

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

CRIMINAL APPLICATION NO.1556 OF 2022

SUMEET PRASHANT PATEL

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

...

Mr. M.R. Deshmukh, Advocate for applicant

Mr. A.M. Phule, APP for respondent No.1

Mr. S.G. Kawade, Advocate for respondent No.2

...

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

RESERVED ON : 25st NOVEMBER, 2022

PRONOUNCED ON : 20th DECEMBER, 2022

ORDER :

1 Present application has been filed under Section 482 of the Code of Criminal Procedure, 1973 for quashing the First Information Report vide Crime No.54/2021 dated 06.03.2021 registered with Badnapur Police Station, Dist. Jalna, at the behest of respondent No.2, for the offence punishable under Section 306 of the Indian Penal Code, 1860.

2 Heard learned Advocate Mr. M.R. Deshmukh for the applicant, learned APP Mr. A.M. Phule for respondent No.1 and learned Advocate Mr. S.G. Kawade for respondent No.2.

3 It will not be out of place to mention here itself that Criminal Application No.976 of 2022 with Application No.1094 of 2022 was on board on 20.06.2022, which is stated to have been arising out of the same crime. Learned APP, on instructions of the Investigating Officer, made a statement that the investigation has revealed that none of those applicants have committed offence as alleged and the Investigating Officer would file appropriate proceedings before learned Magistrate. Accordingly, it appears that 'A' Summary was filed by Investigating Officer before learned Judicial Magistrate First Class, Badnapur and after the filing of the said 'A' Summary, concerned Judicial Magistrate First Class has issued notice to present respondent No.2/informant to appear before the concerned Magistrate and put forth any say in respect of that 'A' Summary, which was filed for deciding that the offence under Section 306 of the Indian Penal Code has not committed.

4 In the background of this subsequent event it is to be noted that the present applicant was the Manager serving with Maharashtra Gramin

Bank at Ashta Kasar, Tq. Lohara, Dist. Osmanabad, at the relevant time. Respondent No.2 has filed the said First Information Report stating that due to the abetment by the present applicant his father Devidas Vitthal Matre committed suicide on 04.03.2021.

5 Learned Advocate appearing for the applicant has vehemently submitted that it is not in dispute; as it is appearing in the First Information Report itself that deceased Devidas had taken loan from the bank where the applicant was serving and the said loan has not been repaid. Notice for the repayment was also issued. Further, by way of documents it can be pointed out that the demand notice under Section 13(2) Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 was issued to deceased Devidas and his two brothers on 01.12.2020. Copy of the said notice has been produced and it shows that amount of Rs.9,00,986/- was due from them. The account extract is also given. Thereafter, it appears that the house belonging to the deceased was decided to be taken in possession and possession intimation in Form 'A' was given to them on 09.02.2021. It was also served on them. The said house belonging to the deceased and brothers was in fact, attached as per the provisions of SARFAESI Act. In this background, it can be said that the applicant was doing his duty of getting the loan amount recovered when he has taken steps

for issuing notice of demand as well as in respect of possession of the house to be obtained. These acts cannot be taken as acts of instigation in any manner. Further, from the First Information Report itself it is to be noted that the suicide note appears to have been written on 26.02.2021, but actual suicide is on 04.03.2021. The First Information Report on the face of it is not making out any case of the offence punishable under Section 306 of the Indian Penal Code and, therefore, even now when the learned Judicial Magistrate First Class has issued notice to the informant; any hanging sword could not be put on the applicant. He relied on the decision in **State of Haryana and others vs. Bhajan Lal and others, 1992 Supp (1) SCC 335** and submitted that the present case is covered under the parameters and, therefore, it is a fit case where this Court should exercise its inherent powers.

6 Per contra, the learned APP and learned Advocate for respondent No.2 strongly opposed the application and submitted that when the learned Judicial Magistrate First Class has been seized with the matter and he would make inquiry after taking into consideration the objections of respondent No.2, if any, this cannot be taken as a fit case for the grant of relief in the nature of inherent powers.

7 As aforesaid, the Investigating Officer after completion of the

investigation has already come to the conclusion that no offence as alleged under Section 306 of the Indian Penal Code is transpiring. It is not in dispute that deceased Devidas committed suicide but what is important is the reason behind his suicide. The contents of the First Information Report would show that he is the son of deceased Devidas and he admits that his father along with his brothers i.e. brothers of the father had obtained loan from Maharashtra Gramin Bank, Branch Shelgaon, Tq. Badnapur, where the applicant is working as Branch Manager. It is not in dispute that the notices were issued by the Bank on 09.02.2021 and 24.02.2021 in the name of deceased as well as his brothers for the repayment of the loan amount. Thereafter, even the immovable property appears to have been attached. Further, according to the informant, he along with his uncle had gone to the bank where the applicant and his superior met them. It is stated that they were requesting to allowed them to deposit principal amount of Rs.4,00,000/- and waive the amount of interest. But, at that time it is said that the accused and his superior abused, in the sense, that they are not caring for applicant's relative as they have no concern with it (तूमचा माणूस जगला काय मेला काय आम्हाला काही हरकत नाही). It is then stated that the informant and uncle informed the deceased about what happened in the bank with them. Thereafter, it is said that the suicide note was written and deceased committed suicide by consuming poisonous substance on 04.03.2021.

8 First and the foremost fact that is required to be noted is that the incident has taken place on 04.03.2021 and the First Information Report has been lodged on 06.03.2021. Therefore, there appears to be delay. But in order to attribute a role to the applicant first of all we will have to consider the suicide note. The suicide note appears to have been written on 26.02.2021, but deceased committed suicide on 04.03.2021. The proximity between the alleged incident dated 26.02.2021 and then writing of the suicide note with the commission of the crime after about five days raises suspicion as well as it cannot be considered as the immediate cause to abet the commission of suicide by Devidas. The First Information Report is silent as to what was the normal routine of deceased from 26.02.2021 to the time till suicide on 04.03.2021. When the alleged suicide note was written and suicide was not committed immediately thereafter, it is hard to believe that the contents of the suicide note were in anticipation of death. Therefore, it cannot be said that even at this prima facie stage that the said suicide note can be considered under Section 32 of the Indian Evidence Act. Admittedly, deceased was not present in the bank when the applicant and his superior had allegedly said anything to the informant and uncle. Informant says that he and his uncle had then told about the alleged incident/happening in the bank with them to the deceased after their return. In other words, there was no direct dialogue between deceased Devidas and the applicant. On this

count also it cannot be taken that any act as alleged in the First Information Report against the applicant would amount to instigation/abetment within the purview of Section 107 or 306 of the Indian Penal Code. Being the Manager of the Bank he has duty to issue various notices to those borrowers of the bank, who have not repaid the loan. Whatever action in respect of issuance of notice of demand as well as attachment are on behalf of the bank and not in the individual capacity of the applicant. When Form No.'A' regarding possession notice of the house was given on 09.02.2021, deceased Devidas as well as his brothers ought to have knocked the door of the Court or any appropriate authority if they had the intention to repay part of the loan/outstanding amount. At the cost of repetition, it can be said that issuing demand notice and taking action for securing the loan amount through the mortgaged property by a Bank Manager on behalf of the bank from whom the loan has been taken will not amount to instigation or abetment to commit suicide, if the borrower commits suicide. 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 applicant would amount to offence under Section 306 of the Indian Penal Code will have to be considered.

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.”

10 Though the learned Magistrate appears to have been now issued notice to respondent No.2 calling upon to put forth his say on ‘A’ Summary report filed by the Investigating Officer, it would be injustice to ask the applicant to any way face the trial or suffer for indefinite period. The case is squarely coming within the parameters laid down in **Bhajan Lal** (supra). Therefore, application deserves to be allowed. Hence, following order.

ORDER

1 Application stands allowed.

2 The First Information Report vide Crime No.54/2021 dated 06.03.2021 registered with Badnapur Police Station, Dist. Jalna, for the offence punishable under Section 306 of the Indian Penal Code, 1860 stands quashed and set aside.

(**Rajesh S. Patil, J.)**

(**Smt. Vibha Kankanwadi, J.)**