

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

**CRIMINAL APPLICATION (APL) NO.1088 OF 2018
with
CRIMINAL APPLICATION (APL) NO.1167 OF 2018**

CRIMINAL APPLICATION (APL) NO.1088 OF 2018

Pandurang Awadhutrao Gedam
Age 50 years, Occ. – Service,
R/o. Tirupati Nagar No.1,
Akoli Road, Sainagar, Amravati,
Tq. and Dist. Amravati

...APPLICANT

VERSUS

1. State of Maharashtra,
through Police Station Officer
Asegaon
Tq. and District Amravati
2. Smt. Sheela Manohar Gade
Age 49 years, Occ. – household,
R/o. Khairi, Post-Asegaon-Purna,
Tq. Achalpur, District Amravati

At present Kandali, Paratwada,
Tq. Achalpur, District Amravati

...NON-APPLICANTS

Shri Pravin S. Patil, Advocate for the applicant.
Shri M.J. Khan, Additional Public Prosecutor for
non-applicant No.1/State.
Shri C.A. Babrekar, Advocate for non-applicant No.2

WITH

CRIMINAL APPLICATION (APL) NO.1167 OF 2018

1. Vishal s/o Narendra Kale
Aged about 40 years,
Occupation – Agriculturist,
2. Ajay s/o Namdeorao Kale,
Aged about 51 years,
Occupation – Agriculturist,
3. Girish s/o Dadarao Kale,
Aged about 42 years,
Occupation – Agriculturist,

All applicant Nos.1 to 3 are
R/o. Khairi (Donoda), Tq. Achalpur,
District Amravati

...APPLICANTS

VERSUS

1. The State of Maharashtra,
through Police Station Officer,
Police Station Asegaon-Purna,
Tq. Achalpur, District Amravati
2. Smt. Sheela wd/o Manohar Gade
Aged about adult,
Occupation – household,
R/o. Paratwada, Kandali,
Tq. Achalpur, District Amravati

...NON-APPLICANTS

Shri V.G. Bhamburkar, Advocate for the applicants.
Shri V.A. Thakare, Additional Public Prosecutor for
non-applicant No.1/State.
Shri C.A. Babrekar, Advocate for non-applicant No.2

CORAM : ROHIT B. DEO & URMILA JOSHI-PHALKE, JJ.
DATE : OCTOBER 17, 2022.

JUDGMENT (Per Urmila Joshi-Phalke, J.)

Heard finally with the consent of learned Counsel for the parties.

2. The present applicants are the accused, in Crime No.203/2018 dated 17/09/2018 registered at police station Asegaon, District Amravati for the offences punishable under Section 306 read with Section 34 of the Indian Penal Code (hereinafter referred to as 'the Code' for short), approached to this Court by filing these applications for quashing of the First Information Report (hereinafter referred to as 'the FIR' for short) under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Cr.P.C.' for short).

3. The applicant in Criminal Application (APL) No.1088/2018 is the Assistant Superintendent of Postmaster of Amravati Division since 2013. As per the contention of the applicant deceased Manohar Narayan Gade was working as a Branch Postmaster of village Khairi. Non-applicant No.2-Smt. Sheela Manohar Gade is the wife of deceased Manohar Gade who had lodged report on 17/09/2018 against the applicants i.e. Pandurang Awadhutrao Gedam, Vishal Narendra Kale,

Ajay Namdeorao Kale and Girish Dadarao Kale alleging that her husband has committed suicide on 15/09/2018 due to the abetment at the hands of the present applicants. Before committing suicide he wrote a suicide note that the applicant – Pandurang Awadhutrao Gedam had lodged false report against him and the other three applicants had demanded Rs.50,000/- from him due to which he was mentally disturbed and committed suicide. On the basis of said report lodged by non-applicant No.2, police registered the crime vide Crime No.203/2018 on 17/09/2018 for the offences punishable under Section 306 read with Section 34 of the Code.

4. As per the contention of the applicant - Pandurang Gedam that he is working as an Assistant Superintendent of Postmaster, Amravati Division since 2013. As a part of his duty he has to supervise the work of sub-ordinate officers. Deceased Manohar Gade was working as a Postmaster at village Khairi. On 13/12/2016 at about 24-25 villagers complained to the Collector, Amravati that in village Khairi under Employment Guarantee Scheme for the year 2009-2016 work was undertaken, however, during this period the bogus accounts were opened in branch post office Khairi and huge amount was illegally withdrawn from the bogus account. In the said complaint specific allegation was made against the deceased Manohar Gade. The Senior

Superintendent of Post Office, Amravati had directed the applicant - Pandurang Gedam to conduct an enquiry. Accordingly, he had conducted the enquiry and submitted the report. As per the statements of the villagers, they never opened the account in the post office, Khairi. The applicant - Pandurang Gedam also recorded the statement of the deceased. He admitted that without obtaining necessary documents, he opened the accounts. He had also submitted that he is ready to deposit the said amount. Accordingly, the report was submitted to the superiors. Considering the report, Senior Superintendent of Post Office had directed to take disciplinary action against the deceased - Manohar Gade and he was suspended on 13/01/2017. As per the directions of Senior Superintendent of Post Office, Amravati the applicant- Pandurang Gedam lodged the report on 23/03/2017. After lodging of the report for about one year six months deceased had not made any grievance. On 15/09/2018, he committed suicide by writing a suicide note alleging that the applicant - Pandurang Gedam had lodged false report against him.

5. The applicants who had filed Criminal Application (APL) No.1167/2018 are the villagers who complained about obtaining of bogus accounts by the deceased Manohar Gade. The allegation was made against them that they have demanded Rs.50,000/- from the deceased. As per the contentions of the applicants offence was registered against them on an allegation that they have abetted the deceased to

commit suicide by instigating and aiding and, therefore, they are responsible for the death of the deceased Manohar Gade.

6. In response to the notice said applications are strongly opposed by the learned Additional Public Prosecutors for the State on the ground that suicide note clearly indicates the abetment at the hands of the present applicants and, therefore, the applications deserve to be rejected.

7. We have heard learned Counsel for the respective parties.

8. Shri P.S. Patil and Shri V.G. Bhamburkar, learned Counsel for the applicants submitted that by no stretch of the imagination the ingredients of the offence punishable under Section 306 of the Code are attracted. Shri Patil, learned Counsel for the applicant submitted that only the role played by his applicant – Pandurang Gedam that he obeyed the order of his superior and conducted the enquiry. It revealed from the said enquiry that deceased Manohar Gade had opened the bogus accounts and withdrawn the amount from the said bogus accounts. Therefore, disciplinary action was taken against deceased Manohar Gade who was serving as a Branch Postmaster. There is absolutely nothing on record to show that he had instigated and aided the deceased to commit suicide in the light of Section 107 and 109 of the Code. The deceased

had committed suicide on 15/09/2018 and the FIR lodged on 17/09/2018 i.e. after two days without any explanation for delay. Learned Counsel for the applicants further submitted that even if the allegations made in the complaint are taken as true on their face value, the same do not constitute an offence under Section 306 of the Code. The only allegation against the applicant – Pandurang Gedam is that he made an enquiry and lodged the report. The applicant – Pandurang Gedam has lodged the report as per the directions of his Superiors which does not constitute offence under Section 306 of the Code.

9. Shri Bhamburkar, learned Counsel submitted that against the applicants – Vishal Narendra Kale, Ajay Namdeorao Kale and Girish Dadarao Kale are implicated by the informant alleging that they have demanded Rs.50,000/- from the deceased. The investigation papers, suicide note nowhere disclose any instigation or aiding by these applicants. Even suicide note nowhere discloses that these applicants were demanding Rs.50,000/- from him. Thus, even if the allegations are accepted as it is, no offence is made out and hence the F.I.R. lodged against them be quashed.

10. On the other hand, learned Additional Public Prosecutors submitted that now the investigation is completed. The statements of

witnesses are recorded which disclosed that the present applicants had committed the offence. From the statements of the witnesses, it is disclosed that due to the harassment at the hands of the present applicants deceased had committed suicide. They further submitted that the allegations made in the complaint *prima facie* constitutes an offence under Section 306 of the Code against the applicants and, therefore, this is not a case where this Court may exercise the jurisdiction under Section 482 of the Cr.P.C. and prayed for dismissal of the applications.

11. Shri Babrekar, learned Counsel for non-applicant No.2 reiterated the contentions raised by the learned Additional Public Prosecutors.

12. To consider the rival contentions, we have given conscious thoughts to the facts of the present case and also perused the documents and the charge-sheet which is already filed before the Judicial Magistrate First Class.

13. Before entering into the merits of the case it is necessary to examine the requirements to attract Section 306 of the Code. The Hon'ble Apex Court in the case of *Arnab Manoranjan Goswami Vs. State of Maharashtra and others 2020 SC Online SC 964* considered the same and observed that :

“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.”

14. In the above said case the Hon’ble Apex Court had also referred ***Madan Mohan Singh Vs. State of Gujarat and anr. (2010) 8 SCC 628*** and observed that in a petition under Section 482 of the Cr.P.C where the High Court had dismissed the petition for quashing an FIR registered for the offences under Sections 306 and 294(B) of the IPC. In that case, the FIR was registered on a complaint of the spouse of the deceased who was working as a driver with the accused. The driver had been rebuked by the employer and was later found to be dead on having committed suicide. A suicide note was relied upon in the FIR, the contents of the FIR indicated that the driver had not been given a fixed vehicle unlike other drivers besides which he had no other complaints. The suicide note named the accused. It is held by the Hon’ble Apex Court that there is absolutely nothing in this suicide note or the F.I.R. which would even distantly be viewed as an offence much less under Section 306 IPC. We could not find anything in the F.I.R. or in the so-called

suicide note which could be suggested as abetment to commit suicide. In such matters there must be an allegation that the accused had instigated the deceased to commit suicide or had engaged with some other person in a conspiracy and lastly, that the accused had in any way aided any act or illegal omission to bring about the suicide.

15. In the light of the above discussion by the Hon'ble Court and after going through the provisions of Section 306 of the Code and the definition of abetment given under Section 107 of the Code. It is apparent that in order to bring out an offence under Section 306 of the Code specific abetment as contemplated by Section 107 IPC on the part of the accused with an intention to bring about the suicide of the person concerned 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 under Section 306 IPC. The Division Bench of this Court also in the case of ***Dilip and others Vs. State of Maharashtra and others 2016 ALL MR (cri) 4328*** held that :

“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 under Section 306 of the Indian Penal Code, 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 offence punishable under Section 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 under Section 306 of the Indian Penal Code, in our considered view, would be an abuse of process of law”.

16. In the light of the above legal principles, we revert back to the facts of the present case. After going through the contents of the F.I.R. it is revealed that the disciplinary action was taken against the deceased as he had opened the bogus accounts in the post office under the Employment Guarantee Scheme for the 2009-2016 for the work which was undertaken and huge amount was illegally withdrawn from the said bogus accounts. The applicant – Pandurang Gedam was directed by his Superiors to conduct an enquiry, accordingly he conducted an enquiry. As involvement of the deceased was found, offence was registered against him. Regarding the other applicants it is alleged that they have obtained Rs.50,000/- from the deceased. The Investigating agency relied upon the suicide note. The recitals of the suicide note also shows that only the allegation against the applicant – Pandurang Gedam is that he asked the deceased to deposit Rs.1,90,000/-. Accordingly, deceased had deposited the amount. Only allegation against the applicant – Pandurang Gedam is that he lodged the report against the deceased. In

fact, record shows that he lodged the report on the direction of his Superior after conducting due enquiry. Against rest of the applicants allegation is that they mentally harassed the deceased. Said suicide note nowhere states that other applicants had obtained Rs.50,000/- from him.

17. From the above referred contents of the FIR none of the allegations made in the FIR discloses the case of abetment against the applicants to show that the applicants had instigated or aided the deceased to commit the suicide. For the purposes of abetment firstly there should be instigation to any person to do that thing, secondly engages with one or more other person or persons in any conspiracy for doing of that thing and thirdly intentionally aiding any legal act or illegal omission in doing that thing. These are the pre-requisite for the offence of abetment. On perusal of the statement and suicide note, none of the statement shows soon before death there was any goading, influence, pressure or threat by the applicants. The suicide note is also silent about the same.

18. From the above referred contents of the FIR, we do not find any of the allegations discloses the case of the abetment against the applicants. Having observed that the offence under Section 306 of the Code does not attract against the applicants, we are of the considered

view that if the applicants are forced to face the criminal trial it would amount to miscarriage of justice. Recently, in the case of ***Jagmohan Singh Vs. Vimlesh Kumar and ors. 2022 LiveLaw (SC) 546*** it is observed by the Hon'ble Apex Court that while exercising jurisdiction under Section 482 of the Cr.P.C., the High Court should not ordinarily embark upon an enquiry into whether there is reliable evidence or not. The jurisdiction has to be exercised sparingly, carefully and with caution only when such exercise is justified by the specific provisions of Section 482 of the Cr.P.C. itself. It is further held that the criminal proceedings can be said to be in abuse of the process of Court, to warrant intervention under Section 482 Cr.P.C., when the allegations in the FIR do not at all disclose any offence or there are materials on record from which the Court can reasonably arrive at a finding that the proceedings are in abuse of the process of the Court.

19. In view of that even if trial is conducted against the applicants no purpose would be served and it will be abuse of process of law, therefore, to secure the ends of justice both the applications deserve to be allowed.

20. In the result, we proceed to pass the following order :

- (a) Both the criminal applications are allowed.
- (b) The First Information Report vide No.203/2018 dated 17/09/2018 registered at police station Asegaon, District

Amravati and the charge-sheet filed by the police station Asegaonpurna, District Amravati on a report lodged by the non-applicant No.2 against the applicants for the offences punishable under Section 306 read with Section 34 of the Indian Penal Code is quashed and set aside.

21. Rule is made absolute in the aforesaid terms. There will be no order as to costs.

(URMILA JOSHI-PHALKE, J.)

(ROHIT B. DEO, J.)

**Divya*