

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1755 OF 2022

01. Dhanraj Maruti Suryawanshi
02. Kranti W/o Dhanraj Suryawanshi
03. Asha Balasaheb Shinde
04. Rahul Dnyaneshwar Pawar
05. Raju @ Rajendra Maruti Suryawanshi
06. Manish @ Manohar Marutirao Suryawanshi
07. Balaji Maruti Suryawanshi
08. Anil Maruti Suryawanshi
09. Santosh Anand Gaikwad
10. Salim Altaf Sayyad
11. Bhagwat Bhanudas Mamadge
12. Maulana Mehaboob Baig .. Applicants

Versus

1. The State of Maharashtra
Through Police Station Killari,
Tq. Killari, Dist. Latur
2. Sudam Sitaram Sawant .. Respondents

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Advocate for the applicants : Mr. Sachin S. Deshmukh
APP for the respondent – State : Mr. G.O. Wattamwar
Advocate for the respondent no. 2 : Mr. Bharat A. Jadhav

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**CORAM : MANGESH S. PATIL &
ABHAY S. WAGHWASE, JJ.**

DATE : 17 APRIL 2023

ORDER (MANGESH S. PATIL, J.) :

This is an application under section 482 of the Code of Criminal Procedure. The applicants are seeking quashment of crime no. 62 of 2022 registered with Killari Police Station, Tq. Ausa, District Latur for the offences punishable under section 306, 420, 323, 504, 506 r/w. 34 of the Indian Penal Code and the criminal case bearing R.C.C. no. 128 of 2022 pending before the learned Judicial Magistrate First Class, Ausa, District Latur.

2. The deceased was the brother of the respondent no. 2. He was a Police Constable and committed suicide by shooting himself with a service rifle in the computer room of the Killari Police Station in the night between 12 March 2022 and 13 March 2022. The deceased left behind as many as three chits and even had uploaded his status on the WhatsApp *inter alia* mentioning that the applicant no. 1 had borrowed an amount of Rs.9,50,000/- from him (deceased) in the year 2017 by promising to return it within a month. The deceased had mortgaged his plot and pledged the ornaments to raise money for being paid to the applicant no. 1. However, the applicant no. 1 cheated him and all the applicants threatened him persistently.

It is alleged that even he was assaulted by one Ishwar Patil on 9 March 2022 questioning him as to why had he (the deceased) named even this person in the complaint. It is further stated

that all these applicants have persistently harassed and cheated him and if he was to be found dead, they shall be held responsible. Though there is some variance in all the three chits, broadly this is the version demonstrating what the deceased was perceiving. Based on such suicide notes and the WhatsApp status, the respondent no. 2 filed the FIR on 13 March 2022 on the basis of which the offence has been registered.

3. The learned advocate for the applicants would submit that accepting the allegations in the FIR and the statements of various witnesses recorded during investigation, at their face value, the ingredients for constituting the offence punishable under section 306 of the Indian Penal Code cannot be made out. He would submit that there could be several factors which lead an individual to take such a drastic decision to commit suicide. Even if the applicant no. 1 was reluctant to repay the hand loan and the applicants were threatening the deceased, that would not constitute abetment as defined under section 107 of the Indian Penal Code which requires instigation, intentional aid or hatching of a conspiracy. There is nothing to demonstrate that refusal to repay the loan and preventing the deceased from insisting for the repayment, was with an intention on the part of the applicants to lead him to commit suicide. Even according to the allegations money was obtained way back in the year 2017 and the suicide has taken place on 13 March 2022. There is no proximity even

in the incident alleged in the suicide note. The latest being dated 8 March 2022 and the suicide was committed in the night intervening 12 March 2022 and 13 March 2022.

4. He would further submit that at least there are some allegations against the applicant no. 1 who had borrowed some money from the deceased. So far as the other applicants are concerned, some of them are near relatives of the applicant no.1 and the others i.e. applicants no. 9 to 12 are in-fact strangers who have not been attributed with specific role so as to discern their complicity in the alleged crime.

5. Learned advocate for the respondent no. 2 tenders across bar affidavit in reply of the respondent no. 2.

6. The learned APP and the learned advocate for the respondent no. 2 would submit that at this juncture, presence of suicide note disclosing what the deceased was perceiving should be sufficient to attribute applicants with instigation. Their alleged conduct as mentioned by the deceased was sufficient to lead him to end his life irrespective of their intention. The harassment meted out to the deceased had apparently led him to take drastic step and should constitute instigation.

7. They would submit that even on 9 March 2022, the deceased was assaulted by one Ishwar Patil, was treated therefor and even that incident has nexus with the present crime.

8. We have carefully considered the rival submissions and pursued the papers.

9. Offence punishable under section 306 of the Indian Penal Code which is the main offence registered against the applicants requires that the suicide takes place due to the instigation or intentional aid or as a result of conspiracy, as is required by section 107 of the Indian Penal Code.

10. Merely subjecting an individual to some harassment would not *ipso facto* constitute instigation or intentional aid. Assuming for the sake of arguments that the deceased was legitimately insisting for repayment of money advanced to the applicant no. 1, and the latter was refusing to repay and further conduct of the applicant no. 1 as also the other applicants threatening him if the money was demanded again, in our considered view would not constitute instigation unless there is something to demonstrate *prima facie* that by their such conduct they were indeed intending that the deceased should end his life. There is absolutely nothing on the record to disclose this circumstance.

11. It is to be borne in mind that section 306 of the Indian Penal Code uses the word 'abetment' which in turn has been defined in section 107 of the Indian Penal Code. It cannot be understood on the lines of the word 'cruelty' as defined under section 498A of the Indian Penal Code. It is defined as a willful conduct as is likely to drive the woman to commit suicide.

12. If one bears in mind the distinction between the abetment as defined under section 306 r/w. 107 of the Indian Penal Code in juxtaposition to the definition of the word 'cruelty' under section 498A of the Indian Penal Code, mere harassment meted out to the deceased who commits suicide would not constitute abetment to commit suicide but may constitute cruelty.

13. True it is that the suicide notes specifically seek to attribute the cause of suicide to the applicants. However, there is essentially distinction between a cause and *causa causans*. It is only in the matter if there is a nexus between the alleged conduct and its consequence that the offence punishable under section 306 r/w. 107 of the Indian Penal Code can be made out.

14. In the absence of such a nexus regarding which there is absolutely no material, allowing the prosecution of the applicants with

the quality of material available with the chargesheet, would be an exercise in futility.

15. The Application is allowed.

16. Crime no. 62 of 2022 registered with Killari Police Station, Tq. Ausa, District Latur for the offences punishable under section 306, 420, 323, 504, 506 r/w. 34 of the Indian Penal Code and the criminal case bearing R.C.C. no. 128 of 2022 pending before the learned Judicial Magistrate First Class, Ausa, District Latur are quashed and set aside.

[ABHAY S. WAGHWASE]
JUDGE

[MANGESH S. PATIL]
JUDGE

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