

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.214 OF 2021

ASHOK BHAUSAHEB PANKADE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

WITH
CRIMINAL WRIT PETITION NO. 27 OF 2021

VISHNU KISAN KALAGATE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Mr. S. S. Tope, Advocate for the Applicant.
Mr. S. D. Kunte, Advocate for the Petitioner.
Mr. A. R. Kale, APP, for the Respondent – State.
Mr. A.B. Gaikwad, Advocate for the Respondent No. 2.

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CORAM : SMT. ANUJA PRABHUDESSAI &
R.M. JOSHI, JJ

DATE : FEBRUARY 08, 2023

PER COURT :

1. With consent, heard finally at the stage of admission.

2. The aforesaid Application and Petition are filed under Article 226 of the Constitution of India and Section 482 of Code of Criminal Procedure to quash the (1) Crime No. I-12/2019 registered with Kannad Police Station, Dist. Aurangabad and R.C.C. No. 85/2019 pending on the file of learned JMFC, Kannad & (2) Crime

No. I-12/2019 registered with Police Station, Kannad, Tq. Kannad, Dist. Aurangabad and Sessions Case No. 219/2019 for offences punishable under Sections 306 & 506 read with Section 34 of the Indian Penal Code and Sections 23, 39 and 45 of the Maharashtra Money-Lending (Regulation) Act, 2014.

3. On 16.01.2019 Bhausahab Ghuge, brother of Respondent No.2 committed suicide. He left a suicide note wherein he claimed that the Applicant/Petitioner and other co-accused subjected him to ill-treatment and harassment over repayment of money borrowed from them and held them responsible for his suicide. The Respondent No.2, therefore, lodged the FIR against the Applicant/Petitioner and other co-accused for abetment of suicide of his brother. Upon investigation, charge-sheet came to be filed against the Applicant/Petitioner and the other co-accused for commission of offence under Section 306 IPC as well as offences under the provisions of the Maharashtra Money-Lending (Regulation) Act, 2014. Section 306 IPC being sessions triable case, same has been committed and registered as sessions case no. 219/2019.

4. Mr. Sambhaji Tope, learned Counsel for the Applicant, submits that even if the statement made in the suicide note are accepted and considered to be true and correct, the same would not constitute abetment within the meaning of Section 107 of the IPC. Referring to the statements of the daughter and widow, he submits that they have not implicated the Applicant. On the contrary, the statement of the widow indicates that the Applicant was a friend of the deceased, which fact would indicate that the Applicant had advanced loan to the deceased due to their friendly relations. He submits that the demand for repayment of the loan would not amount to abetment and does not constitute an offence under Section 306 of the IPC.

5. Learned Counsel for the Applicant further submits that the Applications filed by the co-accused Subhash and Sandesh Darak have been allowed by this Court vide order dated 03.11.2020 and criminal proceedings have been quashed as against them. He further submits that this Court has categorically observed that the allegations made against the accused in the same crime do not constitute an offence under

Section 306 of the IPC. In such circumstances, compelling the Applicant to face criminal trial would be an abuse of the process of Court.

5. Mr. Sachin Kunte, learned Counsel for the Petitioner, has adopted the submissions made by the learned Counsel for the Applicant. He submits that the allegations leveled against the Petitioner even if accepted at their face value do not constitute an offence.

6. *Per contra*, Mr. A. R. Kale, learned APP, submits that the suicide note clearly indicates that the Applicant/Petitioner herein had advanced loan to the deceased. The suicide note reveals that the deceased had already repaid the money despite which he had been harassed and threatened for repayment of loan. He submits that all the ingredients of abetment as defined under Section 107 IPC are attracted. He, therefore, contents that this is not a fit to exercise powers under Section 482 of Cr.P.C which would result in scuttling a legitimate prosecution.

7. Mr. A. B. Gaikwad, learned Counsel for the

Respondent No. 2, submits that the material on record shows that the Applicant/Petitioner had subjected the deceased to mental cruelty by making persistent demand for repayment of loan which according to him constitute abetment within the meaning of Section 107 of IPC.

8. We have perused the records and considered the submissions advanced by the learned Counsel appearing for respective parties.

9. At the outset, it may be mentioned that the powers under Section 482 of Cr.P.C. can be exercised, *inter alia*, to prevent an abuse of the process of Court and to secure the ends of justice. The scope and ambit of the power of the Court under Section 482 of Cr.PC has been considered by the Hon'ble the Apex Court in number of cases. In State of Haryana and Others Vs. Ch. Bhajan Lal and Others reported in AIR 1992 SCC 335, the Hon'ble Apex Court has made it clear that it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such powers should be exercised. Nevertheless, the Hon'ble Apex Court has set out

certain illustrations wherein such powers should be exercised. It is, *inter alia*, held that the powers should be exercised wherein the allegations in the FIR or the complaint, even if they are taken at their face value and accepted in their entirety do not *prima facie* constitute any offence or make out a case against the accused or where uncontroverted allegations made in the FIR or the complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused. It is well settled that though powers of the Court under Section 482 of Cr.P.C. are wide, the same needs to be exercised with proper care and caution.

10. In the instant case, the accusations against the Applicant/Petitioner are that they had abetted suicide of the brother of the Respondent No. 2. It is the case of the prosecution that the Applicant/Petitioner had advanced loan to the deceased. Relying upon the suicide note, left behind by the deceased, it is alleged that four months prior to the date of the incident deceased had taken loan of Rs. 2 lacs from the Applicant. It is stated that though the

deceased had repaid the entire loan amount, the Applicant was demanding Rs. 5 lacs as penal amount and constantly threatening to cause his death. It is further stated that the deceased had availed loan of Rs. 50 lacs from the Petitioner about 20 years prior to the incident. It is alleged that the deceased had repaid total sum of Rs. 2 Crore despite which the Petitioner was making constant demand for repayment of the money. It is stated that he had recorded the said demand made by the Applicant/Petitioner in his mobile and that he was committing suicide because of the harassment meted out to him by the Applicant/Petitioner by raising such constant frivolous demands.

11. The question for our consideration is whether demand for repayment of the loan amount would constitute abetment within the meaning of Section 107 of the IPC. In this context, it would be relevant to refer to Section 107 of IPC 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.

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.

12. The Hon'ble the Apex Court in *Ude Singh & Ors Vs. State of Haryana reported in (2019) 17 SCC 301* upon considering previous decisions of the Apex Court has observed as under:

16. In cases of alleged abetment of suicide, there must be a proof of direct or indirect act/s of incitement to the

commission of suicide. It could hardly be disputed that the question of cause of a suicide, particularly in the context of an offence of abetment of suicide, remains a vexed one, involving multifaceted and complex attributes of human behaviour and responses/reactions. In the case of accusation for abetment of suicide, the Court would be looking for cogent and convincing proof of the act/s of incitement to the commission of suicide. In the case of suicide, mere allegation of harassment of the deceased by another person would not suffice unless there be such action on the part of the accused which compels the person to commit suicide; and such an offending action ought to be proximate to the time of occurrence. Whether a person has abetted in the commission of suicide by another or not, could only be gathered from the facts and circumstances of each case.

16.1 For the purpose of finding out if a person has abetted commission of suicide by another, the consideration would be if the accused is guilty of the act of instigation of the act of suicide. As explained and reiterated by this Court in the decisions above-referred, instigation means to goad, urge forward, provoke, incite or encourage

to do an act. If the persons who committed suicide had been hypersensitive and the action of accused is otherwise not ordinarily expected to induce a similarly circumstanced person to commit suicide, it may not be safe to hold the accused guilty of abetment of suicide. But, on the other hand, if the accused by his acts and by his continuous course of conduct creates a situation which leads the deceased perceiving no other option except to commit suicide, the case may fall within the four-corners of Section 306 IPC. If the accused plays an active role in tarnishing the self-esteem and self-respect of the victim, which eventually draws the victim to commit suicide, the accused may be held guilty of abetment of suicide. The question of mens rea on the part of the accused in such cases would be examined with reference to the actual acts and deeds of the accused and if the acts and deeds are only of such nature where the accused intended nothing more than harassment or snap show of anger, a particular case may fall short of the offence of abetment of suicide. However, if the accused kept on irritating or annoying the deceased by words or deeds until the deceased reacted or was provoked, a particular case may be that of abetment of

suicide. Such being the matter of delicate analysis of human behaviour, each case is required to be examined on its own facts, while taking note of all the surrounding factors having bearing on the actions and psyche of the accused and the deceased.

In Mariano Anto Bruno and Another Vs. Inspector of Police reported in 2022 SCC OnLine SC 1387, the Hon'ble Supreme Court while considering the scope and ambit of Section 107 and 306 IPC referred to the previous decisions and held thus:

28. While analyzing the provisions of Section 306 IPC along with the definition of abetment under Section 107 IPC, a two-Judge Bench of this Court in Geo Varghese Vs. State of Rajasthan has observed as under:-

"13. In our country, while suicide in itself is not an offence as a person committing suicide goes beyond the reach of law but an attempt to suicide is considered to be an offence under Section 309 IPC. The abetment of suicide by anybody is also an offence under Section 306 IPC. It would be relevant to set out Section 306 of the IPC which reads as under :-

"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."

14. Though, the IPC does not define the word 'Suicide' but the ordinary dictionary meaning of suicide is 'self-killing'. The word is derived from a modern latin word 'suicidium' , 'sui' means 'oneself' and 'cidium' means 'killing'. Thus, the word suicide implies an act of 'self-killing'. In other words, act of death must be committed by the deceased himself, irrespective of the means adopted by him in achieving the object of killing himself.

15. Section 306 of IPC makes abetment of suicide a criminal offence and prescribes punishment for the same.

16. The ordinary dictionary meaning of the word 'instigate' is to bring about or initiate, incite someone to do something. This Court in the case of Ramesh Kumar v. State of Chhattisgarh has defined the word 'instigate' as under :-

"Instigation is to goad, urge forward, provoke, incite or encourage to do an act."

17. The scope and ambit of Section 107 IPC and its co- relation with Section 306

IPC has been discussed repeatedly by this Court. In the case of S.S.Cheena Vs. Vijay Kumar Mahajan, it was observed as under:-

"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 the Supreme 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."

36. To convict a person under Section 306 IPC, there has to be clear mens rea to commit offence. It also requires an active act or direct act which leads deceased to commit suicide finding no other option and the act must be such reflecting intention of the accused to push deceased into such a position that he commits suicide. The prosecution has to establish beyond

reasonable doubt that the deceased committed suicide and Appellant No. 1 abetted the commission of suicide of the deceased.

38. This Court has time and again reiterated that before convicting an accused under Section 306 IPC, the Court must scrupulously examine the facts and circumstances of the case and also assess the evidence adduced before it in order to find out whether cruelty and harassment meted out to the victim had left the victim with no other alternative but to put an end to her life. 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 their 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.

13. Reverting to the facts of the case, the suicide note reveals that the deceased had availed loan from several persons. Though it is stated that the deceased had recorded calls made by the

Applicant/Petitioner demanding repayment of loan and threatening to cause death of his family the prosecution has not relied upon the transcript of such call records. The verification panchnama indicates that the mobile of the deceased was switched on in presence of panchas and the call records were verified in their presence. The panchnama indicates that the Applicant/Petitioner had made calls demanding repayment of loan but does not indicate the date on which these calls were made and also does not disclose who had issued threats to cause death of the deceased or his family members for non-payment of loan amount.

14. Suffice it to say, mere allegations of harassment due to demand of money would not constitute abetment unless the material on record indicates that the cruelty and harassment meted out to the victim had left him with no other alternative but to commit suicide. In the instant case, the deceased had borrowed money. He was in financial doldrums and was under pressure and stress due to the demand for repayment made by the creditors. Succumbing to such stress and pressure would not constitute abetment within the

meaning of Section 107 IPC.

15. Having gone through the record, in our considered view there is no material on record to indicate that the Applicant/Petitioner have committed offence punishable under the provisions of Indian Penal Code. There is also no material on record to indicate that the Applicant/Petitioner are money lender or they have under any provision of the Maharashtra Money-Lending (Regulation) Act, 2014. Hence, in our considered view the case is fully covered by illustration (1) and (3) in the case of State of Haryana and Others Vs. Ch. Bhajan Lal and Others (supra). In such circumstances, compelling the Applicant/Petitioner to face criminal prosecution would be sheer abuse of the process of Court. Hence, it is necessary to exercise powers under Section 482 of Cr.P.C. to secure the ends of justice.

16. In the result, the Application and Petition are allowed in terms of prayer clause 'B'. Consequently, Crime No. 12/2019 registered with Kannad Police Station, Dist. Aurangabad, R.C.C. No. 85/2019 pending on the file of learned JMFC, Kannad & Sessions

Case No. 219/2019 for the offences punishable under Sections 306 & 506 read with Section 34 of the Indian Penal Code and Sections 23, 39 and 45 of the Maharashtra Money-Lending (Regulation) Act, 2014 are quashed *qua* Applicant and Petitioner herein.

(R.M. JOSHI, J.)

(SMT. ANUJA PRABHUDESSAI, J)