

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
CRIMINAL APPLICATION NO. 1658 OF 2019

1. Ashtavinayak S/o Chandrakant Shendge
Age 20 years, occ. Education

2. Dnyaneshwar S/o Datta Shendge
Age 19 years, occ. Education

Both r/o Village Golegaon
Tq. Loha, Dist. Nanded.

Applicants

Versus

1. The State of Maharashtra

2. Namdev S/o Vitthal Garole
Age major, occ. Agri.,
R/o Tq. Loha, Dist. Nanded.

Respondents

Mr. A. M. Gaikwad, Advocate for the applicants.

Mr. S. D. Ghayal, APP for the State.

Mr. A. P. Ghule-Patil, Advocate for respondent No. 2.

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

**RESERVED ON : 6th JANUARY, 2023
PRONOUNCED ON : 30th JANUARY, 2023.**

JUDGMENT : (PER R. M. JOSHI, J.)

1. Heard finally with the consent of learned counsel for the respective parties.

2. The applicants have sought to invoke provisions under Section 482 of the Code of Criminal Procedure in order to seek

quashment of First Information Report No. 9/2019 registered with Malkoli Police Station and subsequent Charge Sheet No. 36/2019 filed with the learned Judicial Magistrate First Class, Loha, for offence punishable under Section 306 read with Section 34 of the Indian Penal Code.

3. The facts in brief leading to this application are as under :-

On 15th January, 2019, at 5.00 pm, Anisha, a girl aged about 19 years, studying in II year ITI College, Loha, committed suicide by hanging. On the report given by her father, A.D. came to be registered. It was revealed that on the said day at about 2.00 pm the applicants had offered her *Tilgul* and when she refused to accept the same, they threatened to defame her in the village. She returned home and informed about the same to her father at about 4.00 pm. On 7th February, 2019, on the basis of report of the Police Officer, crime was registered against applicants and the same was investigated resulting in filing of the charge-sheet against the applicants for offence punishable under Section 306 read with Section 34 of the Indian Penal Code.

4. Learned advocate for applicants submitted that there is absolutely no material on record to make out any offence against the applicants herein. The applicants are of young age with no criminal antecedents. Even if the statement of the informant that the applicants offered *Tilgul* to the deceased is accepted in its entirety, no element of crime is revealed therefrom. He further argued that in the absence of any material on record to indicate commission of any crime and by following the judgment of the Hon'ble Apex Court in the matter of State of Haryana and others vs. Bhajan Lal and others, **AIR 1992 Supreme Court Cases 335**, the criminal proceedings against the applicants deserve to be terminated at this stage itself. In order to support his contention, he also placed reliance on the observations made by this Court while granting anticipatory bail to the applicants. According to him, the applicants have been falsely implicated in the crime and the registration of crime belatedly indicates their false implication.

5. Learned APP and learned counsel for respondent No. 2 opposed the said contention by pointing out limited jurisdiction of this Court under Section 482 of the Code of Criminal Procedure to interfere in criminal proceedings. It is submitted that the statement of the father of deceased was recorded on the very next day, hence

there is no delay in giving information to the police and hence there is no question of false implication. It is also argued that if the material collected during investigation is accepted as it is, it shows that the deceased was continuously harassed by the applicants forcing her to commit suicide.

6. At the outset, in order to appreciate the submissions made across the bar, the scope and ambit of Section 482 of the Code of Criminal Procedure needs to be taken into consideration. No doubt, there is inherent power with the High court under Section 482 of the Code of Criminal Procedure to make such orders as may be necessary to prevent abuse of the process of Court or otherwise to secure ends of justice. The judgment of the Hon'ble Supreme Court in the matter of State of Haryana and others vs. Bhajan Lal and others, AIR 1992 Supreme Court Cases 335 and other case laws, remind us that the said powers are not unfettered or uncontrolled and the same must be sparingly exercised and in no case it should be used to choke the prosecution which is legitimate. However, in appropriate case covered by the guidelines laid down in the judgment of Bhajan Lal (supra), this Court in exercise of the inherent powers can quash criminal proceedings inter alia when the allegations made in the First Information Report and other material collected during

investigation even if taken on their face value and accepted in their entirety, does not constitute any cognizable offence or make out any case against the accused, or where the proceedings are manifestly attended with malafides or maliciously instituted with ulterior motive for wreaking vengeance on the accused.

7. In the present case from the material on record, it is clear that the deceased committed suicide on 15th January, 2019 at 5.00 pm and A.D. came to be registered on 16th January at 1.38 am. and the statements of parents of the deceased and other witnesses came to be recorded on the same day. The father of the deceased has categorically stated that the deceased had disclosed to him at about 4.00 pm about the occurrence of the incident of offering of *Tilgul* to her by the applicants and on her refusal, they having threatened to defame her in the village. Thus, this is not a case where the statement of the person to whom disclosure of incident by deceased is made is recorded belatedly. The statement of Manoj Rathod, friend of the deceased, not only discloses the incident occurred on 15th January, 2019, but also states that the deceased was being followed by the applicants to the college and that she was being regularly harassed by them. Similar is the statement of Ramesh, maternal uncle of the deceased, who states that at about

3.00 pm on the day of the incident, the deceased disclosed that she was being harassed by the applicant and that they threatened to defame her in the village and tell about receiving harassment at the hands of applicants, including that she was threatened to be defamed in the village and to tell the incident to her father.

8. In order to appreciate the case unfolded from perusal of First Information Report and material collected during investigation, it would be necessary to consider relevant provisions applicable thereto. The offence of abetment of suicide is specified in Section 306 of the Indian Penal Code 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.*

In order to ascertain abetment it is relevant to consider Section 107 of the Indian Penal Code which defines "abetment" as :

***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.

9. Thus, abetment involves a mental process of instigating a person in doing something and a person abets the doing of a thing when he instigates any person to do that thing or he engages with one or more persons in any conspiracy for the doing of that thing or he intentionally aids, by acts or illegal omission, the doing of that thing. If these essentials are found in the act committed by accused,

then in that case accused can be said to have abetted to the commission of suicide.

10. The Hon'ble Apex Court in the case of Ude Singh and others vs. State of Haryana (2019) 17 Supreme Court Cases 301, on taking into consideration several decisions on subject has observed thus :

"..... This Court referred to several decisions, including that in Ramesh Kumar, and observed inter alia, as under :

34. The work "abetment" has not been explained in Section 306 IPC. In this context, the definition of abetment as provided under Section 107 IPC is pertinent. Section 306 IPC seeks to punish those who abet the commission of suicide of other. Whether the person has abetted the commission of suicide of another or not is to be gathered from facts and circumstances of each case and to be found out by continuous conduct of the accused, involving his mental element..

* * *

36. The word "instigate" literally means to goad, urge forward, provoke, incite or encourage to do an act. A person is said to instigate another person when he actively suggests or stimulates him to an act

by any means or language, direct or indirect, whether it takes the form of express solicitation or of hints, insinuation or encouragement. Instigation may be in (express) words or may be by (implied) conduct.

37. The words “urge forward” means to advise or try hard to persuade somebody to do something, to make a person to move more quickly in the particular direction, specially by pushing or forcing such person. Therefore, a person instigating another has to “goad” or “urge forward” the latter with the intention to provoke, incite or encourage the doing of an act by the latter. In order to prove abetment, it must be shown that the accused kept on urging or annoying the deceased by words, taunts until the deceased reacted. A casual remark or something said in routine or usual conversation should not be construed or misunderstood as “abetment”.

* * *

43. Keeping in view the aforesaid legal position, we are required to address whether there has been abetment in committing suicide. Be it clearly stated that mere allegation of harassment without any positive action in proximity to the time of occurrence on the part of the accused that led a person to commit suicide, a conviction in terms of Section 306 IPC is not sustainable. A casual remark that is likely to cause harassment in ordinary course of things will

not come within the purview of instigation. A mere reprimand or a word in a fit of anger will not earn the status of abetment. There has to be positive action that creates a situation for the victim to put an end to life.

44. In the instant case, the accused had by his acts and by his continuous course of conduct created such a situation as a consequence of which the deceased was left with no other option except to commit suicide. The active acts of the accused have led the deceased to put an end to her life. That apart, we do not find any material on record which compels the Court to conclude that the victim committing suicide was hypersensitive to ordinary petulance, discord and difference in domestic life quite common to the society to which the victim belonged. On the other hand, the accused has played active role in tarnishing the self-esteem and self-respect of the victim which drove the victim girl to commit suicide. The cruelty meted out to her has, in fact, induced her to extinguish her life spark.

(emphasis supplied)

11. In the present case, the statements of father, friend and maternal uncle of the deceased prima facie demonstrate that not only on the day of the incident but even prior thereto, the deceased was

being continuously harassed by applicants. She was followed by applicants and threatened not to speak to anybody or else she would be defamed in the village and that the applicants would tell about the same to her father. Apparently, it is not a case of solitary incident on the fateful day or that she committed suicide only for the reason that the applicants offered *Tilgul* to her and she refused to accept the same, but this incident turned out to be last encounter preceded by other instances. The records do not prima facie show that deceased was hyper sensitive or too emotional to commit suicide due to any casual incident. On the contrary, prima facie, it appears from the material on record that there was continuous harassment to the deceased including threats to defame her in the village. Thus, there is reason to believe that being harassed by the said act of the applicants, the deceased was forced to take a step to put an end to her life. We also find that there is proximity in time of applicants threatening the girl and she committing suicide.

12. In case of Pawan Kumar vs. State of Himachal Pradesh (2017)7 SCC 780, the Hon'ble Apex Court has expressed serious concern over menace of eve teasing and its adverse impact on the civilised society with observation thus :-

“47. We are at pains to state that in a civilised society eve teasing is causing harassment to women in educational institutions, public places, parks, railway stations and other public places which only go to show that requisite sense of respect for women has not been socially cultivated. A woman has her own space as a man has. She enjoys as much equality under Article 14 of the Constitution as a man does. The right to live with dignity as guaranteed under Article 21 of the Constitution cannot be violated by indulging in obnoxious act of eve teasing. It affects the fundamental concept of gender sensitivity and justice and the rights of a woman under Article 14 of the Constitution. That apart it creates an incurable dent in the right of a woman which she has under Article 15 of the Constitution. One is compelled to think and constrained to deliberate why the women in this country cannot be allowed to live in peace and lead a life that is empowered with dignity and freedom....

48. In a civilised society male chauvinism has no room. The Constitution of India confers the affirmative rights on women and the said rights are perceptible from Article 15 of the Constitution. When the right is conferred under the Constitution, it has to be understood that there is no condescension. A man should not put his ego or, for that matter, masculinity on a pedestal and abandon the concept of

civility. Egoism must succumb to law. Equality has to be regarded as the summum bonum of the constitutional principle in this context. The instant case portrays the deplorable depravity of the appellant that has led to a heart-breaking situation for a young girl who has been compelled to put an end to her life. Therefore, the High Court has absolutely correctly reversed the judgment of acquittal and imposed the sentence. It has appositely exercised the jurisdiction and we concur with the same.”

The above observations perfectly apply to instant case considering the facts and circumstances as appearing from record.

13. Though statements of some of the witnesses are recorded belatedly, as per submission of learned counsel for applicants, the delay per se is no reason to discard those statements at this stage, as it is open for the prosecution to explain the same in the course of trial. Further, a careful perusal of the material on record also does not indicate that the proceedings against the applicants are manifestly attended with malafides or maliciously instituted with ulterior motive of wreaking vengeance on the accused.

14. The observations made by this Court while granting anticipatory bail to the applicants cannot be the basis for quashing the criminal proceedings for the simple reason that the exercise of powers under Section 438 and 482 of the Code of Criminal Procedure are in different sphere. The considerations for both are entirely different. In case of bail, predominantly it needs to be seen whether custodial interrogation is essential on prima facie consideration of material on record. Whereas, in exercise of inherent powers to quash criminal proceeding under Section 482 of the Code of Criminal Procedure, the main point for determination is as to whether the uncontroverted material on record discloses any cognizable offence or not. Similarly, the age of the applicants is not a relevant factor for quashing once from the material on record, offence is made out against applicants. Furthermore, while exercising jurisdiction under Section 482 of the Code of Criminal Procedure, it is not permissible to to this Court to sift and weigh the evidence/material on record.

15. The First Information Report and other material collected during investigation indicates that the present case is not covered by the guidelines laid down by the Hon'ble Apex Court in the case of Bhajan Lal (supra), in order to invoke extra ordinary powers under Section 482 of the Code of Criminal Procedure. Thus, no case is

made out to quash the First Information Report and consequential proceedings. Application being devoid of substance stands dismissed.

16. It is however clarified that above observations are made only for purpose of decision of the present application and shall not have bearing/effect on any stage of proceeding before learned Trial Court.

(R. M. JOSHI)
Judge
dyb

(SMT. ANUJA PRABHUDESSAI)
Judge