

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

CRIMINAL REVISION APPLICATION NO. 299 OF 2022

1. Shri. Satyanarayansingh S/o Govindsingh Tehra,
Age : 70 Years, Occ. Agriculture and Business,
2. Shri. Sureshsingh S/o Govindsingh Tehra,
Age : 62 Years, Occ. Agriculture and Business,
3. Shri. Bhagwansingh S/o Govindsingh Tehra,
Age : 62 Years, Occ. Agri and Business
4. Vishwaraj @ Vishu Babusingh Tehra,
Age : 47 Years, Occ. Agriculture
5. Sujeetsinh S/o Vijaysinh Tehra,
Age : 47 Years, Occ. Agriculture
6. Satyandrasinh S/o Sureshsinh Tehra,
Age : 47 Years, Occ. Agriculture
7. Sudheersingh S/o Satyanarayansinh Tehra,
Age : 45 Years, Occ. Deputy Engineer

All resident of Badi Madi, Gadipura,
Nanded.

.. Applicants

VERSUS

The State of Maharashtra,
Through The Police Inspector,
Shivajinagar, Police Station,
Nanded.

... Respondent

**WITH
CRIMINAL APPLICATION NO. 698 OF 2023**

Sow. Maltibai W/o Sundersingh Tehra .. Applicant
Versus
Satyandasingh Sureshsinh Tehra And Others .. Respondent

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Mr. V. D. Sapkal, Senior Advocate instructed by Mr. S. R. Sapkal and Mr. R. R. Suryawanshi, Advocates for the applicants
Mr. S. B. Narwade, Additional Public Prosecutor for the respondent/
State.

Mr. G.R. Syed Advocate for the applicant (in Criminal Application No. 698 of 2023).

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CORAM : S. G. MEHARE, J.

Reserved on : 13.04.2023

Pronounced on : 25.04.2023

JUDGMENT :-

1. Rule. Rule made returnable forthwith. Heard finally by the consent of the parties.

2. The applicants, who are the accused, take exception to the order rejecting the discharge application below Exh. 7 and 8, by the learned Additional Sessions Judge, Nanded in Sessions Case No. 83 of 2018, dated 5.8.2022.

3. The brief facts of the case were that:-

The applicants and the complainant are close relatives. They had a chequered history of litigation since 2007 over the shares in the acquired land. The said dispute is still pending in the Court. It has been alleged against the accused that they were threatening the deceased continuously from time to time to withdraw the civil cases. Due to continuance threats, the deceased was living under tension, and lastly, he committed suicide on 15.05.2015. The brother of the

deceased immediately lodged the report to the Police Station. He did not raise suspicion against anybody. After that another report was lodged with Police Station, Shivajinagar Nanded, and a crime under Section 306, read with Section 34 of the Indian Penal Code, was registered against them. The accused had preferred an application under Section 227 of the Cr.P.C. for discharge. After hearing both parties, the learned Additional Sessions Judge rejected the application.

4. The learned Senior counsel Mr. Sapkal for the accused, has vehemently argued that reading the material and evidence on the record as it is, it is highly improbable to believe that the deceased committed suicide due to the abatement of the applicants. Referring to the statement of the witnesses, he would submit that the material available on record was insufficient to frame the charge. He also argued that the report was filed afterthought with the sole intention of avoiding the share of the accused in a huge immovable property. There was an inordinate delay of four months in lodging the report. The sister, who is practising law, gave a statement that the accused threatened the deceased on 16.04.2013. Those incidents were not reported to the Police. Two years later, the last report was lodged. There were no allegations that from 2013 to 2015, the accused continuously threatened the deceased. Therefore, the harassment was not proximate to the time of the occurrence that led to suicide and

therefore, no offence is made out. Threats should be a direct cause of committing suicide. It is not the case that the deceased stopped going to the field or other places due to threats. He was pursuing his routine. The allegations do not establish abatement. The litigations between the parties have been pending since 2007; hence it cannot be believed that the accused threatened the deceased with the intention that he should commit suicide. The statements are omnibus. Earlier also, a false complaint was filed, and the order of the learned Magistrate passed under Section 156(3) of the Cr.PC., was quashed and set aside by the District Court. The conduct of the complainant and the witnesses shows that anyhow they wanted to see the accused behind the bar. There is no iota of evidence to believe that the alleged acts of the accused amount to abetment to commit suicide. Relying on the case laws, he prayed to allow the petition.

5. Per contra, the learned A.PP for the State vehemently argued that apart from the family members, there were statements of the friends of the deceased, before whom the deceased had expressed apprehension and fear due to threats given to him by the accused. The available material on record is *prima facie* sufficient to frame the charges. If the charges were framed, those would not be groundless. He supported the finding recorded by the learned Additional Sessions Judge.

6. The learned counsel Mr. Sayyed for the complainant, strongly opposed the application and argued that the accused were consistently threatening the deceased. Due to the constant threats, he committed suicide. In the proceeding of land acquisition, the shares of all, including the accused, were held, and the High Court was allowed to withdraw Rs. 25 lakhs to the accused after the date of the incident. The complainant was to struggle to register the crime against the accused. The accused are united and influential. Reading the evidence as a whole, it describes continuous threats. The accused have the intention to grab the entire property. The major portion of the property was in possession of the victim. The suit for partition is also pending. The deceased was the elder son in the family; hence, he was looking after the entire family's affairs. He supported the impugned order and prayed to dismiss the application.

7. The parties are litigating seriously over the immovable property. The order passed under Section 156(3) of the Cr.PC., against the accused was quashed and set aside by the learned Principal District and Sessions Judge, Nanded. The material placed on record shows that since 2007 they have been litigating in the Court of Law. The deceased died in his house. The brother of the deceased Shirish Singh, lodged the report on the very same day of the incident that the deceased was habituated/addicted to the liquor. He committed suicide in the room.

He had no complaints against anybody. Again the complainant lodged the report against the accused, and after a long time, the crime was registered.

8. Abetment of things is an essential element to complete the offence under section 306 of the I.P.Code. The term 'abetment of thing' has been defined in Section 107 of the said Act that reads thus;

"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 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 willful concealment of a material fact which he is bound to disclose, voluntarily cause or procures, or attempts to cause or procure, a thing to be done, is said instigate the doing of that thing.

9. To constitute abetment, the abettor must be shown to have 'intentionally' aided the commission of the crime. Instigation is another important element to complete the offence of abatement to commit suicide. What the acts the

accused do shall be intentional with the object that the person should commit suicide. The literal meaning of the word 'instigate' is to provoke, incite, urge on or bring about by persuasion to do the thing. Prima facie, these ingredients of the section should be established. The constant humiliation for a particular act of the deceased may be sufficient to hold that the deceased was abetted to commit suicide, but it should amount to instigation. The accused, by his acts or omission or by a continued course of conduct, has to create such circumstances that the deceased is left with no other option except to commit suicide.

10. The learned counsel for the applicant relied on the following cases:-

- (i) *G. Balareddy S/o Innareddy Vs. The State of Maharashtra and another Criminal Writ Petition No. 999 of 2019 of the Bombay High Court Bench at Aurangabad, decided on September 4 2019.*
- (ii) *Akshay S/o Maroti More and others Vs. The State of Maharashtra and another Criminal Application No. 1095 of 2020 of Bombay High Court Bench at Aurangabad, dated 14th August 2020.*
- (iii) *Binod S/o Ratan Sarkar and Others Vs. State of Maharashtra and Another 2014 All M.R.(Cri) 1216*

(iv) *M. Mohan Versus State Represented by the Deputy Superintendent of Police. AIR 2011 SC 1238.*

(v) *Dr. Mrs. Seema Ajay Bhoosreddy Vs. The State of Maharashtra, 2011 ALL MR (Cri.)3326*

11. The learned counsel for the complainant has relied on the following cases;

(i) *R. S. Mishra Vs. State of Orissa, 2011 AIR (SCW) 1241*

(ii) *Vinubhai Haribhai Malaviya Vs. State of Gujarat, AIR 2019 SC 5352*

(iii) *Jagjeet Singh and Others Vs. Ashish Mishra alias Monu and Another AIR 2022 Supreme Court 1918.*

12. Section 227 of the Cr.PC under which the discharge has been claimed reads as under :

"Discharge- If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submission of the accused and the prosecution in this behalf, the Judge consider that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reason for so doing."

13. Reading the above two Sections, whether the accused deserves discharge is to be answered.

14. The case of **M. Mohan** (*supra*) is a landmark judgment on Section 107 of the Indian Penal Code. In the said case, the Supreme Court held that:-

"Abetment involves a 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."

15. In the case of *Shabbir Hussain Vs. The State of Madhya Pradesh and others*, (Special Leave to Appeal) (Criminal) No. 7284 of 2017, Supreme Court dated 26.07.2021, it has been held that;

"In order to bring case within the provision of Section 306 of the Indian Penal Code, there must be a case of suicide and in the commission of the said offence, the person who is said to have abatement, the commission of suicide must have played an active role by an act of instigating or by doing a certain act to facilitate the commission of the suicide."

"Mere harassment without any positive action on the part of the accused proximate to the time of occurrence which led to the suicide would not amount to an offence under Section 306 of IPC (Amalendu Pal Vs. State of West Bengal (2010) 1 SCC 707)"

16. In the case of *Chitreshkumar Chopra Vs. State (Government of NCT of Delhi)*, (2009) 16 SCC 605) it has been held that abetment by a person is when a person instigates another to do something instigation can be inferred where the accused had, by his acts or omissions created such circumstances that the deceased was left with no other option except to commit the suicide.

17. Other case laws relied upon by the applicants were on similar points, hence avoided repeating.

18. Admittedly, the applicants and the complainants have been litigating the immovable property since 2007. As per the prosecution, the accused continuously threatened the deceased to withdraw the civil litigation to secure their shares in the immovable property. It was the *mens rea*. In this context, the pendency of the partition suit and raising the objections before the land acquisition authority for share is relevant. That describes that both parties are litigating over their share by following the due process of law. In this context, whether the alleged threats amount to instigation is to be examined.

19. The material on record reveals that the first informant, the brother of the deceased, did not express any doubt or suspicion over anybody. He stated that the deceased was habituated to drinking liquor. However, again a report was lodged after a long gap, making

allegations that the deceased committed suicide as the accused abetted him. The record does not reveal that the applicants threatened the deceased immediately before or proximate to the time of occurrence. After 2013, there were no allegations against the applicant that they threatened the deceased to withdraw the cases. On the contrary, the facts of the case reveal that the parties have been litigating in the civil Court for a long. The statements of the friends, which have been heavily relied upon, do not disclose the date and time. However, he stated that the deceased met the witness, Manish, a year before the incident, and he had expressed that the accused were threatening him, and thereafter, five days before the incident, he saw the deceased tensed. He again reiterated that the accused were threatening him, and he had no option except to commit suicide. The statements of these witnesses were recorded seven months after the incident. Though the friends stated that the deceased told them he felt like ending his life due to threats, no report was lodged against the accused. The record reveals that two reports were lodged against the accused before the incident. The first was lodged in 2011, and the second was in 2013. Since then, there have been no complaints of threats to the deceased at the hands of the accused. The first information report by the brother of the deceased immediately lodged has great relevance. Considering the record and the papers on record, it can safely be said that those are

insufficient to believe that the accused, by their acts of alleged threats, created the circumstances that the deceased left with no other option except to commit suicide. The facts of the case ***Chitresh*** (*supra*) appear similar to the case at hand. Hence, the ratio laid down in the said case is applicable to the case at hand. The case relied upon by the learned counsel Mr. Sayyed appears on different points and is not helpful to the deceased.

20. In view of the observations recorded above, the Court is of the view that the application deserves to be allowed. Hence, the following order:-

ORDER

- (i) The application is allowed.
- (ii) The impugned order of Assistant Sessions Judge, Nanded below Exhs. Nos. 7 and 8 in Sessions Case No. 83 of 2018 dated 5.8.2022 is quashed and set aside.
- (iii) The applications at Exhibit-7 and Exhibit-8 are allowed.
- (iv) The applicants have been discharged for the offence punishable under Section 306 read with Section 34 of the Indian Penal Code in Crime No.151 of 2015 registered with Police Station Shivajinagar, Nanded.
- (v) Criminal Application No.698 of 2023 stands disposed of.
- (vi) Rule made absolute in above terms.

(S. G. MEHARE)
JUDGE