

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
CRIMINAL APPLICATION NO. 304 OF 2022**

1. Bhimrao Arjun Shekade,
Age. 45 years, Occ. Agri.,
R/o. Patsara, Tq. Ashti,
Dist. Beed.
2. Ankush Mahadev Garje,
Age. 34 years, Occ. Agri.,
R/o. Patsara, Tq. Ashti,
Dist. Beed.
3. Balaji Bhimrao Shekaded,
Age. 23 years, Occ. Agri.,
R/o. Patsara, Tq. Ashti,
Dist. Beed.
4. Bhagwat Ginyandev Garje,
Age. 22 years, Occ. Agri.,
R/o. Patsara, Tq. Ashti,
Dist. Beed.
5. Ankush Ginyandev Garje,
Age. 35 years, Occ. Agri.,
Dist. Beed.

....Applicants.

Versus

1. The State of Maharashtra,
Through Police Station Officer,
Police Station Amalner,
Dist. Beed.
2. Sushil Gopinath Garje,
Age. 20 years, Occ. Service,
R/o. Patsara, Tq. Ashti,
Dist. Beed.

....Respondents

Advocate for Applicants : Mr. Sudarshan J. Salunke;
APP for Respondent No. 1 : Mr. M.M. Nerlikar;
Advocate for Respondent No. 2 : Mr. Kedar Warad
h/f. Mr. S.E. Shekade.

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

DATE : NOVEMBER 23, 2022.

P.C.:-

1. The present application has been filed for quashing the FIR as well as the entire proceedings against the applicants under the inherent powers of this court under section 482 of Cr.P.C. It will not be out of place to mention here that the applicant No.1, in view of the order dated 18th February 2022, has withdrawn the application and therefore, the application proceeded for the reliefs claimed by applicant Nos. 2 to 5.

2. Heard Mr. Salunke, learned advocate for the applicants, Mr. Warad for respondent No.2 (informant) and the learned APP.

3. It has been vehemently submitted on behalf of the applicants that perusal of the FIR and the entire charge sheet would show that the alleged incident of suicide by the deceased Gopinath Garje had taken place on 6th October 2021 and he expired on 10th October 2021. The FIR came to be lodged on 11th October 2021. Therefore, there is delay in lodging the FIR. He further submits that the FIR depicts that there was

some dispute pending since 2/3 years prior to the FIR, which according to the informant and the deceased, was in respect of digging a well of which part was in the field of the deceased. It is also stated that there used to be quarrels between the deceased and the applicant No.1 on the ground of said well and the rubble which was lying or dumped in the field of deceased was not removed by the applicant No.1. As regards applicant Nos. 2 to 5, it is stated that they used to give threat to kill to the deceased and such incident had happened around 5.00 p.m. to 6.00 p.m. on 4th October 2021. The said quarrel was separated by the wife of the deceased as well as other relatives. The informant had gone to the village on 5th October, 2021 and the deceased had informed about the complaint lodged by the applicants Balaji Shekade with police and it was also informed that he had promised that the said complaint would be taken back and therefore, the deceased had not lodged any complaint against the applicants.

4. On 6th October, 2021, informant, Balaji and Bhimrao had been to the police station to see, whether Balaji's complaint has been registered and to compromise the said dispute. The deceased was at home. According to informant, the deceased was under tension. He also states that he returned around 6.00 p.m. and found that his father has consumed insecticide called "Rogar". The deceased was talking in stammering and they could smell insecticide from his mouth. The arrangements were made only through applicant No.5 to shift the deceased to hospital. From Government

Hospital, Ashti, he was taken to City Care Hospital Ahmednagar. The deceased expired around 11.45 p.m. on 10th October, 2021.

5. The learned advocate for the applicants submit that the FIR does not show about any suicide note, however, the charge sheet contends that at the time of admission of the deceased at City Care Hospital, Ahmednagar by one Bapu Mahajan – son in law of deceased, the hospital authorities had handed over a chit to said Bapu Mahajan and then he had produced it before the police authorities on 11.10.2021 for which the seizure panchanama has been drawn. The learned advocate for the applicants has raised objection over this piece of evidence. He also questions on the basis of the fact that applicant No.5 had already filed a civil suit for partition and submits that when the applicant no.5 was the person who helped the informant to shift the deceased to hospital, whether, there could have been an intention in the mind of applicants that deceased should commit suicide. He also submits that the statements of witnesses those have been recorded would show about the incident dated 4.10.2022, which could have been taken so seriously to infer that the alleged harassment was of such an extent that it would drive a person to commit suicide. He further submits that even if we consider all the documents in the charge sheet, then also the offence under Section 107 or 306 of IPC are not made out against applicant Nos. 2 to 5. Hence, the application deserves to be allowed.

6. Learned APP Mr. Nerlikar and Mr. Kedar Warad h/f. Mr. Shekate, vehemently submitted that the dispute between the parties has come on record. The said dispute was going on since 2 to 3 years prior to the FIR. It has also come on record that the present applicant Nos. 2 to 5 used to give threat to kill to the deceased by taking up quarrels on some or the other pretext. As regard the incident dated 4.10.2021 is concerned, all the accused persons had come to the house of the deceased, assaulted him and gave him threat to kill. The nephew of deceased by name Ashok and brother of deceased Ajinath as well the wife of deceased were the persons who had separated that dispute. Their statements are in consonance with each others contention. The deceased was under tension because of the said dispute and he had gathered the information that the applicant Balaji had lodged complaint against the deceased with the police. It is specifically stated that thereafter, there was a move from the applicants' side that they would withdraw the same. This kept the tension of the deceased lingering and it appears that ultimately he consumed poison on 6.10.2021. The informant has stated that he had gone alongwith applicant Balaji (applicant No.3) and Bhimrao (applicant No.1) to police station for withdrawal of the complaint lodged by Balaji. They kept him assured till 5.00 p.m. and thereafter applicant No.1 left the police station by saying that they will not take the complaint back. Thereafter, even the informant left the police station around 6.00 p.m. This attitude is required to be considered. Further the suicide note which was handed over by the Doctor at City Care

Hospital, Ahmednagar to Bapu Mahajan has been duly seized and it has been sent for Handwriting Expert's opinion alongwith his natural handwriting. The said report is still awaited.

7. Learned APP has submitted that he is having report from the concerned police station dated 20.7.2022 and thereafter he has no further report, as to whether the said report has been submitted by the Handwriting Expert or not. When all these facts would come before the concerned Court, it would throw light on the fact that the present applicants were the persons who were behind the suicide committed by deceased Gopinath. It would be then premature to allow this application. It was submitted that this is not a fit case where the inherent powers under Section 482 of Cr.P.C. needs to be exercised.

8. At the outset, it is to be noted that the documents were sent for Handwriting Expert's opinion on 6.12.2021. This court cannot wait for indefinite period to receive the report. Even this matter is pending since 17.1.2022 and the first order that was passed in this case, was on 18.2.2022. There ought to have been swift action by the Investigating Officer to see, whether the Handwriting Expert's opinion is ready and it should have been filed. Even if we consider the contents of the said chit/suicide note as it is, whether it makes out the case against the present applicants would be considered at a latter point of time.

9. The contents of the FIR lodged by respondent No.2 who is son of the deceased would show that his agricultural land is adjacent to the land of applicant No.1 – Bhimrao Arjun Shekade. Bhimrao had dug a well about 2 to 3 years ago and according to the informant, a part of that well is in the land owned by deceased Gopinath. The rubble of the said well at the time of digging was dumped in the land belonging to the deceased and on that count, there used to be quarrel between the deceased and applicant No.1. The deceased was insisting that it should be removed. At the cost of repetition, it can be said that since the applicant No.1 has withdrawn the application, we do not want to go into the allegations which are against him. However, FIR after giving names of all the applicants states that all of them used to give threats to kill the deceased and they used to quarrel with deceased, about which information used to be given by the deceased to informant on phone. Here, it is to be noted that why the applicant Nos. 2 to 5 used to raise dispute with deceased Gopinath and used to give him threats to kill has not been further explained. No doubt, applicant No.3 is son of applicant No.1, yet, independently there appears to be no specific reason that has been given on behalf of the informant as well it could not be found in the statement of witnesses under Section 161 of Cr.P.C. that there was some reason for the applicant Nos. 2 to 5 to raise dispute or give threats to deceased to the extent of killing him.

10. Much has been said about the incident dated 4.10.2021 in the FIR as well as statements of the witnesses including the wife of deceased, brother and nephew of the deceased. It is to be noted that it was an assault as alleged by these persons on the deceased. But, admittedly the deceased had not lodged any report. The statement of wife of deceased would show that apart from deceased Gopinath, his wife Manda and other relatives had also received injuries and wooden stick was used in the said assault. She has stated that they had gone to police station and then they were referred to the Government Hospital. She also tries to show that they were admitted at night time in Ashti Hospital and they went to village in the morning. However, she has specifically stated that no complaint was lodged with the police station. It is for the prosecution to then explain that, even then these people had gone to police station, why immediately the FIR was not taken. Injury certificates which have been collected show simple injuries on those persons. Therefore, it does not appear to be a case that FIR could have been delayed by the police station. The injury certificates do not mention history. Therefore, even if we take the facts as they are, it might be a simple case under under Section 323 of IPC or at the most 324 of IPC.

11. The facts further disclose that on 6.10.2021, the informant who had come down to his village on 5.10.2021 had gone alongwith applicant Balaji and Bhimrao i.e. applicant Nos. 1 and 3 to Amalner Police Station and it appears that it was

with a view to convey to the police that Balaji had made up his mind to withdraw the said complaint. Deceased was at home and it also appears from the statements of witnesses that he was alone at home. The informant says that till 5.00 p.m. applicant No.1 told that he would withdraw the complaint but, thereafter he told that he will not, and left the police station. The informant then left the police station around 6.00 p.m. When he came back to home, he found that his father was lying on the ground in the door and he had consumed insecticide. The facts thus disclose that till informant reached home, deceased Gopinath had no knowledge that applicant No.1 has then refused to withdraw the complaint. The question therefore arise is, that when he had no knowledge about what happened at police station, then, whether the incident dated 4.10.2021 can be taken as the reason for Gopinath to commit suicide. As aforesaid, the incident dated 4.10.2021, at the most raises offence under Section 324 of IPC and not more than that.

12. At this stage, we will have to consider also the fact that though the alleged encroachment while digging out the well on the field of deceased Gopinath by applicant no.1 had happened about 2 to 3 years prior to the FIR, but then the statements of witnesses well as the FIR are silent on the point, as to why Gopinath had not filed any suit. In the statement of wife of deceased Gopinath, she has stated that in respect of the said well, a civil suit was filed in Ashti Court against one Parigabai Arjun Shekade. But then, she says that due to

lock-down, the said suit could not proceed.

13. The investigating Officer has not collected the copy of the complaint of that suit nor a reference to the same has been made by the informant in the FIR. The statements further show that there was dispute at least thrice with Bhimrao earlier, but each time, there was compromise. If each time, it has resulted in compromise, then whether, there was *mens-rea* with the applicants and with that intention they would have fought with Gopinath on 4.10.2021, is a question and the answer will have to be in the negative.

14. The suicide note, read as it is, contains the statement that Bhimrao Shekade has dug a well in the field of deceased and Ankush Mahadeo Garje, Balaji Bhimrao Shekade, Bhagvat Ginyandev Garje, Ankush Ginyandev Garje had given threats to kill and it is the reason for his death.

15. Here, it is to be noted that, it does not specifically mention the date i.e. 4.10.2021 as the date on which the threat to kill was given. Further as per the FIR and the statements of the witnesses under Section 161 of Cr.P.C. such threats were given earlier also, however, it is stated that they had ended up in compromise. Definitely, it is not in dispute as to when the deceased had left the said note but then, even if we accept that it was written on 6.10.2021, the deceased expired on 10.10.2021. Under these circumstances, it would be questionable whether the said chit could be accepted under

Section 32 of the Indian Evidence Act as a suicide note. Therefore, the said suicide note also cannot be considered as the best piece of evidence which would cover the case under Section 107 and/or under Section 306 of IPC.

16. The Post-Mortem report gives final opinion as to cause of death as, "clinically the post mortem findings are consistent with that of death due to poisoning". The deceased was admitted to City Care Hospital on 6.10.2021 and prior to that he was taken to Government Hospital, Ashti. The treatment papers have not been collected by the Investigating Officer. The FIR says that deceased was stammering at the time when informant went to home, whether, till he was taken to Government Hospital, Ashti, he was conscious, what was the history that was given and then, when he was shifted to City Care Hospital whether he was unconscious and whether any attempt was made to get his dying declaration recorded, are all questions unanswered in the investigation.

17. No doubt, lacunae in the investigation at this stage cannot give advantage to the applicants and such documents can also be produced at a later point of time, but those were possibilities which could have thrown light on the intention of the applicants and, therefore, reference of the same has been taken.

18. Consideration of the facts which have been stated in the FIR as well as by way of charge sheet would show that the

incident dated 4.10.2021 cannot be taken as such an incident which would drive a person to commit suicide. Further it was not even agitated by the deceased or other persons. The inaction on the part of the deceased as against alleged threats to kill will have to be considered adverse and it could not then be taken as an act which will amounts to instigation, as contemplated under Section 107 of the IPC, which is one of the basic ingredients for proving the offence under Section 306 of IPC.

19. As aforesaid, there was no common cause of action or common intention for the applicant Nos. 2 to 5 to give threat and allegedly harass or instigate deceased and as such, Section 34 of IPC cannot get attracted.

20. For the aforesaid reasons, we arrive at a conclusion that the offence under Section 306 r/w. 34 of IPC has not been made out against applicant Nos. 2 to 5 and, therefore, the FIR as well as the entire proceeding deserves to be quashed qua applicant Nos. 2 to 5. Hence, we pass the following order :-

: O R D E R :

[I] The application stands allowed qua applicant Nos. 2 to 5.

[ii] So far as applicant Nos. 2 to 5 are concerned, the FIR vide crime No. 213 of 2021 dated 11.10.2021 registered

with Amalner Police Station, Dist. Beed, for the offence under Section 306, 323,506 r/w. 34 of IPC stands quashed and set aside. Further charge sheet and criminal case bearing RCC No. 25 of 2022 pending on the file of learned JMFC, Ashti, Dist. Beed and Sessions case, if committed, also stands quashed and set aside as against applicant Nos. 2 to 5.

[iii] It is made clear that the observations made hereinabove are prima facie in nature and the learned trial court shall not, in any way, be influenced by it at the time of trial.

[RAJESH S. PATIL]
JUDGE.

[SMT. VIBHA KANKANWADI]
JUDGE.

grt/-