of *Chitresh Kumar Chopra Vs. State (Govt. of NCT of Delhi)* reported in *(2009) 16 SCC 605*. A useful reference can be made to the decision of the Hon'ble Supreme Court in the case of *Ramesh Kumar Vs. State of Chhattisgarh* reported in *(2001) 9 SCC 618*. The Hon'ble Supreme Court in the context of ingredients of offence punishable under Section 306 of the Indian Penal Code has laid down 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.

21. *In State of W. B. v. Orilal Jaiswal, this Court has cautioned that the Court should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end her life by committing suicide. If it transpires to the court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty.”*

9. In the light of the law laid down by the Hon'ble Apex Court, we have carefully considered the allegations in the First Information Report along with reply filed by the Investigating Agency, and on careful consideration of the allegations, we do not find any active or direct act which led the son of the non-applicant No.2 to commit suicide as neither there is allegations nor there is material, which shows that the applicants intended to push the son of the complainant/non-applicant No.2 into such position that he committed suicide. We are therefore, satisfied that the

continuation of the proceedings against the applicants would amount to abuse of process of Court.

10. Therefore, we pass following order.

The First Information Report bearing No.1928/2021 dated 01.06.2021 registered with the non-applicant No.1 – Police Station for the offences punishable under Sections 306, 504 read with Section 34 of the Indian Penal Code is quashed and set aside.

11. Rule is made absolute in the above terms. Pending application(s), if any, stand(s) disposed of.

JUDGE

JUDGE