

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.3361 OF 2021

- | | |
|---------------------------------|----------------------|
| 1. Chetan s/o Prabhakar Ghatale | |
| 2. Nita w/o Prabhakar Ghatale | .. APPELLANTS |

VERSUS

- | | |
|---|-----------------------|
| 1. The State of Maharashtra
Through Police Inspector,
Pimpalner, Police Station, Sakri,
Dist. Dhule. | |
| 2. Dnyandeo s/o Saduji Punde | .. RESPONDENTS |

...
Mr. N. N. Desale, Advocate for applicants.
Mr. S. D. Ghayal, APP for respondent No.1 – State.
Mr. N. D. Sonawane, Advocate for respondent No.2.
...

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

DATE : 3rd October, 2022

ORDER :- [Per Smt. Vibha Kankanwadi, J.]

Present application has been filed for quashing the First Information Report (for short "FIR") bearing Crime No.57 of 2020 registered with Pimpalner Police Station, Tq. Sakri, Dist. Dhule for the offences punishable under Sections 306, 507 read with Section 34 of Indian Penal Code (for short "IPC") as well as the consequential proceeding initiated against the applicants on the basis of charge-sheet No.53 of 2021 dated 12.07.2021 filed before

the learned Judicial Magistrate First Class, Sakri for the offences punishable under Sections 306, 507 read with Section 34 of IPC.

2. Respondent No.2 has filed the FIR bearing Crime No.57 of 2020 with Pimpalner Police Station, Tq. Sakri, Dist. Dhule on 13.07.2020 for the offences punishable under Sections 306, 507 read with Section 34 of Indian Penal Code (for short "IPC") against the applicants stating that the marriage between Monali Vishal Punde and Vishal Dnyandeo Punde solemnized on 04.05.2017. The married couple was happily residing with each other in a rented premises. It is stated there was matrimonial dispute between Monali and Vishal. It is further stated that Monali and present applicants were causing harassment to Vishal. Due to the harassment at the behest of Monali and the applicants, Vishal committed suicide on 08.04.2020 between 01.00 p.m. to 08.30 p.m. by hanging. It is further stated that after performing last rites, the informant went to Nashik along with his family members by taking one file of Vishal. After immersion of ashes of deceased Vishal in Godavari river at Nashik, they checked the file of Vishal. At that time, they found one-two pages note in the said file. The said note was in handwriting of deceased Vishal. In the said note, it is stated that due to the harassment of Monali and present applicants, he compelled to commit suicide. On the basis of these

allegations, the FIR has been lodged by respondent No.2 against the present applicants.

3. It has been vehemently submitted on behalf of the applicants that even if we consider the contents of the FIR as well as the entire charge-sheet, it can be seen that no case of abetment to commit suicide can be said to have been made out as against the present applicants. The applicants are the in-laws of deceased and main allegations appear to be against the daughter of the applicants, who was the wife of deceased. The deceased who is the son of the informant – respondent No.2 used to blame his wife and treating her behaviour towards him as cruelty. Deceased as well as his wife used to reside at Pimpalner in a rented premises. They got married on 04.05.2017 and they have a child i.e. son. Informant and his wife used to go to the deceased to meet him, his wife and son. However, at that time, the son of the informant used to make complaint that his wife is not listening to whatever he used to say, used to insult, was not preparing the food as of likes etc. Informant says that to make their married life happy, he had advised the present applicants that they should give some advise to their daughter, however, it was of no use and the daughter of the applicants had not shown signs of change and according to the informant, due to the harassment of the wife, his son has

committed suicide. The statements of the witnesses, who are either relatives or were knowing the deceased, have stated the same facts. However, except two lines in respect of the applicants, they have not stated anything. It is the further prosecution story that the deceased has left two page dying declaration, however, perusal of alleged dying declaration would also show that all the allegations were against the wife and as regards the present applicants are concerned, it is only stated that they had not paid attention to his grievances. It also appears that he had made video recording also and the transcript of the same would also show that it is not against the present applicants. It would be a futile exercise to ask the present applicants to face the trial. He, therefore, prayed for quashing of the FIR as well as entire charge-sheet against the applicants.

4. Per contra, the learned APP as well as learned Advocate for respondent No.2 strongly opposed the application and submitted that perusal of the entire charge-sheet would show that there is evidence against the present applicants. They used to interfere in the married life of the son of the informant. It was rather expected from the parents of the wife that they would give better understanding or advise to their daughter so that the marital life would be proper and happy, however, the applicants used to

threaten deceased and used to take the side of their daughter. Definitely, it amounts to instigation/abetment. When the charge-sheet is now produced, the trial Court on the basis of evidence that would be adduced would assess the same and would come to the conclusion, but it would be premature to assess the evidence only on the basis of contents of the statements of witnesses.

5. At the outset, it is to be noted that in such cases of suicide, the Courts would definitely look at the suicide note or nowadays, if the recording of suicide note/statement/speech is made, then that would be considered first. It would show the mental state of the person, who committed suicide. The other evidence in the form of FIR or statement under Section 161 of Cr.P.C. would come later. There might be then scope of concoction at that time. Therefore, if we consider the suicide note as alleged to have been left in written form by deceased so also the video recording would show that almost all allegations are against the wife, who is not before this Court. Another fact to be noted is that the said written suicide note is stated to have been written on 03.04.2020 and deceased committed suicide on 08.04.2020. The alleged suicide note is in the form of grievances against the wife, in which it is stated that he is worried about the behaviour of the wife and because of her, his life has become hell and he is writing it down just for the

information and in the last, he has put 53 points of grievances and then he has stated that many more such things would be disclosed by him in future, but all should guide him about what he should do.

(अशा अनेक गोष्टी आहेत त्या मी अपणा सर्वांना हळूहळू सांगणारच आहे तरी आता मी काय करावे. आपण सर्वांनी मला मार्गदर्शन करावे ही नम्र विनंती).

Therefore, the said two page note which was found whether can be termed as suicide note, is a question, because it does not reflect that at that point of time, he had intention to commit suicide. He has not expressed it in specific words. Merely by saying that because of the behaviour of the wife his life has become hell does not amount to his intention to instigate that he would commit suicide. Under such circumstance, even *prima facie* at this stage it cannot be said that this piece of document can be considered under Section 32 of the Indian Evidence Act. Same is the case in respect of the video recording. No doubt, it is yet to be revealed about the genuineness of the said video recording, but even if we take the said clip as it is, it appears that it does not reveal as to when the videography has been done. Only two lines have been stated as against the applicants that on many occasions he had requested the applicants that they should give advise to the daughter, but they did not listen, rather they had blamed the deceased. The said blame in particular has not been stated in the video recording. Under such

circumstance, it does not amount to abetment.

6. The statements of many witnesses have been recorded under Section 161 of Cr.P.C. The contents of the FIR as well as the contents of the statements under Section 161 of Cr.P.C. as well as statement under Section 164 of Cr.P.C. of the informant would disclose that many times the deceased was making a complaint about the behaviour of his wife to the applicants, but they were not giving positive response. By any stretch of imagination it cannot be said that such behaviour on the part of the applicants would amount to an instigation or abetment as contemplated under Section 107 and/or 306 of IPC. Another fact to be noted is that the suicide has been committed on 08.04.2020 and the FIR has been lodged on 13.07.2020. In the FIR, it has been stated that due to the Covid-19 situation and as he could not arrange for the transportation, the FIR has not been lodged. However, it is to be noted that one Nitesh Ganesh Sable had given A.D. on 08.04.2020. In fact, it is hard to believe that the police would not have made any inquiry with the informant, his other relatives i.e. his other two sons etc. Even if we take that the delay caused in lodging the FIR might have been properly explained by the informant, it would be a futile exercise to ask the applicants to face the trial.

7. It can be useful to refer the decision in ***M. Arjunan vs. State, [(2019) 3 SCC 315]***, wherein in Paragraph No.7 of the judgment the Hon'ble Apex Court 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."

8. Further, in ***S. S. Chheena vs. Vijay Kumar Mahajan, (2010) 12 SCC 190***, the Hon'ble Apex Court in Paragraph No.25 of the judgment held thus :-

"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.”

9. In ***Rajesh vs. State of Haryana, (2020) 15 SCC 359***, the Hon’ble Apex Court, in Paragraph No.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.”

10. Therefore, taking into consideration the facts of the case as well as the law point as aforesaid, we arrived at a conclusion that ingredients of instigation/abetment to commit suicide are not satisfied from the contents of the FIR as well as the contents of the charge-sheet. Hence, this is a fit case where we should exercise our powers under Section 482 of Cr.P.C. The case squarely falls within

the parameters laid down 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 FIR bearing Crime No.57 of 2020 dated 13.07.2020 registered with Pimpalner Police Station, Tq. Sakri, Dist. Dhule for the offences punishable under Sections 306 and 507 read with Section 34 of IPC as well as the consequential proceeding initiated against the applicants on the basis of charge-sheet No.53 of 2021 dated 12.07.2021 filed before the learned Judicial Magistrate First Class, Sakri, stand quashed and set aside.

[RAJESH S. PATIL]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm