

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.4275 OF 2019

1. Hanmant Bhaurao Suryawanshi
Age: 60 years, Occu. Pensioner,
R/o. Sanja Osmanabad,
Tq. and Dist. Osmanabad
2. Amol Hanumantrao Suryawanshi
Age: 34 years, Occu. Service,
R/o. Sanja, Osmanabad,
Tq. and Dist. Osmanabad .. Applicants

Versus

1. The State of Maharashtra
Through the Police Officer,
Tophkhana Police Station,
Tq. and Dist. Ahmednagar
2. Shital Pradeep Patil
Age: 32 years, Occu. Household,
R/o. Sanja, Osmanabad.
Tq. and Dist. Osmanabad .. Respondents

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Mr. Satej S. Jadhav, Advocate for applicants.
Mr. M. M. Nerlikar, APP for respondent No.1 – State.
Mr. A. D. Mane (Patil), Advocate for respondent No.2 (Appointed).

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

RESERVED ON : 26th August, 2022

PRONOUNCED ON : 14th October, 2022

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

. Present application has been filed by invoking the inherent powers of this Court under Section 482 of the Code of Criminal

Procedure (for short "Cr.P.C.") for quashing the First Information Report (for short "FIR") bearing Crime No.190 of 2019 registered with Anandnagar Police Station, Dist. Osmanabad for the offences punishable under Sections 306, 34, 504, 506 of Indian Penal Code (for short "IPC") and Section 45(a)(b)(c) of the Maharashtra Money Lending (Regulation) Act as well as the further proceedings in R.C.C. No.960 of 2020 pending before the learned Judicial Magistrate First Class, Osmanabad filed against the present applicants by respondent No.2.

2. Respondent No.2 has filed the FIR vide Crime No.190 of 2019 with Anandnagar Police Station, District Osmanabad on 12.07.2019 for the offences punishable under Sections 306, 504, 506 read with Section 34 of IPC and under Section 45(a)(b)(c) of the Maharashtra Money Lending (Regulation) Act against the present applicants. It is stated in the FIR that the husband of the informant had taken hand loan of Rs.5,25,000/- from the applicants and the said loan was repaid by her husband with interest to the applicants. Though the husband of the informant has fully repaid the loan, the applicants used to threaten him and they used to demand the said amount from him. It is further stated that the applicants had taken signature of her husband on hundred rupees blank bond paper and due to continuous harassment by the applicants for repayment of

loan, the husband of the informant was always under tension and he has stated to the informant that due to said harassment by the applicants, he may commit suicide. It is further stated that in the year 2012-2013, the applicants had forcibly taken away the two-wheeler of the husband of the informant. Thereafter also from time to time the applicants used to abuse and threaten the husband of the informant on the ground that some amount was remained to be repaid, though he had repaid the entire loan amount. She further stated that on 24.06.2019 at about 9.00 a.m., her brother-in-law informed her that her husband committed suicide by hanging. While conducting inquest panchanama, in the pocket of the pant of her husband, one chit was found and in the said chit, it is mentioned that the applicants were demanding Rs.14,00,000/- even though he has repaid near about Rs.11,00,000/- including loan amount along with interest. It is further mentioned in the note that the applicants were insisting him to transfer the land in their name. With these allegations, Crime No.190 of 2019 is registered against the present applicants by respondent No.2.

3. Learned Advocate for the applicants vehemently submitted that even if we consider the contents of the FIR as well as the charge-sheet, it can be seen that there was no specific acts of abatement, which could have been stated to have been committed

by the present applicants. As per the prosecution story, the informant, who is the widow of the deceased, states that prior to some years back, her husband had taken hand loan of Rs.5,25,000/- from the applicants. Then she says that in 2012-2013, the present applicants had taken away the two wheeler vehicle i.e. Hero Honda Splendor from the house of the deceased towards the said loan. That means, the loan would have been taken prior to 2012-2013 and then the suicide has been committed on 24.06.2019. How such loan could have been kept pending and no documentary or any other transaction could have taken place between the persons. Merely because some chit is stated to have been left by the deceased will not prove any kind of abetment.

4. He prayed for the quashment of the FIR and in order to buttress his submissions, he has relied on the decision in ***Madan Mohan Singh Vs. State of Gujarat and another, [(2010) 8 SCC 628]***, wherein it has been held that "intention of accused to aid or to instigate or to abet the suicide must be proved. Suicide note of deceased implicating appellant – accused was more in the nature of departmental complaint, suggesting some mental imbalance on part of deceased which he himself described as depression would not amount to abetment."

Further, reliance has been placed on the decision in ***Netai Dutta Vs. State of West Bengal, [2005 AIR (SC) 1775]***, wherein it has been held that “in suicide note, no reference of any Act or incidence whereby the appellant is alleged to have committed any willful act or omission or intentionally aided or instigated the deceased in committing the act of suicide. There is no case that the appellant has played any part or any role in any conspiracy, which ultimately instigated or resulted in the commission of suicide by deceased. Under such circumstance, no ground has been made out to proceed against the appellant. Hence, the proceedings were quashed.”

Further, reliance has been placed on the decision in ***Imran s/o Masood Khan and Anr. Vs. The State of Maharashtra and Anr., [2019 ALL MR (Cri.) 2838]***, wherein it has been held that “in this case prosecution case was that deceased committed suicide by hanging at his own house allegedly due to persistent demand of money and threats of consequences by the applicants if demand not fulfilled. Deceased had taken hand loan from the applicants. In suicide note deceased implicated the applicants. He had lodged a non-cognizable offence against the applicants when wife and daughter of deceased were abused on account of interest on loan amount. When it was found that this incident was one month earlier to suicide, then there was an option for the deceased to set the

criminal law in motion rather than to commit suicide. Under such circumstance, it was held that even if the allegations in the FIR and the suicide note presumed to be correct, are not sufficient to take action against applicants and, therefore, the FIR was quashed."

5. Per contra, the learned APP as well as learned Advocate, who is appointed for respondent No.2 strongly opposed the application and submitted that the charge-sheet shows that the deceased had taken hand loan and thereafter, forcibly certain writing was also taken from the deceased. The loan was repaid, still the applicants were harassing the deceased. They had also taken away his two wheeler, yet continued to make demand of the amount. It amounts to abetment and harassment, because of which he has committed suicide by leaving suicide note. The note is yet to be proved before the trial Court and, therefore, this is not the proper stage to quash the FIR and the proceedings.

6. Learned Advocate appearing for respondent No.2 has relied on the decision by this Court in ***Sangharsh Vijay Gavhale Vs. State of Maharashtra and Anr., [Criminal Writ Petition No.1671 of 2021]***, wherein also there was a money transaction and taking into consideration the degree of harassment by the petitioner, which requires investigation, the writ petition was rejected.

Further, reliance has been placed on the decision in ***Mahendra K. C. Vs. State of Karnataka and Another, [(2022) 2 SCC 129]***, wherein following observations are made :-

“24. The essence of abetment lies in instigating a person to do a thing or the intentional doing of that thing by an act or illegal omission. In *Ramesh Kumar v. State of Chattisgarh, (2001) 9 SCC 618*, a three-Judge Bench of this Court, speaking through R.C. Lahoti, J.(as the learned Chief Justice then was), observed :-

“20. Instigation is to goad, urge forward, provoke, incite or encourage to do “an act”. To satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. The present one is not a case where the accused had by his acts or omission or by a continued course of conduct created such circumstances that the deceased was left with no other option except to commit suicide in which case an instigation may have been inferred. A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation.”

25. A two-Judge Bench of this Court in *Chitresh Kumar Chopra v. State (NCT of Delhi), (2009) 16 SCC 605*, speaking through D. K. Jain, J., observed :-

"19. As observed in *Ramesh Kumar (Supra)*, where the accused by his acts or by a continued course of conduct creates such circumstances that the deceased was left with no other option except to commit suicide, an "instigation" may be inferred. In other words, in order to prove that the accused abetted commission of suicide by a person, it has to be established that :-

(i) the accused kept on irritating or annoying the deceased by words, deeds or wilful omission or conduct which may even be a wilful silence until the deceased reacted or pushed or forced the deceased by his deeds, words or wilful omission or conduct to make the deceased move forward more quickly in a forward direction; and

(ii) that the accused had the intention to provoke, urge or encourage the deceased to commit suicide while acting in the manner noted above. Undoubtedly, presence of mens rea is the necessary concomitant of instigation.

20. In the background of this legal position, we may advert to the case at hand. The question as to what is the cause of a suicide has no easy answers because suicidal ideation and behaviours in human beings are complex and multifaceted. Different individuals in the same situation react and behave differently because of the personal meaning they add to each event, thus

accounting for individual vulnerability to suicide. Each individual's suicidality pattern depends on his inner subjective experience of mental pain, fear and loss of self-respect. Each of these factors are crucial and exacerbating contributor to an individual's vulnerability to end his own life, which may either be an attempt for self-protection or an escapism from intolerable self."

26. This has been reiterated in the decision in *Amalendu Pal v. State of W.B., (2010) 1 SCC 707*, where it has been observed :

"12. ... It is also to be borne in mind that in cases of alleged abetment of suicide there must be proof of direct or indirect acts of incitement to the commission of suicide. Merely 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, conviction in terms of Section 306 IPC is not sustainable.

Further, it has been held that while considering application under Section 482 of Cr.P.C., the requisite tests are required to be followed. While exercising such powers the Court cannot function as a Court of appeal or revision. Such powers are required to be exercised sparingly, carefully with caution."

7. At the outset, the parameters laid down by the Hon'ble Supreme Court while deciding the matter under Section 482 of

Cr.P.C. are required to be followed here. This Court is not supposed to sit as an appellate authority and assess the evidence that has been collected in the charge-sheet without there being any opportunity to prove it to the prosecution. With those parameters in mind, the contents of the FIR as well as the entire evidence is now required to be considered.

8. It is to be noted that when the widow of the deceased has given FIR, there appears to be apparent delay. Suicide was committed on 24.06.2019 and FIR has been lodged on 12.07.2019. She has stated that after completion of all the rites, she has come to lodge the report. No doubt, delay alone cannot be the factor to be considered for quashment of the FIR, but it can be considered as one of the facts for the same. The delay would be explained at any later point of time also by the prosecution and then it would be the job of the trial Court to appreciate the said reason, but even apparently we can assess as to whether that delay has been properly explained or not. After the dead body was found, naturally A.D. under Section 174 of Cr.P.C. came to be registered with Anandnagar Police Station, Dist. Osmanabad and the inquiry was started. During the course of inquiry, definitely, the police would have visited the house of the informant, still there was no attempt at that point of time to lodge the FIR. Admittedly, deceased Pradeep

died due to suicide by hanging. Under this circumstance, now with that *prima facie* unexplained delay, we are required to consider whether allowing the prosecution to proceed with the case would be a futile exercise.

9. In the FIR as well as in the statements of witnesses, it has come on record that deceased Pradeep had taken loan of Rs.5,25,000/- from the present applicants. Intentionally, the date or year of taking that hand loan has not been stated. It is then stated that thereafter the present applicants were insisting for the return of the amount. Insistence for return of the hand loan *per se* cannot amount to an instigation, it is the right of the person, who lends money to ask for the return of his amount. No documentary evidence has been collected to show that such transaction was entered into between the deceased and the present applicants. According to the informant and other witnesses, the said hand loan was mitigated by deceased Pradeep. Again when the entire amount was returned has not been stated. It is further stated that deceased Pradeep had told informant on one day that the applicants were insisting that still certain amount towards interest is remaining and, therefore, a document was forcibly got executed from him. According to the informant as the accused persons were insisting upon return of the amount together with interest, her husband used to be under stress. She has also stated that certain times her

husband used to express that due to the insistence of the applicants, he feel that he should commit suicide. We can consider that if the loan amount has been already mitigated and still there is insistence, Pradeep could have approached the police station or even the Magistrate to have his grievance redressed as against the applicants, but he has not taken any such action. When the feeling was expressed by deceased Pradeep to wife that he feels like committing suicide is not described i.e. date or approximate month and year has not been stated. It is then stated that in the year 2012-2013, the two wheeler of deceased Pradeep was taken away by the present applicants. Therefore, if we consider the chronology then all that was said about in respect of facts had taken place prior to 2012 and the suicide has been committed in 2019. The FIR as well as the charge-sheet does not contain any such specific act from 2012-2013 to 2019 on the part of the applicants which showed that they were desperately insisting upon to return the amount and were giving threats that if Pradeep does not return the amount, it would be of dire consequence to him.

10. The FIR says that the informant was informed about the suicide committed by her husband at about 9.00 a.m. on 24.06.2019 by her brother-in-law Rajpal Prakash Patil. It is then also stated in the FIR itself that after Rajpal informed the fact to the

police, police came to the spot. They checked the person of the deceased and found the suicide note. Interesting point to be noted is that said Rajpal Patil has given A.D. in writing on 24.06.2019 and he does not say anything about the suicide note. No doubt, at the time of drawing spot panchanama, there is reference about the suicide note, but it is nothing but the repetition of the contents of the FIR. It rather says that he had returned about Rs.11,00,000/- towards the said hand loan of Rs.5,25,000/- and the applicants were still demanding Rs.14,00,000/-. If this was the situation, why deceased had not approached police is a question for which none of the prosecution witnesses have given any answer in their statements. Everything has been kept vague. Further, again at the cost of repetition, if the suicide note was found on the same day, then why the FIR was lodged belatedly, is a question. It was not necessary that the FIR should have been by the widow of the deceased. Even the brother of the deceased could have lodged the report with the police on the same day.

11. Thus, taking into consideration even the suicide note as it is as well as the contents of the FIR, charge-sheet, it does not fulfill the basic ingredients of the offence. The ratio laid down in ***Mahendra K. C. (Supra)*** is also taken note of and by utilizing the touchstone of that ratio also, this Court arrives at a conclusion that

it would be a futile exercise to ask the applicants to face the trial. The FIR as well as entire charge-sheet deserves to be quashed and set aside. Hence, the following order :-

ORDER

I) The application stands allowed.

II) The FIR bearing Crime No.190 of 2019 registered with Anandnagar Police Station, Dist. Osmanabad for the offences punishable under Sections 306, 34, 504, 506 of IPC and Section 45(a)(b)(c) of the Maharashtra Money Lending (Regulation) Act as well as the further proceedings in R.C.C. No.960 of 2020 pending before the learned Judicial Magistrate First Class, Osmanabad, stand quashed and set aside.

III] Fees of learned Advocate, who is appointed to represent the cause of respondent No.2, is quantified at Rs.5,000/- to be paid by High Court Legal Services Sub-Committee, Aurangabad.

[RAJESH S. PATIL]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm