

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

CRIMINAL APPLICATION NO. 2695 OF 2022

1. Rekha Laxman Kalokhe
2. Shrikant Laxman Kalokhe

..APPLICANTS

VERSUS

1. State of Maharashtra
2. Mira Ramesh Borde

..RESPONDENTS

....

Mr. N.B. Narwade, Advocate for applicants

Mr. R.D. Sanap, A.P.P. for respondent no.1 – State

Ms. A.D. Patil, Advocate for respondent no.2 (appointed)

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CORAM : R.G. AVACHAT AND

SANJAY A. DESHMUKH, JJ

DATE : 04th JULY, 2023

PER COURT :

1. This application, under Section 482 of Code of Criminal Procedure, has been filed for quashment of proceeding in Sessions Case No. 104 of 2022 pending on the file of Sessions Judge, Ahmednagar in pursuance to the First Information Report ('F.I.R.'), being Crime No. 544 of 2018 registered with Pathardi Police Station, Dist. Ahmednagar for the offences punishable under Sections 306 and 506 read with Section 34 of the Indian Penal Code.

2. Heard.

3. The applicants are alleged to have abetted Ramesh, husband of the informant to commit suicide. Case of the prosecution, as is disclosed from the F.I.R. is that the deceased owed Rs.5,000/- to the present applicants. The applicants came to the residence of the informant on 08th September, 2018 and made a demand of Rs.5,000/-, given to the deceased as hand loan. The applicants are alleged to have threatened the deceased of implicating him in a false crime. He, therefore, became desperate. On the following day, he committed suicide by hanging.

4. It has also been averred in the F.I.R. that one Vikas Masalkar (co-accused) had also been to the residence of the informant the same day and made a demand of Rs.7,000/-, given to the deceased as hand loan. He even took away the motorbike of relation of the deceased as security until the amount is paid back. On the same lines are the statements of the persons acquainted with the facts and circumstances of the case.

5. Considered the submissions advanced. Perused the F.I.R. and related police papers.

6. The Supreme Court in the case of ***S.S. Cheena vs. Vijay Kumar Mahajan and another, (2010) 12 SCC 190***, observed that, the abetment involves 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 this Court is clear that in order to convict a person under Section 306 of the I.P.C., there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which leads 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 commits suicide.

7. In the case of of Dilip s/o Ramrao Shirasao and others vs. State of Maharashtra and another (Criminal Application No.332 of 2016), dated 5th August 2016, the Division Bench of the Bombay High Court, Bench at Nagpur has considered various judgments of the Supreme Court and the High Court and in Paragraph 20 of the judgment, held thus:

"20. As has been held by Their Lordships of the Apex Court that for permitting a trial to proceed against the accused for the offence punishable under Section 306 of the Indian Penal Code, it is necessary for the prosecution to at least prima facie establish that the accused had an intention to aid or instigate or abet the deceased to commit suicide. In the absence of availability of such material, the accused cannot be compelled to face trial for the offence punishable under Section 306 of the Indian Penal Code. As has been held by Their Lordships of the Apex Court that abetment involves mental process of instigating a person or intentionally aiding a person in doing of a thing and without a positive act on

the part of the accused in aiding or instigating or abetting the deceased to commit suicide, the said persons cannot be compelled to face the trial. Unless there is clear mens rea to commit an offence or active act or direct act, which led the deceased to commit suicide seeing no option or the act intending to push the deceased into such a position, the trial against the accused under Section 306 of the Indian Penal Code, in our considered view, would be an abuse or process of law."

8. The deceased did not leave behind suicide note. Co-accused – Vikas Masalkar, who has played a major role in the alleged crime i.e. he took the motorbike of relation of the deceased as security for repayment of the amount, has been granted relief by this Court. Case of the applicants is less serious than the case of co-accused – Vikas Masalkar. For the offence of abetment of suicide, intention is an essential ingredient. The applicants/creditors of the deceased would not deal with the deceased with a view to drive him to commit suicide. No creditor would like his debtor to pass away without making repayment of his dues. Close scrutiny of police papers do not lead us to find the applicants' visiting residence of the deceased and make demand of Rs.5,000/-, threatening him of implicating him in a false crime was intended to drive the deceased to commit suicide. As such, 'intention' is lacking in the case. We are, therefore, inclined to grant the applicants relief.

9. In view of above, criminal application is allowed in terms of prayer clause (B).

10. Fees of Ms. Anita D. Patil, learned counsel appointed to represent Respondent No.2 – informant, is quantified to Rs.7,000/- (Rupees Seven Thousand).

(SANJAY A. DESHMUKH, J.)
SSD

(R.G. AVACHAT, J.)