

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

**47 CRIMINAL WRIT PETITION NO.1442 OF 2022**

**DATTU MAROTI TANDALE  
VERSUS  
THE STATE OF MAHARASHTRA**

Mr.J.M. Murkute, Advocate for the petitioner.  
Mr.Y.G. Gujarati, APP for the respondent/State.

**CORAM : KISHORE C. SANT, J.  
DATED : 03.04.2023**

**PC :-**

01. Heard learned Advocates for the parties. The petition is taken up for final disposal by consent of the parties.

02. The petitioner is accused in Sessions Case No.25 of 2018 pending before the learned Additional Sessions Judge, Ahmedpur . His application for discharge came to be rejected by impugned order dated 07.07.2022 for the offence punishable under section 306 of the Indian Penal Code.

03. The facts giving rise to the present petition are that on 24.10.2017 one Krushna Madhukar Dahiphale lodged FIR with Kingaon Police Station, for the offence punishable under section 306 of the Indian Penal

Code. The informant informed that he and his father deceased Madhukar run a business of seed and pesticides in the name of Vaishnavi Krushiseva Kendra. Deceased Madhukar had taken some hand loan from the petitioner for the business purpose. He used to take amount on interest. In one such transaction, on 21.08.2017 he took the amount of Rs.2 lakhs on interest at the rate of 5% per month. Said amount was transferred in the bank account of the informant. Some amount was repaid by transferring the same in the account of the petitioner. However, an amount of Rs. 1 lakh and interest of Rs.10,000/- was still in balance to be paid and it was to be paid on 21.09.2017. The petitioner allegedly made demand of this amount from the deceased on mobile phone. Since the deceased and the informant were busy in Grampanchyat election, they did not talk much. On 23.09.2017 the petitioner went to the shop at 10.30 in the morning and asked the deceased to pay amount immediately otherwise he threatened to put lock to the shop. The informant assured him that he will pay the amount by the evening. However, the petitioner called the deceased to the shop and asked to pay the amount then and there only. On that some altercation took place between them. Thereafter, the petitioner took keys from the drawer of the cash-counter and put lock by asking the cashier and other servants to go out of the shop. The

deceased also left the shop and went to his village. In the evening when the informant went to home, he was told that the deceased had left for the agricultural land. On 24.09.2017 at around 7.30 a.m. he received call from one Kisan Sirsath calling to the agricultural land immediately. On receiving call, the informant and his brother Vaijinath went to the farm. They found that the deceased had committed suicide by hanging himself to a Babool tree. This fact was informed to the police. The postmortem was conducted. However, no complaint was given. Thus, after a month the FIR came to be lodged. The police conducted investigation. They recorded statements of the nearby shop-owners, son of the deceased, cashier of the shop and other servants in the shop and filed charge-sheet in the Court. In the charge-sheet the offence shown is under section 306 of the Indian Penal Code.

04. The petitioner in the Trial Court filed an application for discharge below Exh.10 stating that no case is made out under section 306 of the IPC.

05. The learned Sessions Court by order dated 07.07.2022 rejected the application stating that there appears to be instigation at the hands of the petitioner. The learned Sessions Court also considered the judgments of the

Apex Court in the case of M. Mohan Vs. State, AIR 2011 SC 1238. The Sessions Court held that there was utter humiliation of the deceased as the shop was locked by the petitioner for non payment of loan and that is sufficient to attract the section. The Court also considered that the petitioner had approached this Court by filing Criminal Application No. 556 of 2018 for quashing of the FIR, however, the same was withdrawn with liberty to file discharge application.

06. Thus, this Court has to examine as to whether there is sufficient material to proceed against the petitioner for the offence punishable under section 306 of the IPC. In support of the submission, the learned Advocate for the petitioner relied upon judgment in the case of M. Arjunan Vs. State represented by its Inspector of Police, reported in (2019) 3 SCC 315 and in the case of S.S. Chheena Vs. Vijay Kumar Mahajan & Anr, reported in (2010) 12 SCC 190.

07. The learned APP vehemently opposes the petition submitting that there is material evidence on record to support every allegation in the FIR. The act of putting lock to the shop has taken place in presence of many

persons in a day time. This act of the petitioner caused utter humiliation and insult and therefore the deceased committed suicide immediately on the next day. There are statements of cashier and servants in the shop along with statements of the relatives of the deceased and also nearby shop owners, who have witnessed the incident.

08. Considering the material on record and statements of the witnesses, it is seen that the petitioner had allegedly given some amount to the deceased on interest. Same was not repaid. Therefore, the petitioner had been to the shop of the deceased of the informant for making demand. At that time some altercation took place between the deceased and the petitioner. Because of the altercation, the petitioner put lock to the shop of the deceased by taking keys from drawer of cash-counter. Thus, we have to consider that does it amount to abetment to commit suicide.

09. Coming to the judgment of **M. Arjunan (Supra)**, it is seen that the Hon'ble Apex Court had allowed the appeal by quashing and setting aside the judgment and order passed by the High Court, by which the High Court had refused to quash the FIR and had upheld the conviction of the accused

therein. It was a case where the accused had advanced money to the deceased. While demanding the amount there was allegation that the accused used abusive language. It is held that the said allegation by itself is not sufficient to constitute offence punishable under section 306 of the IPC.

10. In the case of Chheena (Supra), the Hon'ble Supreme Court has observed as below :-

“25. 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. 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 IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led 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 committed suicide.”

. The Hon'ble Apex Court has also held in various authorities that it has to be shown that there was intention in the mind of the accused that the deceased should commit suicide. In this case it was only demand of the amount. It is highly unacceptable that a person who gives amount to the borrower instigates the borrower to commit suicide. In this case, the learned Advocate for the petitioner also pointed out that after death of the deceased the informant and his brother had even taken some amount and they received amount from the Government under a scheme of the Government of paying

compensation in the cases of farmers' suicide by showing that it was a suicide out of agricultural debt and because of poverty of the deceased. Having been taken benefit under such scheme, now the informant cannot make another story and lodge a complaint that too about after one month of the the date of committing suicide. In the FIR, there is no sufficient justification for lodging the complaint after such a period. Considering all these aspects, this Court finds that the impugned order deserves to be quashed and set aside by allowing the petition. Hence, following order :-

**ORDER**

- (i) The criminal writ petition is allowed in terms of prayer clauses (B) and (C) and disposed off accordingly.

**[KISHORE C. SANT, J.]**