

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1414 OF 2020

- |    |                                          |   |  |
|----|------------------------------------------|---|--|
| 1. | Ramesh S/o Shivaji Jadhav                | ] |  |
|    | Age : 39 years, Occ : Advocate & Agril., | ] |  |
|    | R/o : Bhosa, Tq. Manwat,                 | ] |  |
|    | Dist. Parbhani.                          | ] |  |
| 2. | Shivaji S/o Annasaheb Jadhav             | ] |  |
|    | Age : 76 years, Occ : Agril.,            | ] |  |
|    | R/o as above.                            | ] |  |
- ... Applicants.**  
(Orig. Accused)

***Versus***

- |    |                                 |   |  |
|----|---------------------------------|---|--|
| 1. | The State of Maharashtra,       | ] |  |
|    | Through Police Station Officer, | ] |  |
|    | Police Station Manwat,          | ] |  |
|    | Tq. Manwat, Dist. Parbhani.     | ] |  |
| 2. | Shivaji S/o Bhimrao Bhosale,    | ] |  |
|    | Age : 36 years, Occ : Agril.,   | ] |  |
|    | R/o. Bhosa, Tq. Manwat,         | ] |  |
|    | Dist. Parbhani                  | ] |  |
- ... Respondents**  
(Respondent No.2  
Orig. Complainant)

...

Mr. Gajanan G. Kadam, Advocate for Applicant.

Mr. S. D. Ghayal, APP for Respondent No.1-State.

Mr. Chaitanya C. Deshpande, Advocate for Respondent No.2 (Appointed).

...

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

**DATE : 21 NOVEMBER 2022**

**JUDGEMENT (ABHAY S. WAGHWASE, J.) :**

1. Present proceeding at the instance of applicant Nos.1 and 2 is for

quashing of crime and charge-sheet, arising out of FIR at the hands of respondent no.2 herein, for the offence punishable under section 306 read with section 34 of Indian Penal Code. Precisely applicants are seeking quashment of the same by exercise of inherent powers under section 482 of Cr.P.C.

### **Factual matrix alleged in FIR**

2. Deceased Bhimrao Bhosale resident of Bhosa, taluka Manwat was owner of 08 acres land in the vicinity of Bhosa. Out of said land, Bhimrao had disposed of 02 acres land to applicant no.1 Ramesh Shivaji Jadhav by executing sale deed. Complainant - son was unaware of the said transaction. Subsequently, Bhimrao also sold 02 acres of land to one agriculturist of Gunj, who in turn further sold the said land to Sopan Shripatrao Waghmare. It was decided that Rs. 2 lakh were to be returned to both of them and get the lands redeemed.

Two months prior to FIR, Ramesh Jadhav and Sopan Waghmare were insisting deceased Bhimrao to get the lands transferred in their name.

Fifteen days prior to FIR, Ramesh Jadhav, Subhash Jadhav, Shivaji Annasaheb Jadhav, Sopan Waghmare had tied Bhimrao to a cot. Neighbouring land owner Ramu Pralhad Jadhav untied deceased Bhimrao. All this was duly reported by Bhimrao to the complainant. Complainant assured above persons that his father would repay their amount.

On 18.06.2019, Bhimrao committed suicide by hanging himself to a tree in the field. Hence on the next day, i.e. on 19.06.2019, son set the law in motion against Ramesh Jadhav, Subhash Jadhav, Shivaji Jadhav, Sopan Waghmare holding them responsible for suicidal death of Bhimrao. Resultantly, crime was registered and investigation was undertaken by Manwat Police Station and after completing the same charge-sheet came to be filed.

It is the above crime and the charge-sheet, which is now sought to be quashed by both the applicants herein.

### **SUBMISSIONS**

3. Learned counsel for applicants would open his arguments by submitting that instant crime is sheer abuse of process of law. FIR is false, afterthought and out of annoyance. It is putforth that there is no denial that there was transaction of sale of land, but it was valid, legal and by executing registered deeds. That deceased Bhimrao had sold land to Kerba Nemane on 06.04.2010 by way of registered sale deed and present applicant no.1 purchased the said land also by executing registered sale deed on 10.08.2012 i.e. from Kerba. Consequently, he pointed out that apparently there was no direct transaction between present applicant no.1 and deceased Bhimrao. As such, it is his submission that there was no nexus whatsoever between deceased and applicant no.1 and therefore according to learned counsel his involvement of said applicant is apparently false.

4. It is further pointed out that even going by the contents of FIR and entire charge-sheet, one would not come across any material to show that there was any abetment to commit suicide. According to him, necessary ingredients for attracting offence under section 306 of IPC are patently missing. It is his submission that reference of present applicant has come only in the backdrop of sale transactions and even the same were not directly entered by the applicant and deceased and therefore applicant no.1 ought not to have been implicated and so should not be allowed to unnecessary face prosecution. Hence, he prays for granting relief as prayed.

5. In answer to above, on behalf of State learned APP would submit that FIR is lodged immediately by none other than son of deceased Bhimrao. Taking us through the FIR, he pointed out that applicants herein had entered into transaction with deceased Bhimrao and there is material in the FIR that accused were insisting and pressurizing deceased to transfer the land in their name. There was continuous harassment for above demand. He pointed out that two weeks prior to the suicide, persons including both the applicants had detained deceased by tying him down to a cot for the whole night and he was released by untying on next day by neighbour and his statement is also on record. Therefore, on the strength of complaint and statements of relevant witnesses including family members of deceased, ample material has come on record regarding complicity of applicants. Therefore, it is his submission that

both applicants are liable to face prosecution and so he prays to dismiss the application.

6. On behalf of complainant learned counsel also resisted the application and relief by making submissions on the same lines as like APP. He pointed out that applicants are solely responsible for the suicidal hanging by Bhimrao. Applicants and other two have entered into transaction with deceased. That it was agreed that deceased would repay the loan and get his land released. However, applicants were intending to get the land transferred in their name and therefore there was continuous harassment to the deceased. Prior to the suicide, they had indulged in tying down deceased. All such material has come on record. Applicants are solely responsible for abetting suicide of Bhimrao and as such they are liable to face legal action. Hence, he prays for dismissal of the application.

7. Before advertng to the merits of the case to ascertain whether the case for quashment of crime under section 306 of IPC is made out, it would be desirable to give a brief account of objects, scope and circumstances necessitating exercise of inherent powers bestowed on this court under the provision of section 482.

8. There are umpteen judgments on the scope, object and powers of exercise of provision of Section **482 of Cr.PC**. It would be profitable to refer to

few landmark judgments, wherein the Hon'ble Apex Court has time and again reiterated that inherent powers under section 482 of Cr.P.C. can be exercised by the High Court; *firstly*, to give effect to an order under Cr.P.C., *secondly*, to prevent abuse of process of court and *thirdly*, to secure ends of justice.

In the landmark case of ***Inder Mohan Goswami and Anr. v. State of Uttaranchal and Ors.***, reported in ***(2007) 12 SCC 1***, it was observed as under:

*“23. This Court in a number of cases has laid down the scope and ambit of courts’ powers under section 482 of Cr.P.C. Every High Court has inherent powers to act ex debito justitiae to do real and substantial justice, for the administration of which alone it exists, or to prevent abuse of the process of the Court.”*

(i) to give effect to an order under the Code;  
(ii) to prevent abuse of the process of the court, and (iii) to otherwise secure the ends of justice.

*24. Inherent powers under section 482 of Cr.P.C. though wide have to be exercised sparingly, carefully and with great caution and only when such exercise is justified by the tests specifically laid down in this section itself. Authority of the Court exists for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the court, then the court would be justified in preventing injustice by invoking inherent powers in absence of specific provisions in the statute.”*

9. Similarly, the Hon'ble Apex Court in the case of ***State of Orissa v. Saroj Kumar Sahoo*** ; ***(2005) 13 SCC 540***, the Hon'ble Apex Court, in para 8, made the following observations :

“8. ... While exercising the powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone the courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers the court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the report, the court may examine the question of fact. When a report is sought to be quashed, it is permissible to look into the materials to assess what the report has alleged and whether any offence is made out even if the allegations are accepted in toto.”

Similarly, in ***Vineet Kumar v. State of U.P.*** ; (2017) 13 SCC 369, after referring to several other cases, including ***State of Haryana and others v. Ch. Bhajan Lal*** ; ***AIR 1992 SC 604***, the Hon’ble Apex Court concluded and made following observations in Paragraph No. 41 :

“41. Inherent power given to the High Court under Section 482 Cr.P.C is with the purpose and object of advancement of justice. In case solemn process of court is sought to be abused by a person with some oblique motive, the court has to thwart the attempt at the very threshold. The court cannot permit a prosecution to go on if the case falls in one of the categories as illustratively enumerated by this Court in ***State of Haryana v. Bhajan Lal*** ; 1992 Supp (1) SCC 335. Judicial process is a solemn proceeding which cannot be allowed to be converted into an instrument of operation or harassment. When there are materials to indicate that a criminal proceeding is manifestly attended with mala fide and proceeding is maliciously instituted with an ulterior motive, the High Court will not hesitate in exercise of its jurisdiction under Section 482 Cr PC to quash the proceeding under Category (7) as enumerated in *State of Haryana v.*

*Bhajan Lal (supra), which is to the following effect:*

*“102. ... (7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”*

*Above Category 7 is clearly attracted in the facts of the present case. Although, the High Court has noted the judgment of State of Haryana v. Bhajan Lal, but did not advert to the relevant facts of the present case, materials on which final report was submitted by the IO. We, thus, are fully satisfied that the present is a fit case where the High Court ought to have exercised its jurisdiction under Section 482 Cr PC and quashed the criminal proceedings.”*

Based on above **precedent**, the Hon’ble Apex Court **very recently** in the case of ***Mahendra K.C. v. State of Karnataka and another ; (2022) 2 SCC 129*** observed that “while exercising powers under Section 482 Cr.PC., for quashing proceedings, following tests are required to be applied, **firstly**, whether the allegations made in the complaint, prima facie constitute an offence; and **secondly**, whether the allegations are so improbable that a prudent man would not arrive at the conclusion that there is sufficient ground to proceed with the complaint.

This is the settled legal position on scope and object of Cr.PC. that can be culled out from various rulings discussed above.

10. Here, prosecution is launched against applicants for commission of offence under section 306 of IPC. As to when charge under section 306 of IPC can be said to be brought home, is time and again dealt and discussed in various rulings. It would be profitable to briefly discuss settled legal position on this aspect.

11. Section 306 of IPC deals with punishment for abetment of suicide. As to what amounts to abetment is also fairly settled. Observations to that effect made by the Hon'ble Apex Court in ***Mahendra K.C.*** (supra) in para 23 to 25 read as follows :

*“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, *Vajjnath 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.

12. In the light of above discussed legal requirements of provisions under section 482 of Cr.PC. and 306 of IPC, we proceed to test the case in hand to see whether it is a fit case for grant of relief as prayed for.

### ANALYSIS AND SUMMATION

13. We have carefully examined the FIR which is at the instance of

son of deceased Bhimrao, who was an agriculturist having land at Bhosa, Taluka Manwat. It is revealed from the FIR that deceased Bhimrao was owner of 08 acres of land. It is emerging that five to six years back Bhimrao entered into a transaction with regard to 02 acres of land with one Ramesh Shivaji Jadhav. It is alleged in the FIR by son of deceased, that subsequently again transaction was entered into with one agriculturist of Gunj and one Sopan Waghmare. Said transaction was in lieu of loan transaction. It was agreed that by repaying Rs.2 lakh with interest, the land would be redeemed. However, Ramesh Jadhav and Sopan Waghmare were insisting deceased Bhimrao to transfer the land in their names and even handover their possession. It is alleged that fifteen days back, in the night, deceased Bhimrao was tied to the cot while he was sleeping in the field. Only because of continuous harassment at the hands of persons named in the FIR, it is alleged that deceased had hanged himself to a tree on 18.06.2019.

14. Apart from the above FIR, record and file comprising of charge-sheet show that Investigating Officer has recorded statements of relatives and even immediate neighbour Ramchandra. On visiting their statements they all are unanimously reiterating about Bhimrao entering into transaction of pieces of land to Ramesh Jadhav, Kerba and Sonap Waghmare. They all speak that after repayment of money borrowed along with interest the land was to be redeemed. However, Ramesh Jadhav and Sopan Waghmare insisted for

transferring the land in their name and handing over possession. They all also speak about deceased Bhimrao tied with a cot by Ramesh Jadhav, Subhash Jadhav, Shivaji Annasaheb Jadhav, and Sopan Waghmare.

15. On critical analysis of the contents appearing in the FIR and the statements under section 161 of Cr.P.C. and on going through the record and file, it is emerging that deceased Bhimrao had entered into transaction with Ramesh Jadhav. Said transactions of the land was entered approximately five to six years back. According to informant, his deceased father had also entered into transaction of 02 acres of land with one of the agriculturist at Gunj, however he candidly agrees about not knowing his name. Then there are allegations about accused insisting for transfer of land. In the FIR apparently except insistence for transfer, neither manner nor nature of harassment is reflected. The copies of sale instances placed on record show that said transactions were of 13.06.2014, i.e. between Sopan Waghmare on one hand and deceased Bhimrao on the other hand. Therefore sale transaction was almost five years prior to the suicide. Other sale instance regarding transaction of agriculturist of Gunj is not finding placed on record. Applicant no.1 has come up with a specific case that there was no transaction directly with deceased Bhimrao rather it was with Kerba Namdeo Nemane. However, statement of such Kerba is not recorded by police for the best reasons known to him.

16. There is also allegation that, fifteen days back deceased was tied to the cot by Ramesh Jadhav, Subhash Jadhav, Shivaji Jadhav and Sopan Waghmare. Except recording statement of immediate neighbour Ramchandra Pralhad Jadhav, there is no further investigation or evidence in that direction. This is a solitary instance quoted in the FIR. There is vague statement that each of the above persons visited house as well as field and put up demand of money or to relinquish right over the field. Thus, the FIR is full of bald, vague and general allegations. No instance of continuous harassment is attributed the applicants herein. The circumstances and conditions reflected in *Chitresh Kumar Chopra and Unnikrishnan Nair (Supra)* are patently missing.

17. In the light of above discussed law and on reverting to the facts of the case in hand, we are convinced that present case is a fit case for exercise of powers under section 482 of Cr.P.C. as essential ingredients for attracting section 306 of IPC are missing. *Mens rea* is also patently missing. Complaint is vague, non specific as regards to abetment of suicide is concerned.

Consequently, there is no hesitation to hold that present case is sheer abuse of process of law. To meet the ends of justice intervention at our hands by exercise of inherent power is inevitable. Hence, applicant succeeds. Resultantly, we pass the following order :-

**ORDER**

- i) The criminal application is allowed in terms of clause (C).
- ii) The application is accordingly disposed of.

**(ABHAY S. WAGHWASE, J.)**

**(SMT. VIBHA KANKANWADI, J.)**