

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.2957 OF 2018

1. Venkatrao Shankarrao Tidke
Age: 78 years, Occu.: Sr. Citizen Pensioner,
President of Vijay Nagar Hsg. Sct., Nanded,
R/o. Vijay Nagar, Nanded,
Tq. and Dist. Nanded
2. Dileep s/o Gururao Sirsath,
Age : 49 years, Occu.: Agri.,
Ex. Secretary of V. N.H. Society,
R/o. Vijay Nagar, Nanded,
Tq. and Dist. Nanded

... Applicants

Versus

1. The State of Maharashtra
For Shivajinagar Police Station,
Tq. and Dist. Nanded,
Through the Public Prosecutor,
High Court of Bombay at Aurangabad.
2. Prashant s/o Baliram Ghorband
Age: 41 years, Occu.: Service,
R/o. Sitaram Nagar, Nanded,
Tq. and Dist. Nanded.

... Respondents

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Mr. P. P. Mandlik, Advocate for applicants.
Mr. R. V. Dasalkar, Advocate for respondent No.1 – State.
Mr. R. O. Awasarmol, Advocate for respondent No.2.

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

DATE : 25th August, 2022.

JUDGMENT :-

. Rule. Rule made returnable forthwith. Heard learned Advocates
for the parties finally, by consent.

2. Learned Advocate for the applicants places on record the photocopy of the death extract of applicant No.1 – Venkatrao Shankarrao Tidke. He died on 24.05.2022 and, therefore, it can be said that the application stands disposed of as against applicant No.1 and the case against him stood abated. The death extract marked 'A' is taken on record.

3. By invoking the inherent powers of this Court under Section 482 of the Code of Criminal Procedure, applicant No.2 prays for quashment of the FIR vide Crime No.175 of 2018 dated 21.07.2018 for the offence punishable under Section 306 read with Section 34 of Indian Penal Code registered with Shivajinagar Police Station, Dist. Nanded and by way of amendment, when the charge-sheet came to be filed during the pendency of the application, he has amended the petition and prayed for quashing of the entire proceedings bearing R.C.C. No.614 of 2021.

4. Heard learned Advocate Mr. P. P. Mandlik for the applicants, learned Advocate Mr. R. V. Dasalkar for respondent No.1 – State and learned Advocate Mr. R. O. Awasarmol for respondent No.2.

5. Learned Advocate appearing for applicant No.2 has vehemently submitted that as per the FIR, which has been lodged by the brother of the deceased i.e. present respondent No.2, the deceased was serving as

Manager with the Nanded Co-operative Housing Society, Vijaynagar, Nanded since 2016. The informant was informed by the deceased on 20.06.2018 that the President and Secretary i.e. present applicants were doing all the transactions of the institution in the name of the deceased and in spite of his request of not to make such transaction in his name, they were mentally harassing him and, therefore, he had lodged the complaint against them with Shivajinagar Police Station, Nanded. Informant had advised the brother stating that since he is educated, he should leave the job and make preparation for the competitive exams. Thereafter, the deceased had taken back his complaint on 21.06.2018 and resigned from the job. He had then started his studies for the competitive exams. He left the house on 10.07.2018 and he was contacted by the informant around 5.00 p.m. regarding his plans to return home. It was told by the deceased that he would come. When he had not returned till night time and he was tried to be contacted on phone, the informant was getting signal that the phone is switched off. On the earlier one or two occasions, the deceased had gone to take darshan of Balaji or had gone to meet his friends at Pune without giving any intimation to the family members. They were under the impression that this time also he has gone like that and, therefore, they did not inform the said fact to the police. On 19.07.2018, informant came to

know in the morning that dead body of a person has been found in Vijaynagar in decomposed position and the police have taken the said dead body for postmortem. Therefore, he went to the postmortem room and identified the dead body as that of his brother. His relatives had also come and they found a chit from the hip pocket of the pant of the dead body. The handwriting was identified by the informant as that of his brother. After the postmortem, they had performed the last rites with deceased and they perused the contents of the chit. The informant says that in view of the fact that the Secretary and President of the society had done illegal transaction in the name of the deceased and thereafter after his objection, he was mentally harassed. They had instigated the deceased for commission of suicide and, therefore, the FIR came to be lodged.

6. Learned Advocate appearing for applicant No.2 further submits that perusal of the entire FIR and the contents of the alleged suicide note, will not, in any manner, would show that there was any instigation or abetment on the part of the applicants, which could have forced the deceased to commit suicide. Since the ingredients of offence under Section 306 of Indian Penal Code are not attracted, it would be a futile exercise to ask the applicants to withstand the trial. He prays for quashment of the FIR as well as the entire proceedings.

7. Per contra, the learned APP as well as learned Advocate appearing for respondent No.2 strongly opposes the application and submitted that the chronology of events are required to be considered. Initially, the deceased had given complaint against the applicants with Shivajinagar Police Station, Nanded on 20.06.2018. It was then stated in the said application that since 16.07.2016, he was serving as Manager and since a year prior to that complaint, all the transactions were being done in his name. When he requested not to do such transactions in his name, he was mentally harassed and he was pressurized to leave the job. Even in that complaint, he had stated that because of the mental tension if any untoward incident happens with him, then for that purpose, the President as well as Secretary would be responsible. However, thereafter, he was persuaded by his brother respondent No.2 to leave the job and accordingly, he had given his resignation on 27.06.2018. The charge-sheet would show that deceased had left the house on 10.07.2018 and his dead body was found on 19.07.2018 in Vijaynagar. In the pocket of the pant of the deceased, the suicide note has been found, which clearly shows that by forging his handwriting, certain withdrawals have been done through cheque and illegal transactions have taken place, which has been done by the President and the Secretary and due to the mental harassment given by them, he has committed suicide. The said chit as

well as admitted handwriting has been sent for the opinion of the expert, yet it was in fact identified by the brother, who can be said to be knowing the handwriting of the deceased. Though at the time of postmortem, the viscera was preserved for chemical analysis and no final opinion was given, the viscera report shows that the results of detection of organophosphorus insecticide Monocrotophes and the level detected in the viscera of stomach and loop of intestine as well as slices of liver spleen and kidney, were found fatal. Therefore, it was a case of death by consumption of poison. The statements of witnesses have also been taken under Section 164 of the Code of Criminal Procedure and, therefore, there is sufficient material collected against the present applicant No.2, which discloses that he along with deceased applicant No.1 had instigated commission of suicide by the deceased. They both have prayed for rejection of the application.

8. The FIR lodged by present respondent No.2, as the contents are already narrated they are not reproduced here, would show that after the brother had given advise, deceased had taken back the complaint, which he had lodged against the present applicants and, thereafter, he had resigned from his post. Those documents have been attached. The complaint was filed by the deceased on 20.06.2018 with the Police Station and he had withdrawn the same on the next day i.e. 21.06.2018.

In his said statement for the withdrawal of the complaint, he has stated that as regards his application dated 20.06.2018 is concerned, it was given due to anger and misunderstanding. There was a meeting of the housing society consisting of the members and they told that he has been removed from the post. It was the misunderstanding and, therefore, he had taken back the said complaint. Then on 27.06.2018 the deceased had given resignation. In his resignation letter, he had stated that there were differences of opinion between him and the President and, therefore, he has decided to leave the job. He has not stated that due to those illegal transactions in his name, he is leaving the job. Anyway, if we consider that his role as Manager of the housing society had come to an end on 27.06.2018, but then he left the house on 10.07.2018. The informant in his FIR or the other family members, whose statements have been recorded under Section 161 of the Code of Criminal Procedure, have not stated as to what was the behavior of the deceased between 27.06.2018 to 10.07.2018. They have not stated that even after the resignation letter, in any manner, the applicants, especially now the applicant No.2 was contacting deceased. The main grievance was in respect of the transaction that was done in the name of the deceased. Then their ought to have been an investigation and documents on record to show that even after his resignation, the same

fact continued. When the FIR as well as entire charge-sheet is silent as regards the acts done or transactions between 27.06.2018 to 10.07.2018, then it cannot be taken that there is any kind of proximity between that incident and the death of deceased Prakash, which can be said to be as contemplated under Section 107 and/or Section 306 of Indian Penal Code. In ***Arnab Manoranjan Goswami Vs. State of Maharashtra and others, [(2021) 2 SCC 427]*** it has been held that in order to prove the offence under Section 306 of Indian Penal Code, the essential ingredients are (i) the abetment (ii) the intention of accused to aid or instigate or abet the deceased to commit suicide. Further, in ***S. S. Chheena Vs. Vijay Kumar Mahajan, [(2010) 12 SCC 190]***, 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.”

Further, in *Gurcharan Singh Vs. State of Punjab*, [(2020) 10 SCC 200], it has been observed that :-

“to prove the offence of abetment, as specified under Section 107 IPC, the state of mind to commit a particular crime must be visible, to determine the culpability. In order to prove the mens rea, there has to be something on record to establish or show that the appellant herein had a guilty mind and in furtherance of that state of mind, abetted the suicide of the deceased.”

9. It is to be noted that as per the prosecution story, the deceased had left the suicide note. No doubt, the opinion of the handwriting expert appears to be still awaited, but even if we take aid of Section 47 of the Indian Evidence Act and take that it would be a relevant fact to prove the suicide note on the basis of the acquaintance of the handwriting of the deceased by the brother and taking the contents of the chit as it is, it does not state anything as regards what happened after 27.06.2018 till 10.07.2018. As aforesaid, there has to be a proximity between the acts. If no active role has been attributed to the applicants during that period, then it cannot be said that there was abetment to commit suicide. Note of the decision in *Kishori Lal Vs. State of MP*, [2007 (10) SCC 797] was taken in *Arnab Manoranjan Goswami (Supra)*, wherein it was held that “the instigation literally

means to provoke, incite, urge on or bring about by persuasion to do anything.” In this situation, in some way or the other, the accused should be in contact with the person, who committed suicide within the reasonable period prior to the commission of the suicide. In ***Rajesh Vs. State of Haryana, [(2020) 15 SCC 359]***, it has been observed in paragraph No.9 that :-

“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.”

10. Taking into consideration the contents of the postmortem report as well as viscera report, it may be concluded that it was suicide by deceased Prakash, however, the entire charge-sheet including the FIR does not comply with the ingredients of the offence and, therefore, it would be a futile exercise to ask applicant No.2 to face the trial by

invoking the powers of this Court under Section 482 of the Code of Criminal Procedure, as per the guidelines those have been given in ***State of Haryana and others Vs. Ch. Bhajanlal and others, [AIR 1992 SC 604]***.

Hence, the following order :-

ORDER

- I) The application stands allowed.
- II) The First Information Report bearing Crime No.175 of 2018 dated 21.07.2018 registered with Shivajinagar Police Station, Dist. Nanded for the offence punishable under Section 306 read with Section 34 of Indian Penal Code and further proceedings i.e. Charge-sheet No.99 of 2021 in R.C.C. No.614 of 2021 pending before the learned Additional Chief Judicial Magistrate, Nanded stand quashed and set aside.
- III) Rule made absolute in above terms.

[RAJESH S. PATIL, J.]

[SMT. VIBHA KANKANWADI, J.]

scm