

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

CRIMINAL APPLICATION NO. 3520 OF 2022

1. Shankar Pandu Sanap
2. Vilas Shankar Sanap
3. Amol Shankar Sanap
4. Bhaiyya Balkisan Nagre
5. Bapu Balkisan Nagre

..APPLICANTS

VERSUS

1. State of Maharashtra
2. Pradip Suresh Nagre

..RESPONDENTS

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Mr. S.V. Dixit, Advocate for applicants
Mr. R.B. Bagul, A.P.P. for respondent no.1 – State
Mr. Y.A. Jadhav, Advocate for respondent no.2

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**CORAM : R.G. AVACHAT AND
SANJAY A. DESHMUKH, JJ
DATE : 20th JUNE, 2023**

PER COURT :

1. The challenge in this application under Section 482 of Code of Criminal Procedure is to the First Information Report ('F.I.R.'), being Crime No. 176 of 2021 registered with Chalisgaon Rural Police Station, Dist. Jalgaon for the offences punishable under Sections 306, 504 and 506 read with Section 34 of the Indian Penal Code and consequential charge-sheet filed in Sessions Case No. 98 of 2021 pending on the file of District and Sessions Court, Jalgaon.

2. Heard.

3. The case of prosecutions, in short, is as follows :-

Anil (deceased) was the brother of informant - Pradip Nagare. Mother of the deceased had unsuccessfully contested gram panchayat election in January 2021. It so happened that by 08:30 a.m. on 21st January, 2021 the informant - Pradip was in his agricultural land. His friend - Deepak informed him on cell phone that some quarrel was underway just outside his residence with his parents. The informant, therefore, rushed there to find the applicants were quarreling with the parents of the informant and deceased - Anil. The applicants had given threats to eliminate informant's parents and Anil. The informant intervened. He subsided the quarrel. Even thereafter Applicant No.1 - Shankar caught hold of collar of Anil and gave threats of eliminating him. The applicants went away after a while.

4. It is further the case of the prosecution that by 10:30 a.m. i.e. about two hours after the above referred incident, Anil left the house without informing anyone. The informant, therefore, contacted Anil on cell phone and asked not to be stressed by the incident. One Anna Nagare told the informant that Anil had made viral a video clip of the quarrel on the Whatsapp group. He also made viral an audio clip stating therein that he was committing suicide due to Applicant No. 1 - Shankar, his children - Vilas and

Amol (Applicant Nos. 2 and 3) and Bhaiyaa and Bapu (Applicant Nos. 4 and 5). The informant, therefore, went to the field of Shankar Sanap to find Anil to have committed suicide by hanging from a branch of a babul tree. The informant, therefore, lodged the F.I.R. alleging the applicants to have driven deceased - Anil to commit suicide. A crime for offence punishable under Section 306 of the I.P.C., therefore, came to be registered. On investigation, charge-sheet has been filed. A video clip of the quarrel and even an audio clip in the nature of suicide note/declaration are part of police papers besides statements of persons acquainted with the facts and circumstances of the case.

5. Learned counsel for the applicants would submit that in the first paragraph of the F.I.R., names of one Chaburao Nagare and Dilip Nagare have been mentioned alleging to have teased the deceased and even asked him (deceased) to commit suicide. According to him, these two persons have not been made accused in the case. A petty quarrel between the applicants and parents of the deceased would in no way be termed, the applicants to have driven the deceased to commit suicide. According to him *mean rea* is an essential ingredient of the offence of abetment. In support of his contention, he relied on a judgment of the Apex Court in case of ***M. Arjunan Vs. State, AIR 2019 SC 43*** to ultimately urge for allowing the application.

6. Learned A.P.P. and learned counsel appearing for Respondent No.2 – informant would, on the other hand, submit that there is an audio clip indicating the applicants to be responsible for driving the deceased to commit suicide. In this fact situation, there is prima facie material to proceed against the applicants. An affidavit-in-reply has been filed reiterating therein the incident that took place next before the deceased committed suicide. Both the learned counsel would further submit that whatever has been submitted by learned counsel for the applicants is in the nature of their defence. The same would only be considered during trial of the case. It was not a single incident of quarrel. The applicants had continuously harassed the deceased. The harassment ultimately became unbearable. The deceased had no option but to commit suicide. Learned counsel, therefore, ultimately urged for rejection of the application.

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

8. 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.

9. 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."

10. Taking prosecution case as it is, it has to be ascertained as to whether the alleged conduct of the applicants prima facie constitute an offence of abetment of suicide. Admittedly, mother of the deceased had contested gram panchayat election unsuccessfully. A quarrel had ensued between the applicants on one hand and the parents of the deceased on the other by 08:30 a.m. on 21st January, 2021. The deceased was present thereat. The applicants allegedly threatened the deceased of eliminating him. Applicant No. 1 – Shankar caught hold collar of the deceased and gave him similar threats. The quarrel was thereafter subsided. Two hours after the incident, the deceased left his residence without informing anyone. He made a video clip of the preceding quarrel viral alongiwth an audio clip stating therein to have been committing suicide because of the applicants. There is nothing to indicate the applicants to have continuously and persistently harassed the deceased on the fateful day and even therebefore. Averments in the F.I.R. also indicate that none of the applicants had assaulted the deceased or beaten him up. It appears that the deceased was hyper sensitive. He took the incident to his heart and committed suicide. By no stretch of imagination

a petty quarrel and even the threats of eliminating the deceased would not be termed the applicants to have committed the said incident with an intention to drive the deceased to commit suicide. In our view, material ingredients viz. intention is lacking in the case. In such circumstances, allowing the prosecution to proceed against the applicants would be an abuse of process of Court. We are, therefore, inclined to allow the application.

11. In the result, application succeeds and allowed in terms of prayer clauses (A) and (B).

(SANJAY A. DESHMUKH, J.)
SSD

(R.G. AVACHAT, J.)