

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1748 OF 2018

Mukesh Dipchand Jain, Age 48 years,
R/o.20/229, Netaji Nagar, Meghaninagar,
Ahmadabad, Gujarat.

Petitioner

versus

The State of Maharashtra

Respondent

Mr.Mubin Solkar with Mr.Aamir Sopariwala, Mr.Zahid B. i/by
Mr.Yusuf Mithi, Advocate for Petitioner.
Mr.S.R.Agarkar, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 27th September 2022

PC :

1. The Petitioner is seeking quashing of the order passed by Sessions Court, at Mumbai dated 1st February 2018 rejecting application for discharge preferred by him in Sessions Case No.343 of 2015.

2. The prosecution case in brief is as under :-

(i) The husband of first informant Gopal Mali was residing at Ahmedabad with his family. In 2011 he was owner of mobile sale shop. He did not earn profit and hence closed the business. He started video editing business at his residence. Since there was no sufficient profits, he closed the said business. In March-2013 he started selling solar electric fan and other goods in the name of Siddhivinayak Enterprises at Ahmedabad. He suffered losses. He

used to travel to Mumbai for business purposes. He left the house on 3rd July 2013;

(ii) On 23rd July 2013 Mr.Gopal Mali committed suicide by hanging in a hotel at Mahim, Mumbai. Mahim Police Station informed about the incident to his son. On receiving information, son and son in law of deceased came to Mumbai. Last rites were performed at Ahmedabad. Complainant's son and son in law informed her that deceased had written note that he was harassed by Mukesh Jain, Mayursingh Ghanshyam Jadeja Girdhar Sagar, Ketan Sagar and Nilesh Mali. The complainant informed that the deceased had taken loan from them and the said persons were troubling him for recovery of loan. The rate of interest on loan obtained from Mukesh Jain was high and hence deceased could not repay loan. Mukesh Jain used to visit house and threaten the deceased. Complainant's husband had also taken loan from Mayursingh Jadeja. About one year ago four associates of Mayursingh Jadeja had visited shop of deceased and threatened him. On that day deceased did not return home;

(iii) Deceased had taken loan from Giridhar Sagar and Ketan Sagar in 2008 for marriage of daughter. The said persons were threatening him for repayment of loan;

(iv) Deceased had taken loan from Nilesh Mali on interest. The amount was returned. Nilesh Mali was defaming deceased in society;

(v) On 4th August 2013 the complainant found 9 page letter in the cupboard. It was written in Gujarati. In the said letter deceased had written about harassment by Mukesh Jain and Mayursingh Jadeja on account of money. The quantum of loan obtained from Mukesh Jain and interest on loan was also mentioned

in the letter. It was high rate of interest. The letter was bearing date as 13th August 2012;

(vi) Personal diary of deceased was found by police in the hotel. Some writings were made in diary. There is reference of a woman named Sweety @ Begum Khatun in the diary. The complainant does not know anything about her;

(vii) Due to harassment caused by Mukesh Jain, Mayursingh Jadeja, Girdhar Sagar, Ketan Sagar and Nilesh Mali as written in diary and letter, deceased Gopal Mali had committed suicide on 23rd July 2023 in hotel Mahim Palace;

(viii) The letter dated 13th August 2012 was handed over to police. Statement of wife of deceased/complainant was recorded on 8th August 2013;

(ix) ADR inquiry was conducted vide ADR No.100 of 2013;

(x) Statement of Dinesh Mali was recorded on 24th July 2013. He is the son in law of deceased. He stated that names of persons responsible for suicide viz Mukesh Jain, Mayursingh Jadeja, Girdhar Sagar, Ketan Sagar and Nilesh Mali, are written in personal diary. Said persons were known to his father in law and there were business transactions between them. He is not aware whether there was any dispute between them and he is not aware why deceased has held them responsible for suicide. Statement of Deepak Gehlot was recorded on 24th July 2013. He is the nephew of deceased. Statement of Ankit Mali was recorded on 24th July 2013. He is the son of deceased. All these statements are similar;

(xi) The statement of wife of the deceased recorded on 6th August 2013 was treated as FIR on 27th July 2014 vide C.R No.253 of 2009 for offence under Section 306, 34 of IPC. Charge sheet was filed. Supplementary statement of complainant was recorded on 4th

April 2015 and supplementary charge sheet was filed.

3. Petitioner preferred application for discharge vide Exhibit-3 before Sessions Court. Prosecution filed say and opposed the application. Learned Sessions Judge vide order dated 1st February 2018 rejected the said application vide order dated 1st February 2018.

4. Learned advocate for Petitioner submitted that Trial Court has committed error in rejecting application. The offence u/s306 of IPC is not made out. There is no suicide note of the deceased in the charge sheet. There is no evidence to establish that petitioner has abetted suicide. The statements of witnesses did not refer to any harassment caused by Petitioner. Their statements indicate that they have no clue as to why deceased had committed suicide. The FIR was registered after a period of more than one year from the date of incident of suicide. There is no evidence before the Court to frame charge against petitioner. The deceased had left Ahmedabad about 25 days prior to his death and was residing at Mumbai at Hotel Mahim Palace. During the said period there was no communication between petitioner and the deceased. The deceased had taken loan not only from the petitioner but also from several other businessmen from Ahmedabad, which he was unable to repay on account of repeated losses in business. Assuming that rate of interest charged by petitioner and other lenders was exorbitant, that itself cannot be a ground to hold that petitioner was abetting to commit suicide. Petitioner had initiated proceedings u/s.138 of Negotiable Instruments Act against deceased. There is no prima facie evidence revealing complicity of petitioner in the commission of alleged

offence. There is no material in the charge sheet disclosing any offence against petitioner. The FIR and accompanying evidence annexed to the chargesheet does not prima facie disclose any offence against petitioner. The deceased committed suicide on 23 July 2013. The son of deceased and his son in law reached Mumbai. Their statements were recorded but for a period of about one year, no FIR was lodged. Statements of son and son in law of the deceased were recorded by police immediately on the next date of the alleged suicide and although they were confronted with the contents of personal diary of the deceased containing suicide note which was allegedly seized from his room in the hotel where he committed suicide, they did not lodge any complaint against petitioner. On the contrary, said persons stated that they had no knowledge as to whether there was any dispute or quarrel between the deceased and the accused. They could not assign reason as to why the deceased had held the accused persons responsible for his suicide. The statement of nephew of deceased was recorded immediately after the incident. He stated that he had no knowledge as to whether there was any dispute or quarrel between deceased and the accused persons and could not assign any reason as to why he had held them responsible. There is no material in the charge sheet to disclose that petitioner had committed any overt act immediately before the death of deceased thereby instigating or abetting him to commit suicide. There is no material in the charge sheet to show that petitioner had contacted the deceased immediately before his death. The alleged handwritten letter was found by the wife of deceased on 4th August 2013. The date appearing on the said letter is 4th August 2012. It has no evidentiary value to further the case of prosecution that accused was responsible for suicide of deceased. The handwritten

letter is no material to infer that the petitioner or the co-accused had instigated, aided or abetted the deceased to commit suicide. The alleged note found in the personal diary of the deceased was seized from the room on the date of suicide, does not disclose that petitioner had committed any overt act immediately before death of deceased to compel the deceased to commit suicide.

5. Learned Advocate for Petitioner has relied upon following decisions :-

- (a) M.Mohan Vs. State represented by the Deputy Superintendent of Police – (2011)3-SCC-626;
- (b) State of Kerala and others Vs. S.Unnikrishnan Nair and others (2015)9-SCC-639;
- (c) Sharad Darade Vs. State of Maharashtra and others - (Writ Petition No.1806 of 2021 and connected matters decided on 8th September 2022);
- (d) Suhas and others Vs. The State of Maharashtra 2017-ALL MR (Cri)-1684.

6. Learned APP submitted that prima facie case is made against accused. At this stage this Court is not required to appreciate the evidence. The Sessions Court has assigned reasons for rejecting the application for discharge. Material on record supports prosecution case. The statements of witnesses shows involvement of petitioner in the crime. The suicide note implicates the petitioner. There was instigation on the part of petitioner to the deceased to commit suicide. The victim was harassed for recovery of loan by the accused. Material on record cannot be brushed aside at this stage.

7. The deceased left his residence on 3rd July 2013. He came to Mumbai and checked in hotel Mahim Palace at Mahim, Mumbai. He committed suicide in the hotel on 23rd July 2013. Statements of relatives who came to Mumbai on receiving information from police were recorded on 24th July 2013. The victim committed suicide 20 days after he left his residence. The son, son in law and nephew of deceased had stated that they have no personal knowledge about the nature of harassment caused by accused and why the accused are held responsible for suicide. The wife of deceased found a 9 pages letter in cupboard on 4th August 2013. It was dated 13th August 2012. Thus, the said letter was written one year ago. The victim had allegedly decided to commit suicide due to alleged harassment one year ago. There is no proximity between the time when the letter was written and date of suicide. The charge sheet does not contain any panchanama of seizure of said letter. Prosecution could not place on record any opinion of handwriting expert that the handwriting on the letter is of deceased. Statement of wife of deceased was recorded on 6th August 2013. However, the FIR was registered on 27th July 2014. Personal diary was allegedly recovered from hotel. It contains writing stating that some persons named therein created problems in his life. The note does not mention what is the nature of problems faced by him from accused persons. According to first informant, the deceased had left his residence on 3rd July 2013. During his life time he was conducting business of selling mobile phones. Since there was loss in the business he closed the business. Thereafter he was carrying on business of video editing at his residence. Since there was no sufficient profits, he started business of selling solar electric fans and other articles at

Ahamedbad. He was not getting any returns in the business and suffered losses. However, he continued with the said business. The rate of interest of loan advanced by Mukesh Jain was high. Due to loss the deceased was not in a position to repay the loan and interest. About one year ago some persons associated with Mayur Singh Jadeja had visited the shop of deceased and threatened him. Girdhar Sagar and Ketan Sagar had provided loan of Rs.1,00,000/- to the deceased for marriage of his daughter in the year 2008. For repayment of loan, Girdhar Sagar and Ketan Sagar were threatening the deceased by visiting his residence. Some amount of loan was repaid to them. However, she is not aware as to how much amount was refunded to the lenders. The deceased had obtained Rs.40,000/- for engagement ceremony from Nilesh Mali. The said amount was returned to him, however, Nilesh Mali was defaming in the market area. In the said letter it was stated that Mukesh Jain and Mayur Singh Jadeja had troubled the deceased with repeated demands of money. Letter also contained the quantum of loan borrowed from Mayur Singh Jadeja and cleared by the deceased. It could be inferred that rate of interest was very high. Mayur Singh Jadeja, Girdhar Sagar, Ketan Sagar, Nilesh Mali were harassing the deceased. However, first informant or her husband did not make any complaint to Meghani Nagar Police Station, Ahamadabad due to fear.

8. There is no evidence on record to show that immediately before the incident, petitioner had met the deceased or had any telephonic conversation with the deceased or has harassed him in any manner resulting in instigation or abetment to commit suicide. The aforesaid witnesses are silent about any cause as to why the deceased had committed suicide. The wife, son and son in law of the

deceased never made any complaint about the alleged harassment caused to the deceased by petitioner. The first informant had drawn an inference that rate of interest charged for the loan advanced by the petitioner was high. Assuming that petitioner had disbursed loan and was charging high interest, it cannot amount to abetment to commit suicide. Assuming that petitioner was demanding repayment of loan, it cannot be inferred that petitioner is responsible for the suicide committed by the deceased. The legitimate demand for return of money cannot be construed as an act of abetment for commission of suicide. In fact, FIR indicate that deceased had borrowed money from several persons. He could not repay the amount. The lenders were demanding repayment of the amount. Deceased left Ahmedabad and came to Mumbai and then committed the unfortunate act. The contents of suicide note does not disclose that petitioner had instigated or aided the deceased to commit suicide.

9. In the case of K.Mohan Vs. State represented by the Deputy Superintendent of Police (supra), the Hon'ble Supreme Court has observed that abetment involves mental process of instigating or intentionally aiding a person in doing of a thing or there should be clear mens rea to commit offence u/s.306 of IPC. It requires commission of direct or active act by accused which led deceased to commit suicide seeing no other option and such act must be intended to push victim into a position that he commits suicide.

10. In State of Kerala and others Vs. S.Unnikrishnan Nair and others (supra) it is observed that it was the suicide note which forms the fulcrum of the allegations. On plain reading of the suicide note it

is difficult to hold that there was any abetment by accused. The note except saying that the respondents compelled him to do everything and cheated him and put him in deep trouble, contains nothing else. The allegations are vague.

11. In a recent decision of Division Bench of this Court in the case of Sharad Darade Vs. The State of Maharashtra and another delivered in Writ Petition No.1806 of 2021 and other connected matters, this Court had quashed the FIR registered under Section 306 of IPC. It was observed that for attracting Section 306 of IPC, the pre-requisite is abetment. There must be material of a positive act, as a pre-requisite for satisfying the word 'abetment', the contents of FIR and reference made to incidents falls too short to show any positive act committed by the petitioners so as to satisfy the term abetment which is a pre-requisite of Section 306 of IPC. Reference was made to several decisions of Supreme Court relating to ingredients to constitute offence u/s.306 of IPC.

12. 'Abetment of a thing' has been defined under Section 107 of the Code, which 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.

Explanation 1. - A person who, by wilful misrepresentation, or by wilful concealment of a

material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Explanation 2. - Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitate the commission thereof, is said to aid the doing of that act.”

13. In Rameshkumar Vs. State of Chattisgarh (2001)9-SCC-618, the dispute was between husband and wife. The husband uttered “you are free to do whatever you wish and go wherever you like”. Wife committed suicide. The Apex Court examined different shades of the meaning of ‘instigation’. In paragraph 20 it was observed as follows :

“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.”

14. The Hon’ble Supreme Court in Chitresh Kumar Chopra Vs. State (Govt. of NCT of Delhi) (2009)16-SCC-605, had an occasion to deal with this aspect of abetment. The Court dealt with the dictionary meaning of the word ‘instigation’ and ‘goadings’. The

Court opined that there should be intention to provoke, incite or encourage the doing of an act by the letter. Each person's suicidability pattern is different from the others. Each person has his own idea of self-esteem and self-respect. Therefore, 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 Madan Mohan Singh Vs. State of Gujarat and another (2010-AIR-SCW-5101), the victim had left the suicide note alleging that the accused has ruined his life. It was observed that in order to bring out an offence u/s.306 of IPC, specific abetment as contemplated by Section 107 of IPC on the part of the accused with an intention to bring out the suicide of the concerned person as a result of that abetment is required. The intention of the accused to aid or to instigate or to abet the deceased to commit suicide is a must for this particular offence u/s.306 of IPC in the FIR or suicide note.

16. In the case of Dilip s/o Ramrao Shirasao and others Vs. State of Maharashtra and another (2016-ALL MR (Cri)-4328) , the Division Bench of this Court considered various judgments of Supreme Court and the High Court and in para 20 of the judgment, held thus :

“20. As has been held by Their Lordships of the Apex Court that for permitting a trial to proceed against the accused for the offence punishable u/s.306 of IPC, it is necessary for the prosecution to at least prima facie establish that the accused had an intention to aid or instigate or abet the deceased to commit suicide. In the absence of availability of such material, the accused cannot be compelled to face trial for the offense punishable u/s.306 of the Indian Penal Code. As has

been held by Their Lordships of the Apex Court that abetment involves mental process of instigating a person or intentionally aiding a person in doing of a thing and without a positive act on the part of the accused in aiding or instigating or abetting the deceased to commit suicide, the said persons cannot be compelled to face the trial. Unless there is clear mens rea to commit an offence or active act or direct act, which led the deceased to commit suicide seeing no option or the act intending to push the deceased into such a position, the trial against the accused u/s.306 of the IPC, in our considered view, would be an abuse or process of law.”

17. In the case of Suhas and others Vs. State of Maharashtra (2017-ALL MR (Cri)-1684), it is held that initiation of legal proceedings by accused and act of suicide had no nexus. After gap of one year of initiation of legal proceedings deceased committed suicide. The said act could not be said to be in proximate date and time of initiation of such legal proceedings.

18. In the case of Praveen Pradhan Vs. State of Uttarakhand and another (20129-SCC-734, it is observed that instigation has to be gathered from circumstances of a particular case. No straitjacket formula can be laid down to find out as to whether in a particular case there has been instigation which force the person to commit suicide.

19. Although at the stage of discharge the Court is not required to conduct roving inquiry, but for framing charge against the accused prima facie case has to be made out. The prosecution has not made out the case to proceed against the accused. In PVijayan Vs. State of Kerala (AIR-2010-SC-663), it is held that Judge was not a mere post office to frame the charge at the behest of prosecution. But had 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. In the case of CBI Vs. K.Narayan Rao (2012)3-SCC (Cri)-1183, it is held that roving inquiry in pros and cons of matter and weighing of evidence as is done in trial is not permissible at this stage. Charge has to be framed if court feels that there is strong suspicion that accused has committed offence. If court feels that there was no prima facie evidence against the accused, then the accused had to be discharged. In the present case there is no sufficient ground for proceeding against the accused.

20. In the light of aforesaid circumstances, no case is made out by the prosecution for proceeding against petitioner. Impugned order is required to be set aside and petitioner has to be discharged from impugned proceedings.

ORDER

- (i) Writ Petition is allowed and disposed off;
- (ii) The order dated 1st February 2018 passed by Additional Sessions Judge, Greater Bombay below Exhibit-3 in Sessions Case No.343 of 2015 rejecting application for discharge is quashed and set aside and petitioner is discharged in Sessions Case No.343 of 2015.

(PRAKASH D. NAIK, J.)

MST