

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.279 OF 2021

Kunda Sushil Wankhede @
Kunda Rambhau Gothale
Age: 35 years, Occu. Service
R/o. Kanchan Apartment,
Professor Chowk, Nagar
Tq. and Dist. Ahmednagar

.. Applicant

Versus

1. The State of Maharashtra
Through the Police Officer,
Tophkhana Police Station,
Tq. and Dist. Ahmednagar

2. Suman Vishwanath Dhavan
Age: 56 years, Occu. Household,
R/o. Dhavan Vasti, Tapovan Road,
Nagar, Tq. & Dist. Ahmednagar

.. Respondents

...

Ms. Sunita G. Sonawane, Advocate for applicant.

Mr. S. D. Ghayal, APP for respondent No.1 – State.

Mr. Y. V. Kakade h/f Mr. N. V. Gaware, Advocate for respondent No.2.

...

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

DATE : 16th September, 2022

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

. 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") as well as the further proceedings in Sessions Case No.113 of 2021 pending before the learned Chief Judicial Magistrate, Ahmednagar.

2. Respondent No.2 has filed the FIR vide Crime No.7377 of 2020 with Tophkhana Police Station, District Ahmednagar on 03.10.2020 for the offences punishable under Sections 306, 506 of Indian Penal Code (for short "IPC") against the present applicant stating that deceased Vishwanath Dhavan, aged 65 years, was her husband. Fifteen days prior to the FIR, when informant and deceased Vishwanath were at home, Vishwanath received a phone call from the applicant and Vishwanath was requesting to the applicant to wait for some time and he would pay the money when he would be having the same. When the informant asked him about the phone call, he told that seven months back he had borrowed Rs.2,00,000/- from the applicant. He has returned some amount to the applicant but he was unable to arrange for the remaining amount. The applicant was demanding said amount from time to time and giving threats to her husband that if he fails to repay the money, she would file false cases against him. Thereafter, on 20.09.2020 deceased Vishwanath told the said fact to his daughter – Asha, who resides at Pune and sent mobile number of the applicant to her. Asha gave a phone call to the applicant and

requested her for some time to repay the amount. On her request, the applicant told that she would wait till 30.09.2020, but for that deceased Vishwanath should give it in writing. Initially, deceased was not ready to go to the office of the applicant, but after request by the informant on 21.09.2020, deceased Vishwanath had been to the office of the applicant along with one Uttam Maruti Fulare, there she has taken stamp paper from him stating that he will repay the money till 30.09.2020. When deceased asked for the photocopy of the stamp paper, the applicant confined him as well as Uttam Fulare in a room in her office and forcibly taken amount of Rs.5,000/-, which was in fact, taken by deceased from Uttam at that moment and gave it to the applicant and threatened that if he fails to repay the amount till 30.09.2020, she would implicate him in false case and also gave threats to kill. Thereafter, deceased tried his level best but he could not arrange for the money till 30.09.2020. It is stated by the informant that due to mental harassment by present applicant for returning her money, deceased Vishwanath has committed suicide by hanging on 01.10.2020. He has left behind one chit in the name of present applicant stating that he has borrowed Rs.2,00,000/- from the present applicant. She demanded her money back and also gave threats that if he would not pay money, she would file complaint against him. It is also alleged that deceased has stated in the said chit that she is liar and she should

not be set free. With these allegations, the FIR under Sections 306 and 506 of IPC came to be lodged against the applicant by respondent No.2.

3. It has been vehemently submitted on behalf of the applicant that the applicant has no concern with the suicidal death of the deceased. Deceased had taken hand loan from the applicant for purchase of flat and she was demanding it. When it was stated that he would pay the said amount, she stated that she want it in writing. There is nothing wrong in the said approach. The said action on the part of the applicant cannot amount to instigation of any nature. Now, the investigation is over and charge-sheet is on record. The statement of witness Uttam Maruti Fulare, who was with deceased Vishwanath on the said date, would disclose that there was only talk about the outstanding amount and nothing more than that. He has not stated that the applicant had in any form given threat to the deceased. It would be a futile exercise to ask the applicant to face the trial when she has not committed any offence at all.

4. Per contra, the learned APP as well as learned Advocate Mr. Y. V. Kakade holding for learned Advocate Mr. N. V. Gaware for respondent No.2 submitted that the contents of the FIR would clearly show that the deceased was dealing with the real estate

business and through him a transaction in respect of a flat was made by the applicant. The amount that was given by the applicant to the deceased was due because it was to be refunded to the applicant, but then he was not having that much amount. For that purpose, each and every time, the applicant was making a phone call and harassing the deceased. On 21.09.2020, the applicant had given a phone call to the daughter of the deceased and told that she want a writing to be executed on stamp paper that deceased would pay her amount by the end of 30.09.2020. Deceased told the informant, who is his wife, that the applicant is danger and a fraud. He is afraid of her. He went along with Uttam Maruti Fulare and after return, his condition has also been stated by the informant. The deceased had disclosed her that the applicant had confined him as well as Uttam Fulare in a room in her office and forcibly taken amount of Rs.5,000/-, which was in fact, taken by deceased from Uttam at that moment and gave it to the applicant. This act led to the tension to the deceased and it amounts to harassment and thereby such instigation has led the deceased to commit suicide. There is no supporting evidence that has been collected. Statements of witnesses would clear the transaction. Therefore, when there is evidence against the applicant, the FIR as well as entire proceedings cannot be quashed and set aside.

5. At the outset, we are required to consider the prosecution case, the evidence that has been collected and as to whether it fulfills the ingredients of offence punishable under Sections 306, 506 of IPC. If it is not fulfilling, then the applicant cannot be asked to face the trial. The documents produced along with the case would disclose that deceased appears to be acting as an agent in real estate business and the applicant had entered into a contract. Applicant had seen plot in Bhistbaag Sambhajinagar in Ahmednagar and gave cash of Rs.20,000/- and amount of Rs.1,80,000/- was given by R.T.G.S. mode to the deceased, thereby the amount that was given to deceased towards the transaction was Rs.2,00,000/-. Thereafter, the said transaction turned out to be illegal or could not have been legally completed. Under such circumstance, definitely, deceased was bound to return the amount. If such insistence from the applicant is made, then it cannot be termed as an instigation or abetment *per se*. The FIR discloses that even the deceased was ready to repay the said amount, but he was asking time. It will not be out of place to mention here that the applicant is a Government Servant. It will have to be then presumed that it is her hard earned money, which she was insisting that should be returned. According to the FIR, deceased and Uttam Fulare had gone to the office of applicant on 21.09.2020 and after coming from the said office, it was disclosed to the informant that the applicant had threatened

the deceased and had confined him as well as Uttam Fulare in the office. She got the document on stamp paper executed from him and she allowed them to let go after she was given Rs.5,000/-. It is to be noted that no complaint has been filed by either deceased or by Uttam Fulare in respect of that incident. Thereafter, suicide has been committed in the intervening night of 30.09.2020 and 01.10.2020 by deceased Vishwanath. According to the informant, from 21.09.2020 till 30.09.2020, deceased was in the process of collecting money, but according to her, deceased could not collect the amount. Informant does not say that there was any kind of suicidal tendency or behaviour during the said period from 21.09.2020 to 30.09.2020. Informant was admittedly not accompanying her husband on 21.09.2020. Therefore, statement of Uttam Fulare will have to be considered. He has stated that about seven months prior to the incident, deceased had taken amount of Rs.2,00,000/- from the applicant and as the applicant was insisting for the refund, Vishwanath was under tension. He states that on 21.09.2020, he had gone to M.S.E.B. office where the applicant works along with deceased Vishwanath. Vishwanath had talk with applicant and then on that day, the applicant got in writing from Vishwanath that he would give her the amount. According to him, the said stamp paper was typewritten by the applicant and signed by Vishwanath. Thereafter, Vishwanath asked

Uttam to give Rs.5,000/- and then he gave it to the applicant. At that time, the applicant gave time to repay the said amount to Vishwanath till 30.09.2020 and then Vishwanath and Uttam came back to house. His statement under Section 161 of Cr.P.C. is totally silent on the point that he and Vishwanath were confined by the applicant in her office. In fact, MSEB office is a public office where many persons would be working. How it is possible under such public office to confine anybody is a question. When that theory of confinement and forcible execution of the stamp paper is not supported by Uttam, then it cannot be said that it is fulfilling the ingredients of Section 107 and 306 of IPC. It is to be noted that the said document appears to be not seized by the police, which is stated to be on stamp paper. A photocopy of one document has been produced by the applicant, but it appears that it has been executed on 18.09.2020 and not on 21.09.2020. One Kisan Kopnar and Yogesh Khandve are the witnesses to the said document, which is in fact in handwriting and not typed document. Police have recorded the statement of Yogesh Khandve, Kisan Kopnar and one Ajay Bagade, who were present in the MSEB office on that day. All these persons are saying that the documents were executed on 18.09.2020. None of them support that it was executed on 21.09.2020. These prosecution witnesses have stated that on the said stamp paper deceased Vishwanath signed in their presence and

it appears that there was no objection raised by the deceased. They are also saying that Uttam Fulare was along with Vishwanath on that day. They have all stated that it was the money transaction and by that document Vishwanath promised that he would return the amount by the end of 30.09.2020. At the cost of repetition, it can be said that no active role is attributed to the applicant from either 18.09.2020 or 21.09.2020 till 30.09.2020. No doubt the family members of the deceased are contending that it was the pressure put by the applicant in the nature of instigation has led to the suicide, yet none of them have stated that there was any contact between deceased and applicant after the execution of the said stamp document till the death of deceased. The death is due to hanging, but it cannot be stated that it was the result of any active act in the nature of instigation or abetment by the applicant.

6. 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."

7. 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."

8. 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.”

9. 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 30.09.2020 deceased Vishwanath 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.

II) The FIR bearing Crime No.7377 of 2020 registered with Tophkhana Police Station, Dist. Ahmednagar for the offences punishable under Sections 306 and 506 of IPC as well as the further proceedings in Sessions Case No.113 of 2021 pending before the learned Chief Judicial Magistrate, Ahmednagar, Tq. and Dist. Ahmednagar stand quashed and set aside.

[RAJESH S. PATIL]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm