

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

23 CRIMINAL APPLICATION NO.459 OF 2021

- 1 Balasaheb Arjun Jogdand,
Age 24 yrs., Occ. Agri.,
R/o Yeota, Tq. Kaij, Dist. Beed.
- 2 Arun Uttam Jogdand,
Age 55 yrs., Occ. Agri.,
R/o Yeota, Tq. Kaij, Dist. Beed.
- 3 Ramesh Arun Jogdand,
Age 26 yrs., Occ. Agri.,
R/o Yeota, Tq. Kaij, Dist. Beed.
- 4 Sushil Arun Jogdand,
Age 28 yrs., Occ. Agri.,
R/o Yeota, Tq. Kaij, Dist. Beed.
- 5 Rambhau Achut Jogdand,
Age 45 yrs., Occ. Agri.,
R/o Yeota, Tq. Kaij, Dist. Beed.

... **Applicants**

... **Versus** ...

- 1 The State of Maharashtra,
Through the Police Station Officer,
Police Station, Kaij, Tq. Kaij,
Dist. Beed.
- 2 Shriram Raosaheb Jogdand,
Age 24 yrs., Occ. Driver,
R/o Yeota, Tq. Kaij, Dist. Beed.

... **Respondents**

...

Mr. S.S. Choudhary, Advocate for applicants

Mr. M.M. Nerlikar, APP for respondent No.1

Mr. R.D. Khadap, Advocate for respondent No.2

...

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

DATE : 29th AUGUST, 2022

JUDGMENT : (PER : SMT. VIBHA KANKANWADI, J.)

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

2 The applicants, by invoking the inherent powers of this Court under Section 482 of the Code of Criminal Procedure, 1973, praying for quashment of the First Information Report lodged against them as well as the entire proceedings, for the offence punishable under Sections 306, 504, 506 read with Section 34 of the Indian Penal Code, 1860.

3 Heard learned Advocate Mr. S.S. Choudhary for the applicants, learned APP Mr. M.M. Nerlikar for respondent No.1 and learned Advocate Mr. R.D. Khadap for respondent No.2.

4 Respondent No.2 – original informant is the son of the deceased Raosaheb Shesherao Jogdand. Deceased Raosaheb was residing with his wife Minakshi and two children Shriram i.e. informant and Ashok. Applicant No.1 has agricultural land adjacent to the land belonging to Raosaheb and they are distant relatives of each other. There was dispute between the applicants and deceased Raosaheb about 1½ month prior to the incident and complaint to that effect was filed with Police Station. Thereafter, Raosaheb had gone to cut grass on 21.08.2020 around 02.00 p.m. in his land. After returning he informed that he was obstructed by applicant No.2 and by catching hold of his collar he had abused Raosaheb and asked Raosaheb not to cut the grass. Informant and other family members had persuaded Raosaheb and that fact was informed to one Bharat Balbhim Jogdand as well as Balasaheb Laxman Jogdand. Those persons had then given understanding to the applicants. After few days again the applicants, on different ground, were giving abuses and threat to kill the informant and his father. When this fact was also informed by the deceased, the other family members told him that since the agricultural land is adjacent to each other, they would file a case in Court after the lock-down is over. On the same day, when he had gone to purchase some grocery items around 7.00 p.m., he found that his father was lying by the side of the road. When he went near father, he found poisonous substance bottle and the father was unconscious. Therefore, he called other

persons and they made arrangements to take deceased to Primary Health Centre, Kaij and then he was referred to Civil Hospital, Ambajogai. He was further referred to Civil Hospital, Latur. Raosaheb expired around 6.00 p.m. on 25.08.2020. According to the informant, due to the ill-treatment and harassment of the applicants Raosaheb has committed suicide.

5 Learned Advocate for the applicants after taking this Court through the above First Information Report submitted that even if we take the First Information Report as it is, it does not amount to abetment in any manner. There was no active role alleged to have been played by any of the applicants to instigate Raosaheb to commit suicide. The glaring discrepancy can be found from the fact that as per the statements of the witnesses under Section 161 of the Code of Criminal Procedure, which consists widow of the deceased and another son, daughters-in-law and other relatives of the deceased as well as Balasaheb Laxman Jogdand, who had intervened and given advice to the applicants, it appears that the entire incident had taken place on 21.08.2020. Whereas, the First Information Report says that after 21.08.2020 after few days the acts continued and thereafter though an assurance was given that after the lock-down is over they would file a Court case; yet, Raosaheb committed suicide. This glaring defect goes to the root of the case. The complaint that was allegedly filed by Raosaheb 1½ month

prior to the incident has not been collected by the Investigating Officer. Therefore, when there was no motive at all, it cannot be said that the applicants would have abetted the commission of the suicide by Raosaheb. It would be then futile exercise to ask the applicants to face the trial. He, therefore, prayed for quashing of the First Information Report as well as the entire proceedings.

6 Per contra, the learned APP as well as learned Advocate appearing for respondent No.2 strongly opposed the application and submitted that in fact, initially police complaint was given 1½ month prior to the incident and since then the acts of the accused continued to abuse and give threat to kill the informant as well as deceased. The main incident had taken place on 21.08.2020. When applicant No.2 had obstructed and assaulted Raosaheb, the other accused persons were present there. After the incident, Bharat Balbhim Jogdand and Balasaheb Laxman Jogdand had intervened. Even after the act of persuasion it appears that Raosaheb had fear in his mind and he had expressed before the wife that due to the harassment of the applicants he has no desire to live but to commit suicide. That means, the acts of harassment were to such an extent that Raosaheb felt that he has now left with no option but to commit suicide. Therefore, when there is evidence against the applicants, this will not be the fit case where the

First Information Report as well as entire proceeding should be quashed and set aside.

7 Since the contents of First Information Report are already narrated, those are not reproduced once again. Suffice it to say that the contents of the First Information Report disclose that about 1½ month prior to the incident there was quarrel and complaint was given to the Police Station against all the applicants. The First Information Report is silent about the period from filing of that complaint till 21.08.2020 about the behaviour of the applicants with the deceased. It is then stated that on 21.08.2020 when Raosaheb had alone gone to the field to cut the grass, he was obstructed, abused and assaulted by applicant No.2. The First Information Report is silent about the presence of other applicants. On that day itself mediation had been done by Bharat Jogdand and Balasaheb Jogdand. Then, the First Information Report says that after some days the applicants were abusing and were giving threat to the informant as well as his father on some or the other reasons. Thereafter, it is stated that after it was told to Raosaheb that after lock-down they would file a case against the applicants, on the same day informant found that his father had consumed poisonous substance and then he was taken to hospitals. Ultimately Raosaheb succumbed on 25.08.2020. At the cost of repetition, it can be said that in their statements

under Section 161 of the Code of Criminal Procedure almost all the witnesses have stated that when Raosaheb had gone alone to the field to cut the grass, he was abused by applicant No.2 and the other applicants were also present, who had then by catching hold of the collar of deceased abused him and then went away and all these acts were done on 21.08.2020. Statement of Bharat Jogdand and Balasaheb Jogdand is also on the same line. Rather they have not stated any earlier dispute which had taken place about 1½ month prior to the incident, but then they both have specifically stated that they had persuaded Raosaheb from not to go to Police Station. Rather these two witnesses appears to have independently met Raosaheb and gave same kind of assurance and had sent him to home and thereafter they had contacted the applicants and given advice to them that they should not pick up quarrels in respect of the land. That means, they had not sat together with Raosaheb, his family members and the applicants to give advice. If we consider the statements of these two witnesses, then, Raosaheb had met them around 3.00 p.m. on 21.08.2020 and by calming him down they had sent him to house and then the informant had found his father was lying on the ground, outside his house, around 7.00 p.m. That means, these two witnesses are not aware with the incident that had taken place or that had not taken place between 3.00 p.m. to 7.00 p.m. What was the mental condition of Raosaheb when he went outside the house, from where he had purchased the

poisonous substance or whether it was available in his house, since he is an agriculturist; all questions are unanswered in the entire charge sheet. No doubt, the Postmortem Report gives probable cause of death as “Multi organ failure due to poisoning” and the C.A. report appears to be yet to be received to match with the substance that was found in the viscera is the same with that of the substance in the bottle which was found near Raosaheb. Even if we take the fact as it is that Raosaheb has committed suicide by consuming poisonous substance; yet, by any stretch of imagination whatever has been stated by the informant in his First Information Report as well as the statements of the witnesses cannot be said to be amounting to abetment or instigation as contemplated under Section 107 and/or 306 of the Indian Penal Code.

8 It can be useful to refer the decision in **M. Arjunan vs. State (2019) 3 SCC 315**, wherein in para No.7 of the Judgment the Hon’ble Apex Court has held that -

“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.”

9 Another decision of the Hon’ble Apex Court which can be useful, is in **S. S. Chheena vs. Vijay Kumar Mahajan, (2010) 12 SCC 190**, wherein in para No.25 of the Judgment, it has been observed that -

“ 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. ”

10 In **Rajesh vs. State of Haryana, (2020) 15 SCC 359**, the Hon’ble Apex Court, in Para 9 of the Judgment, has held that -

“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.”

11 The act of quarrel, abuses and giving threat to kill, cannot be taken as an instigation under Section 107 of the Indian Penal Code. Further, as aforesaid, the incident that had allegedly taken place in the field of Raosaheb was at about 2.00 p.m. on 21.08.2020 and the deceased has consumed the poisonous substance at about 7.00 p.m. What was his mental condition or what happened in between those two events, has not been stated by anybody. At the cost of repetition, it can be said that when the alleged threat and dispute was going on since last 1½ month, then it cannot take the shape of instigation or abetment as contemplated under Section 107 or 306 of the Indian Penal Code.

12 It would be a futile exercise to ask the applicants to face the trial with such kind of evidence and, therefore, as the case is within the parameters laid down in **State of Haryana and others vs. Ch. Bhajan Lal and others**, reported in **AIR 1992 SC 604**, this is a fit case where we should exercise our powers under Section 482 of the Code of Criminal Procedure. Hence, following order.

ORDER

- 1 The application stands allowed.
- 2 The First Information Report bearing Crime No.333/2020 dated 26.08.2020 registered with Kaij Police Station, Tq. Kaij, Dist. Beed, for the offence punishable under Sections 306, 504, 506 read with Section 34 of the Indian Penal Code, 1860 and the entire proceedings of Regular Criminal Case No.85/2020 pending on the file of the learned Judicial Magistrate First Class, Kaij, Dist. Beed, stand quashed and set aside.
- 3 Rule made absolute in above terms.

(Rajesh S. Patil, J.)

(Smt. Vibha Kankanwadi, J.)

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