

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

CRIMINAL APPLICATION (APL) NO. 476 OF 2021

- 1 Ramdas Gopal Ingle,
Aged about 69 years, Occ. : Retired
- 2 Sau. Damayanti Ramdas Ingle,
aged about 56 years, Occ. : Homemaker,
- 3 Mohit Ramdas Ingle,
aged about 33 years, Occ. : Private Job
- 4 Rohit Ramdas Ingle,
Aged about 31 years, Occ. - Government
Service.
No.1 to 4 R/o Nityanand Nagar,
Gaurakshan Road, Akola, Tq. And Dist.
Akola
- 5 Gautam Baliram Wankhade,
Aged about 63 years, Occ. - Agriculturist
R/o Near Buddha Vihar, Juni Vasti,
Gaurakshan Road, Malkapur, Akola, Tq.
And Dist. Akola

APPLICANTS

VERSUS

- 1 State of Maharashtra, through Police station :
officer of Police Station Akot file, District
Akola.
- 2 Manoj S/o Yashwant Ingle,
Aged about 48 years, Occ. - Labourer,
R/o Kasli Khurd, Akola, Tq. And Dist. Akola

RESPONDENTS

Mr. A.R. Deshpande, Advocate for Applicants
Mr. A.S. Fulzele, Add. P.P. for respondent No.1

CORAM : MANISH PITALE AND
VALMIKI SA MENEZES, J.J.

DATE : 27th JULY, 2022

ORAL JUDGMENT

Heard.

2. ADMIT. Heard finally by consent of the learned counsel appearing for the parties.

3. By this application, five applicants have approached this Court seeking quashing of the First Information Report (FIR) dated 21/10/2020, bearing No.480/2020, registered at Police Station Akot File, District Akola, for offence punishable under Section 306 read with Section 34 of the Indian Penal Code. The respondent No.2 is the original informant - complainant. The applicant No.1 is his uncle, applicant No.2 is his aunt and applicant Nos.3 and 4 are cousins of respondent No.2, while applicant No.5 is member of the local Grampanchyat, who was later added as an accused in the present case.

4. According to the report lodged by respondent No.2, leading to registration of FIR, the deceased who was the father of respondent No.2 was driven to commit suicide due to the applicants. According to the respondent No.2, due to a property dispute in the family, the applicant Nos.1 to 4 had harassed the deceased, resulting the incident in question. Upon registration of the FIR, investigation was undertaken by the police authorities and it came to the light that there were three suicide notes found in the

pocket of the deceased. On the basis of the investigation undertaken by the police authorities, the applicant No.5 was also added as an accused and it was alleged that even the said applicant had caused harassment to the deceased, leading to his suicide.

5. The applicants approached this Court by filing the present application, wherein notice was issued on 09/04/2021 and it was directed that in the meanwhile, the investigation could go on, but, charge-sheet would not be filed without permission of this Court.

6. The respondent No.1 – State filed its reply to the present application and by relying upon the suicide notes, which were found during the course of investigation and other material that had come on record, as also the case diary, it was submitted that the present case ought to go to trial and that the FIR at this stage could not be quashed.

7. Mr. A.R. Deshpande, learned counsel appearing for the applicants submitted that perusal of the oral report, leading to registration of the FIR would show that general and vague allegations regarding harassment were levelled against applicant Nos.1 to 4, in the backdrop of an apparent family dispute pertaining to property. It is alleged that the applicants were seeking share in the self-acquired property of the deceased and that due to such harassment, he committed suicide on 21/10/2020. The learned counsel appearing for the applicants submitted that insofar

as the applicant No.5 was concerned, there was no allegation in the FIR and, therefore, he was not even added as an accused and that it appears that subsequently, he was added as an accused No.5 in the present case.

8. The learned counsel appearing for the applicants relied upon judgments of the Hon'ble Supreme Court in the cases of **Sanju alias Sanjay Singh Sengar Vs. State of M.P.** reported in (2002) 5 SCC 371 and **Arnab Manoranjan Goswami Vs. State of Maharashtra and Others** reported in (2021) 2 SCC 427 and judgment of this Court in the case of **Anusaya Wasudeo Mate and others Vs. State of Maharashtra and another** reported in 2018 ALL MR (Cri.) 2950, to contend that the law laid down in the context of Section 306 of IPC, pertaining to abetment of suicide, read with the definition of abetment given in Section 107 of the IPC, was clear to the effect that mere allegation of harassment will not even *prima facie* make out a case against the accused for offence under Section 306 of the IPC. It was submitted that, for a *prima facie* case to be made out under the said provision, there ought to be at least some material to indicate that instigation or incitement in immediate proximity of the incident had occurred, showing intention of the accused to drive the victim to suicide. It was submitted that in the present case, there was no such material on record and, therefore, the present application deserved to be allowed.

9. On the other hand, Mr. A.S. Fulzele, learned Additional Public Prosecutor submitted that the oral report leading to registration of the FIR is not expected to be an encyclopedia and it merely triggers investigation. It was submitted that the investigation has indeed brought on record suicide notes, wherein the deceased had named the applicants as the persons responsible for having driven him to suicide and the harassment suffered by the victim at the hands of the applicants. It was submitted that the applicant No.5 was subsequently added as an accused, since his role came to light upon investigation into the matter. It was submitted that even if the law laid down by the Hon'ble Supreme Court and this Court has to be applied to the facts of the present case, the matter ought to go to trial.

10. We have perused the material on record and appreciated the rival contentions. Before considering the material pertaining to the case before us, it would be appropriate to refer to the position of law illustrated by the Hon'ble Supreme Court in the aforementioned judgments. In the case of **Sanju alias Sanjay Singh Sengar Vs. State of M.P.** (supra), the Hon'ble Supreme Court considered Section 306 of the IPC, pertaining to abetment of suicide, in the context of definition of abetment as found in Section 107 of the IPC, in the said judgment, it was held as follows,

“6 Section 107 I.P.C defines abetment to mean that a person abets the doing of a thing if he firstly, 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.

7. Before we advert further, at this stage we may notice a few decisions of this Court, relevant for the purpose of disposal of this case.

8. In *Swamy Prahalddas v. State of M.P. & Anr.*, 1995 Supp. (3) SCC 438, the appellant was charged for an offence under Section 306 I.P.C. on the ground that the appellant during the quarrel is said to have remarked the deceased 'to go and die'. This Court was of the view that mere words uttered by the accused to the deceased 'to go and die' were not even prima facie enough to instigate the deceased to commit suicide.

9. In *Mahendra Singh v. State of M.P.*, 1995 Supp.(3) SCC 731, the appellant was charged for an offence under Section 306 I.P.C basically based upon the dying declaration of the deceased, which reads as under: (SCC p.731, para 1)

"My mother-in-law and husband and sister-in-law (husband's elder brother's wife) harassed me. They beat me and abused me. My husband Mahendra wants to marry a second time. He has illicit connections with my sister-in-law. Because of these reasons and being harassed I want to die by burning."

10. This Court, considering the definition of 'abetment' under Section 107 I.P.C., found that the charge and conviction of the appellant for an offence under Section 306 is not sustainable merely on the allegation of harassment to the deceased. This Court further held that neither of the ingredients of abetment are attracted on the statement of the deceased.

11. In *Ramesh Kumar V. State of Chhattisgarh* (2001) 9 SCC 618, this Court while considering the charge framed and the conviction for an offence under Section 306 I.P.C. on the basis of dying declaration recorded by an Executive Magistrate, in which she had stated that previously there had been quarrel between the deceased and her husband and on the day of occurrence she had a quarrel with her husband who had said that she could go wherever she wanted to go and that thereafter she had poured kerosene on herself and had set fire. Acquitting the accused this Court said:

"A word uttered in a fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation. If it transpires to the court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in 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 for abetting the offence of suicide should be found guilty."

11. In the case of **Arnab Manoranjan Goswami Vs. State of Maharashtra** (supra), the Hon'ble Supreme had an occasion to refer to numerous earlier judgments on the interpretation of Sections 107 and 306 of the IPC, in order to examine as to whether even a *prima facie* case was made out for a matter to go to trial. After quoting Section 107 of the IPC, the Hon'ble Supreme Court in the aforesaid judgment held as follows :

"50. The first segment of [Section 107](#) defines abetment as the instigation of a person to do a particular thing. The second segment defines it with reference to engaging in a conspiracy with one or more other persons for the doing of a thing, and an act or illegal omission in pursuance of the conspiracy. Under the third segment, abetment is founded on intentionally aiding the doing of a thing either by an act or omission. These provisions have been construed specifically in the context of [Section 306](#) to which a reference is necessary in order to furnish the legal foundation for assessing the contents of the FIR. These provisions have been construed in the earlier judgments of this Court in [State of West Bengal vs Orilal Jaiswal](#) (1994) 1 SCC 73, [Randhir Singh vs State of Punjab](#) (2004) 13 SCC 129, [Kishori Lal vs State of MP](#) (2007) 10 SCC 797 ("Kishori Lal") and [Kisangiri Mangalgiri Goswami vs. State of Gujarat](#) (2009) 4 SCC 52. In [Amalendu Pal vs State of West Bengal](#), (2010) 1 SCC 707, [Mukundakam Sharma](#), J.

speaking for a two-judge Bench of this Court and having adverted to the earlier decisions, observed: (SCC p.712, para 12)

“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.

51. The Court noted that before a person may be said to have abetted the commission of suicide, they “must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide”. Instigation, as this Court held in *Kishori Lal* (supra), “literally means to provoke, incite, urge on or bring about by persuasion to do anything”. In *S S Chheena vs Vijay Kumar Mahajan*, (2010) 12 SCC 190, a two-judge Bench of this Court, speaking through Dalveer Bhandari, J. observed: (SCC p.197, para 25)

“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”.

12. Reference was specifically made to an earlier judgment of the Hon’ble Supreme Court in the case of **Madan Mohan Singh Vs. State of Gujarat** reported in (2010) 8 SCC 628 and it was held that even if a suicide note existed, which expressed only a state of

anguish of the deceased, it could not be said that a *prima facie* case under Section 306 of the IPC, was made out. The emphasis was on the aspect that the acts attributed to the accused had left no option for the victim but to commit suicide.

13. The said position of law was relied upon by this Court in the case of **Anusaya Wasudeo Mate and others Vs. State of Maharashtra** (supra), wherein a suicide note was found and even after perusing the same, this Court came to a conclusion that although the same indicated that the accused therein were demanding share in the property, that in itself could not be a ground to hold that a *prima facie* case was made out against the accused.

14. In the light of the aforesaid position of law, if the material placed on record in the present case is perused, it is found that in the oral report leading to registration of the FIR, there is indeed reference to harassment suffered by the victim at the hands of the applicant Nos.1 to 4, in the context of their demand of share in the property allegedly belonging to the victim. Other than making statements as regards the harassment suffered by the victim, there is no reference to any specific incident immediately prior to the point in time when the victim committed suicide.

15. The learned APP made the papers of investigation available to us, including the aforesaid suicide notes. We perused the suicide notes and it is found that in the said suicide notes also,

the victim appears to be narrating the harassment that he allegedly suffered at the hands of applicant Nos.1 to 4, in the context of the property dispute and at one place he did state that the applicants were responsible for his suicide.

16. But, in the suicide notes, we do not find any material indicating a specific allegation about any incident soon before the suicide and it is found that general allegations of harassment have been made against the applicant Nos.1 to 4.

17. Applying the above quoted position of law laid down by the Hon'ble Supreme Court and this Court, we find that even a *prima facie* case is not made out against the applicant Nos.1 to 4, of having acted in such a manner intentionally that they left no option for the victim but to commit suicide. The law laid down in the aforesaid manner in the context of Sections 107 and 306 of IPC, makes it clear that in the facts of the present case, the applicant Nos.1 to 4 have indeed made out a case for exercising power under Section 482 of the Cr.P.C.

18. Insofar as applicant No.5 is concerned, in the first place, he was not named in the FIR at all. There is no reference to any act on his part in the oral report submitted by respondent No.2, leading to registration of the FIR and it seems that his name was subsequently added during investigation. When we have found that there is lack of material to proceed further against the applicant Nos.1 to 4, there is no question of the matter proceeding

further as against applicant No.5, who is not a family member and he has been roped in merely because he is member of the Grampanchyat, who appears to have taken some steps to sort out the dispute between the victim and applicant Nos.1 to 4.

19. In view of the above, it is found that there is substance in the contentions raised on behalf of the applicants and that the present application deserves to be allowed.

20. Accordingly, the application is allowed in terms of prayer clause A, which reads as follows :

“A) Quash and set aside the FIR No. 480/2020 dated 21/10/2020 (Annexure A) lodged by the complainant / respondent no.2 with respondent no.1 for offences punishable u/s 306 and 34 of the IPC, 1860.”

(VALMIKI SA MENEZES, J.)

(MANISH PITALE, J.)

MP Deshpande