

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

969 CRIMINAL WRIT PETITION NO.162 OF 2021

- 1 Gorakshanath Rangnath Vahile,
Age 48 yrs., Occ. Service,
- 2 Aruna Gorakshanath Vahile,
Age 43 yrs., Occ. Household,
- 3 Mayur Gorakshanath Vahile,
Age 19 yrs., Occ. Student,

All are r/o B-1, Tulsi Park,
Aute Mala, Samangaon Road,
Nasik Road, Nasik, Dist. Nasik

... Petitioners

... **Versus** ...

- 1 The State of Maharashtra
Through The Police Inspector,
Newasa Police Station,
Newasa, Dist. Ahmednagar.
- 2 Ravindra Dattatray Vahile,
Age 21 yrs., Occ. Nil,
R/o A/p Ekurkhe, Tq. Rahata,
Dist. Ahmednagar.

... Respondents

...

Mr. P.V. Tapse Patil, Advocate for petitioners

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

Mr. S.E. Waghmare, Advocate for respondent No.2

...

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

DATE : 25th NOVEMBER, 2022

ORDER :

1 Present petition has been filed for invoking inherent powers of this Court under Article 226 and 227 of the Constitution of India and Section 482 of the Code of Criminal Procedure, 1973 for quashing First Information Report lodged at the instance of respondent No.2 with Newasa Police Station, Dist. Ahmednagar.

2 Heard learned Advocate Mr. P.V. Tapse Patil for petitioners, learned APP Mr. S.D. Ghayal for respondent No.1 and learned Advocate Mr. S.E. Waghmare for respondent No.2.

3 It has been submitted on behalf of the petitioners that perusal of the First Information Report would show that it has been given by respondent No.2 – informant stating that on 18.11.2020 father of informant left the house on account of dispute between petitioner No.1 and informant's father. Accordingly, a missing complaint was filed at Rahata Police Station on 19.11.2020. Thereafter, on 22.11.2020 Police Inspector of Police Station, Newasa informed respondent No.2 that his father viz. Dattatray Vahile is

found dead in the bed of Godavari river. It is further stated that deceased was physically and mentally harassed by the petitioners and, therefore, he committed suicide by jumping in Godavari river. It is further stated that on 18.11.2020 around 10.30 a.m. when deceased and others were at their home, petitioner No.1 came there and started abusing the deceased and mother of informant with obscene words. At that time, the sister of petitioner No.1 and her husband intervened and tried to mediate the dispute. It is further stated that petitioners continued abusing the deceased as well as threatened to kill him. Petitioners drove the informant, his father, mother and sister out of the house. The deceased was assaulted by petitioner No.1. It is further stated that deceased informed him that he is suffering a lot due to mental and physical harassment at the behest of petitioners and he may do something to his life. Thereafter, around 12.45 p.m. deceased went from village and did not turn up. Accordingly, the First Information Report came to be registered against the petitioners.

4 Learned Advocate for the petitioners has submitted that petitioners are falsely implicated in the alleged crime only to settle the land dispute between the petitioners and respondent No.2, as father of the informant and others wanted to grab the land of the petitioners. It is further submitted that the deceased was HIV positive and was fed up with his life,

therefore, he committed suicide. Despite knowing that petitioner No.1 is real brother of deceased, informant has falsely implicated the petitioners in the crime to settle the personal scores. Petitioners are in no way concerned with the crime. It is further submitted that no specific role is attributed to each of the petitioners in the alleged crime and the allegations levelled against the petitioners are general in nature. There is nothing on record to show involvement of the present petitioners in the alleged crime. There is inordinate delay of 45 days in registering the First Information Report. Learned Advocate for the petitioners, therefore, submits that the First Information Report registered against the petitioners deserves to be quashed and set aside.

5 Per contra, the learned APP as well as learned Advocate for respondent No.2 strongly opposed the petition and on the basis of investigation papers submitted that the allegations in the First Information Report are supported by the statements of the witnesses. Due to dispute about joint landed property deceased Dattatray Vahile was physically and mentally harassed by the petitioners and, therefore, he committed suicide by jumping in Godavari river. Therefore, it is submitted that the prayer of the petitioners for quashing the First Information Report may not be favourably considered.

6 Perusal of the First Information Report would show that there was no serious dispute on the point of property between deceased and the petitioners. It is then contended that on that day i.e. on 18.11.2020 around 10.30 a.m. the petitioner No.1 along with his wife came to house and abused deceased and his wife. Even the sister of deceased as well as her husband are stated to have tried to mediate but the petitioner No.1 was not in a mood to listen. It was the contention of the petitioner No.1 that as to why the deceased has given different numbers of the agricultural lands than the numbers those were actually carrying. Thereafter he insisted that there should be partition in respect Gat No.698/2 on the same date. The informant also states that after the heat exchanges of words and also on the point raised by the deceased against the petitioner No.1 that petitioner No.1 has grabbed the land belonging to their mother and transferred it in the name of his son. It should also be partitioned on that same day and to distribute the loan. The petitioners got annoyed and assaulted deceased. The informant also states that the petitioners had driven him along with his parents out of the house and then they went to a guava garden and sat there. If we consider all these aspects, then the obvious question that arises is - As to why there is no immediate lodging of the report either by deceased or by informant in respect of the same ? It is then stated that at that point of time when they were sitting in guava garden, deceased had stated that he is fed up with the

behaviour of the petitioners since last one year, which is amounting to physical and mental harassment, and he feels that he should do something with his life. He was persuaded. Thus, it is to be noted that the entire incident had taken place around and after 10.30 a.m. Informant then says that his father told him around 12.45 p.m. that they would go to village and then they proceeded on motorcycle. Informant was made to get down from the two wheeler on Ekrukhe to Pimpalwadi road and it was told to the informant by deceased that he would go to village. The second question that arises is that – When the informant knew the mental condition of his father, why he had allowed him to go alone ? But then it can be seen that deceased did not return and after two days the missing report was filed. Dead body appears to have been found on 22.11.2020 in the river of Godavari, but still the First Information Report came to be lodged on 03.01.2021. The importance of lodging of the First Information Report immediately has been explained in **Thulia Kali vs. State of Tamil Nadu, 1972 (3) SCC 393**, wherein it has been observed that -

“First Information Report in a criminal case is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced at the trial. The importance of the above report can hardly be over estimated from the standpoint of the accused. The object of insisting upon prompt lodging of the report to the police in respect of commission of an offence is to obtain early information

regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as the names of eye witnesses present at the scene of occurrence. Delay in lodging the First Information Report quite often results in embellishment which is a creature of afterthought. On account of delay, the report not only gets bereft of the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation. It is, therefore, essential that the delay in lodging of the First Information Report should be satisfactorily explained.”

Here, in this case, there is absolutely no explanation for the delay in lodging the First Information Report. No doubt, we are in a way premature stage; yet, when the first opportunity itself is available in view of the fact that there is a specific column i.e. column No.8 in the printed form of the First Information Report which states, “reason for delay in reporting by the complainant/informant” and the said column No.8 has been kept blank.

7 Perusal of the charge sheet from the point of view that delay is concerned, it is to be noted that on 22.11.2020 itself one Somnath Tulshiram Gadhave, who is the brother-in-law of deceased Dattatraya had lodged report/A.D. with the police. In the said A.D. it has been stated that around 11.30 a.m. on 18.11.2020 there was dispute between Dattatraya and petitioner No.1 in respect of property and thereafter Dattatraya left home without saying anything to anybody. Dispute between two brothers on the

point of partition of the property is not new in this world, however, whether that dispute can be said to be an instigation or abetment to the brother to commit suicide, is a question. When a brother asks for his share in the property to be separated, sometimes voice may raise and even from the contents of the First Information Report it can be seen that as the petitioner No.1 was claiming partition in a particular property, partition in another property was also claimed by deceased to petitioner No.1. Both have raised question in respect of opposite sides action regarding dealing with two different properties. Therefore, such act of demanding partition, by any stretch of imagination, will not amount to abetment. The fact that there was dispute can be expected, however, not lodging of immediate First Information Report might have raised to concoction of the story to the extent that the petitioner No.1 had given threat to kill by saying that he should not reside in the house. Rather it gives an impression that both the brothers were residing separately since prior to that date i.e. 18.11.2020. Further, as aforesaid, the A.D. came to be lodged on the same day but it took about one and half month to lodge the First Information Report. Further, the First Information Report is silent about any earlier incident and statement to that effect which was alleged to have been made by the deceased alleged to be too vague. It cannot be stated that there was mental or physical harassment of Dattatraya about one year prior to 18.11.2020. Statement of Somnath Tulshiram

Gadhave, who had lodged the A.D., has then been taken on 09.01.2021, however, he also not given any reason as to why after the A.D. he had not lodged any report prior to 03.01.2021.

8 Learned APP has more relied upon the statement of witness Indrayani Rangnath Vahile who is the mother of petitioner No.1 and deceased Dattatraya. Perusal of her statement would show that petitioner No.1 is residing at Nashik along with his family members since last many years. There is some land in her name which she has transferred in the name of grandson – present petitioner No.3 and on that count there was dispute between deceased and petitioner No.1. But then she has used the word that those disputes were trifle in nature. It can also be seen that the mother used to reside with deceased Dattatraya and family, but then she says that after the dispute when Dattatraya was allegedly assaulted by kicks and fists, petitioner No.1 along with petitioner Nos.2 and 3 drove Dattatraya, his wife, sons and daughter out of the house. She does not say that she was also driven out of the house. Who had taken them thereafter inside the house and when petitioner No.1 left that place has not been explained by this witness as well as other witnesses also including informant. Even if for the sake of argument we accept that the incident has taken place as it is stated in the First Information Report, then, whether the said act on the part of the petitioner

No.1 would amount to either offence under Section 306 or 506 of the Indian Penal Code will have to be considered.

9 In almost all the cases and especially in **Chitresh Kumar** (supra) 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 "goading" 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).

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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.”

9.1 Further reliance can be placed on the decision in **Vaijinath Kondiba Khandke vs. State of Maharashtra and another**, (2018) 7 SCC 781, wherein it is observed that “*It is true that if a situation is created deliberately so as to drive a person to commit suicide, there would be room for attracting Section 306 of the Indian Penal Code.*” Thereafter, taking into consideration the facts of the case Hon’ble Supreme Court further held that the facts on record herein are completely inadequate and insufficient and then quashed the First Information Report.

9.2 Further, as regards the role alleged to be attracted to petitioner Nos.2 and 3 reliance has also placed on **Somnath vs. The State of Maharashtra and others**, 2018 ALL MR (Cri.) 290, wherein this Court held that *allegations are general in nature and without attributing any specific overt act, then prima facie alleged offence cannot be said to be disclosed.*

10 Another fact, that is, required to be noted is that the prosecution has come with a case that it is a suicide by deceased Dattatraya. No suicide note was found. As per the informant, he was left on road by deceased and deceased proceeded further on motorcycle. The missing report was lodged after two days and thereafter two days the dead body was found in river. In the Postmortem Report no opinion has been given and it is reserved. Viscera was preserved for chemical analysis. The entire charge sheet does not say that anybody had seen deceased jumping into the river. Therefore, basically taking the case of the prosecution as it is on the basis of the entire charge sheet it is not making out a case of suicide. Therefore, when it is doubtful about the cause of death, then, with no certainty it can be said that it is a suicide and under these circumstances, asking the applicants to face trial on the basis of such material it would be totally injustice. Therefore, the case is within the parameters laid down in **State of Haryana and others vs. Ch. Bhajan Lal and others, AIR 1992 SC 604** and this is a case where we should exercise our powers under Section 482 of the Code of Criminal Procedure.

11 For the reasons stated above, following order is passed.

ORDER

1 The writ petition stands allowed.

2 The First Information Report vide Crime No.4/2021 dated 03.01.2021 registered with Newasa Police Station, Dist. Ahmednagar, for the offence punishable under Section 306 of the Indian Penal Code and the charge sheet bearing No.30/2021 i.e. Regular Criminal Case No.43/2022 pending before learned Judicial Magistrate First Class, Newasa, Dist. Ahmednagar and the sessions case, if any, if committed to the Court of Sessions before learned Additional Sessions Judge, Newasa, Dist. Ahmednagar stand quashed and set aside.

(Rajesh S. Patil, J.)

(Smt. Vibha Kankanwadi, J.)

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