

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

CRIMINAL APPLICATION NO.1828 OF 2021

- 1) Mahesh S/o Chatrabhuj Dodke,
Age-25 years, Occu:Agri.,
R/o-Devthana, Tq-Dharur, Dist-Beed,
- 2) Sachin S/o Chatrabhuj Dodke,
Age-30 years, Occu:Agri.,
R/o-Devthana, Tq-Dharur, Dist-Beed,
- 3) Chatrabhuj S/o Nagorao Dodke,
Age-70 years, Occu:Agri.,
R/o-Devthana, Tq-Dharur, Dist-Beed,
- 4) Aruna W/o Chatrabhuj Dodke,
Age-65 years, Occu:Household,
R/o-Devthana, Tq-Dharur, Dist-Beed,
- 5) Archana W/o Sachin Dodke,
Age-25 years, Occu:Household,
R/o-Devthana, Tq-Dharur, Dist-Beed,
- 6) Nita W/o Mahesh Dodke,
Age-20 years, Occu:Household,
R/o-Devthana, Tq-Dharur, Dist-Beed.

...APPLICANTS

VERSUS

- 1) The State of Maharashtra,
Through Sirsala Police Station,
Dist-Beed,
- 2) Daivashala Limbraj Dodke,
Age-56 years, Occu:Agri.,
R/o-Devthana, Tq-Dharur,
Dist-Beed.

...RESPONDENTS

...
Mr. B.A. Shinde Advocate for Applicants.
Mr. A.M. Phule, A.P.P. for Respondent No.1.
Mr. K.A. Kadam Advocate for Respondent No.2.
...

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

DATE : 17th AUGUST, 2022

JUDGMENT [PER SMT. VIBHA KANKANWADI, J.] :

1. Rule. Rule made returnable forthwith. Heard the learned Advocates for the parties finally, by consent.
2. By invoking the inherent powers of this Court under Section 482 of the Code of Criminal Procedure, the applicants have prayed for quashment of the First Information Report (for short "FIR") vide Crime No.90 of 2021 dated 26th May 2021 registered against them with Sirsala Police Station, District-Beed for the offence punishable under Sections 306, 323, 504, 506, 507 read with Section 34 of the Indian Penal Code, and by way of amendment the applicants pray for quashment of subsequent filing of the charge-sheet, on the basis of said FIR, bearing No.69 of 2001 and R.C.C. No.80 of 2021 pending on the file of the learned Judicial Magistrate, First Class, Dharur.

3. Heard learned Advocate Mr. Shinde for the applicants, learned APP Mr. Phule for respondent No.1 – State and learned Advocate Mr. Kadam for respondent No.2.

4. Present respondent No.2 had filed the said FIR contending that she stays along with her husband, son, daughter-in-law and grand-sons. On 22nd May 2021 around 7.30 a.m., her son Daulat, aged 32 years had gone for watering sugarcane crop in their land at Devthana, Taluka-Dharur, District-Beed. He returned around 9.00 a.m. and then meal was served to him. At that time he told the informant, her daughter-in-law and husband that when he was in the field, cousin brothers, applicant Nos.1, 2 and uncle, applicant No.3 came near him and asked him as to why he was cutting grass near the Bandh of the field, the said field belongs to them and then they had abused and assaulted him. They also gave him threat that if he cuts grass in future then he would be killed. Further, while Daulat was taking the meal, he received phone call on his Mobile which was picked by his wife Shamal. She was then abused by applicant No.1 and threats were given to her and her husband i.e. Daulat. Informant further says that thereafter applicant Nos.4 to 6 came in front of the house of the informant and had abused them on the count of quarrel that had taken place in the field. Applicant Nos.4 to 6

were advised by one Dharmaraj Solanke and Dattatraya Solanke and those ladies were asked to go home. Informant says that since last two years the accused persons were abusing and giving threat to Daulat and his wife Shamal. Informant further says that, on the same day i.e. 22nd May 2021 at about 5.30 p.m., Daulat went to field for bringing grass for she-buffalo but did not return for a considerable time. Therefore, informant, her daughter-in-law Shamal and grand-sons went towards the field around 7.15 p.m. At that time, they found that Daulat had hanged himself to a neem tree near the field and therefore, they called people and his body was taken down. Daulat had made a video shooting stating that he has not got justice but then his family should get justice, and it was sent on the group of villagers. Thereafter, police came and arrangements were made for postmortem, which was conducted on the next date i.e. 23rd May 2021 and after the last rites since the informant was in grief, she has not lodged the report immediately. The report came to be lodged on 26th May 2021.

5. After the said FIR was lodged and the offence was registered, investigation was taken up and in the month of July 2021, the charge-sheet came to be filed before the learned Judicial Magistrate First Class, Dharur against the applicants.

6. Learned Advocate for the applicants has vehemently submitted that even if we take the case as it is, it does not show that in any way the applicants had abetted the commission of suicide by deceased. Though it is stated that the deceased Daulat had video recorded his dying declaration, yet it has not been recovered by Police. The incident, alleged to have been taken place in the morning, was between Daulat and applicant Nos.1 to 3, and applicant Nos.4 to 6 were not present at all. Then, even as per the informant when applicant Nos.4 to 6 had allegedly gone in front of the house of the informant and abused, at that time applicant Nos. 1 to 3 were not present. There cannot be a common intention on their part to commit abetment of the suicide by Daulat and therefore, it would be a futile exercise to ask the applicants to face the trial as there is nothing against them. The statements of the family members of the informant, including widow of the deceased, are on the same line. The Application needs to be allowed.

7. Per contra, learned APP as well as learned Advocate appearing for respondent No.2 has strongly opposed the Application and submitted that it is not the act of one day but it was there since last two years. The applicants were harassing

deceased Daulat and on the relevant day also threats were given. The threats were also given on phone which were heard by the widow of the deceased. Definitely, it would have caused apprehension in the mind of the deceased and that apprehension can be considered as abetment.

8. At the outset, it is to be noted that the contents of the FIR and the statements of the witnesses are almost on the same line. If there was dispute between Daulat and applicant Nos.1 to 3, in respect of the field, he could have definitely approached, either Civil Court to protect his right over the field, or if it was giving rise to an offence then he could have approached the Police and / or the Court of Magistrate to have redressal of his grievances. No complaint was ever lodged in respect of the acts alleged to have been done by applicant Nos.1 to 3 against Daulat. Even in respect of the incident that had taken place on 22nd May 2021 either at 7.30 a.m. in the field or after 9.00 a.m. in front of the house of the informant, no complaint was lodged with the Police. It is stated that in respect of the second incident involving applicant Nos. 4 to 6, the intervention was by one Dharmaraj Solanke and Dattatraya Solanke. Statements of these persons have been recorded under Section 161 of the Code of Criminal Procedure. It is stated by them that applicant Nos.4

to 6 were abusing and giving threat in front of the house of the informant on the count of quarrel that had taken place in the field. Interesting point to be noted is that, how applicant Nos. 4 to 6 came to know about the incident in the morning that had taken place in the field, is a question. These two persons i.e. Dharmaraj Solanke and Dattatraya Solanke have stated that the dispute between applicant No.3 and deceased was there since last about 4 to 5 years and the villagers, by intervening, had implanted poles on the *bandh*, however, the dispute did not resolve. According to these witnesses, applicant No.3 had damaged the *bandh*. However, this fact is not disclosed by other witnesses from the house of the informant. If there is such damage to the property of Daulat, how he could have kept silence, is a question. But we may not go into these aspects. The fact is that, whether those quarrels which were going on even as per the informant, from 2 years and rather from the point of view of witnesses, from 4 to 5 years prior to the incident, can be taken as abetment to commit suicide.

9. It can be useful to refer the decision in ***M. Arjunan vs. State, [(2019) 3 SCC 315]***, wherein in Para-7 of the Judgment the Hon'ble Apex Court has held thus :

“ 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.”

10. 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 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. ”

11. In ***Rajesh vs. State of Haryana, (2020) 15 SCC 359***, the Hon'ble Apex Court, in Para 9 of the Judgment, has held thus:

“ 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. ”

12. The act of quarrel, in the form of abuses and giving threat to kill with the help of slaps and fists, 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 front of the house of of the informant involving present applicant Nos.4 to 6 (in absence of applicant Nos.1 to 3), had taken place around 9.00 a.m. and thereafter deceased Daulat proceeded towards the field around 5.30 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 2 / 4 to 5 years, then it cannot take the shape of instigation or abetment as contemplated under Section 107 or 306 of the Indian Penal Code. Further, when each and every witness has stated that deceased had done video shooting and uploaded the video on a group of "Pani Foundation, Devthana" then non collection of the said evidence will have to be considered in favour of the accused – applicants. Even if we consider the statement of witnesses who had seen that video, then it is stated that Daulat has stated that he did not get justice but at least his family should get justice. That means deceased has not specifically named the applicants by specifying their role. It cannot be considered as his suicide note which will disclose the alleged abetment or instigation.

13. 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

(I) The Application stands allowed.

(II) The First Information Report bearing Crime No.90 of 2021 dated 26th May 2021 registered with Sirsala Police Station, District-Beed for the offence punishable under Sections 306, 323, 504, 506, 507 read with Section 34 of the Indian Penal Code, subsequent charge-sheet No.69 of 2001, and R.C.C. No.80 of 2021 pending on the file of the learned Judicial Magistrate, First Class, Dharur, stands quashed and set aside, and if the Sessions Case has been committed to the Court of Sessions, then the said Sessions Case stands quashed and set aside.

(III) Rule made absolute in above terms.

[RAJESH S. PATIL]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE