

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

CRIMINAL APPLICATION NO.2523 OF 2023

Omkareshwar Rameshwar @ Someshwar
Katkar and another ... **APPLICANTS**

VERSUS

The State of Maharashtra and others ... **RESPONDENTS**

.....
Mr. Mohit R. Deshmukh, Advocate for applicants
Mr. S.N. Morampalle, A.P.P. for respondents No.1 and 2
Mr. M.S. Bhosale, Advocate for respondent No.3.
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WITH

CRIMINAL WRIT PETITION NO.350 OF 2023

Ravindra s/o Rameshwar Kanade
and another ... **PETITIONERS**

VERSUS

The State of Maharashtra and others ... **RESPONDENTS**

.....
Mr. Mohit R. Deshmukh, Advocate for petitioners
Mr. S.N. Morampalle, A.P.P. for respondents No.1 and 2
Mr. M.S. Bhosale, Advocate for respondent No.3.
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**CORAM : R.G. AVACHAT AND
SANJAY A. DESHMUKH, JJ.**

DATE : 4th SEPTEMBER, 2023

ORDER :

Heard. Both the Criminal Application and Criminal Writ
Petition have been filed for quashing of the F.I.R. bearing Crime

No.0031/2023, registered at Dharur Police Station, District Beed and consequential charge sheet bearing No.77/2023 for the offence punishable under Section 306 read with Section 34 of the Indian Penal Code.

2. For the sake of convenience, we propose to refer to the papers of Criminal Application No.2523/2023.

3. The F.I.R. has been lodged by widow of the deceased on 14/12/2023, alleging the applicants and petitioners (for the sake of convenience, referred to hereinafter as petitioners) to have all along been after her deceased husband with a view to coerce him to repay the amount of loan obtained by him (deceased) from Shri Mangalnath Multi-State Co-operative Credit Society. It has been averred in the F.I.R. that the deceased was a Teacher serving with Zilla Parishad School, Bodka (Kasari). The petitioners namely Ravindra Katkar and Prashant Solunke went to the work place of the deceased. They made a demand of the loan amount. They allegedly threatened him to take (kidnap) him to their office to ensure that the entire loan amount would be recovered at once. In short, it is the case of the prosecution that these petitioners gave the deceased threats so as to recover the loan amount and the deceased, therefore, did end his life by committing suicide.

4. Our attention has been adverted to the statements of

Raosaheb Tidke and Datta Tarte to suggest that on the given day, both the petitioners namely Ravindra and Prashant had been to the work place of deceased and threatened him of dire consequences, if the loan amount was not repaid.

5. The informant gave a supplementary statement, stating therein that the petitioners Ravindra Kanade and Rameshwar Kanade were the office bearers of the Credit Society and the petitioners named in the F.I.R. were torturing the deceased at their behest. Both of them, therefore, came to be added as accused, however, are not being proceeded against by filing the charge sheet. The learned counsel apprehends that the respondent No.2 may appear before the Court concerned and resist the acceptance of Summary Report.

6. Heard. Learned counsel for the petitioners would submit that, the deceased did not leave behind suicide note. He had availed loan of Rs.4 Lakhs in November 2020. Only one E.M.I. was paid. The deceased did not pay 9 consecutive E.M.Is. His Loan Account, therefore, became Non Performance Asset. The Credit Society, therefore, initiated recovery proceedings. Demand notice was issued to him. Even an arbitration application was preferred before the named Arbitrator. Our attention has been adverted to the Arbitrator's statement to indicate that the deceased

did not appear before him. According to him, when the Credit Society took all the steps towards recovery of the loan amount, the petitioners could not be termed to have been after the deceased so as to coerce him to repay the loan. According to him, Mr. Tarte, whose statement supports the prosecution case, is none other than a surety to the loan. According to him, no Creditor would like his Debtor to pass away. According to learned counsel, mens rea is an essential ingredient of offence of abetment. The same is lacking in the present case. The deceased committed suicide no sooner the recovery proceedings were initiated against him. The learned counsel would further submit that, some other so called social activists intervened in the matter and at their behest the crime came to be registered. Our attention has been drawn to facebook posts. He ultimately urged for allowing the proceedings.

7. The learned A.P.P. and the learned counsel representing the respondent No.2 would, on the other hand, submit that, the petitioners made the life of the deceased miserable. Statement of an independent witness namely Datta (colleague of the deceased) would indicate that, on the given day, both Omprakash and Prashant had been to the work place of the deceased. They threatened him. As such, coercive modes were employed for recovery of the loan amount. According to them, no mini trial can be conducted hereat. The averments in the F.I.R. and

the statement of Datta indicate there being material to direct the petitioners to stand trial. Both of them, therefore, urged for dismissal of the proceedings.

8. Considered the submissions advanced. Perused the F.I.R. and the related papers. Admittedly, the deceased was serving as a Teacher with a Zilla Parishad school. He did not leave behind a suicide note. He had availed a loan of Rs.4 Lakhs as against a Pay slip in November 2020. Only one E.M.I. was paid towards repayment of the loan amount. After he defaulted on 8 continuous E.M.Is., his Account was declared as Non Performance Asset. The charge sheet indicates Credit Society to have taken recourse to legal proceedings. A demand notice was issued to the deceased. Thereafter, arbitration proceedings were initiated. Statement of the Arbitrator indicates the deceased to have not appeared before him. Arbitration Application was dated 30/1/2023 while the deceased committed suicide on 14/2/2023 i.e. within 24 days of initiation of recovery proceedings. It is true that, we have to go by the averments in the F.I.R. and the statements of witnesses as it is. The same indicate that, on the given day, Omprakash and Prashant had been to the work place of the deceased and they threatened him so as to coerce him to repay the loan amount.

9. Sections 107 and 306 of the Indian Penal Code read as

under :

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.

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.

10. Mens rea is an essential ingredients of an offence of abetment. The conduct on the part of the petitioners Omprakash and Prashant to visit the place of deceased and coerce him to repay the amount would in no way be termed to have been intended to drive the deceased to commit suicide. The learned counsel for the petitioners was right in submitting that no Creditor

would like his Debtor to pass away. When the record indicates that the Credit Society has taken recourse to arbitration proceedings for recovery of the loan amount, by no stretch of imagination the petitioners before us could be termed to have intended to harass and ill-treat the deceased only with an intention to drive him to commit suicide. It is reiterated that, the deceased did not leave behind suicide note. The deceased owed the amount to the Credit Society and not the petitioners personally.

11. In the aforesaid factual backdrop, directing the petitioners to stand trial would be an abuse of process of Court. We are, therefore, inclined to allow both the proceedings. Hence the order :

12. Criminal Application No.2523/2023 is allowed in terms of prayer clause (B).

13. Criminal Writ Petition No.350/2023 is allowed in terms of prayer clause (B).

(SANJAY A. DESHMUKH, J.)

(R.G. AVACHAT, J.)

fmp/-