

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

CRIMINAL APPLICATION NO.4163 OF 2022

Nitin Kantilal Gade	..Applicant
Vs.	
The State of Maharashtra and anr.	..Respondents

**WITH
CRIMINAL APPLICATION NO.2649 OF 2022**

1. Rama @ Ramji s/o. Kishan Satnur	
2. Vikas s/o. Ramji Satnur	..Applicants
Vs.	
The State of Maharashtra and anr.	..Respondents

**WITH
CRIMINAL APPLICATION NO.4166 OF 2022**

Vijaykumar Tatyaso Devkar	..Applicant
Vs.	
The State of Maharashtra and anr.	..Respondents

Mr.K.D.Mundhe, Advocate for applicant in Cri. Application Nos.4163 of 2022 and 4166 of 2022

Mr.M.V.Salunke, Advocate for applicants in Cri. Application No.2649 of 2022

Mr.R.V.Dasalkar, APP for respondent no.1 in all matters

Mr.A.P.Basarkar, Advocate for respondent no.2 in all matters

**CORAM : R.G.AVACHAT AND
SANJAY A. DESHMUKH, JJ.
DATE : JULY 04, 2023**

ORDER :-

These applications under Section 482 of the Code of Criminal Procedure, have been filed for quashment of the FIR, being Crime No.228 of 2022, registered with Pathri Police Station, Dist.Parbhani, for the offences punishable under Sections 306 and 392 read with Section 34 of Indian Penal Code and the consequent Charge Sheet, bearing No.289 of 2022. These applications are being taken up for hearing since common questions of facts and law arise therein.

2. Heard learned counsel for the applicants. They took us through the FIR and the statements of witnesses to submit that even if the conduct of the applicants is taken as it is, no inference of abetment of suicide could be drawn. According to them, in the given facts and circumstances of the case, if the applicants are directed to stand the trial, it would be an abuse of the process of Court. Learned counsel relied on the following authorities to ultimately urge for allowing the applications:-

(i) Gurcharan Singh Vs. State of Punjab,
AIR 2017 SC 74;

(ii) Kishor Dattatraya Shinde Vs. State of
Maharashtra and anr.; 2016(2) Bom. C.R.
(Cri) 516;

(iii) Rajeev Kourav Vs. Baisahab and ors.,
AIR 2020 SC 909

3. Learned counsel for the informant and learned APP would, on the other hand, took us through the statements of Sk. Umar Sk. Sarvar and Khayyum Afsar Pathan to submit that the conduct of the applicants was not short of harassment, mental and economic as well. According to them, the deceased was from the lower strata of society. Learned counsel relied on paragraph 8 the Apex Court judgment in the case of **Rajeev Kourav** (supra) to submit that assessment of police statements under Section 161 of the Code of Criminal Procedure could not be done in the proceedings under Section 482 of the Code of Criminal Procedure. Learned counsel, ultimately, urged for rejection of the applications.

4. Considered the submissions advanced. Perused the FIR and the related papers.

5. The deceased consumed insecticides on 19.05.2022 and succumbed thereto on 21.05.2022, i.e., three days thereafter. The FIR has been lodged by the son of the deceased on 22.05.2022. What can be gathered from the FIR and the papers of investigation is that the deceased was in the business of construction of wells. His son would assist him in the business. The deceased would hire tractor, Poclain and JCB machines. In April, 2022, the deceased had taken a contract for construction of a well of one Dnyanoba Bansode, co-accused (who is not before this Court). The cost of construction of well was Rs.2,55,000/-. The well was to be dug upto 45 ft. deep with 18 ft. circumference. He had received Rs.70,000/- as advance. Even the well was dug upto 15 ft. deep. The deceased had hired a JCB/Poclain machine from Vijay Devkar, one of the applicants, and agreed to pay him Rs.3,400/- per hour. It is also alleged that the applicant- Vijay Devkar was paid Rs.4,50,000/- as advance, for the work of construction of three wells.

6. It is further the case of prosecution that the deceased had also taken the work of construction of well of one Vikas Satnur, another applicant. The deceased had agreed to construct the well up 45 ft. deep and 18 ft. circumference for Rs.2,55,000/-. The

applicant - Vikas Satnur and his father, another applicant - Rama @ Ramji Satnur, had paid the deceased Rs.70,000/- as advance. The deceased had then commenced the work of construction of well for Dnyanoba with a JCB machine taken on rent from applicant - Vijay Devkar.

7. It has been averred in the FIR that the deceased came to village on 22.04.2022, when the applicant - Vijay Devkar took away his Poclain machine, pending the construction of well. He was paid advance of Rs.2 Lakhs. When he was contacted on cell phone, he denied to have received any amount for more than the work he actually did. The deceased then engaged another person, i.e. applicant - Nitin Gade for construction of the well. He was paid Rs.3,50,000/- as advance. The Poclain machine of Nitin Gade was taken on hire. The well of Vikas Satnur (applicant) was dug upto 32 ft. deep. It was the work of Rs.2,00,000/-. The applicant - Nitin left the work midway. He did not pay the balance amount. He took away his Poclain machine on 19.05.2022. Thereafter, the co-accused Dnyanoba told the deceased that he did not want to continue the work of construction of the well. Dnyanoba asked the deceased to pay back Rs.70,000/. He even detained two tractors of the

deceased. With all these facts, the deceased was said to have been harassed by the applicants and the co-accused - Dnyanoba. The deceased was tremendously under stress. He, therefore, consumed insecticide on 19.05.2022. One of the sons talked with the deceased. The deceased narrated him to have consumed insecticide as the harassment meted out by the applicants and the co-accused became unbearable for him. On the same lines are the statements of Sk. Umar Sk. Sarvar and Khayyum Afsar Pathan.

8. The question is, whether there is *prima facie* material to indicate the applicants to have abetted commission of suicide.

9. Section 306 of Indian Penal Code reads:-

306. Abetment of suicide — If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Section 107 of Indian Penal Code reads:-

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

Explanation 2.—Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.

10. Needless to mention, *mens rea* (intention) is the essential ingredient of the offence of abetment of suicide. Admittedly, the deceased did not leave any suicide note. Whatever transpired from the FIR is that there were business transactions between the applicants and the deceased. The work of construction of wells undertaken by the deceased could not be completed for one or the other reason. The applicants before the Court, therefore, took away their JCB/Poclain machines. These events happened about 20 to 25 days before the deceased committed suicide. Neither the FIR nor the statement of witnesses indicate that either immediately before or recent past of the deceased committed suicide, any of the applicants had been to the deceased to harass

and illtreat him. The allegations against the present applicants are that they denied to have received any amount in excess of the work actually done.

11. The co-accused – Dnyanoba Bansode, who, allegedly, detained the tractors hired by the deceased the day before commission of suicide, is not before this Court. His case, therefore, is not appreciated on merits.

12. It is reiterated that the transactions between the applicants on one hand and the deceased on the other, took place about 22-25 days before the deceased committed suicide. There is nothing *prima facie* to suggest that any of the present applicants had been to the house of the deceased to harass, ill-treat or threaten him with dire consequences. By no stretch of imagination, the conduct of the applicants in committing breach of the contract of construction of wells, would amount to abetment of suicide by the deceased. In the aforesaid factual backdrop, asking the applicants to stand trial would be an abuse of the process of court. In the circumstances, the applications deserve to be allowed.

13. In the result, the applications are allowed. The FIR, being Crime No.228 of 2022, registered with Pathri Police Station, Dist.Parbhani, for the offences punishable under Sections 306 and 392 read with Section 34 of Indian Penal Code and the consequent Charge Sheet bearing No.289 of 2022, stand quashed, qua the applicants herein.

[SANJAY A. DESHMUKH, J.]

[R.G. AVACHAT, J.]

KBP