

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

CRIMINAL APPLICATION NO.1979 OF 2022

1. Shivkanya w/o. Sadashiv Dawale
Age: 52 years, Occu.: Household & Agri.,
R/o. Rathi Antarwali,
Tq. Ghansawangi, Dist. Jalna.
 2. Udhav s/o. Sadashiv Dawale
Age: 26 years, Occu.: Private Service,
 3. Shyam s/o. Sadashiv Dawale
Age: 23 years, Occu.: Education,
Applicant no.2 to 3 are at present
R/o. At Village Narhe, Survey no.48/25/5,
Aryan Heights, Third Floor,
Flat no.5, Tq. Haveli, Dist.Pune.
 4. Shrirang s/o. Bapurao Dawale
Age: 75 years, Occu.: Agri.,
R/o. Dewade Hatgaon, Tq. Ghansawangi,
Dist.Jalna.
- ..Applicants
(Orig. Accused)

VERSUS

1. The State of Maharashtra,
Through Police Station Incharge,
Police Station, Ambad, Tq. Ambad,
Dist.Jalna.
 2. Muktaibai w/o. Ramkisan Dawale
Age: 45 years, Occu.: Household & Agri.,
R/o. Rathi Antarwali, Tq. Ghansawangi,
Dist. Jalna.
- (Orig. Informant)
..Respondents

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Advocate for Applicants : Mr.Vishnu M.Jaware
APP for Respondent No.1: Mr.S.D.Ghayal
Advocate for Respondent No.2 : Mr.D.B.Gaikwad

...

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

DATE : 5 April 2023

JUDGMENT (ABHAY S. WAGHWASE, J.) :-

. All four applicants before the Court are praying for quashing of the FIR and final report / charge-sheet arising out of the said FIR by seeking exercise of powers under Section 482 of the Code of Criminal Procedure.

BRIEF FACTS GIVING RISE TO THE CASE

2. Informant / respondent No.2 - Muktabai was residing with her husband in their agricultural field at Rathi Antarwali, Tq.Ghansawangi, Dist.Jalna. Adjoining to her field was the field of her sister-in-law / applicant no.1 Shivkanya. According to informant, Shivkanya, her two sons and her father were regularly picking up quarrels with deceased Ramkisan on one or other count. She also used to repeatedly level false allegations. Because of her such conduct, husband of respondent No.2 / Muktabai namely Ramkisan was fed up. Eight days prior to the incident of suicide, someone had set standing sugarcane crop of applicant No.1 on fire. She alleged

that Ramkisan, his wife / informant and his daughter-in-law are responsible for it and she also picked up quarrel on that count. She even gave an application at Ambad Police Station. Police had come to the spot to make enquiry. There also, in presence of Police, applicant no.1 levelled allegation against Ramkisan. While Police were returning back, at that time, Ramkisan consumed pesticide. He was immediately taken to the hospital.

However, on 03-05-2022, he succumbed and therefore, respondent no.2 lodged above complaint, which was registered by Ambad Police Station, Dist.Jalna vide crime no.252 of 2022 for offence punishable under Section 306 read with Section 34 of the Indian Penal Code (IPC). on the strength of which investigation was carried out.

Both, above crime and subsequent charge-sheet were sought to be set aside by way of instant proceeding.

SUBMISSIONS ON BEHALF OF APPLICANTS

3. Learned Advocate for the applicants took us through the FIR and submits that there was no whisper in the complaint about any role played by the applicants in abetting or instigating the deceased Ramkisan to consume pesticide. Except levelling allegation of setting

sugarcane to fire, there are no other allegations. He would submit that infact applicants had taken recourse to legal procedure and therefore, Police had come to the spot. Mere allegation of setting sugarcane crop to fire would not amount to instigation or abetment to commit suicide. Ingredients for attracting offence under Section 107 of IPC are patently missing. Therefore, investigating machinery ought not to have carried out investigation or file charge-sheet. That, entertainment of FIR with such allegation itself was unwarranted. It being apparently abuse of process of law, learned Advocate would submit that prayers raised in the application deserve to be granted.

Learned Advocate for the applicants places reliance on the rulings of Hon'ble Apex Court in the case of *M. Mohan vs. State, Represented by the Deputy Superintendent of Police*, reported in *(2011) 3 SCC 626, Gangula Mohan Reddy vs. State of Andhra Pradesh*, reported in *(2010) 1 SCC 750* and Judgment and order dated 20-09-2022 passed by this Court in *Criminal Application No.2266 of 2020 (Narsing s/o. Sopan Mahakunde and ors. vs. The State of Maharashtra and Another)*.

SUBMISSIONS ON BEHALF OF STATE AND RESPONDENT NO.2

4. While opposing the application and prayers, learned APP as

well as learned Advocate for respondent No.2 would point out that it is clear from the FIR that the applicants were persistently levelling serious allegations against the deceased. They regularly picked up quarrels on one and other count and thereby made life of deceased Ramkisan miserable. The harassment on account of false implication was to such an extent that the deceased was left with no other alternative but to end his life. Therefore, applicants are solely responsible for abetting suicidal death of deceased Ramkisan and investigation also revealed complicity of applicants. Therefore, prosecution has rightly being launched and therefore, it is their request that it should be taken up to its logical end.

ANALYSIS AND CONCLUSION

5. By way of instant proceeding, applicants are seeking quashment of FIR and subsequent charge-sheet by exercising powers under Section 482 of the Code of Criminal Procedure (Cr.P.C.).

In catena of judgments, the Hon'ble Apex Court has time and again reiterated that inherent powers under Section 482 of Cr.P.C. can be exercised by the High Court; *firstly*, to give effect to an order under Cr.P.C., *secondly*, to prevent abuse of process of court and *thirdly*, to secure ends of justice. Law with regard to above Section is

dealt in series of landmark judgments viz. *Inder Mohan Goswami and Anr. v. State of Uttaranchal and Ors.*, reported in (2007) 12 SCC 1 and *Mahendra K.C. v. State of Karnataka and Another*; reported in (2022) 2 Supreme Court Cases 129.

6. Equally, it is trite law that powers under Section 482 of Cr.P.C. are to be exercised sparingly and in only exceptional circumstances i.e. only when strong *prima facie* case is made out for interference and there is apparent abuse of process of law. Such powers are expected to be exercised by High Court only upon complete circumspection. Principles to be borne in mind while exercising such power are succinctly spelt out in the cases of *State of Haryana v. Bhajan Lal* reported in (1992) SCC (Cri) 426; *State of Orissa v. Saroj Kumar Sahoo* reported in (2005) 13 SCC 540; *State of M.P. v. Surendra Kori* reported in (2013) 1 SCC (Cri) 247 and *Praveen Pradhan v. State of Uttaranchal and Another* reported in (2013) 9 SCC 734.

7. Here, as charge is framed under Section 306, we deem it fit to reproduce essentials of the same which are 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.

Section 107 IPC defines the expression “abetment”:

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 willful misrepresentation, or by willful concealment of a material fact which is 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.

8. Law on the point of applicability of Sections 306 and 107 of

the IPC has been lucidly and succinctly dealt with in various legal pronouncements like *Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi)* reported in (2009) 16 SCC 605; *Ramesh Kumar v. State of Chhattisgarh* reported in (2001) 9 SCC 618 ; *State of W.B. v. Orilal Jaiswal* reported in (1994) 1 SCC 73 and *Madan Mohan Singh v. State of Gujarat* reported in (2010) 8 SCC 628.

9. Bearing in mind the above settled legal position, we proceed to examine whether case is at all made out for grant of relief as prayed. On close scrutiny of the FIR, the following aspects are discernible. **Firstly** applicants and respondent No.2 are close relatives, **secondly**, they both are agriculturists and are having agricultural fields abutting to each other and **thirdly** there used to be continuous verbal exchange of words between them.

10. FIR shows that, according to respondent No.2, applicant no.1 and her sons were regularly picking up quarrels with the deceased by levelling false allegations. Respondent no.2 claims that her deceased husband was fed up of it. Eight days prior to consumption of pesticide, sugarcane crop of applicants got gutted in the fire. According to applicant no.1, deceased Ramkisan was responsible for

it and so she lodged complaint. FIR shows that Police had reached spot and were making enquiry and it further seems that Police were about to leave, at that time, Ramkisan consumed pesticide.

11. Now informant claims that the said suicide was only because of the applicants. Taking such allegations raised in the FIR, it is evident that episode of fire to sugarcane crop has resulted into quarrels followed by complaint. Admittedly, Police machinery had come to the spot and they were duly conducting enquiry and shortly thereafter, Ramkisan allegedly consumed pesticide. Therefore, here there is no material to indicate that applicants played any positive role in making deceased consume pesticide. There is no whisper in the complaint about any abetment or instigation to consume pesticide. It seems that only out of annoyance as a result of lodgement of complaint and on account of facing enquiry, drastic step appears to have taken by Ramkisan. There is nothing on record to hold that applicants have played any role in the act of alleged consumption of pesticide by Ramkisan. Therefore, when very essential ingredients about abetment or instigation are patently missing, in our opinion, continuation of prosecution of applicants for abetment of suicide would amount to abuse of process of law. They

would be unnecessarily made to face prosecution for the suicidal death even when they are not remotely connected with the said episode. Therefore, it is a fit case for grant of relief as prayed and we accordingly proceed to pass following order :

ORDER

(I) Criminal Application is allowed.

(II) The FIR No.252 of 2022 registered with Ambad Police Station, District Jalna for the offence punishable under Section 306 read with Section 34 of the IPC and subsequent final report / charge-sheet are quashed and set aside.

(ABHAY S. WAGHWASE)
JUDGE

(MANGESH S. PATIL)
JUDGE