

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.526 OF 2023

JEEVAN DODHU BAVISKAR AND ANOTHER  
VERSUS  
THE STATE OF MAHARASHTRA AND ANOTHER

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Mr. M. D. Narwadkar, Advocate for the Applicants.  
Mr. S. D. Ghayal, APP, for the Respondent – State.  
Mr. S. M. Ganachari, Advocate for the Respondent No. 2.

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

DATE : FEBRUARY 17, 2023

PER COURT :

1. Learned Counsel for the Applicants and the Respondent No. 2 have stated that the matter has been amicably settled. The Respondent No. 2 has filed his affidavit giving no objection to quash the first information report. Since the offence is punishable under Section 306 of IPC, which is not of private nature, we are not inclined to quash the proceedings with consent.

2. With consent of the parties, matter is heard finally at the stage of admission.

3. This is an application under Section 482 of Cr.P.C. to quash the first information report bearing

Crime No. 326/2022 dated 18.09.2022 registered at Police Station, Parola, Dist. Jalgaon for the offence punishable under Section 306 read with Section 34 of the Indian Penal Code.

4. The aforesaid crime was registered pursuant to the FIR lodged by the Respondent No. 2, son of the deceased Shobhilal Mahajan. The FIR reveals that the deceased had availed loan from IndusInd Bank to purchase two commercial vehicles. The applicant no. 1 is the Branch Manager and the Applicant No. 2 was the Recovery Officer in the said bank. The deceased defaulted in payment of loan installments. It is stated that as per the advice of the Applicant No. 2 the deceased sold one of the vehicles to one Bhushan More, despite which he was unable to clear the loan amount. It is alleged that the Applicants persistently demanded repayment of the outstanding dues. Upon failure of the deceased to pay the outstanding loan, the bank attached the vehicle. The Respondent No. 2 claimed that the Applicants refused to release the vehicle despite repeated requests by the deceased and assurance to pay the loan. The Respondent No. 2 has alleged that his

father committed suicide because of the harassment meted out to him by these Applicants. Based on these allegations, the aforestated crime came to be registered.

5. Learned Counsel for the Applicants states that the allegations made in the FIR, even if accepted in their entirety, do not disclose offence under Section 306 of IPC. He, therefore, contends that in such circumstances compelling the Applicants, who are the officers of the Bank, to face criminal trial would be an abuse of the process of Court.

6. *Per contra*, learned APP submits that persistent demand for repayment of loan amount constitutes abetment. He contends that this is not a fit case to exercise discretion under Section 482 of Cr.P.C.

7. We have perused the records and considered the submissions advanced by the learned Counsel appearing for the respective parties. The only question for our consideration is whether the first information report *prima facie* discloses the offence as alleged.

8. Before advertng to the facts of the case, it would be relevant to refer to the decision of the Hon'ble Apex Court in Mariano Anto Bruno and Another Vs. Inspector of Police reported in 2022 SCC OnLine SC 1387. The Hon'ble Supreme Court in above decision, 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."*

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*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.*

9. Reverting to the facts of the present case, the records reveal that the father of the Respondent No. 2 had availed loan from IndusInd Bank to purchase commercial vehicle. The loan agreement was duly executed between the parties and both commercial vehicles were hypothicated in favour of the bank. It is

also not in dispute that father of the Respondent No. 2 had defaulted repayment of loan. The Applicant No. 2, the Manager of the Bank and the Applicant No. 2 being the Recovery Officer had demanded repayment of loan, and upon failure to clear the dues, the bank had proceeded to attach the vehicle. The father of the Respondent No. 2, who was in financial doldrums committed suicide and under mental pressure and stress due to seizure of the vehicle and his inability to pay the loan amount. The records do not indicate that the Applicants herein had instigated, aided, abetted suicide or that they had committed any act to facilitate commission of the suicide. In absence of any direct or indirect act on the part of the Applicants, there would no abetment within the meaning of Section 107 IPC.

10. Having gone through the FIR and material which is placed before us, we are of the considered view that the essential ingredients of Section 107 IPC, which is an essential ingredient of Section 306, are not made out. In such circumstances, compelling the Applicants to face criminal trial, would be sheer abuse of the process of Court. In our considered view, the case is

squarely covered by illustration (1) in the case of State of Haryana and Others Vs. Ch. Bhajan Lal and Others, AIR 1992 SCC 335.

11. In the result, the Application is allowed in terms of prayer clause 'B'. As a consequence, the FIR No. 326/2022 dated 18.09.2022 registered with Police Station, Parola, Dist. Jalgaon for the offence punishable under Section 306 read with Section 34 of IPC, is hereby quashed.

(R.M. JOSHI, J.)

(SMT. ANUJA PRABHUDESSAI, J)