

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL APPLICATION (APL) NO.190/2022

Dr. Uday Navlekar,
aged about 51 years, Occ. Professor,
r/o Navprabhat Colony, Near Darda
Nagar, Yavatmal-445 001.

.....APPLICANT

...V E R S U S...

1. The State of Maharashtra through
Police Station Officer, Kalamb Police
Station, Dist. Yavatmal.
2. Smt. Durga wd/o Pramod Thakre,
aged about 45 years, Occ. Labour,
r/o Nanza, Tq. Kalamb, Dist. Yavatmal. **...NON APPLICANTS**

Mr. F. T. Mirza, Advocate for applicant.
Mr. V. A. Thakare, A.P.P. for non applicant no.1.
Ms Soniya Gajbhiye, Advocate appointed for non applicant no.2.

CORAM:- ROHIT B. DEO & ANIL L. PANSARE, JJ.

DATE OF RESERVING THE ORDER : 06.09.2022

DATE OF PRONOUNCING THE ORDER : 19.10.2022

JUDGMENT (Per: Anil L. Pansare, J.)

Heard. Admit. Heard finally by consent of learned
counsel for the parties.

2. The applicant has put forth following substantive
prayer:

“a) quash and set aside the impugned Chargesheet No.73/2021 dated 29.06.2021, now Sessions Case No.56/2021 pending before the Learned Sessions Judge at Yavatmal arising out of impugned FIR No.347/2020 dated 21.10.2020 registered at Police Station, Kalamb, District Yavatmal.”

2. The applicant is President of P. M. Ruikar Trust. He is also Principal of Abasaheb Parvekar Senior College, Yavatmal. One Pramod Thakare was working as Superintendent of the Boys Hostel. He committed suicide on 09.04.2019 as he allegedly suffered continuous harassment at the hands of the applicant, Rajendra Tongo (Managing Trustee) and cook named Amol Raut. The deceased has left behind suicide note wherein he has stated that he was suffering mental harassment at the hands of these three, for last many days, therefore, he has committed suicide. He has further stated that his wife, who is also working with him was also harassed by the applicant. She was a Balwadi Teacher, but was asked to do house works or agricultural works. Her job was frequently changed. He has also stated that the other employees are also receiving bad

treatment. Rajendra Tongo abused old aged employees. The deceased has then stated that there is rampant corruption in the trust. The deceased was against such corruption. The details of corruption are also mentioned in the suicide note. The deceased succumbed to such harassment and committed suicide.

3. The FIR came to be lodged by the wife of deceased mentioning all the above facts. The FIR was lodged on 20.10.2020 with Police Station, Kalamb vide Crime No.0156/2020 for an offence punishable under Sections 306 read with Section 34 of the Indian Penal Code (IPC). The investigating agency recovered suicide note and recorded statements of as many as 42 witnesses, some of whom are neighbours of the deceased who have supported the theory of the deceased that he was suffering harassment at the hands of the applicant and others. After completing the investigation, the charge-sheet has been filed.

4. Mr. Mirza, learned counsel for applicant, submitted that the allegations as levelled against the applicant, even if taken at its face value, would not attract the ingredients of Section 306 of the IPC. He has drawn our attention to Sections 306 and 107 of the IPC, which read thus:

“306. Abetment of suicide.—If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

“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.”

Mr. Mirza, learned counsel for applicant, submits that case against the applicant is of abetment of commission of suicide. Abetment is defined under Section 107 of the IPC which includes three possibilities. The first being instigation to do certain things. Second being engaging with one or more persons in any conspiracy for doing such thing. And third being intentionally aiding by any act or omission for doing such thing.

5. In the present case, Mr. Mirza, submits that, what is alleged against the applicant is that he has harassed the deceased and his wife and that he is involved in corruption. Neither harassment nor involvement of the applicant in corruption could be said to be an act by which the applicant has

instigated the deceased to commit suicide or that the applicant has committed certain things that left the deceased with no other option but to commit suicide. Thus, according to him, there is nothing in the charge-sheet to indicate that the applicant has aided or abetted the deceased to commit suicide.

6. Mr. Mirza, learned counsel for the applicant has relied on the following judgments:

1. *Gio Varghese Vs. State of Rajasthan and anr.*¹
2. *Kanchan Sharma Vs. State of Uttar Pradesh and anr.*²

In *Gio Varghese* (supra) The appellant therein was appointed as Physical Training Instructor. One student, aged 14 years, committed suicide on the ground that the appellant has harassed and insulted him in presence of everyone. The child informed his mother of the incident. His mother said that they will go to the school on the next day. However, the child committed suicide in the night. The child left behind suicide notes which only mentioned, “Need justice” and “Thanks Geo

1 2021 SCC Online SC 873

2 AIR 2021 SC 4313

(PTI) of My School”. The High Court refused to quash the FIR under Section 482 of the Cr.P.C. The Supreme Court held that, “Very element of abetment is conspicuously missing from allegations levelled in FIR. In absence of element of abetment missing from the allegations, essential ingredients of offence under Section 306 of IPC do not exist. Further, suicide note is rhetoric document penned down by an immature mind.” Lastly, it is held that there is no material to indicate that appellant had intention or that he intended to bring about suicide of his student and that it would be absurd even to think that appellant had any intention to place the deceased in such circumstances that there was no option available to him except to commit suicide. Accordingly, the FIR came to be quashed.

7. In Kanchan Sharma (supra), the FIR was registered for the offence punishable under Section 306 of the IPC read with Section 3 (2) (v) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The appellant approached the High Court for quashing of the proceedings. The High Court dismissed the petition mainly on the ground

that the disputed questions of fact cannot be adjudicated at this stage under Section 482 of the Cr.P.C. The Hon'ble Supreme Court found that except for self serving statements of complainant and other witnesses stating that deceased was in love with applicant, there was no other material to show that applicant was maintaining any relation with the deceased. It is then held that merely because the deceased went to the house of appellant and consumed poison that itself would not indicate any relation of applicant with the deceased. Accordingly, it is held that there is no material to allege that the appellant has abetted for suicide of the deceased within the meaning of Section 306 of the IPC.

8. As against this, Mr. Thakare, learned A.P.P. for non applicant-State, contends that the allegations in the charge-sheet clearly demonstrates that the deceased was left with no other option but to commit suicide. He suffered continuous harassment at the hands of applicant and others. The deceased was against the corrupt practice adopted by the applicant and others and therefore could be said to be a threat to the applicant

and others. Suicide note further indicates that the applicant and others intended to remove all old employees, may be applicant and others wanted to employ their men in the trust that runs the school and hostels amongst others. According to him, the aforesaid facts could only be unearthed during the trial. He submits that shutting the doors at this stage would seriously prejudice the prosecution.

9. He relied upon Mahendra K. C. Vs. State of Karnataka and anr.¹ In the said case, the offence punishable under Section 306 read with Section 34 of the IPC was registered against the appellant therein and others. The appellant approached the High Court of Karnataka, which was pleased to quash the criminal complaint on the ground that continuation of the prosecution would be a perversity of justice and sheer waste of time besides requiring the accused to undergo rigors of the trial. The complainant challenged the said order before the Apex Court. The Supreme Court summarized the doctrine of abetment of suicide. It is held that the suicide can be inferred

1 (2022) 2 SCC 129

where the accused, by his acts or by continued course of conduct created such circumstance that the deceased was left with no other option except to commit suicide. On the point of powers under Section 482 of the Code of Criminal Procedure, the Supreme Court held that the required test is whether the allegation in complaint, as they stand, without adding or detracting from the complaint, prima facie, establish the ingredients of the offence. It further held that the High Court cannot test the veracity of the allegations nor, for that matter, can it proceed in the manner of a Judge conducting a trial would on the basis of the evidence collected during the course of trial. It held that the High Court must consider whether the allegations are so improbable that a prudent man would not arrive at the conclusion that there is sufficient ground to proceed with the complaint. The Supreme Court also took into consideration that the FIR was lodged and investigation was ongoing and accordingly held that the High Courts, under Section 482 of the Code, are normally refrained from giving prima facie decision, in case where the entire facts are

incomplete or hazy. The issues involved, whether factual or legal, are of wide magnitude and cannot be seen in their true perspective without sufficient material.

10. Learned A.P.P. has then referred to the judgment in Praveen Pradhan Vs. State of Maharashtra Uttaranchal and anr.¹

In the said case, the FIR was lodged by brother of deceased alleging that the appellant therein, for long been attempting to compel the deceased to indulge in several wrongful practices at workplace, non-compliance with which led to regular harassment and insulting of deceased by appellant. Owing to constant humiliation and ill-treatment meted out to him by appellant, the deceased committed suicide. The High Court dismissed the application for quashment of the proceedings. The matter was carried before the Supreme Court which, upsetting the order of the High Court, held as under:

“19. Thus, the case is required to be considered in the light of aforesaid settled legal propositions. In the instant case, alleged harassment had not been a casual

1 (2012) 9 SCC 734

feature, rather remained a matter of persistent harassment. It is not a case of a driver; or a man having an illicit relationship with a married woman, knowing that she also had another paramour; and therefore, cannot be compared to the situation of the deceased in the instant case, who was a qualified graduate engineer and still suffered persistent harassment and humiliation and additionally, also had to endure continuous illegal demands made by the appellant, upon non-fulfillment of which, he would be mercilessly harassed by the appellant for a prolonged period of time. He had also been forced to work continuously for a long duration in the factory, vis-à-vis other employees which often even entered to 16-17 hours at a stretch. Such harassment, coupled with the utterance of words to the effect, that, “had there been any other person in his place, he would have certainly committed suicide” is what makes the present case distinct from the aforementioned cases considering the facts and circumstances of the present case, we do not think it is a case which requires any interference by this court as regards the impugned judgment and order of the High Court. The appeal is, therefore, dismissed accordingly.”

11. Another judgment is in Narayan Malhari Thorat Vs. Vinayak Deorao Bhagat and anr.¹ In the said case, FIR was lodged by the appellant under Section 306 IPC in which it was alleged that his daughter-in-law and son (deceased victim) were teachers in a village school, where first respondent (accused) was also a teacher. The accused used to call on mobile of appellant's daughter in law and used to harass her. It resulted in verbal altercations between the son and accused on a day. Three days thereafter the son committed suicide leaving the suicide note addressed to Police Station Officer that accused ruined his family life and therefore should not be pardoned and should be hanged. The accused filed an application under Section 482 of the Code for quashing the FIR, which was allowed by the High Court. The complainant assailed the order before the Supreme Court, which held that there are definite allegations that the first respondent would keep on calling the wife of victim and kept harassing. The allegations are supported by statements of mother and wife of victim recorded during investigation. Evidence also shows that there was

1 (2019) 13 SCC 598

altercation between the victim and the first respondent, 3-4 days prior to the incident. It is accordingly held, considering overall facts, coupled with the fact that suicide note made definite allegation against the first respondent, that the High Court was not justified in entering into question whether first respondent had requisite intention to aid or instigate or abet commission of suicide. The Court also held that when the investigation was yet to be completed and charge-sheet, if any, was to be filed, the High Court ought not to have gone into the aspect whether there was requisite mental element or intention on part of respondent.

12. We have given thoughtful consideration to the submissions made by both the sides. We have gone through the material placed before us including charge-sheet. The fact in the two out of three judgments relied upon by learned A.P.P. Mr. Thakare indicate, FIR itself was challenged and the charge-sheet was to be filed. The Supreme Court has held that when there are certain allegations in the FIR against the accused, the High Court should be slow in quashing the FIR.

13. The judgments relied upon by Mr. Mirza, learned counsel for the applicant, emphasize a settled principle of law that the FIR or the charge-sheet could only be quashed where the allegation, if taken at its face value, doesn't make out any case.

14. In the present case, it will be difficult to hold that the allegations, if accepted at its face value do not disclose the offence punishable under Section 306 of the IPC. The suicide note coupled with statements of witnesses, some of whom are family members of the deceased and some are the neighbours of the deceased, would indicate that the deceased was in continuous mental pressure because of the harassment suffered at the hands of the appellant and others. The wife of the deceased was also harassed. The deceased had tendered resignation which appears to have been accepted only after the death of the deceased. One of the allegations against the appellant and others is that they were not accepting the resignation of the deceased to harass him. He was against the corrupt practices adopted by the appellant and others, which

include selling of rice and other materials brought for the students residing in hostel so also of selling teak from the lands belonging to the trust. The deceased appears to have objected to the said corrupt practice. In the circumstances, whether the continuous harassment given by the appellant and others to the deceased was with intention of abetting the suicide or not can only be decided during the trial. The learned A.P.P. is correct in contending that if the charge-sheet is quashed at the threshold, the prosecution will be deprived of getting even an opportunity to unearth the truth. Ultimately, if the appellant is innocent, the truth will prevail. We are, therefore, not inclined to invoke inherent jurisdiction in the case.

15. There is one more reason why we say so. The appellant and others had earlier approached this Court seeking to quash the FIR lodged, vide Criminal Application (APL) No. 748/2020. This Court (Croam : Z. A. Haq & Amit B. Borkar, JJ.) vide order dated 03.12.2020 has dismissed the application as withdrawn in the following manner:

“2] We have examined the facts. Though the incident is of 09/04/2019, the first information report came to be registered on 21/10/2020 and delay is explained by the non-applicant no.1-State by pointing out that the first information report is registered after receiving the report of hand writing expert to the effect that the suicide note found by the Investigating Agency is in the hand writing of the deceased. As the first information report is registered recently on 21/10/2020, we are not inclined to abort the investigation. When we expressed this, learned advocate for the applicants requested for permission to withdraw the criminal application with liberty to approach this Court again under Section 482 of the Code of Criminal Procedure after filing of the charge-sheet.

3] The criminal application is dismissed as withdrawn with liberty to the applicants to approach appropriate Court after filing of the charge-sheet,if filed.”

16. It is thus evident that the applicants therein, one of which is the applicant herein, have requested for permission to withdraw the criminal application with liberty to approach this Court again under Section 482 of the Cr.P.C. after filing of the charge-sheet. The Court thought it appropriate to dismiss the

application as withdrawn but did not grant liberty as sought, instead the liberty was granted to approach appropriate Court (and not to this Court under Section 482 Cr.P.C.) after filing charge-sheet. The order, thus, clearly indicates that the liberty to approach this Court under Section 482 of the Code has been conspicuously not granted.

17. The inference of the order would be that liberty was granted to the applicant to approach the trial Court seeking discharge, if so desired, after filing of the charge-sheet. The present applicant chose to come back to this Court without there being any liberty and therefore, the application is liable to be rejected on this count as well.

18. We are of the view that this is not a case where it could be said that the trial would cause great prejudice to the appellant or that continuation of proceedings against the appellant would result in abuse of process of Court. We are therefore not inclined to quash the charge-sheet. The application is, therefore, rejected.

Fees of Ms Gajbhiye, learned counsel appointed on behalf of the non applicant no.2 from the High Court Legal Service Sub Committee, Nagpur, shall be quantified and paid, in accordance with the Rules.

(Anil L. Pansare, J.)

(Rohit B. Deo, J.)

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At this stage, Mr. Mirza, learned counsel for the applicant submits that the interim relief granted vide order dated 20.06.2021 whereby the proceedings in Sessions Case No.56/2021 was stayed, may be continued for a period of six weeks.

We are not inclined to continue the interim relief inasmuch as no prejudice will be caused to the applicant as appropriate remedies are available to the applicants under the law, including seeking discharge.

Accordingly, the request is refused.

(Anil L. Pansare, J.)

(Rohit B. Deo, J.)

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Digitally signed by YOGESH
ARVIND KAHALE
Signing Date: 19.10.2022
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