

IN THE HIGH COURT OF JUDICATURE OF BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.1342 OF 2022

Shrikant s/o Tukaram Madrewar ... **APPLICANT**

VERSUS

The State of Maharashtra & anr. ... **RESPONDENTS**

.....

Mr. P.P. More, Advocate for applicant

Mr. S.G. Ghayal, A.P.P. for respondent No.1

Ms Seema Gaikwad, Advocate for respondent No.2.

.....

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

DATE : 7th FEBRUARY, 2023

P.C. :

With the consent of learned counsel for rival parties,
heard finally at the stage of admission.

2. By this application under Section 482 of the Code of Criminal Procedure, the applicant has sought to quash First Informant Report bearing Crime No.106/2021, registered with Chakur Police Station and consequential criminal proceedings bearing R.C.C. No.69/2022, pending before the learned Judicial Magistrate, First Class, Chakur, District Latur for the offence

punishable under Section 306 read with Section 34 of the Indian Penal Code and Section 39 of the Maharashtra Money-Lending (Regulation) Act, 2014.

3. It is submitted by learned counsel for the applicant that, even if the material available on record and accusations levelled against the applicant are accepted, no offence of abetment of suicide is made out.

4. Per contra, learned counsel for respondent No.2 and learned A.P.P. submitted that, refusal by the applicant and his father to reconvey the property after repayment of loan and raising objections for payment of compensation, which respondent No.2 and his family were entitled to, amounts to abetment of suicide. Learned counsel for respondent No.2 placed reliance on the judgment of the Hon'ble Apex Court in case of **Daxaben Vs. State of Gujarat & ors. [2022 DGLS (SC) 925]**.

5. We have perused the records and considered the submissions advanced by learned counsel for the respective parties. The only question for consideration is whether the First Information Report and the other material on record disclose

offence as alleged.

6. The aforesaid crime was registered pursuant to the First Information Report lodged by respondent No.2, wherein he has alleged that, in the year 2006, they had taken loan of Rs.90,000/- from the father of the applicant. A document of conditional sale was executed as security for refund of the loan amount. He has stated that, the loan amount was repaid, despite which the applicant did not execute the sale deed and did not transfer the possession of land in their favour. It is further alleged that, the subject land i.e. Gut No.424 was acquired for the construction of highway and the compensation was ordered to be paid to them. It is stated that, the applicant herein had objected for the payment of the said amount. The respondent No.2 has further stated that, he and his father had approached the applicant and his father to execute the sale deed in their favour, but they refused to execute the sale deed. He claims that, his mother committed suicide on 20/3/2021 by consuming poison due to the harassment caused by the applicant. The statement of the father of the respondent No.2 is on similar line.

7. A perusal of the First Information Report and the

other material on record indicate that, the land under Gut No.424 has been acquired for the purpose of construction of highway. The First Information Report reveals that the applicant was claiming right to compensation on the basis of the sale deed executed in his favour and had, therefore, lodged objections before the acquiring body for payment of compensation to the respondent No.2 and others. Lodging of such objections, according to the respondent No.2, amounts to abetment of suicide.

8. It may be mentioned that, the term 'abetment' as defined under Section 107 of the Indian Penal Code, reads thus :-

107. 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 willful misrepresentation, or by willful 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.”

9. In the case of Mariano Anto Bruno Vs. The Inspector of Police (Criminal Appeal No.1628 of 2022, the Hon’ble Apex court has observed thus :

“24. 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 and Another [2021 SCC OnLine SC 873], 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 Vs. State of Chhattisgarh [(2010) 1 SCC 707] 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 and Anr [(2010) 12 SCC 190], 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.”

25. *The ingredients of Section 306 IPC have been extensively laid out in M. Arjunan Vs. State, represented by its Inspector of Police [(2019) 3 SCC 315] which are as under: -*

“The essential ingredients of the offence under Section 306 I.P.C. are: (i) the abetment; (ii) the intention of the accused to aid or instigate or abet the deceased to commit suicide. The act of the accused, however, insulting the deceased by using abusive language will not, by itself, constitute the abetment of suicide. There should be evidence capable of suggesting that the accused intended by such act to instigate the deceased to commit suicide. Unless the ingredients of instigation/abetment to commit suicide are satisfied, accused cannot be convicted under Section 306 I.P.C.”

26. *In order to convict an accused under Section 306 IPC, the state of mind to commit a particular crime must be visible with regard to determining the culpability. With regard to the same, a two-judge bench of this Court in Ude Singh & Ors. Vs. State of Haryana [(2019) 17 SCC 301] 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 behavior 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.”

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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.”

10. The records reveal that by sale deed dated 2/2/2006 the father of the applicant had purchased the property under Gat No.424 for sale consideration of Rs.90,000/-. The respondent No.2 claims that it was a conditional sale and the property was to be reconveyed on payment of the loan amount. The allegations against the applicant are that he failed to reconvey the property despite repayment of loan and further lodged objection before the acquiring body not to disburse compensation to respondent

No.2. The dispute, if any, between the parties was of civil nature. The mere fact that the applicant or his father had refused to reconvey the land or that they had raised objection before the Land Acquisition Officer would not constitute cruelty or harassment. There is absolutely no material to indicate that the applicants had directly or indirectly incited, instigated or aided commission of the suicide. Thus, the allegations lack the very element of abetment, which is an essential ingredient of offence under Section 306 of the Indian Penal Code.

11. Learned A.P.P. concedes that, there is no prima facie material to show the involvement of the applicant in commission of the offence under the Maharashtra Money-Lending (Regulation) Act, 2014. In the absence of such material, compelling the applicant to face trial would be an abuse of the process of Court. Hence, in our considered view, the case is squarely covered by illustrations No.(1) and (3) of the guidelines laid down by the Hon'ble Apex Court in case of **State of Haryana & ors. Vs. Ch. Bhajan Lal [AIR 1992 SC 604]**.

12. In the result, the criminal application is allowed in terms of prayer clause (B) and (B-1). The First Informant Report bearing Crime No.106/2021, registered with Chakur

Police Station and consequential criminal proceedings bearing R.C.C. No.69/2022, pending before the learned Judicial Magistrate, First Class, Chakur, District Latur for the offence punishable under Section 306 read with Section 34 of the Indian Penal Code and Section 39 of the Maharashtra Money-Lending (Regulation) Act, 2014 is hereby quashed qua the applicant.

13. Fees of the appointed Advocate Ms Seema Gaikwad is quantified at Rs.6000/- (Rupees six thousand), to be paid by the Legal Services Authority.

(R. M. JOSHI, J.)

(SMT. ANUJA PRABHUDESSAI, J.)

fmp/-