

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.1703 OF 2021

1. Purushottam s/o Dadarao Bhutkare
 2. Dadarao s/o Ganpatrao Bhutkare
 3. Vanraj s/o Dadarao Bhutkare
 4. Anand s/o Kishanrao Sawant
 5. Prasenjit s/o Anandrao Sawant
 6. Jyoti w/o Raghunath Ingole
 7. Shaikh Sumer Shaikh Mukhtar
 8. Shaikh Mukhtar Shaikh Jaji
 9. Shaikh Samdani Ibrahim
 10. Dadarao s/o Namdevrao Navghare
 11. Namdev s/o Dadarao Navghare
 12. Savita w/o Dadarao Navghare
- Applicants

Versus

1. The State of Maharashtra
 2. Namrata w/o Prashant Indurkar
- Respondents

WITH

CRIMINAL APPLICATION NO.1143 OF 2021

1. Manish s/o Dattatraya Wadje
 2. Parth s/o Manish Wadje
 3. Madhav s/o Dattaram Pawle
- Applicants

Versus

1. The State of Maharashtra

2. Namrata w/o Prashant Indurkar Respondents

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Mr. S.S. Gangakhedkar, Advocate for the applicants in Criminal Application No. 1703 of 2021.

Mr. Amit A. Mukhedkar, Advocate for the applicants in Criminal Application No. 1143 of 2021.

Mr. M.M. Nerlikar, A.P.P. for respondent No. 1 – State.

Mr. A.V. Indrale Patil, Advocate for respondent No. 2.

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CORAM : V.K. JADHAV AND
SANDIPKUMAR C. MORE, JJ.

DATED : 04-03-2022.

ORDER (Per Sandipkumar C. More) :

1. Heard finally with consent of the parties at the admission stage.

2. The applicants in both these applications are claiming quashing of F.I.R. bearing Crime No. 136/2021 registered with Bhagyanagar Police Station, Nanded on 29.04.2021 for the offence punishable under Section 306 read with Section 34 of the Indian Penal Code (for short, "I.P.C.").

3. On perusal of the F.I.R., it appears that one Namrata Prashant Indurkar is making allegations against all the aforesaid applicants that her husband Prashant Indurkar was continuously harassed by these applicants on account of money transactions. Due to such harassment, her husband

Prashant could not bear the said tension, and therefore, on 28.04.2021 at about 6.00 p.m. he consumed poison. After consuming poison, Prashant made a phone call to his brother Pravin and called him near one petrol pump by the side of Welington School. Pravin immediately rushed there and got admitted Prashant in Vishnupuri Government Hospital. While going to the said hospital, Prashant had given one chit to Pravin wherein it was mentioned that due to harassment from the aforesaid applicants and others, he consumed poison. On subsequent death of Prashant, the present F.I.R. has been lodged.

4. Learned Counsels for the applicants submit that deceased Prashant Indurakar had in fact, by joining hands with Santosh Deshmukh and Sandeep Kadam, had lured the applicants by posing themselves to be the persons of high influential character in connections with several Banking Institutions, Health Department, Ministry of Railway, Government of India. Deceased Prashant had in fact cheated all the applicants by assuring them for providing jobs to them or their family members in the aforesaid respective organizations and also collected huge amounts from them on that pretext. They further submit that even if the contents of

F.I.R. are perused, then also no offence under Section 306 of I.P.C. is made out, as besides the suicide note there is nothing mentioned in the complaint as to when the alleged money transactions were made in between the parties and deceased Prashant. Further, they submit that it is not at all specified in the complaint itself that on what count there were money transactions between deceased Prashant and the applicants. Merely on the basis of the suicide note, without specifying the details of money transactions, abetment cannot be considered on the part of the applicants resulting into the death of Prashant. Learned Counsels for the applicants relied on the following judgments :

***(i) S.S. Chheena vs. Vijay Kumar Mahajan and another
(2010) 12 SCC 190***

***(ii) Balasaheb and another vs. State of Maharashtra
2021 SCC OnLine Bom 3347***

5. On the contrary, learned A.P.P. as well as learned Counsel for respondent No. 2 / informant vehemently opposed the applications on the ground that in the suicide note, names of the applicants alongwith others are mentioned with the allegations that those persons had harassed Prashant Indurkar in such a manner that he had left with no option but to commit suicide. They contended that specific

names of the applicants are mentioned in the suicide note left behind by the deceased Prashant. As such, they prayed for dismissal of the applications.

6. We have carefully gone through the allegations in the F.I.R. as well as relevant documents and also the police papers submitted by learned A.P.P. On perusal of the same, admittedly it appears that deceased Prashant had left suicide note while consuming the poison. Further, there is no dispute in respect of the death of Prashant due to consumption of poison. It is significant to note that though the names of the applicants are mentioned in the suicide note, but in the complaint itself the informant / respondent No.2 has only made allegations that there were certain money transactions between the applicants and deceased Prashant. No details are mentioned in the complaint as regards those money transactions. Moreover, specific details in respect of day and dates in respect of those money transactions are also not in the complaint. The applicants are claiming that deceased Prashant had in fact lured them by assuring themselves or their family members of jobs in respective organizations as mentioned above and on that count collected huge amount from them posing himself as an influential

person having contacts with those organizations. It is also claimed by the applicants that despite collecting certain huge amount, the deceased with the help of other persons namely Santosh Deshmukh and Sandeep Kadam, provided them with false job orders of State Bank of India, Railway Department and Ministry of Health Department. In view of the said appointment orders, when some of the applicants and their family members went to the concerned department for joining, it was found that they were cheated as those appointment orders were found false and fabricated. Thus, the applicants are claiming that they did not harass the deceased Prashant, but in fact deceased himself cheated them for huge amount which they were claiming back.

7. In the case of ***S.S. Chheena vs. Vijay Kumar Mahajan and another*** reported in ***(2010) 12 SCC 190***, the Supreme Court has observed that when the offence under Section 306 of I.P.C. is based on the allegations reflected in suicide note, then the temperament of person committing suicide is the most relevant aspect. When the deceased was undoubtedly found hypersensitive, then it is difficult to connect the accused with the crime under Sections 306 of I.P.C. since the human sensitivity of each individual differs

and different people behave differently in the same situation. Though the aforesaid observations of the Supreme Court have come at the conclusion of the trial, but this Court (Coram : V.K. Jadhav and S.D. Kulkarni, JJ.) in the case of ***Balasaheb and another vs. State of Maharashtra*** reported on **2021 SCC OnLine Bom 3347**, has observed in para 19 as below :

“19. On going through the material placed on record along with the charge sheet by the investigating agency, there is no iota of evidence to attract section 306 of I.P.C. against the applicants. There is no material on record to show that the applicants instigated the deceased either by act of omission or commission or persistent harassment. There is no mens rea to commit the said crime.

Further, in para Nos. 20, 21 and 22 of the above-cited judgment, the Hon'ble Supreme Court has observed as follows :

“20. In case of Gurucharan Singh Vs. State of Punjab (supra), it is held by the Hon'ble Supreme Court that in order to give finding of abetment under section 107 of I.P.C., accused should instigate a person either by act of omission or commission, and only then a case of abetment is made out. In order to prove mens rea, there has to be something on record to establish or show that accused had guilty mind and in furtherance of that state of mind, he abetted crime. Ingredient of mens rea cannot be assumed to be ostensibly present but have to be visible and conspicuous.

21. In case of Sanju alias Sanjay Singh

Sengar Vs. State of M.P. (supra) held in given facts that accused telling deceased 'to go and die'. That itself would not constitute ingredient of 'instigation' - Presence of mens rea is necessary concomitant of instigation.

22. The Hon'ble Supreme Court in a recent judgment in case of Shabbir Hussain Vs. The State of Madhya Pradesh and others (Special Leave to Appeal (Criminal) No.7284 of 2017 SC dated 26.7.2021 has held as under :

" In order to bring a case within the provision 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 instigating or by doing a certain act to facilitate the commission of suicide.

Mere harassment without any positive action on the part of the accused proximate to the time of occurrence which led to the suicide would not amount to an offence under Section 306 of IPC [Amalendu Pal V. State of West Bengal (2010) 1 SCC 707].

Abetment by a person is when a person instigates another to do something. Instigation can be inferred where the accused had, by his acts or omission created such circumstances that the deceased was left with no other option except to commit suicide. [Chitresh Kumar Chopra v. State (Government of NCT of Delhi) (2009) 16 SCC 605]".

8. On going through the aforesaid observations, it is sufficiently made clear that if no abetment as contemplated

under Section 107 of I.P.C. is found, then the offence under Section 306 of I.P.C. is not attracted, and therefore, it can be quashed on evaluation of material placed on record. The aforesaid observations clearly show that the accused should instigated a person either by an act of omission and with mens rea. Further, there must be certain positive act from the side of the accused in proximity of commission of suicide by the deceased. It is also well settled that even if any accused told the deceased to go and die, that itself would not constitute the ingredient of instigation.

9. In the instant case, it appears that the applicants or their family members had in fact cheated by the deceased by collecting huge amount from them on the pretext of providing them jobs at respective organizations. On perusal of the police papers and statements also, it is evident that the deceased had in fact collected huge amount from the applicants for providing themselves or their family members such jobs and issued certain appointment orders which ultimately turned out to be false and fake. Even in the suicide note the deceased Prashant had accepted that he had collected huge amount of Rs. 1,20,00,000/- (Rupees One Crore Twenty Lacs) from the applicants and other persons at

the instance of one Santosh Deshmukh who was posing himself as an employee of Mantralaya. Further, the suicide note also indicates that ultimately the deceased was found repenting at the end as he could not provide jobs as assured. Thus, it appears that it was the deceased who had in fact cheated the applicants and when the applicants were demanding their money back, he could not sustain the pressure of returning the same, and therefore, committed suicide. Thus, merely the applicants were demanding their money back for which they were cheated by the deceased, it cannot be considered as an abetment as contemplated in Section 107 of I.P.C. for commission of suicide in the instant case.

10. In the case of *State of Haryana vs. Bhajan Lal* reported in *AIR 1992 SC 604*, the Hon'ble Supreme Court has observed some categories of cases wherein inherent powers under Section 482 of the Code of Criminal Procedure (for short, "Cr.P.C.") can be exercised. The first category of those cases is relevant in the instant case wherein it is observed that even though the contents of F.I.R. are taken as proved, then also no offence as alleged can be made out. Admittedly, the powers under Section 482 of Cr.P.C. are to be used

sparingly, but in view of the aforesaid category and to avoid abuse of process of law the said powers can be exercised. In the instant case, considering the nature of transactions in between the applicants in deceased Prashant, which are not specifically stated in the F.I.R. itself, we are of the opinion that it was the deceased who had in fact cheated the applicants. We have also found that merely the act of demanding the money back by the applicants, cannot be said that the applicants had abetted the commission of suicide.

11. Learned Counsel for the respondent No. 2, by placing reliance on the orders of the Supreme Court in the following cases, vehemently submitted that if the allegations in the F.I.R. prima facie indicate any abetment from the side of the accused for commission of suicide by the deceased, then the F.I.R. cannot be quashed.

(i) *Narayan Malhari Thorat vs. Vinayak Deorao Bhagat and another, 2019 (13) SCC 598;*

(ii) *Jitul Jantilal Kotechs vs. State of Gujrat and others 2021 (4) Crimes (SC) 356.*

However, on careful perusal of the aforesaid judgments, it reveals that the Hon'ble Supreme Court has also observed that when specific role was attributed to the

accused, High Court could not have quashed F.I.R. under Section 482 of Cr.P.C.

12. In the instant case, no specific role of the applicants is apparent from the allegations in the F.I.R. On the contrary, it has been revealed that the deceased had in fact collected huge amount from them for assuring them in the jobs in various reputed organizations and ultimately it turned out to be a false promise. Moreover, in the F.I.R. only certain money transactions are mentioned, but there are no details as to why and on what account those money transactions were there between the applicants and deceased. Therefore, the observations made in the aforesaid cases relied upon by respondent No. 2, are not at all helpful in view of the peculiar facts of this case.

13. Therefore, considering all these aspects and on careful examination of the F.I.R. and material collected during the course of investigation, it has been revealed that *prima facie* no offence under Section 306 of I.P.C. against the applicants is constituted even if the allegations against the applicants are taken at their face value and accepted in its entirety. Therefore, we find that if the criminal prosecution

against the applicants is allowed to be continued, it would definitely result in abuse of process of law and waste of the valuable time of the Court. Hence, we pass the following order.

ORDER

- (i) Criminal Application No. 1703 of 2021 and Criminal Application No. 1143 of 2021 are hereby allowed in terms of prayer clause [B] of the respective applications.
- (ii) Criminal Applications stand disposed of accordingly.

(SANDIPKUMAR C. MORE, J.)

(V.K. JADHAV, J.)