

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO. 61 OF 2020**

Vishal Natha More ...Applicant
Versus
The State of Maharashtra And Anr. ...Respondents

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Mr. Viral K. Rathod, Advocate for the Applicant.

Mr. Heramb Kadam i/by Mr. Sachin D. Kadam, Advocate for Respondent No.2.

Mr. A.R. Patil, APP for Respondent - State.

CORAM : PRAKASH D. NAIK, J.

DATE : 24th AUGUST, 2022.

P.C.

1. The Applicant challenges order dated 4th November, 2019 passed by learned Additional Sessions Judge and District Judge rejecting his application for discharge in Sessions Case No.12 of 2018.

2. The First Information Report (for short 'FIR') was registered vide C.R. No.8 of 2017 on 9th January, 2017 with Nallasopara Police Station for offence under Section 306 r/w Section 34 of Indian Penal Code (for short 'IPC') by the father of deceased. It is alleged that on 13th November, 2016 the daughter of first informant Nutan Shewale consumed poison in her bed room and she was taken for treatment to hospital. She died in hospital while undergoing treatment.

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Postmortem was conducted at J.J. Hospital, Mumbai and subsequently last rites were performed. The police recorded ADR No.50 of 2016. The first informant made inquiry with his wife and son about the possible reason for suicide committed by his daughter. They searched the bedroom of victim. The first informant's son went through the cellphone of the victim and found that the victim had recorded note in her cellphone. In the note it was stated that she has lost interest in life. There was negativity in her mind because of Vishal Sir. It was also found that there were calls from Ajit Patil during the day and the last call was also made by him. The first informant also made inquiry with his married daughter Neelam about the victim and she disclosed that Nutan was in relationship with Ajit Patil since last three years. If the victim talks to any other person on phone Ajit used to suspect her. He used to quarrel with Nutan. After learning that Ajit Patil was troubling his daughter, the first informant made inquiry with victim's friend Nitin Dinkar Patil. He told the first informant that he used to talk to Nutan on phone. Nutan had informed him that Ajit was not allowing her to talk to any other person and on that count he was troubling her. Nitin showed the message sent by victim Nutan to him on 7th November, 2016 wherein it was stated that Ajit is repeatedly calling her. His only intention is to harass her and he has not kept any option to her,

except ending her life. All her dreams would remain unfulfilled due to Ajit. The first informant than approached friend of victim Urvashi and she informed that Vishal More Sir was strict and in case of mistake committed by any one in project he used to shout at them. Nutan did not like it. On one or two occasions she had cried. The first informant alleged that Ajit Patil and Vishal More had troubled his daughter and were responsible for her suicide.

3. On 15th November, 2016, the brother of victim handed over the mobile phone of the victim to the police. Panchanama was recorded on the same day. The Panchanama refers to note recorded by victim in her cellphone and several missed calls and messages from cellphone of Ajit and Nitin Patil. Statements of victim's friends Sejal Naik, Hitakshi Vaze, Pranjali Patil were recorded on 15th November, 2016. They did not suspect involvement of any person and could not assign any reason for victim's suicide. Statement of Neelam Jadhav (married sister of victim) was recorded on 7th December, 2016. She stated that victim had informed her that she is having love affair with Ajit Patil. Victim had also informed her that Ajit was not allowing her to talk to any other person and suspect her and used to fight with her. Statement of Nitin Patil was recorded on 17th November, 2016. He stated that he was acquainted with victim. She

had told him that she was in love relationship with Ajit. The relationship has come to an end. However, Ajit calls her. Victim had told him that Ajit did not like her talking to him. He is troubling her. Victim had sent him what's app messag about it. Satement of Urvashi Jain was recorded on 17th November, 2016. She is the friend of victim. She stated that she had taken admission at Arena Animation for Graphics and Web Designing Course. She was attendeing lectures. Nutan (Victim) was also attending those classes. Vishal More was taking classes for software. He was strict. He used to scold all the students not any individual. Nutan had told her about affair with Ajit. She also told her that Nitin is her friend. Ajit does not like her talking to Nitin. Nutan was not keeping well. Sometimes she was not attending classes. Statement of Rajeev Thakare was recorded on 17th November, 2016. He is working as centre head of Arena Animation. He sated that Nutan Shewale had taken admission for Graphics and Web Designing Course. She had paid fees. Vishal More was teaching in the course. He was a good teacher. There was no complain of any student against him. All these statements were recorded during ADR inquiry prior to registration of FIR. The FIR was registered after about 56 days from the incident. Statements of Neelam Jadhav (sister of victim) and Omkar Shewale (Brother of victim) were recorded on 10th January,

2017. Statement of Urvashi Jain and Nitin Patil were again recorded on 12th January, 2017. On completing investigation charge-sheet was filed against Ajit Patil and Vishal More (Applicant)

4. The Applicant preferred an application for discharge before the Court of Sessions at Vasai. The said application was rejected by the learned Sessions Judge vide order dated 4th November, 2021.

5. Learned Advocate for the Applicant submitted that the offence under Section 306 of IPC is not made out. There is no evidence to frame charge against the Applicant under Section 306 of IPC. The FIR was registered after 56 days from the date of incident. There is no evidence to establish that the Applicant had instigated or abetted the victim to commit suicide. Being strict in the class and reprimanding the students for committing mistake would not tantamount to instigation which would compel the person to commit suicide. The basic ingredients to constitute offence under Section 306 of IPC are absent. The entire case is based on the relationship between victim, co-accused and the witness Nitin Patil. The Police had recorded CDR, messages exchanged between the aforesaid persons. The note found in the cellphone of victim would not be sufficient to draw an inference that the applicant had compelled victim to commit suicide. The statement of Urvashi Jain and Rajeev

Thakare refers to conduct of Applicant and no adverse inference can be drawn against Applicant.

6. Learned Advocate for the Applicant has relied upon the following decisions :

- i. Ramesh Kumar V/s. State of Chattishgarh, AIR 2001 SC 3837.*
- ii. Nehal Dutta V/s. State of West Bengal, AIR 2005 SC 1775.*
- iii. Amalendu Pal V/s. State of West Bengal, AIR 2010 SC 512.*
- iv. Randhir Singh & Anr. V/s. State of Punjab, AIR 2004 SC 5097.*
- v. S.S. Cheena V/s. Vijay Kumar Mahajan & Anr., 2010 AIR SCW 4938.*
- vi. State of West Bengal V/s. Oilal Jaiswal & Anr., AIR 1994 SC 1418.*
- vii. Mahendra Singh & Anr. V/s. State of M.P., 1995 Supp. 3 SCC 731.*
- viii. Gangula Mohan Reddy V/s. State of A.P., (2010) 1 SCC 750.*

ix. Poonam Aggarwal V/s. State of Maharashtra, 2019 Cr.LJ.

x. Dr. Seema Ajay Bhoosreddy V/s. State of Maharashtra, 2011 SCC OnLine Bom 1037.

7. Learned Advocate for Respondent No.2 and learned APP submitted that the note recorded by victim is sufficient to draw an inference that the victim has taken the unusual step due to harassment by the Applicant. The statement of witness Urvashi Jain corroborates the suicide note recorded in the cellphone. Although the co-accused is also responsible for suicide by victim, the Applicant cannot be exonerated from charge. *Prima facie* case is made out against the Applicant to frame charge. The impugned order does not suffer from any illegality. At this stage the Accused cannot be discharge. *Prima facie* case is made out to frame charge and proceed against the Accused.

8. Learned Advocate for Respondent No.2 has relied upon the following decisions :

i. M. E. Shivalingamurthy V/s. Central Bureau of Investigation, (2020) 2 Supreme Court Cases 768.

ii. Sandeep Sunil Kumar Loharia V/s. Summet Ganpatrao Bachewar & Anr., 2018 ALL MR (Cri) 4470 (S.C.).

iii. State of Madhya Pradesh V/s. Deepak, (2019) 13 Supreme Court Cases 62.

9. I have perused the charge-sheet. The material on record is not sufficient to invoke Section 306 of IPC against the Applicant. Even if note recorded in the cellphone is accepted to be true, it cannot be said that the Applicant has instigated the victim to commit suicide. The statement of witness Urvashi Jain mention that the Applicant was the teacher in the course of Graphics and Web Designing which was attended by the witness as well as the victim. The Applicant used to be strict and reprimand the students for committing mistake in the project. She also stated that the action was against all students and not against individual. Assuming the said version to be true it is difficult to accept that the Applicant was responsible for the suicide committed by the victim. Statement of Rajveev Thakare mentions that he is the head of the centre where course is conducted. The Applicant is the teacher in the course. He is good teacher. There are no complaints by any students against him. No other students statement is on record asserting any harassment to them or victim. Statements also indicate that victim was not attending class for sometime although she had paid the course fees. There is no credible material even to frame charge against the Applicant for an offence under Section 306 of IPC. Surprisingly the charge-sheet was filed for

the offence under Section 306 r/w Section 34 of IPC. None had acted in furtherance of common intention.

10. The Apex Court in the case of *S.S. Cheena V/s. Vijay Kumar Mahajan & Anr.* (supra) in Paragraph No.28 has observed

“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 of 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.”

11. Abetment has been defined under Section 107 of IPC. It reads as follows :

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.

12. The Apex Court in the case of *Ramesh Kumar V/s. State of Chattishgarh* (Supra) in Paragraph No.20 has observed that

“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.”

13. In the case of *State of West Bengal V/s. Orilal Jaiswal & Anr. (supra)*, the Apex Court has observed that the Court should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end the life by committing suicide. If it appears to the Court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences to domestic life quite common to the society to which the victim

belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the Court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty.

14. In the case of *Chitresh Kumar Chopra V/s. State (Govt. of NCT of Delhi)* AIR 1446 the Supreme Court had an occasion to deal with the aspect of abetment. It is opined that there should be intention to provoke, incite or encourage the doing of an act by the latter. Each persons suicidability pattern is different from the other. Each person has his own idea of self-esteem and self-respect. It is impossible to lay down any straitjacket formula in dealing with such cases. Each case has to be decided on the basis of its own facts and circumstances.

15. In the case of *State of Madhya Pradesh V/s. Deepak (supra)*, the Apex Court considered the scope of discharge in revision. The victim had committed suicide. Her dying declaration was recorded. She had stated that she is not able to get the job. Wherever she go, the accused seduced her out of job. Earlier he had molested her on which she had filed case against him, since than he is harassing her. The Court held that

there is sufficient material to uphold the order framing charge. The deceased had filed several complaints. She was evicted from house and her employment was terminated. In the case of *Sandeep Sunil Kumar Loharia V/s. Summet Ganpatrao Bachewar & Anr. (supra)*, the accused was charged from offence under Section 302 of IPC. The High Court in the impugned order of discharge has observed that the statement made by the Appellant (complainant) appears to be calculated and does not indicate trustworthiness in comparison to the statements made by the person who took him in auto rickshaw and b the employee. The Apex Court observed that, appreciation of evidence is an exercise that the High Court could not have undertaken at the stage of consideration of application for discharge. In the case of *M. E. Shivalingamurthy V/s. Central Bureau of Investigation (supra)*, it was held that while deciding a discharge petition, only material brought on record by prosecution have to be considered. Accused is entitled to discharge if evidence which prosecution proposed to adduce to prove guilt of the Accused if fully accepted before it is changed in cross-examination or rebutted by defence evidence, cannot shown that Accused commit the offence. Where two witness are possible and one of them gives rise to suspicion only as

distinguished from grave suspicion, the trial Judge would be empowered to discharge Accused.

16. Applying the principle enunciated in the aforesaid decision it is evident that there was no material before the Court to proceed against the Accused/Applicant. In the case of *P Vijayan V/s. State of Kerala (2010) 2 SCC 398*, it is observed that Judge was not a mere post office to frame charge at the behest of prosecution. The Judge has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by prosecution.

ORDER

- i. The Criminal Revision Application No. 61 of 2020 is allowed ;
- ii. Impugned order dated 4th November, 2019 passed by Extra Additional Sessions Judge, Vasai in application below Exhibit-3 is set aside;
- iii. The Applicant is discharged from the proceedings in S.C. No.12 of 2018 pending before the Sessions Court, Vasai ;
- iv. Criminal Revision Application is disposed off accordingly.

(PRAKASH D. NAIK, J.)