

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.55 OF 2019

**BHAUSAHEB S/O. DADA BANSODE
VERSUS
THE STATE OF MAHARASHTRA AND ANR**

Mr. B. A. Husale, Advocate for the petitioner
Mr. A. R. Kale, APP for the respondent/State
Mr. V. R. Langhe, Advocate for respondent 2 (appointed)

**CORAM : SMT. ANUJA PRABHUDESSAI AND
R. M. JOSHI, JJ.**

DATE : 12th JANUARY, 2023

PER COURT :-

1. At the outset, learned counsel for the applicant seeks leave to amend the prayer clause as to mention that Sessions Case No. 199 of 2019 which is pending before the Sessions Court, Kopergaon may kindly be quashed and set aside. Leave granted. Amendment to be carried out forthwith.

2. With consent, heard learned for the petitioner, learned APP for the respondent/State and learned counsel for respondent No. 2, finally at the stage of admission. We have perused the records and considered the submissions advanced by learned counsel for the respective parties.

3. By this petition the petitioner has sought to quash FIR No. 115 of 2017 registered with Rahata Police Station, Tq. Rahata, Dist. Ahmednagar, consequent RTC No. 287 of 2018 and Sessions Case No. 199 of 2019 pending before the Sessions Court, Kopergaon for offence under Section 306 read with 34 of the Indian Penal Code.

4. The aforesaid crime is registered pursuant to the first information report lodged by respondent No. 2.

5. Before advertng to factual aspect, it would be apt to consider the relevant provision of law and legal position with regard to offence of abetment to suicide. Provisions of Sections 306 and 107 of IPC 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."

6. The Hon'ble Supreme Court in the case of **Ude Singh and Others Versus State of Haryana** reported in **(2019)17 SCC 301** has observed thus;

"14.2

43. mere allegation of harassment without any positive action in proximity to the time of occurrence on the part of the accused that led a person to commit suicide, a conviction in terms of Section 306 IPC is not sustainable. A casual remark that is likely to cause harassment in ordinary course of things will not come within the purview of instigation. There has to be positive action that creates a situation for the victim to put an end to life."

7. In the instant case, Sanjay Gaikwad, the brother of respondent No. 2 committed suicide on 20th October, 2017. Respondent No.2 lodged the first information report against the aforesaid petitioner and other accused persons alleging that they had abetted the suicide. It is alleged that the deceased used to take construction contracts of

Rahata Municipal Council and that the petitioner used to obstruct his work and also used to make critical comments and torture him. He has stated that in the suicide note the deceased had mentioned the name of petitioner and other accused persons who instigated him to commit suicide. Hence the complainant had made allegations against the petitioner and other accused persons about they being responsible for death of his brother Sanjay.

8. The letter dated 27th November, 2017 reveals that the deceased had undertaken construction work of Rahata Municipal Council from 2010 till the year 2015. The complainant and other witnesses have made general allegations that the petitioner herein had obstructed the work of the deceased and that he as well as the co-accused used to make harsh comments and torture the deceased. Apart from this statement, the material on record does not disclose any instigation, aiding or incitement on the part of the applicant to facilitate commission of suicide. Suffice it to say that mere allegation of harassment in the absence of any positive action proximate to the time of occurrence would not constitute abetment within the meaning of 107 of IPC. The present case is therefore squarely covered by illustration (1) & (3) of judgment in case ***State of Harayana and others Vs. Ch. Bhajan Lal and others, 1992 AIR 604***. In such circumstances, continuance of criminal

proceeding would be sheer of abuse of the process of law.

9. Hence the petition is allowed. C.R. No. 115 of 2017 registered with Rahata Police Station and consequent RTC No. 287 of 2018 and Sessions Case No. 199 of 2019 pending before the Sessions Case against the petitioner is hereby quashed.

10. Fees of the appointed counsel for respondent No. 2 is quantified at Rs. 6000/-, to be paid by the High Court Legal Services Authority, Sub Committee, Aurangabad

(R. M. JOSHI, J.)

(SMT. ANUJA PRABHUDESSAI, J.)

ssp