

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.187 OF 2021

1. Rushikesh s/o Bapu Khurne
Age: 44 years, Occu.: Agri.,
2. Valmik s/o Suka Khurne
Age: 64 years, Occu.: Agri.,
3. Dnyaneshwar Valmik Khurne
Age: 29 years, Occu. Agri.,
4. Sopan Valmik Khurne
Age: 27 years, Occ.: Agri.,
5. Anna Sukdev Khurne
Age; 54 years, Occu.: Agri.,
6. Prabhakar Anna Khurne
Age: 31 years, Occu.: Agri.,

All R/o Village Horpada,
Taluka and District – Dhule.

.. Applicants

Versus

1. The State of Maharashtra
Through Police Inspector,
Police Station, Dhule Taluka,
Taluka and District – Dhule
2. Sudam s/o Raghu Dude
Age: 48 years, Occu.: Agri.,
R/o. Village Horpada,
Taluka and District – Dhule.

.. Respondents

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Mr. S. B. Solanke, Advocate for applicants.
Mr. R. V. Dasalkar, APP for respondent No.1 – State.
Mr. S. T. Kazi, Advocate for respondent No.2.

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

DATE : 14th September, 2022

JUDGMENT [Per Smt. Vibha Kankanwadi, J.] :-

. Rule. Rule made returnable forthwith. Heard learned Advocates for the parties finally, by consent.

2. Present application has been filed by invoking the inherent powers of this Court under Section 482 of the Code of Criminal Procedure (for short "Cr.P.C.") for quashing the First Information Report (for short "FIR") filed against the present applicants by respondent No.2.

3. Respondent No.2 has filed the FIR vide Crime No.599 of 2020 with Dhule Taluka Police Station, District Dhule on 31.10.2020 for the offences punishable under Sections 306, 506 of Indian Penal Code (for short "IPC") against the applicants. The prosecution story is that deceased Prakash Dude, aged 24 years, was the son of respondent No.2. He was preparing for exams for the recruitment in police as well as army. Onkar Khurne is he brother-in-law of respondent No.2, who resides in the same village i.e. Horpada where the informant is residing. Applicant No.1's agricultural land is situated behind the house of Onkar Khurne. All the applicants had

put stones on the road till the raised platform (*Ota*) of the house of Onkar and, therefore, the Onkar had gone to talk to the applicants. At that time, all the applicants had picked up quarrel as well as assaulted Onkar and, therefore, there was offence registered with Dhule Taluka Police Station against the applicants on 03.05.2019. Thereafter, it is said that applicant No.1 had shown that there was a quarrel on 15.05.2019 and lodged FIR against deceased Prakash and other relatives of respondent No.2. According to the informant, since that date i.e. 15.05.2019, the applicants were threatening Prakash whenever he used to meet them. They used to threaten that how he will prepare for the exams for the police recruitment and they would see that he does not get recruited. By filing more offences against him, he would be sent to jail. By such acts of the applicants, Prakash was mentally harassed. He told about the same to his parents and other relatives, but the relatives told him that he should not quarrel with the applicants. Therefore, informant ignored deceased Prakash on that point. It is then stated that the Prakash came to house around 6.00 p.m. on 20.10.2020 and told the informant, his nephew and brother-in-law that the present applicants had again threatened him that they would see that he does not get recruited, he would be put in jail and, therefore, he feels that his life has been ruined and he has no desire to live. At that time, the informant and others had persuaded him. Then

deceased Prakash went to water the crops in the field around 6.00 a.m. on 29.10.2020 when the informant was in the house. Thereafter, around 8.30 a.m., after having breakfast, he told that he would go to Borkund for shaving and haircut and then from there, he would directly go to the field. Prakash used to return usually at about 5.00 p.m., but since he did not return till 6.00 p.m., informant and his elder son Nilesh started searching him. They could not find him in village and therefore, they went to their field known as Shingad Patli. They found both *chappals*, shirt and watch of Prakash by the side of Well, but informant and others raised doubt about suicide by Prakash and therefore, they searched Prakash with iron rod. Prakash could be found in the Well and, therefore, he was taken out of the Well and taken to Civil Hospital where he was declared dead. A.D. was registered on 30.10.2020 and on 31.10.2020, the FIR came to be lodged by respondent No.2.

4. Learned Advocate for the applicants submitted that even if we take the case as it is, as has been told in the FIR, it does not attract the ingredients of Section 306 or 506 of IPC. There was no instigation by the present applicants on or around 29.10.2020. The alleged incident is stated to have taken place on 20.10.2020 and between 20.10.2020 to 29.10.2020, nothing had happened. When there was no proximity in the two incidents, it cannot be said that

by any such acts, the applicants had instigated or abetted the commission of suicide by deceased Prakash. The investigation is over and now the charge-sheet is also filed. If we consider the statements of the witnesses on record, they are on the same line that of the FIR and they are literally copy paste. In fact, when A.D. was registered on 30.10.2020, the informant had not expressed any doubt over anybody. It was simply an information about the death of Prakash. Therefore, it would be a futile exercise to ask the applicants to face the trial. The FIR as well as charge-sheet deserves to be quashed and set aside.

5. Per contra, the learned APP as well as the learned Advocate for respondent No.2 strongly opposed the application and submitted that it is not in dispute that the brother-in-law of the informant had lodged report against the applicants in respect of an incident dated 02.05.2019. Thereafter, applicant No.1 had lodged FIR on 15.05.2019 and it appears that intentionally, he had made even deceased Prakash as an accused in that case. Applicant No.1 had knowledge that deceased Prakash was preparing for his exams for getting recruited in police/army. The applicants had the intention that he should not get recruited and, therefore, when intentionally a criminal complaint has been lodged, deceased felt that he is being harassed and it is in fact the act of abetment. Thereafter also the

applicants used to give threats to deceased that they would continue to lodge false FIR's against him so that he should not get recruited in the police department. The further ingredients would be proved by the prosecution at the time of trial, but this cannot be considered as a fit case where this Court should exercise its inherent powers.

6. At the outset, we are required to consider what is the averments in the FIR and what material has been collected by the investigating agency to prosecute the applicants. It appears that some incident had taken place on 03.05.2019 in respect of which brother-in-law of the informant Onkar Khurne had lodged FIR against the present applicants. Thereafter, it appears that on 15.05.2019, applicant No.1 filed FIR against Onkar and other six persons including deceased Prakash and then in the FIR, it is stated that since thereafter, that means after 15.05.2019, the applicants started saying and threatening that they would see that how Prakash gets recruited in the police department and they would file Criminal FIR's against him so that he would go to jail. However, by persuading deceased Prakash, informant himself says that he had not paid attention to the say of the son. There is, therefore, room to believe that even the informant had not taken that threat seriously. If some action would have been taken at that point itself,

the further things could have been avoided by the informant.

7. The FIR thereafter states that next action or incident had taken place at about 6.00 p.m. on 20.10.2020. Therefore, what we will have to consider is that some incident had taken place on 15.05.2019 and thereafter, the non cognizable threat alleged to be given by the applicants on 20.10.2020. How far that non cognizable reason could have been stretched, is a question. How many times such threat was given between 15.05.2019 to 20.10.2020 has not been stated by the informant. After so many months whether the applicants would have raised the same threat at about 6.00 p.m. is a question and this fact is indigestible or may be said to be improbable. Even on that day also after the fact was told to the informant and other relatives by the deceased Prakash, the informant says that he and his relatives had rather persuaded deceased Prakash to ignore the applicants. In fact, it is stated that he had expressed that he feels like committing suicide. Under such situation, in fact, an emotional support ought to have been given by the informant and his family members. We may presume that such emotional support was given by them to deceased.

8. The FIR further quotes the events that that had taken place on 29.10.2020. The morning routine of Prakash, as given in the FIR, appears to be normal. Under such circumstance, all of a

sudden, whether he would have committed suicide is a question. It will not be out of place to mention here that the statements of the witnesses under Section 161 of Cr.P.C. are on the same line and, therefore, it requires no repeated observations.

9. If we consider the postmortem report, the probable cause of death is "asphyxia due to drowning". Taking into consideration the said probable cause of death and also the statements of the witnesses and the FIR, it can be certainly said that two possibilities would have been created one is accidental death and another is suicidal death. In order to prove the offence under Section 306 of IPC, we will have to consider Section 107 of IPC. Unless there would have been a positive act on the part of the applicants, it cannot be said that they had abetted or instigated the deceased to commit suicide. Possibility of accidental death should be ruled out by the prosecution in such cases. There is nothing on record to show that the said possibility has been ruled out. Further, at the cost of repetition, it can be said that when the morning routine of deceased was normal, then it is hard to believe that thereafter, there was any kind of instigation or abetment by the applicants.

10. It can be useful to refer the decision in ***M. Arjunan vs. State, [(2019) 3 SCC 315]***, wherein in Paragraph No.7 of the judgment the Hon'ble Apex Court held thus :-

"7. The essential ingredients of the offence under Section 306 IPC are: (i) the abetment; (ii) the intention of the accused to aid or instigate or abet the deceased by using abusive language will not, by itself, constitute the abetment of suicide. There should be evidence capable of suggesting that the accused intended by such act to instigate the deceased to commit suicide. Unless the ingredients of instigation/abetment to commit suicide are satisfied the accused cannot be convicted under Section 306 IPC."

11. Further, in ***S. S. Chheena vs. Vijay Kumar Mahajan, (2010) 12 SCC 190***, the Hon'ble Apex Court in Paragraph No.25 of the judgment held thus :-

"25. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. The intention of the legislature and the ratio of the cases decided by this Court is clear that in order to convict a person under Section 306 IPC there has to be a clear *mens rea* to commit the offence. It also 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."

12. In *Rajesh vs. State of Haryana, (2020) 15 SCC 359*, the Hon'ble Apex Court, in Paragraph No.9 of the judgment, has held thus :-

"9. Conviction under Section 306 IPC is not sustainable 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. In order to bring a case within the purview of Section 306 IPC, there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide. Therefore, the act of abetment by the person charged with the said offence must be proved and established by the prosecution before he could be convicted under Section 306 IPC."

13. Therefore, taking into consideration the facts of the case as well as the law point as aforesaid, we arrived at a conclusion that ingredients of instigation/abetment to commit suicide are not satisfied from the contents of the FIR as well as the contents of the charge-sheet. The entire material does not show that on or just earlier to 29.10.2020, deceased Prakash was either criminally intimidated or insulted. Therefore, the ingredients of Section 506 of

IPC are also not attracted. Hence, this is a fit case where we should exercise our powers under Section 482 of Cr.P.C. The case squarely falls within the parameters laid down in *State of Haryana and others vs. Ch. Bhajanlal and others*, [AIR 1992 SC 604]. Hence, the following order :-

ORDER

I) The application stands allowed in terms of prayer clauses 'B' and 'B-1' thereby quashing the FIR bearing Crime No.377 of 2020 (FIR No.599/2020) registered with Dhule Taluka Police Station, Dist. Dhule for the offences punishable under Sections 306 and 506 of IPC as well as the entire proceedings in Sessions Case No.148 of 2021 pending before the learned Sessions Judge, Dhule.

II) Rule made absolute in above terms.

[RAJESH S. PATIL, J.]

[SMT. VIBHA KANKANWADI, J.]

scm