

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

925 CRIMINAL APPLICATION NO.3389 OF 2022

GANESH DURYODHAN NAIK AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...

Mr. N.E. Deshmukh, Advocate for applicants

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

...

WITH

CRIMINAL APPLICATION NO.3378 OF 2022

BHANUDAS LAXMAN SAKHARE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...

Mr. N.E. Deshmukh, Advocate for applicants

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

...

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

DATE : 30th NOVEMBER, 2022

ORDER :

1 Both the applications are filed by the co-accused for quashment

of First Information Report vide Crime No.289/2022 dated 20.07.2022 registered with Vaijapur Police Station, Dist. Aurangabad (Rural), for the offence punishable under Section 306, 323, 504, 506 read with Section 34 of the Indian Penal Code, 1860, which came to be registered at the behest of respondent No.2.

2 Heard learned Advocate Mr. N.E. Deshmukh for applicants and learned APP Mr. M.M. Nerlikar for respondent No.1 in both matters.

3 It has been vehemently submitted on behalf of the applicants that the informant has stated that her husband has taken loans from various persons including the applicants. However, according to her, the sale deeds, those have been executed, were not the real sale deeds but they were in the form of security. In fact, in view of sale deed dated 09.12.2021 the applicant Ramdas Naik has been put in possession, even the respondent No.2 is party to the said document. With applicant Bhanudas Sakhare it was a different transaction i.e. hand loan of Rs.3,00,000/- and for the repayment of that amount cheque was issued by deceased. That cheque came to be dishonoured and, therefore, he had filed complaint under Section 138 of the Negotiable Instruments Act against the deceased on 30.08.2021. There is also a mortgaged document executed in favour of applicant Ganesh Naik.

The mortgaged document as well as sale deed are registered documents and, therefore, it cannot be said that there was some other intention behind the said transaction. The contents of those documents and the contents of the First Information Report are not corroborating each other. If the demand for the repayment is asked, then, it will not amount to harassment. There are no specific incidents alleged in the First Information Report against the applicants. Whatever allegations are there, they are vague and omnibus and, therefore, the ingredients of the offence punishable under Section 306 of the Indian Penal Code cannot be said to have been attracted. The First Information Report is based on concocted story after death of Yogesh and the real reason for his suicide appears to be different. There could not have been a motive for the applicants to drive deceased Yogesh to commit suicide, as he was supposed to pay/repay the amount.

4 Learned Advocate for the applicants has relied on **Kanchan Sharma vs. State of Uttar Pradesh and another** [Criminal Appeal No.1022 of 2021], **Chitresh Kumar Chopra vs. State** (Govt. of NCT of Delhi) [(2009) 16 SCC 605], **S.S. Chheena vs. Vijay Kumar Mahajan and another** [(2010) 12 SCC 190 to support his contention that unless there is clear *mens rea* offence under Section 306 of the Indian Penal Code cannot be said to have been attracted.

5 Learned APP representing respondent No.1 submitted that this cannot be taken as a fit case to exercise the inherent powers of this Court under Section 482 of the Code of Criminal Procedure as the investigation is still in progress. The contents of the First Information Report would show that in the month of June, 2022 i.e. just prior to the First Information Report also accused Ganesh and Ramdas had assaulted Yogesh by saying that he should part with the possession of the land. As against accused Bhanudas is concerned, it is stated that he used to give phone call and demanding the amount frequently. It is stated that all of them were giving threats to kill deceased Yogesh and there is a chit as well as video clip on his mobile giving reasons for his decision to commit suicide. Therefore, investigation should get completed, otherwise it would be premature to say that there is no case against the applicants.

6 Based on the submissions as well as contents of the First Information Report it is not even necessary to issue notice to respondent No.2.

7 At the outset, in the First Information Report itself it is stated that the deceased has left a suicide note as well as he has prepared a video in his mobile, in which he is giving reasons for taking decision to quit this

world. The authenticity of those pieces of evidence is under consideration by the police, the investigation is still going on, a man has lost his life and, therefore, no decision can be taken hastily in respect of reason as to why he committed suicide. It would be premature then to say that the facts of the case/First Information Report do not disclose the ingredients of the offence. No doubt, there appears to be financial transaction in the nature of registered documents, but, at the same time, we cannot brush aside possibility of different nature of transaction than it is appearing by way of registered instrument. No doubt, in catena of Judgments it is held that mere demand of refund of the amount which was given as loan to the deceased and then deceased committing suicide will not amount to abetment, however, the way such demand is made would differ. Here, in this case, it has been stated in the First Information Report that the applicants used to abuse and assault deceased Yogesh, from time to time. Informant has specifically stated that the possession of the land was with Yogesh and the applicants were demanding the possession, in case of failure on his part to repay the amount. Except on the basis of those documents and also the fact that applicant Bhanudas Sakhare adopting legal proceedings will not at this stage allow us to come to a conclusion that there is no abetment because we are at a very premature stage. This is not a fit case where the discretionary and inherent powers of this Court under Section 482 of the Code of Criminal Procedure

should be exercised. Both the applications stand rejected.

(Abhay S. Waghware, J.)

(Smt. Vibha Kankanwadi, J.)

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