

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

CRIMINAL APPLICATION NO. 342 OF 2022

- 1) Ramdas @ Rama s/o Popat Adhav
Age: 45 years, Occu.: Agriculture,
R/o. Yewati, Tq. Shrigondha,
Dist. Ahmadnagar.
- 2) Dada s/o Popat Adhav
Age: 42 years, Occu.: Agriculture,
R/o. Yewati, Tq. Shrigondha,
Dist. Ahmadnagar.
- 3) Popat s/o Sakharam Adhav
Age: 71 years, Occu.: Agriculture,
R/o. Yewati, Tq. Shrigondha,
Dist. Ahmadnagar.
- 4) Jijabai w/o. Popat Adhav
Age: 66 years, Occu.: Agriculture,
R/o. Yewati, Tq. Shrigondha,
Dist. Ahmadnagar.

... Applicants.

Versus

- 1) The State of Maharashtra,
Through Police Inspector,
Belwandi Police Station,
Tq. Shrigondha, Dist. Ahmadnagar.
- 2) Chhaya Wd/o. Gautam Adhav
Age: 36 years, Occu. : Agriculture,
R/o. Yewati, Tq. Shrigondha,
Dist. Ahmadnagar.

... Respondents

(Resp. No.2 Original Complainant)

...

Mr. Vijay Vasant Rao Deshmukh , Advocate for Applicants.

Mr. M. M. Nerlikar, APP for Respondent No.1-State.

Ms. Sunita G. Sonawane, Advocate for Respondent No.2

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**CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

DATE : 16th December, 2022

JUDGMENT (PER ABHAY S. WAGHWASE, J.) :

. All applicants herein have prayed for quashing FIR and charge-sheet arising out of Crime bearing No.0348 of 2021 registered at Belwandi Police Station, District Ahmednagar on 18-08-2021 for the offence punishable under Sections 306, 420, 504, 506 read with Section 34 of the Indian Penal Code (IPC).

2. Brief facts leading to registration of crime :

Informant, who is wife of deceased Gautam Bhanudas Adhavi, has set law in motion alleging that, three and half acres land was standing in the name of her husband Gautam. Out of said land, Ramdas has purchased half acre land, however, she was unaware about it. When 7/12 extract was obtained, only one and half acre land was reflected in the name of her deceased husband. When she learnt about it, she questioned her deceased husband, who told her that by cheating him Ramdas had got sale deed executed to the extent of one and half acre land. According to informant, such transaction was behind back of the family. Therefore, a meeting was held in the village but Ramdas flatly denied to return the land and moreover, demanded Rs.21,00,000/- that too in a period of month. In spite of repeated

demand by the deceased to accused Ramdas to return the land, Ramdas and his family members abused him. Therefore, getting fed-up of the same, Gautam hanged himself to a tree on the intervening night of 17-08-2021 and 18-08-2021. That, deceased Gautam had written a suicide note before hanging himself and a chit to that extent was seized by Police machinery. Therein, present applicants are named and hence, crime was registered against Ramdas Popat Adhav, Dada Popat Adhav, Popat Sakharam Adhav and Jijabai Popat Adhav i.e. present applicants.

In the light of such allegations, investigation machinery swung into action and carried out investigation and finally after investigation, charge-sheet has been filed in the Court of law.

It is above crime and consequential charge-sheet, which is sought to be quashed and set aside by exercising inherent powers under Section 482 of Cr.P.C.

Submissions

3. Learned Advocate for the applicants submits that FIR is apparently false, afterthought and filed with ulterior motive. He pointed out that present applicants are related to deceased. Deceased Gautam was in financial crisis and he also had bad vices and under such circumstances, he himself entered into sale transactions. Said transactions were duly registered. Learned Advocate invited our attention to both the sale deeds brought on record. According to him, there is no whisper about transactions to be out of money

lending transaction. According to him, it was pure sale transaction and deceased was in dire need of money. Therefore, it is his submission that false allegations are levelled in the FIR of money being borrowed and land being kept mortgaged and that exorbitant interest was charged.

Learned Advocate for the applicants also pointed out that in this case there is a suicide note. As to when the suicide note was written has not been specified. He also pointed out that it is very clearly written in the suicide note that because of quarrel in the house, deceased committed suicide and as such, applicants should not be held responsible for the suicidal hanging of Gautam. It is his further submission that even considering the FIR as it is, there is no whisper about any abetment or harassment, which was of such nature that deceased would end up his life. Therefore, according to him, offence under Section 306 is clearly misdirected against present applicants.

It is his next submission that even if so-called sale transaction is concerned, it is much prior to alleged suicide and therefore, it is unreasonable to connect it with suicide. He pointed out that no details are given as to when alleged meeting was held in the village. Rather, according to the learned Advocate, deceased had bad vices and was heavily indebted and further because of the quarrel in the house, he might have committed suicide. Learned Advocate submits that there is no specific role attributed to any of the applicants as to in what manner they harassed deceased and abetted suicide. It is further submitted that applicant No.1, being immediate

neighbour, the above said transaction was entered into and even informant and her family members were aware about it but no objection was raised by the deceased or informant or any family member at any point of time till lodgement of FIR. While concluding, he submitted that none of the ingredients for attracting offence under Section 306 or Section 420 are made out. That, there is no whisper of issuing any threat to kill and hence, as necessary ingredients for attracting none of the Sections inducted in the charge-sheet are available, he prays for grant of relief as prayed.

4. On behalf of respondent No.1 – State, while strongly opposing the said application, learned APP would submit that applicants have cheated deceased Gautam. Secret transaction was carried out and informant and her family members were not aware about it. It was their only source of income. That, there was no valid sale transaction, rather money was borrowed and after return of money, land was decided to be returned back to the deceased. However, when demand was made, it is revealed from the investigation that applicants flatly denied to return the land and moreover, demanded exorbitant amount by way of interest. Because of such cheating, continuous harassment and trouble at the hands of applicants, deceased was left with no other alternative but to commit suicide. Learned APP submits that complicity of the applicants is revealed from the FIR and investigation and therefore, it is his submission that the applicants are solely responsible for suicide. Moreover,

there is suicide note and in the light of such material on record, it is his submission that accused are liable to face prosecution. According to him, it is not at all a case to exercise powers under Section 482 of the Cr.P.C. Hence, he prays to reject the application.

5. Learned Advocate for respondent No.2 would submit that applicants do not deserve relief as prayed. Firstly, they are named. Investigation revealed that they have indulged in abetting suicide as they were continuously harassing deceased after cheating him. Only because of circumstances created by applicants, deceased committed suicide. Statements of not only family members but also neighbours and villagers are recorded. According to her, they are all pointing fingers towards applicants for abetting suicide and therefore, it is his submission that applicants do not deserve relief as prayed. Hence, she prayed for rejection of the application.

6. Here applicants have prayed to invoke inherent powers of this Court under Section 482 of Cr.P.C..

As to when powers under Section 482 of Cr.P.C. can be exercised is fairly settled by slew of judgments including *Inder Mohan Goswami and Anr. Vs. State of Uttaranchal and Ors.* ; (2007) 12 SCC 1, *Priya Vrat Singh Vs. Shyam Singh Sahai*; (2009) SCC Suppl. 709, *Vineet Kumar v. State of U.P.* ; (2017) 13 SCC 369 and *Mahendra K.C. Vs. State of Karnataka and Another* ; (2022) 2

Supreme Court Cases 129.

7. FIR is registered for commission of offence under Section 306 of IPC and therefore, it would be appropriate to even give a brief account as to when penal provision under Section 306 of IPC would be attracted and what are the necessary ingredients for maintainability of such charge.

Section 306 of IPC deals with punishment for abetment of suicide. Section 107 of IPC deals with as to what amounts to abetment. By umpteen judgments, time and again Hon'ble Apex Court and High Courts have dealt with and discussed as to when charge of Section 306 of IPC can be said to be brought home. A few landmark judgments on this point which could be referred are as under.

The Hon'ble Apex Court in ***Mahendra K.C.*** (supra) in para 23 to 25, has made the following observations :

“23. Section 306 IPC provides for punishment of the abetment of suicide:

“306. Abetment of suicide. - If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.” Section 107 IPC defines the expression “abetment”:

Section 107 IPC defines the expression “abetment”:

“107. Abetment of a thing- A person abets the doing of a thing, who -

First. - 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 1. - A person who by willful misrepresentation, or by willful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.”

24. *The essence of abetment lies in instigating a person to do a thing or the intentional doing of that thing by an act or illegal omission. In Ramesh Kumar v. State of Chhattisgarh ; (2001) 9 SCC 618 : 2002 SCC (Cri) 1088, a three-Judge Bench of this Court, speaking through R.C. Lahoti, J. (as the learned Chief Justice then was), observed: (SCC p. 629, para 20)*

“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.”

25. *A two-Judge Bench of this Court in Chitresh Kumar Chopra v. State (NCT of Delhi); (2009) 16 SCC 605 : (2010) 3 SCC (Cri) 367, speaking through D.K. Jain, J., observed: (SCC pp. 611-12, paras 19-20)*

“19. As observed in Ramesh Kumar [(2001) 9 SCC 618 : 2002 SCC (Cri) 1088], 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.

20. In the background of this legal position, we may advert to the case at hand. The question as to what is the cause of a suicide has no easy answers because suicidal ideation and behaviours in human beings are complex and multifaceted. Different individuals in the same situation react and behave differently because of the personal meaning they add to each event, thus accounting for individual vulnerability to suicide. Each individual's suicidality pattern depends on his inner subjective experience of mental pain, fear and loss of self-respect. Each of these factors are crucial and exacerbating contributor to an individual's vulnerability to end his own life, which may either be an attempt for self-protection or an escapism from intolerable self.”

In the case of ***State of Kerala and Ors. Vs. Unnikrishnan Nair and Ors.;***

(2015) 9 SCC 639, the Hon’ble Apex Court has observed as under :

“10. The aforesaid provision was interpreted in *Kishori Lal Vs. State of M.P.*; (2007) 10 SCC 797, by a two-Judge Bench and the discussion therein is to the following effect :

“6. Section 107 IPC defines abetment of a thing. The offence of abetment is a separate and distinct offence provided in IPC. A person, abets the doing of a thing when (1) he

instigates any person to do that thing; or (2) engages with one or more other persons in any conspiracy for the doing of that thing; or (3) intentionally aids, by act or illegal omission, the doing of that thing. These things are essential to complete abetment as a crime. The word “instigate” literally means to provoke, incite, urge on or bring about by persuasion to do any thing. The abetment may be by instigation, conspiracy or intentional aid, as provided in the three clauses of Section 107. Section 109 provides that if the act abetted is committed in consequence of abetment and there is no provision for the punishment of such abetment, then the offender is to be punished with the punishment provided for the original offence. “Abetted” in Section 109 means the specific offence abetted. Therefore, the offence for the abetment of which a person is charged with the abetment is normally linked with the proved offence.”

11. In *Amalendu Pal Vs. State of W.B.*; (2010) 1 SCC 707, dealing with expression of abetment the Court observed : (SCC pp.712-713 para 14)

“14. The expression “abetment” has been defined under Section 107 IPC which we have already extracted above. A person is said to abet the commission of suicide when a person instigates any person to do that thing as stated in clause Firstly or to do anything as stated in clauses Secondly or Thirdly of Section 107 IPC. Section 109 IPC provides that if the act abetted is committed pursuant to and in consequence of abetment then the offender is to be punished with the punishment provided for the original offence. Learned counsel for the respondent State, however, clearly stated before us that it would be a case where clause Thirdly of Section 107 IPC only would be attracted. According to him, a case of abetment of suicide is made out as provided for under Section 107 IPC.”

The other landmark rulings on above point are *Praviee Pradhan v. State of Uttaranchal* ; (2012) 9 SCC 734, *Vajinath Kondiba Khandke v. State of Maharashtra* ; (2018) 7 SCC 781, *Ude Singh v. State of Haryana* ; (2019) 17 SCC 301, *Gurcharan Singh v. State of Punjab* ; (2020) 10 SCC 200 and *Rajesh v. State of Haryana* ; 2020 15 SCC 359.

8. Taking into account the scope and object of above provisions under Section 482 of Cr.P.C. and Section 306 of IPC, we proceed to examine the case in hand to ascertain whether case for grant of relief has at all been made out or not.

Analysis

9. On carefully examining the FIR, it is evident that applicant No.1 is cousin brother of deceased Gautam, who was owner of three and half acres of land. Applicant No.1 also seems to be immediate neighbour of deceased. According to the informant, six years back, applicant No.1 Ramdas Popat Adhav purchased half acre land from her husband and one year back also, her husband had sold one and half acres land to Ramdas. She claims that it was revealed to her only when 7/12 extract was obtained by Sarpanch. According to her, when she questioned it to her husband, he allegedly told that applicant No.1 cheated him and made him execute the transactions. Here, it is seen that at no point of time after transactions, deceased had informed his wife – informant or other family members. It seems that only on being questioned, he had disclosed that he was cheated. Deceased never made any complaint to Police about alleged cheating during his life time. In the FIR, it is stated that there was a meeting in the village and demand of return of land was made but it is flatly denied by applicant No.1. As to when such meeting was held in the village and where, is also not clearly stated in the FIR or statements recorded

under Section 161 of Cr.PC. Informant states that her husband was continuously thinking about the land. Even after such flat refusal also, he had not taken legal steps. It is revealed from the FIR that in the intervening night of 17-08-2021 and 18-08-2021 deceased hanged himself. The incident of hanging has also allegedly taken place near the house. It seems that informant also woke up in the night and had not found her husband sleeping at his place. She claims that assuming that he might have gone to ease himself, she went back to sleep and in the morning the episode of hanging came into light. What exactly happened during the day of 17-08-2021 or the night till all went to sleep has not come on record. Informant even does not state that mental state of her husband at such time was also not proper or that he was still thinking of land.

10. Here investigating machinery claims that there is a suicide note. Copy of the same is also placed on record. Prosecution is strongly relying on the suicide note in resisting the application. As pointed out, the suicide note is apparently undated. It is gathered from the FIR that deceased was in his own house at night time also, where there were his family members. When the chit was written is a mystery. Secondly, there is text in the suicide note that "Rama Popat Adhav cheated him and entered into sale transaction of land and charged heavy interest and thereby usurped his land". It is also specifically written that "there were quarrels in the house".

Thus, firstly there is name of only Rama Popat Adhav and not other applicants herein. Only allegation is about entering into transaction by cheating. However, if we go through the Sale Deeds, which are placed on record, there seems to be two transactions i.e. first one of the year 2015 with applicant No.2 herein i.e. Dada Popat Adhav and transaction with applicant No.1 herein i.e. Ramdas Popat Adhav of the year 2019. On minute scrutiny of the Sale Deeds, it is emerging that there is recital in paragraph No.3 of sale deed dated 04-09-2019 that land is being sold for repaying loan and for running family. There is no whisper in any of the recitals of both the deeds that it was a buy-back transaction or mortgage. Therefore, allegation of mortgage or money lending and charging of exorbitant interest are without any foundation. It is apparently a plain sale transaction. Even as stated above, the sale transactions had been entered into long back since date of suicide.

11. Investigating machinery has recorded statements of various witnesses under Section 161 of the Cr.P.C. We have carefully examined such statements of son, daughter and mother of deceased. They are monotonous in nature. Neighbour Balu Mhaske, in his statement recorded under Section 161 of Cr.P.C. on 19-08-2021, has also informed about transaction of land between deceased Gautam and Ramdas. However, it is emerging that he too has merely learnt about it and has no personal knowledge. Therefore, he apparently has

hearsay information. Similarly, immediate neighbours Asha Mhaske and Ganesh Dhorajkar are speaking about they learning about transaction of land subsequently. It is surprising to find that according to informant, there was a meeting in the village, however, from the statements of the immediate neighbours, nothing of that sort has come on record as they do not speak of such meeting or they to be party to such meeting. These witnesses are apparently hearsay witnesses.

12. In our opinion, in the light of above material coming on record, both in FIR as well as in charge-sheet, it is clear that, those were pure sale transactions i.e. one between Ramdas Popat Adhav (applicant No.1) and deceased dated 04-09-2019 for one and half acres land, and another between Dada Popat Adhav (applicant No.2) and deceased dated 02-12-2015 for half acre land. There is nothing to infer that it was a buy-back transaction.

13. What role was played by applicants herein has not come on record. FIR is silent about any conduct on the part of applicants herein amounting to continuous harassment or creating circumstances which were of such nature that deceased was left with no alternative but to end up his life. There is nothing to show that applicants herein intended that deceased should commit suicide and with such sole intention, harassment was inflicted. There is no material suggesting instigation, abetment or intentionally aiding commission

of suicide. On the contrary, what preceded prior to suicide is not at all finding place in the FIR. There is nothing indicating conduct or act of accused which was in proximity to alleged suicide. On the contrary, there is nothing on record suggesting meeting between accused persons and deceased at any point of time immediately or in proximity to the suicide. Rather it is pertinent to note that deceased was in the company of his wife - informant and other family members. In the suicide note, deceased had allegedly written that there were quarrels in the house. Therefore, there are other possibilities surfacing.

14. As necessary ingredients for attracting abetment to suicide are not available, it is doubtful whether said penal section could at all be attracted. Therefore, we are unable to accept that this is a case falling under Section 306 of IPC. Therefore, as *prima-facie* none of the ingredients to attract any of the charges are available, we find it a fit case to exercise our inherent powers under Section 482 of Cr.P.C. We are convinced that FIR is an abuse of process of law. Hence, for ends of justice to meet, we proceed to pass the following order :

ORDER

- (I) Application is allowed in terms of prayer clause-(A).
- (II) Application is accordingly disposed of.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)