

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

CRIMINAL APPLICATION NO. 2772 OF 2022

Shailendra Vasant Chirmade
Age 63 years, Occ. Business &
Agriculture, R/o. 1862, Polan Peth,
Chirmade Agencies, Chitra Theatre
Square, Jalgaon.

... **Applicants.**

VERSUS

- 1) State of Maharashtra
- 2) Shobha Sukalal Ghodke

... **Respondents.**

...

Advocate for the Applicant : Mr. Joydeep Chatterji
APP for the Respondent No. 1/State : Mr. G.O. Wattamwar
Advocate for the Respondent no. 2 : Mr. Mayur B. Borse

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

DATE : 06.04.2023

PER COURT :

This is an application under Section 482 of the Code of Criminal Procedure seeking quashment of Crime No. 543/2021, registered with M.I.D.C. Police Station Jalgaon, District Jalgaon, for the offences punishable under Sections 306, 506 read with Section 34 of the Indian Penal Code and the subsequent charge-sheet and the Regular Criminal Case No. 361/2022 pending on the file of the learned Judicial Magistrate First Class Jalgaon.

2. The respondent No. 2 has lodged an F.I.R. on 07.08.2021 alleging that her husband committed suicide on 19.01.2021 due to the instigation of all the accused persons and the applicant is one of them. It is alleged that a land was standing in the name of her mother in law. The accused Prakash Mali is an estate agent. Due to his intervention the deceased agreed to sell the property standing in the name of her mother in law to the present applicant for a total consideration of Rs. 5,75,000/-. Rs. 2,00,000/- were to

be paid at the time of agreement and the balance was to be paid on the date of the sale-deed. Accordingly, a registered agreement was entered into on 05.04.2018. However, only an amount of Rs. 50,000/- was paid to her mother in law. The rest of the amount of Rs. 1,50,000/- that was agreed to be paid at the time of agreement was withheld by the accused Prakash Mali and the present applicant under the pretext that the land was a 'tenure-2' category land requiring previous permission of the Government and the money would be required to obtain such permission and the balance amount would be paid after such permission was obtained. Without there being any such understanding the agreement was got executed due to which her husband was under stress. Even in the year 2006 her husband had obtained hand loan from Prakash Mali of barely Rs. 10,000/- but by applying interest her husband was made to pay an amount of Rs. 1,25,000/-. The applicant and Prakash threatened him of involving in false cases. Due to which he was under stress and expressed his intention to end his life. She and their son convinced him from time to time but ultimately committed suicide.

3. The learned advocate Mr. Chatterji for the applicant would submit that accepting the allegations in the F.I.R. at its face value and also accepting the material collected by the investigating officer at its face value, ingredient for constituting an abetment as defined under Section 107 of the Indian Penal Code cannot be made out. It was at the most a civil dispute. Even if the main accused Prakash Mali had withheld some money, the applicant had no role. Essentially the dispute was between Prakash Mali and the deceased. The applicant was to purchase the land. No civil dispute has ever been raised. There is enormous delay in lodging the F.I.R. The applicant is being roped in falsely. Allowing his prosecution to go on would be abuse of the process of law. The case is squarely covered by the decision in the matter of **State of Haryana and Ors V/s. Bhajan Lal and Ors.: AIR 1992 Supreme Court, 604** and the crime and the criminal case be quashed and set aside.

4. The learned A.P.P. and the learned advocate for the respondent No. 2 would submit that there is enough material to reveal complicity of the applicant in commission of the crime. He has been specifically named in the F.I.R. Even a role is attributed to him. There are chits left behind by the deceased specifically mentioning that he was committing suicide due to the harassment meted out to him by Prakash Mali and the applicant. The prosecution deserves an opportunity to lead evidence to substantiate the charge and the process may not be stalled at the threshold.

5. We have carefully considered the rival submissions and perused the papers. Accepting the allegations in the F.I.R. and the statements of the witnesses including the hand written chits left behind by the deceased, at the most it can be said that the applicant had agreed to purchase the land standing in the name of the mother of the deceased for some consideration through the estate agent Prakash Mali. It is not the case of the respondent no. 2 about her husband having resorted to any remedy in the civil court once the dispute had started albeit the dispute apparently seems to have started in the year 2018 and the suicide was committed on 19.01.2021. Assuming for the sake of arguments that pursuant to such dispute and withholding of an amount of Rs. 1,50,000/- which was never agreed upon by the deceased, his conduct in not initiating any civil dispute for almost three years prior to his death, in our considered view is a strong circumstance which goes in favour of the applicant.

6. So far as the contents of the chits left behind by the deceased, merely because the deceased states that he was committing suicide due to the harassment meted out by the accused persons, the requirement of law to make out a case of abetment as defined under Section 107 of the Indian Penal Code is not dispensed with.

7. Section 107 of the Indian Penal Code defines the act of abetment to take three forms viz. instigation, intentional aid and conspiracy. The

prosecution is trying to make out that the harassment meted out to the deceased by Prakash Mali and the applicant constitutes instigation. We are afraid, the instigation contemplated under Section 107 of the Indian Penal Code cannot be in the form of raising a dispute of a civil nature. Merely subjecting a person to some harassment would not constitute abetment as defined under this section unless it can be demonstrated that such harassment was meted out with an intention that the person would commit suicide. There is absolutely nothing on the record not even allegations that the applicant was intending to compel the deceased to commit suicide by subjecting him to harassment in the form of raising a dispute.

8. In the absence of such allegations and any material revealing that the applicant was holding any such intention, merely because that the deceased was subjected to some harassment by the applicant, it would not constitute abetment under Section 107 which is a necessary concomitant for constituting the offence punishable under Section 306 of the Indian Penal Code.

9. In our considered view, the case is squarely covered by the parameters laid down in the matter of **Bhajan Lal (supra)**.

10. The Application is allowed.

11. Crime No. 543/2021, registered with M.I.D.C. Police Station Jalgaon, District Jalgaon, for the offences punishable under Sections 306, 506 read with Section 34 of the Indian Penal Code and the subsequent charge-sheet and the Regular Criminal Case No. 361/2022 pending on the file of the learned Judicial Magistrate First Class Jalgaon to the extent of the applicant are quashed and set aside.

(ABHAY S. WAGHWASE, J.)

(MANGESH S. PATIL, J.)

mkd/-