

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

CRIMINAL REVISION APPLICATION NO. 199 OF 2022

APPLICANT: Mahendra s/o Digambar Parimal,
Aged 38 years, Occu: Agriculturist,
R/o Mandwa, Tah. and Dist. Wardha.

..V E R S U S..

RESPONDENT The State of Maharashtra,
through P.S.O., Sawangi (Meghe),
Wardha, District Wardha.

Mr Mahesh Rai, counsel for the applicant.
Ms Shamsi Haider, APP for the respondent/State.

CORAM : ANIL S. KILOR, J.
DATE : 10th November, 2022

ORAL JUDGMENT :

1. Heard.
2. **Rule.** Rule is made returnable forthwith. Heard finally with the consent of both the parties.
3. On rejection of application for discharge vide order dated 06/06/2022, passed by the learned Additional Sessions Judge, Wardha in Sessions Trial No. 28/2020, the applicant has approached this Court by way of present application.
4. Brief facts of the present case are that, on a complaint

lodged by Kishor Krushnaji Shende on 08/07/2019, a crime came to be registered as Crime No. 383/2019 with Police Station Sawangi (Meghe), District Wardha for the offences punishable under Sections 306, 420, 504, 506 and 34 of the Indian Penal Code, 1860.

5. In the report, it is alleged that the accused Nos. 2 and 3 without paying any amount towards consideration, to the deceased father of the informant, had got transferred the agricultural land of the deceased in their names and thereafter, they tried to take forcible possession of the land on the basis of such sale deed and therefore, the deceased committed suicide.

6. I have heard the learned counsel for the applicant and the learned A.P.P. for the State.

7. Shri M.V. Rai, learned counsel for the applicant submits that, except the fact that, the applicant was present at the spot when the deceased consumed the pesticide, there is nothing incriminating against the applicant.

8. It is submitted that it is not the case of the prosecution that, the applicant got the land of the deceased, transferred in his name by cheating him. Hence, Section 420 of the Indian Penal

Code will not attract against the applicant. Similarly, there are no allegations or material to show that the applicant is abator and therefore, Section 306 of the Indian Penal Code will also not attract.

9. It is submitted that at the same time, there are no allegations which would attract the offence under Section 504 and 506 of the Indian Penal Code. He, therefore, submits that the learned Trial Court without considering the material available on record, rejected the application moved by the applicant for discharge.

10. He, therefore, submits that as no offence attract against the applicant, he needs to be discharged.

11. On the other hand, the learned APP supports the finding recorded by the learned Trial Court while rejecting the discharge application moved by the applicant and prays for rejection of the present revision application.

12. I have perused the FIR and the Charge-sheet.

13. In the charge-sheet, there are statements of witnesses. After considering the report and the statements of witnesses, there is no material or there is no evidence to suggest that the applicant is the abator. In all the statements, except the fact that, the applicant

was present at the spot with his Tractor when the deceased consumed pesticide, there is nothing which would show the involvement of the applicant in the alleged offence.

14. At this juncture, it is necessary to refer to Section 306 of the Indian Penal Code, abetment of suicide, which reads 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.”

15. Similarly, it is necessary to consider Section 107 of the Indian Penal Code, abetment of a thing which reads thus:

“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.”

16. The Hon’ble Supreme Court of India in the case of ***Amalendu Pal Vs. State of West Bengal***¹ has held thus:

1 (2010) 1 SCC 707

“10. The legal position as regards Section 306 IPC which is long settled was recently reiterated by this Court in the case of Randhir Singh v. State of Punjab as follows in paras 12 and 13: (SCC p.134)

“12. Abetment involves a mental process of instigating a person or intentionally aiding that person in doing of a thing. In cases of conspiracy also it would involve that mental process of entering into conspiracy for the doing of that thing. More active role which can be described as instigating or aiding the doing of a thing is required before a person can be said to be abetting the commission of offence under Section 306 IPC.

13.”

11. Further in Kishori Lal v. State of M.P. this Court gave a clear exposition of Section 107 IPC when it observed as follows in para 6: (SCC p.799)

“6. Section 107 IPC defines abetment of a thing. The offence of abetment is a separate and distinct offence provided in IPC. A person, abets the doing of a thing when (1) he instigates any person to do that thing; or (2) engages with one or more other persons in any conspiracy for the doing of that thing; or (3) intentionally aids, by act or illegal omission, the doing of that thing. These things are essential to complete abetment as a crime. The word “instigate” literally means to provoke, incite, urge on or bring about by persuasion to do any thing. The abetment may be by instigation, conspiracy or intentional aid, as provided in the three clauses of Section 107. Section 109 provides that if the act abetted is committed in consequence of abetment and there is no

provision for the punishment of such abetment, then the offender is to be punished with the punishment provided for the original offence. "Abetted" in Section 109 means the specific offence abetted. Therefore, the offence for the abetment of which a person is charged with the abetment is normally linked with the proved offence."

17. In the statement of wife of the deceased, she has stated a specific reasons for commission of suicide by the deceased. According to her, accused Nos. 2 and 3 got transferred the land of her husband in their favour without paying any consideration, therefore, the deceased committed suicide.

18. The record shows that, at the time of signing the document before the Sub-Registrar, by the deceased, the applicant was not present, which further shows that the applicant did not participate in the alleged act of illegal transfer of agricultural land in the name of accused Nos. 2 and 3.

19. Thus, for the offence under Section 306 of the Indian Penal Code, there is no material to support the case of the prosecution against the applicant as abator. Similarly, there is no *prima-facie* material to show that the applicant has committed the offence under Sections 504 and 506 of the Indian Penal Code.

20. It is a settled law that while framing the charge, the Court cannot go into the adequacy of evidence or probability of the accused being convicted, but the Court has to see whether *prima-facie* material is available.

21. After going through the charge-sheet and the evidence collected by the Investigating Officer, there is no prima-facie material available against the applicant to attract any of the offences under which the charge-sheet has been filed. In the circumstances, I am of the opinion that, the learned trial Court has committed error in rejecting the application of the applicant for discharge. Accordingly, I pass the following order:

- i) The Revision Application is **allowed**.
- ii) The order dated 06/06/2022 passed by the learned Additional Sessions Judge, Wardha, in Sessions Trial No. 28/2020 is hereby quashed and set aside and thereby the application Exhibit No.6 filed by the applicant in Sessions Trial No. 28/2020 for discharge is hereby allowed.

[ANIL S. KILOR, J.]