

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

CRIMINAL APPLICATION (APL) NO.846 OF 2015

Bhushan s/o. Shridharao Gadwal,
Aged about 25 yrs., Occ. : Student,
R/o. Ravinagar, Amravati,
Tah. & Distt. Amravati.

....APPLICANT

----- VERSUS -----

1. The State of Maharashtra,
through its Police Station Officer,
Pandharkawda,
Tah. Pandharkawda, Distt. Yavatmal.

2. Sau. Sunanda Prakash Khodke,
Aged 50 yrs., Occ. : Labour,
R/o. Nehru Ward, Pandharkawda,
Tah. Kelapur, Distt. Yavatmal.

.... NON-APPLICANTS

Shri M. P. Kariya, Advocate for the applicant.

Shri N. S. Rao, A.P.P. for the non-applicant No.1/State.

CORAM : Z. A. HAQ AND
AMIT B. BORKAR, JJ.

DATE : 09.03.2021.

ORAL JUDGMENT : [PER: AMIT B. BORKAR, J.]

1. Heard.

2. By this application under Section 482 of the Code of Criminal Procedure, the applicant has challenged registration of the First Information Report No.120/2015 registered with the non-applicant No.1-Police Station for the offence punishable under Section 306 read with Section 34 of the Indian Penal Code.

3. The First Information Report came to be lodged against the applicant and another with the accusations that the applicant was in love relationship with the victim (deceased) - daughter of the non-applicant No.2. The marriage of the victim was fixed with another person. The applicant harassed the victim mentally by calling the victim on the date of her suicide. It is alleged that the friends of the victim told the informant, who is mother of the victim that the victim was in relationship with applicant and due to harassment caused by the applicant, the victim has committed suicide. The applicant has challenged registration of the First Information Report by way of filing present application.

4. This Court on 08.12.2015 issued notice to the non-applicants and on 26.04.2016, issued Rule and granted interim relief that charge-sheet shall not be filed against the applicant without leave of this Court.

5. The non-applicant No.1 filed reply stating that the Investigating Agency recorded statements of complainant and other witnesses, who have stated that the applicant and the victim were in relationship for a period of one year before victim committed suicide. It is further stated that the victim was in continuous contact with the applicant. Therefore, it is prayed that the application is liable to be dismissed.

6. The non-applicant No.2 has also filed reply and has stated that there is sufficient material available with the Investigating Agency against the applicant to implicate the applicant. It is stated that from the allegations in the First Information Report the ingredients of the offence under Section 306 of the Indian Penal Code are made out. It is therefore, prayed that the application deserves to be dismissed.

7. On 03.03.2021, the learned Advocate for the non-applicant No.2 was absent. Therefore, the matter was adjourned to 08.03.2021. When the matter was called out on 08.03.2021 the learned Advocate for the non-applicant No.2 was absent. By giving last chance to the non-applicant No.2, the present matter was adjourned for today. Today also, the learned Advocate for the non-applicant No.2 is absent. Therefore, we have deciding the present application on merits.

8. We have carefully considered the allegations in the First Information Report. From the allegations in the First Information Report, it appears that the allegations against the applicant are based on the inference of the mother of victim relying on the statements of friends of victim that the applicant and the victim were in relationship for a period of one year. There is neither any allegation nor any material produced by either non-applicant No.1

or non-applicant No.2 to show that the applicant had any active role in forcing the victim to commit suicide.

9. The reply filed by the non-applicant No.2 shows that the witnesses, who have stated that the applicant and the victim were in love relationship for a period of one year. The fact of relationship for more than one year by itself cannot implicate the applicant in absence of any active role thereby applicant forced the victim to commit suicide. In absence of allegation or material regarding active role of the applicant, the continuation of prosecution against the applicant would amount to abuse of process of the Court.

10. Before holding an accused guilty under Section 306 of the Indian Penal Code, Court is required to scrutinize following factors:-

(i) Whether the person has abetted the commission of suicide of another or not is to be gathered from facts and circumstances of each case and to be found out by continuous conduct of the accused, involving his mental element.

(ii) Direct involvement of the person or persons concerned in the commission of offence of suicide is essential to bring home the offence under Section 306 IPC.

(iii) In order to prove abetment, it must be shown that the accused kept on urging or annoying the deceased by words, taunts until the deceased reacted. A casual remark or something said in routine or usual

conversation should not be construed or misunderstood as "abetment".

(iv) More active role which can be described as instigating or aiding the doing of a thing is required before a person can be said to be abetting the commission of offence under Section 306 IPC.

(v) It is also to be borne in mind that in cases of alleged abetment of suicide there must be proof of direct or indirect acts of incitement to the commission of suicide. Merely on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide, conviction in terms of Section 306 IPC is not sustainable.

(vi) 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 to be inferred.

(vii) Where the accused by his acts or by a continued course of conduct creates such circumstances that the deceased was left with no other option except to commit suicide, an "instigation" may be inferred.

(viii) Undoubtedly, presence of mens rea is the necessary concomitant of instigation. (See - Pawan Kumar Vs. State of Himachal Pradesh reported in (2017) 7 SCC 780, Paras 34 to 42)

In the facts of the present case, essential ingredients of Section 306 of the Indian Penal Code are not fulfilled taking into consideration statements of witnesses. We are therefore, of the view that continuance of the present proceedings against the applicants would amount to abuse of process of Court.

11. We therefore, pass the following order :

The First Information Report bearing No.120/2015 dated 31.05.2015 registered with the non-applicant No.1–Police Station against the applicant for the offence punishable under Section 306 read with Section 34 of the Indian Penal Code is quashed and set aside.

Rule is made absolute in the above terms.

JUDGE

JUDGE

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