

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.1786 OF 2021

VISHNU KISAN KHEDKAR

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

...

Mr. S.R. Andhale, Advocate for the applicant

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

Mr. N.B. Narwade, Advocate for respondent No.2

...

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

RESERVED ON : 20th SEPTEMBER, 2022

PRONOUNCED ON : 14th OCTOBER, 2022

ORDER :

1 Present application has been filed under Section 482 of the Code of Criminal Procedure, 1973 for quashing the First Information Report lodged against the present applicant by respondent No.2, so also by way of amendment, since the charge sheet came to be filed; the applicant has prayed for the quashment of the entire proceedings bearing Regular Criminal Case No.46/2022 pending before learned Judicial Magistrate First Class, Pathardi, Dist. Ahmednagar under Section 306, 506 of the Indian Penal Code, 1860.

2 Heard learned Advocate Mr. S.R. Andhale for the applicant, learned APP Mr. M.M. Nerlikar for respondent No.1 and learned Advocate Mr. N.B. Narwade for respondent No.2.

3 It will not be out of place to mention here that when the matter was before this Court (CORAM : SUNIL P. DESHMUKH AND NITIN B. SURYAWANSHI, JJ.) on 02.09.2021, following order was passed.

“1 Prima facie, it does not appear that the ingredients of Section 306 of IPC can be said to be available.

2 Issue notice to respondents, returnable on 30th September, 2021.

3 Learned APP waives service of notice for respondent No.1.

4 In the meanwhile, investigation may go on, however, charge-sheet may not be filed without permission of the Court.”

In spite of the said order it appears that the charge sheet came to be filed on 29.01.2022 without taking permission of this Court and, therefore, the Investigating Officer was asked to file affidavit-in-reply. In his affidavit-in-reply it has been seen that after the said order was passed the office of the Public Prosecutor, High Court, Bench at Aurangabad had sent a written communication by E-mail to Police Inspector, Police Station, Pathardi informing that the charge sheet should not be filed. It has been stated that

due to non working of internet the said order was not noted by the said Police Station till December, 2021. He has filed certain entries of the station diary, in which it is stated that the wireless computer net is not working or computer and printer are not in working condition. It is stated that in the month of January, 2022 the technical issue was solved, and in the meantime, the charge sheet was filed. He has tendered apology stating that it was not the willful act to disobey the order of the Court. On this point we would express that the Superintendent of Police, Ahmednagar would take up the issue and see that alternate arrangements are there in each Police Station or Police Chowky, so that the internet facility is made available throughout the day and night. It is an important service/facility, which connects the Police Station with other Police Station/headquarter or even Courts and other public offices. When we are in the internet world the technical issues should not interrupt the workings and there has to be an alternate arrangement for the same. It appears in this case that from September till December when it is said that the internet facility was not available or the computers were not in working condition, then, the Police Inspector ought to have taken up this issue immediately with the higher officials and the officials ought to have solved the said problem. We are not satisfied with the reasons those have been given, but instead of taking any harsh step it would be appropriate now to direct the Superintendent of Police, Ahmednagar to have alternate

arrangement also. So that any communication which is sent through E-mail would be read by at least Police Inspector of each of the Police Chowky. Superintendent of Police, Ahmednagar may issue circular in this respect and report the compliance.

4 Now, turning towards the case in hand it has been submitted on behalf of the applicant that perusal of the First Information Report and now even the entire evidence that has been collected and included in the charge sheet would show that respondent No.2 – informant had taken hand loan from the applicant and according to him, amount of Rs.1,50,000/- was due and he was repaying it since last two years, but still around the date of incident i.e. 08.05.2021 amount of Rs.45,000/- was due. He then also states that he was doing agricultural work on crop sharing basis with applicant and since amount was due the applicant had taken his land from respondent No.2, which was given on crop sharing basis. He says that he returned around 05.05.2021 from the work of sugarcane cutting for which he had gone out of village. He then says that the applicant went to his house around 4.00 p.m. on 08.05.2021 and in front of informant's son Krishna he told to the informant as well as Krishna that both of them should return the amount of Rs.45,000/-, otherwise he will not allow them to live in the village and also that he will not allow them to live in the world. Informant says that due

to this threat his son Krishna got frightened and was under tension. Around 3.00 p.m. on 09.05.2021 Krishna came to village from his house but did not return and, therefore, informant went to search him. He found Krishna around 7.30 p.m. near the field of applicant, in the field of one Narayan Rambhau Khedkar. Froth was coming out of his mouth and nose and there was insecticide bottle of Monostar lying near him, which was empty. Informant then called his relative and both of them took Krishna to hospital. However, he was declared dead around 9.00 p.m. by the Doctors at Sub District Hospital at Pathardi. After the last rites he has lodged the report on 10.05.2021.

5 The statements of the witnesses recorded under Section 161 of the Code of Criminal Procedure are on the same line. The applicant is not disputing the fact that Krishna committed suicide by consuming insecticide. But the alleged act attributed to the applicant cannot in any way amount to abetment or instigation so as to attract Section 306 or 506 of the Indian Penal Code. There was no overt act on the part of the applicant. Demand of his outstanding amount cannot amount to instigation and the fact remains is that if the amount was outstanding, then, in order to avoid the repayment the story can be concocted by the applicant. Therefore, it would be a futile exercise to ask applicant to face the trial and, therefore, quashment of the

First Information Report as well as entire proceeding is necessary.

6 The learned Advocate for the applicant has relied on the decision in **Sonti Rama Krishna vs. Sonti Shanti Sree and another, AIR 2009 SC 923**, wherein on the facts of the case the Hon'ble Supreme Court did not interfere with the exercise of the inherent powers by the High Court under Section 482 of the Code of Criminal Procedure, when it was found that there was no instigation or abetment by the petitioner-accused therein.

6.1 Further reliance has been placed on the decision in **Hafizur Rahman Sheikh vs. State of Maharashtra and others, 2021 DGLS (Bom.) 948**, wherein after taking note of the decisions by the Hon'ble Apex Court it was held that the acts alleged do not amount to abetment.

6.2 Similar view has been taken in **M. Srinivasa Reddy s/o M. Rama Subba Reddy vs. The State of Maharashtra and another in Criminal Writ Petition No.343 of 2021** decided on 13.08.2021 and **Jairam Suryabhan Hapte vs. State of Maharashtra and others, 2022 DGLS (Bom.) 2796**.

7 Per contra, the learned APP as well as learned Advocate for respondent No.2 strongly opposed the application and submitted that the informant has stated that what threat was given by the applicant to him as

well as Krishna in presence of Krishna. It would depend upon a psychology of a person as to how he takes the threat. Therefore, the perception of instigation or abetment would vary according to the temperament of the person. It is not in dispute that deceased committed suicide by consuming poisonous substance. There was no other reason for Krishna to commit suicide. The statements of other witnesses, especially Rajendra Dongre, who is the relative of respondent No.2, had reached the spot where Krishna was lying, after he was called by the informant at that place. He has stated that the informant used to inform him as to how the applicant is harassing him. Statement of mother of the deceased would also show that such threats were given by the applicant and she was present at the same place. Rather she has further stated that when it was found that Krishna was frightened and had taken the tension he had not even taken dinner. He was restless and he was telling mother that the applicant is a dangerous person and if they do not repay his amount he will not leave them. Therefore, it will have to be assessed by the Trial Court as to how the deceased had taken the threat that was given by the applicant and, therefore, this cannot be the stage where the entire proceeding should be quashed and set aside. The prosecution be allowed to adduce evidence and then it should be left to the Trial Court to come to a conclusion as to whether the ingredients of offence have been proved beyond reasonable doubt or not.

8 Learned APP relied on the decision in **Mahendra K.C. vs. State of Karnataka and another**, AIR 2021 SC 5711 : 2002(2) SCC 129. In this case reliance has been placed on the observations from **State of Orissa vs. Saroj Kumar Sahoo**, (2005) 13 SCC 540, wherein it has been observed that -
“While exercising 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 within caution and only when such exercise is justified by the tests specifically laid down in the section itself.” Further, the observations in **Ramesh Kumar vs. State of Chhattisgarh**, (2001) 9 SCC 618 and **Chitresh Kumar Chopra vs. State (Govt. of NCT) of Delhi**, (2009) 16 SCC 605 were taken note of. The decision in **Chitresh Kumar** (supra) has been also relied by learned Advocate for respondent No.2. The decision in **Amalendu Pal @ Jhantu vs. State of West Bengal**, (2010) 1 SCC 707 has been reported wherein it has been observed that - *“It is also to be borne in mind that in cases of alleged abetment of suicide there must be proof of direct or indirect acts of incitement to the commission of suicide. Merely 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, conviction in terms of Section 306 of the Indian Penal Code is not sustainable.”*

9 The prosecution story has already been described in aforesaid paragraphs and, therefore, it is not reproduced once again. Perusal of the First Information Report would show that informant has stated that he has his own 20 gunthas of agricultural land in village Eknathwadi and since last 18 years he is cultivating 10 acres land belonging to the applicant on contract basis. He has stated that applicant used to give the pesticides and fertilizer and after the crop was sold then he used to deduct the amount of expenses from the same. He says that since last few years there was no good crop in the land and, therefore, there was no sufficient income. Amount of Rs.1,50,000/- was outstanding and since two years prior to the First Information Report the informant was repaying that amount. Around the date of First Information Report amount of Rs.45,000/- was remaining. According to him, the applicant has taken back his land from the informant because of the outstanding of the amount. This can be considered in a way that when the relationship between the applicant and the respondent No.2 was in existence since last about 18 years, whether such kind of threat were possible. 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 either offence under Section 306 or 506 of the Indian Penal Code will have to be considered.

10 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.”

The alleged threat in this case is stated to have been given around 4.00 p.m. on 08.05.2021. It is stated that the said threat was given to the informant as well as Krishna. We are required to take into consideration the background also. In the First Information Report it is absolutely not mentioned exactly when the amount was taken or since when the amount of Rs.1,50,000/- was outstanding and whether the account was settled when the applicant had allegedly taken back the agricultural land which was given to the informant on contract basis. Further, what was the reaction of the informant after the alleged threat was given to him and Krishna on 08.05.2021 has not been stated by the informant as well as his wife. It will not be out of place to mention here that Krishna was aged 23 and he cannot be taken as a child who will not react to the threats given to him. Mere statement that he was frightened and took tension will not be sufficient. In fact, the informant in his First Information Report has not stated that deceased had not taken dinner on that day and was saying that the applicant is a dangerous person. We will have to take note that the relationship between the informant and the applicant are since 18 years prior to the

incident. That means, those relations were in existence since Krishna was aged 5. With this background, whether the applicant could have been termed as a dangerous person by Krishna is also required to be noted. However, at this stage, we are supposed to consider the said improvement in the statement of the wife of the informant as compared to the contents of the First Information Report.

11 Further, it is to be noted that the First Information Report is silent about the fact that whether the applicant had again contacted Krishna after 4.00 p.m. of 08.05.2021 till 3.00 p.m. on 09.05.2021. What was the mental condition and actions in the routine of Krishna on 09.05.2021 have not been stated either by the informant or by his wife. How informant and his wife advised or pacified Krishna is also not stated. All these things were necessary in order to assess how the alleged threat was taken by Krishna and whether it still amounts to instigation. We agree that the act of a person whether amounts to instigation or abetment would depend upon the facts of each case. But when it is well settled that words uttered under a fit of anger or emotion without any intention cannot be termed as instigation. Even if that threat was given and no further action has been done by the present applicant, then, it can be certainly said that the alleged act though accepted as the act of accused-applicant will not amount to instigation or abetment, as

contemplated under Section 107 or 306 of the Indian Penal Code. We would like to say that we have considered all the authorities those have been cited by both the parties and on the basis of the ratio laid down in various authorities by the Hon'ble Apex Court and the facts of this case has prompted us to exercise our inherent powers to quash and set aside the First Information Report and entire proceedings. Hence, we pass following order.

ORDER

1 Application stands allowed.

2 The First Information Report vide Crime No.284/2021 dated 10.05.2021 registered with Pathardi Police Station, Dist. Ahmednagar for the offence punishable under Section 306, 506 of the Indian Penal Code, 1860 and the entire proceedings i.e. Regular Criminal Case No.46/2022 pending before learned Judicial Magistrate First Class, Pathardi, Dist. Ahmednagar, and if committed to the Court of Sessions, by this date, the proceedings before the Sessions Court stand quashed and set aside.

3 The Superintendent of Police, Ahmednagar to look after the problem regarding internet connections and also the electric equipments attached to it to work throughout the day and night and there should not be

any interruption in respect of receipt of mail and other instructions on internet. He may consider any alternative mode also, which can be made available, so that the communication is received to the appropriate person. He may issue circulars in respect of the same as well as upkeep of these devices. He should report the compliance within a period of one month.

(Rajesh S. Patil, J.)

(Smt. Vibha Kankanwadi, J.)

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