

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

**CRIMINAL APPLICATION NO.3381 OF 2019
WITH
CRIMINAL APPLICATION NO.214 OF 2020**

GIRISH SAKHARAM PAMPATWAR

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

...

Mr. U.B. Bilolikar, Advocate for applicant

Mr. B.V. Virdhe, APP for respondent Nos.1 and 2

Mr. G.R. Ingole, Advocate for applicant in Appln/214/2020

...

**CORAM : SMT. VIBHA KANKANWADI AND
RAJESH S. PATIL, JJ.**

RESERVED ON : 21st SEPTEMBER, 2022

PRONOUNCED ON : 21st OCTOBER, 2022

ORDER :

1 Criminal Application No.214 of 2020 filed for assist to APP stands rejected and disposed of.

2 Criminal Application No.3381 of 2019 has been filed under Section 482 of the Code of Criminal Procedure, 1973 for quashing the First

Information Report lodged against the applicant by respondent No.2, so also, the charge sheet that was filed against him vide Regular Criminal Case No.11/2020 before learned Judicial Magistrate First Class, Dharmabad, Tq. Dharmabad, Dist. Nanded, under Section 306 of the Indian Penal Code, 1860.

3 Heard learned Advocate Mr. U.B. Bilolikar for the applicant and learned APP Mr. B.V. Virdhe for respondent Nos.1 and 2.

4 It has been vehemently submitted on behalf of the applicant that here the informant is the Police Inspector serving with Dharmabad Police Station and it can be seen that the First Information Report was filed by him in his official capacity, on the basis of the alleged suicide note, which was found in the pocket of the pant of deceased Umakant Gangadhar Mandge. Police Patil Laxman Karhe of village Bannali gave report that the dead body of deceased Umakant has been found in the field of one Maruti Chaple. In connection with the said information Accidental Death was registered under Section 174 of the Code of Criminal Procedure and inquiry was started. Statements of the relatives of deceased, especially the parents, brother etc. have been recorded. Nobody has complained about the death of Umakant, in a sense that they do not want to accuse anybody, especially even the applicant. Only on the basis of said suicide note, in which it was stated that

the present applicant had accused deceased Umakant of committing theft, he felt bad which mentally stressed, because of which he committed suicide. Deceased Umakant was serving with applicant since last about 16 years and then it is stated in the First Information Report that as the present applicant has levelled allegations of theft, deceased Umakant went in mental depression. According to the informant, it amounts to abetment, however, taking into consideration the statements on record, it can be seen that the near relatives are not accusing the applicant. Even the wife of the deceased has stated in similar fashion. Yet, her father i.e. applicant Vitthal Honshete, who has filed Criminal Application No.214 of 2020 for intervention, is now accusing of the applicant and it is stated that he wants to assist APP. He has no personal knowledge at all. It would be a futile exercise to ask the applicant to face the trial.

5 Per contra, the learned APP objected the application and submitted that it is not in dispute that deceased Umakant committed suicide by consuming poison. The Postmortem Report shows that the cause of death was due to poisoning and the C.A. report shows that the result of detection of Organophosphorus insecticide Phorate (themate) is positive in the viscera and the level of phorate detected was fatal to the life. Thus, when deceased Umakant has admittedly committed suicide and he has left suicide note, then,

we will have to consider the contents of said suicide note. It was specifically stated in the suicide note that he has served with the applicant with honesty; yet, accusations about theft were levelled against him and, therefore, deceased felt bad. The supplementary statement of the widow of the deceased would show that when she found that the husband has come nervous after attending his duty on 13.05.2019; upon inquiry, the husband told that he has been unnecessarily accused of committing theft by the applicant, he felt that he has been defamed and he was not able to come out of those accusations. He has then accused that the present applicant is responsible for the death of her husband. It has also come on record that the said suicide note is left by the deceased. Under such circumstance, this will not be the fit case where the First Information Report as well as the proceeding should be quashed and set aside. Prosecution should be allowed to lead the evidence and prove the suicide note.

6 As aforesaid, it can be seen that it is not in dispute that deceased Umakant died by committing suicide by consumption of poison. Definitely, prima facie evidence is on record and it is also not disputed by the applicant. What has been disputed by the applicant is the allegations that he is the author of the crime. It has also come on record and not disputed by the applicant that deceased Umakant was serving with the applicant since last

about 16 years prior to his death. If we consider the contents of the suicide note, then, it can be seen that it is silent on the point as to when the accusations about theft were levelled against the deceased by the applicant. There is no date on the suicide note. Further, the statements of father Gangadhar, brother Chandrakant, widow Nagmani, mother Mahadabai, sister-in-law Parvati and other family members would show that deceased Umakant went missing from 15.05.2019 and his dead body was found on 16.05.2019. In her supplementary statement widow Nagmani has stated that after the husband had come nervous on 13.05.2019, she had asked about the nervousness and then at that time the deceased told her about the accusations of theft. Thereby she wanted to say that the incident had happened on 13.05.2019. Neither her statement nor the statements of the family members would show as to what was the mental condition of deceased Umakant from 13.05.2019 till 15.05.2019. The statement of witness Nagmani taken earlier i.e. on 18.05.2019 is silent on the point that she had talked to husband on 15.05.2019. Rather she states that since 7.00 a.m. she along with brother-in-law Chandrakant and sister-in-law Parvati were sieving the sand, as the work of construction of the house was going on and they came back to house around 10.00 a.m. She made inquiry with mother-in-law about her husband and then mother-in-law told that Umakant left house around 8.30 a.m. However, it appears that on 04.10.2019 the

supplementary statement of widow Nagmani has been recorded and then she states that her husband started saying on 15.05.2019 again that the applicant is ridiculing him on the accusations of theft. This subsequent improvement in the statement is definitely required to be considered. Further, it is to be noted that only the supplementary statement of the widow has been recorded and not of any other family member including the parents, brother etc.

7 Another aspect, that is, also required to be considered is that merely because it is stated in the suicide note that such accusation has been made by the applicant against the deceased may not be the complete evidence. It was asked, as to whether the deceased was the only servant in the shop of the applicant and that it was reported that there were two more servants in the said shop. Thereafter, by order dated 05.08.2022 when need was felt of the presence of Investigating Officer as well as case diary, he was called. On 26.08.2022 the case diary was shown but then the Investigating Officer was transferred and, therefore, the affidavit of Investigating Officer was directed to be produced. In his affidavit API Nagnath Sangalle has stated that he had made inquiry with the servants in the shop of the applicant, however, the servants were found reluctant to give statement and it is then stated that they avoided it under pressure. This excuse cannot be accepted, though it is now stated that he has taken an entry in the case diary about the

same. If a person who is having knowledge about an incident is not assisting the investigating agency, then, other modes are also available. No such mode has been used by the Investigating Officer. Therefore, a subsequent entry in the case diary, if any, cannot be given importance. By taking that entry only, the Investigating Officer cannot be said to have justified the investigation also, as a vital piece of evidence is then withheld.

8 Even if for the sake of arguments it is accepted that accusations were made by the present applicant against the deceased about theft though he was serving for more than 16 years; yet, it is to be noted that applicant had not filed any complaint against deceased Umakant about the said theft in the Police Station. As it appears that it was within the four walls of the shop that accusation was made and they were heard by those two servants. Again, at the cost of repetition, it can be take a note of that, that accusation when exactly made is not reflected in the suicide note, but as per the statement of widow it was on 13.05.2019. Thereafter, for about two days deceased was alive and in the inquiry under Section 174 of the Code of Criminal Procedure none of the family members including the widow had expressed any doubt. Whether only on the basis of the suicide note the informant ought to have lodged the First Information Report itself is a question.

9 The applicant Vitthal Honshete, who wants to assist the learned APP, is the father-in-law of deceased. The widow of the deceased has not come forward to assist APP and object the present application. The father of the widow, under such circumstance, cannot object the present application.

9.1 Very recently in **Mariano Anto Bruno and another vs. The Inspector of Police, 2022 LiveLaw (SC) 834** Hon'ble Supreme Court has held 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 their 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 of the Indian Penal Code is not sustainable.”

No doubt, it was the appeal that was decided by Hon'ble Supreme Court before whom the entire evidence was available. However, the above said ratio would be applicable even to the early stages also where the petition is for quashment of the entire charge sheet as along with the charge sheet every piece of evidence would be before the Court and the prosecution cannot travel beyond the same.

Further observations are also important -

“Each suicide is a personal tragedy that prematurely takes the life of an individual and has a continuing ripple effect, dramatically affecting the lives of families, friends and communities. However, the court of law while adjudicating is not to be guided by emotions of sentiments but the dictum is required to be based on analysis of facts and evidence on record.”

9.2 Same view was taken in **Amalendu Pal @ Jhantu vs. State of West Bengal, (2010) 1 SCC 707.**

9.3 Further reliance can be placed on **Chitresh Kumar Chopra vs. State (Govt. of NCT) of Delhi, (2009) 16 SCC 605**, wherein it has been observed thus -

“As per the Section, a person can be said to have abetted in doing a thing, if he, *firstly*, 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 to Section 107 states that any wilful misrepresentation or wilful concealment of material fact which he is bound to disclose, may also come within the contours of "abetment". It is manifest that under all the three situations, 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 of the IPC.”

Thereafter, in that case the decision in **Ramesh Kumar vs. State of Chhattisgarh, (2001) 9 SCC 618** was also taken note of and it has been observed thus -

“16. Speaking for the three-Judge Bench in Ramesh Kumar case, R.C. Lahoti, J. (as His Lordship then was) said that 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. *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.* A word uttered in a fit of anger or emotion without intending the consequences to actually follow, cannot be said to be instigation.

17. Thus, to constitute "instigation", a person who instigates another has to provoke, incite, urge or encourage the doing of an act by the other by "goad" or "urging forward". The dictionary meaning of the word "goad" is "a thing that stimulates someone into action: provoke to action or reaction" (See: Concise Oxford English Dictionary); "to keep irritating or annoying somebody until he reacts" (See: Oxford Advanced Learner's Dictionary - 7th Edition).

19. As observed in Ramesh Kumar's case (supra), 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. In other words, in order to prove that the accused abetted commission of suicide by a person, it has to be established that :

(i) the accused kept on irritating or annoying the deceased by words, deeds or wilful omission or conduct which may even be a wilful silence until the deceased reacted or pushed or forced the deceased by his deeds, words or wilful omission or conduct to make the deceased move forward more quickly in a forward direction; and

(ii) that the accused had the intention to provoke, urge or encourage the deceased to commit suicide while acting in the manner noted above. Undoubtedly, presence of *mens rea* is the necessary concomitant of instigation.”

10 In fact, in this case, what was the action or reaction of the applicant, what were the words used by him while accusing deceased Umakant of committing theft, of which article along with its value the accusation was made regarding theft etc. is absolutely silent. The shop of the applicant is a jeweller's shop. Under such circumstance, even a small article there may be carrying more value. But then when it is not coming on record as to what was the article which was alleged to be stolen, then, whether there was any force in that accusations cannot be assessed and the Investigating Officer has not produced any documentary evidence in the charge sheet

regarding the same. Under such circumstance, on the basis of the evidence collected against the applicant it would be a futile exercise to ask the applicant to face the trial. Hence, we pass following order.

ORDER

1 Application stands allowed.

2 The First Information Report vide Crime No.102/2019 dated 18.05.2019 registered with Dharmabad Police Station, Tq. Dharmabad, Dist. Nanded, for the offence punishable under Section 306 of the Indian Penal Code, 1860 and the entire proceedings i.e. Regular Criminal Case No.11/2020 pending before learned Judicial Magistrate First Class, Dharmabad, Tq. Dharmabad, Dist. Nanded, stand quashed and set aside.

3 Criminal Application No.214 of 2020 stands rejected.

(Rajesh S. Patil, J.)

(Smt. Vibha Kankanwadi, J.)