

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

CRIMINAL APPLICATION NO. 2134 OF 2021

**HARISH KONDUMAL CHANDNANI AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

...

Advocate for the Applicants : Mr. S. S. Bora
APP for Respondent No.1-State : Mr. R. D. Sanap
Advocate for Respondent no.2 : Mr. B. K. Patil

...

WITH

CRIMINAL APPLICATION NO. 2485 OF 2021

**GURMEETSINGH AMARJEETSINGH TUTEJA
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

...

Advocate for the Applicant : Mr. S. S. Bora
APP for Respondent No.1-State : Mr. R. D. Sanap
Advocate for Respondent no.2 : Mr. B. K. Patil

....

WITH

CRIMINAL APPLICATION NO. 2295 OF 2021

**KISHANJEET SINGH LAL SINGH NONIWALE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

...

Advocate for the Applicant : Mr. A. D. Hande
APP for Respondent No.1-State : Mr. R. D. Sanap
Advocate for Respondent no.2 : Mr. B. K. Patil

.....

WITH

CRIMINAL APPLICATION NO. 2552 OF 2021

**KARAMJEET SINGH KRIPALSINGH BEDI
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

...

Advocate for the Applicant : Mr. M. K. Bhosale
APP for Respondent No.1-State : Mr. R. D. Sanap
Advocate for Respondent no.2 : Mr. B. K. Patil

...

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

DATED : 2nd MARCH, 2022.

..

ORDER : (PER : SANDIPKUMAR C. MORE, J) :

1. By consent of the parties, heard finally at the stage of admission.

2. Under all these applications, the applicants are seeking quashing of one and the same crime bearing FIR No. 263 of 2021 dated 08/08/2021, registered with Bhagyanagar Police Station, Nanded for the offence punishable under Section 306 read with 34 of the Indian Penal Code (for short "IPC). All the applicants are accused nos.1to 4 and 10 to 12 in the present crime along with other co-accused. Respondent no.1 informant- Jyoti Yayati Munde has lodged the FIR against all the present applicants along with other co-accused in the aforesaid crimes with allegations that her husband Yayati Munde was engaged in sale and purchase of plots. On 05/08/2021, Yayati Munde had a bath at about 5.00 a.m. and also

had tea. Thereafter Yayati Munde told the informant that he was going to chant certain Mantras and therefore, went to bed room and closed the door from inside. After some time, when the informant insisted her husband- Yayati to open the door, he asked her to wait for some time. Thereafter again at 10.30 a.m. when the informant knocked the door of said bed room, there was no response of her husband Yayati from inside. Therefore, the informant along with other family members when broke open the door of said bed room, she saw her husband -Yayati having committed suicide by hanging himself with help of rope. When they brought Yayati Munde down by cutting the rope with knife and escorted him to Titumala Hospital, Chatrapati Chowk, the doctor at the said hospital declared him dead. When the dead body of Yayati Munde was kept in post-mortem room, Bhagyanagar police authorities came there and drawn inquest panchanama over the dead body. The police also found one chit from the pocket of pant of the deceased Yayati Munde, wherein it was mentioned by the deceased that the present applicants along with other co-accused had harassed him for money, which he borrowed from them and therefore, he committed suicide. It is also alleged by the the informant-respondent no.2 in the FIR itself that prior to two years of the incident, her husband - Yayati Munde had repaid his

earlier loan amount by selling his immovable property. As such, the informant has alleged that the present applicants and other co-accused harassed her husband - Yayati Munde for returning the amount and thereby forced him to commit suicide.

3. Learned counsel for the applicants vehemently submit that the aforesaid crime has been registered only with a view to harass the applicants and there is no prima facie material on record to attract Section 306 of IPC. They further submit that the deceased Yayati Munde had in fact obtained a huge loan amount from the applicants and other co-accused and since he could not return the amount, he himself committed suicide being fed up of such life. Learned counsel for the applicants further submit that the deceased committed suicide for his inability to repay the loan and the applicants had not instigated him for commission of suicide. Further they also submit that there is nothing on record about so called abetment in commission of suicide of the deceased at the hands of present applicants. As such, learned counsel for the applicants submit that the applicants are falsely roped in the present crime only after occurrence of commission of suicide of the deceased Yayati Munde. Learned counsel for the applicants also relied on judgment of this court in the case of *Hafizur Rahman Sheikh vs. The State of*

Maharashtra and others, reported in 2021 ALL MR(Cri) 3453. On the contrary, learned APP as well as learned counsel for respondent no.2 i.e. informant Jyoti Yayati Munde, strongly opposed the applications on the ground that there are direct allegations against the present applicants and in fact in the suicide note the deceased had specifically mentioned their names and the ill-treatment received by him on account of repayment of money. They also relied upon in the case of ***Mahendra K. C. vs. State of Karnataka and another, reported in (2022) 2 Supreme Court Cases 129.***

4. We have carefully gone through the FIR and other investigation papers. Admittedly, deceased Yayati Munde has committed suicide by hanging himself in his bed room with help of rope. However, the informant- respondent no.2 has made specific allegations that in the suicide note found in the pant of the deceased by police the specific role of the applicants and other co-accused is mentioned as to how they were constantly insisting the deceased for returning their money and thus, caused ill-treatment, which resulted in the commission of suicide by Yayati Munde. The said suicide note is seized by the police, wherein the names of all the applicants along with other co-accused are mentioned with specific amounts which the deceased had borrowed from them. According to the learned counsel for the

applicants, this is clearly a false crime registered against the present applicants merely because they were asking their money to be returned by the deceased.

5. In the case of ***Hafizur Rahman Sheikh*** (supra) this court has observed in para nos. 20 and 23 as below :

"20. 'Abetment of a thing' has been defined under Section 107 of the Indian Penal Code, which reads thus :

"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 2 which has been inserted along with section 107 reads as under :

Explanation 2- Whoever either prior to or at the time of commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitate the commission thereof, is said to aid the doing of

that act."

23. Merely because the applicant was insisting for his money on account of dealings between the parties does not mean to abetment of suicide. There must be proof of direct or indirect acts of incitement to the commission of suicide, as held in case of Binod s/o Ratan Sarkar vs. State of Maharashtra (supra)".

6. On perusal of the aforesaid observations, it is evident that abetment of a thing under Section 107 of IPC needs positive role from the side of accused and there should be a proof of direct or indirect acts of incitement to the commission of suicide. In the instant case though the names of the applicants are mentioned in the suicide note, but there is no reference at all as to when the amounts mentioned against the names of applicants, were borrowed by the deceased. It is only mentioned in the suicide note that the applicants and other co-accused were continuously insisting return of their money from the deceased. However, it was not disputed by the deceased that he has borrowed the amount mentioned in the suicide note from the applicants and other co-accused. Further the recitals of said suicide note clearly indicate that the deceased had committed suicide only after being fed up of the indebted life as he could not repay the loan borrowed from the applicants. Further, it is

specifically mentioned in the said suicide note that he left nothing to sell for refund of said borrowed amount. The deceased had blamed himself for taking such drastic step of commission of suicide. Further, there is nothing mentioned either in the FIR or the suicide note that as to how and when the applicants or other co-accused harassed him for the repayment of money with specific particulars such as day and dates. Merely because the applicants were insisting for their money from the deceased, cannot be considered as an abetment for commission of suicide by the deceased as contemplated under Section 107 of IPC.

7. Learned counsel for respondent no.2-informant also heavily relied upon in the case of ***Mahendra K. C. vs. State of Karnataka and another, reported in (2022) 2 Supreme Court Cases 129*** and submit that the crime under Section 306 of IPC cannot be quashed since the applicants by their acts and conduct created such circumstances that the deceased was left with no other option to commit suicide. However, in the said judgment itself the Hon'ble Supreme Court has referred certain categories, wherein powers under Section 482 of Cr.P.C. can be exercised. We would like to mention the first category, which is relevant as per the applicants' in this matter.

"1. Where the allegations made in the first

information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused."

Though the Hon'ble Supreme Court has questioned that the powers under Section 482 of Cr.P.C. should be used sparingly but same can be used either to prevent abuse of the process of law of any court or otherwise to secure the ends of justice.

8. In the instant case, from the allegations in the FIR as well as the suicide note, it prima facie appears that the deceased was heavily indebted and he had nothing to sell for the repayment of a huge amount obtained by him from the applicants and other co-accused. Moreover, it has been specifically stated by the deceased himself in the said suicide note that having fed up of such indebted life, he intended to commit suicide. We have already mentioned earlier that it cannot be said that the applicants harassed the deceased as they were merely demanding their money back. Further, the deceased had blamed himself for taking such drastic decision of ending his life.

Therefore, having regards to the entire material on record, we are of the opinion that the deceased himself committed suicide on account of his inability to repayment of money which was advanced by the applicants. Further, there are no specific details as to how and in which manner the applicants harassed the deceased on account of demanding their money back. Therefore, even if the names of the applications are mentioned in the FIR as well as in the suicide note, but it is difficult for us to gather any ingredients of the offence of abetment of suicide at the hands of the applicants. It appears that the decision of ending his life was solely of the deceased for having fed up of his highly indebted life. Therefore, considering all these aspects and in view of the observation of this court in ***Hafizur Rahman Sheikh*** (supra), we are of the opinion that this is a fit case to exercise power under Section 482 of the Cr.P.C. for quashing the FIR otherwise there will be abuse of process of law if the present criminal applications are allowed to be continued against the applicants. Even if the allegations in the FIR are taken as proved, then also no offence punishable under Section 306 read with 34 of IPC can be made out against the applicants specifically in the light of statement by the deceased in his suicide note. Hence, we pass the following order.

ORDER

- I) The Criminal Application Nos.2134 of 2021, 2485 of 2021, 2295 of 2021 and 2552 of 2021 are hereby allowed in terms of prayer clause "C", "C", "B" and "B" respectively.
- II) The criminal applications accordingly stand disposed of.

(SANDIPKUMAR C. MORE, J.)

(V. K. JADHAV, J.)

vsm/-