

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO.2835 OF 2022

1. Shri Suryakant Pandurang Holmukhe
Age.70, Occu. Retired
R/o 102, Dashmesh Coloney, N.Datta Marg,
Four Bunglow, Andheri West,
Azad Nagar, Mumbai
Present Address-R/o Tadsar,
Tal-Kadegaon, Dist.-Sangli.

2. Shri Pralhad Sopan Rokade
Age-63 yrs, Occu.-Agriculture

3. Sou. Pramila Pralhad Rokade
Age 50 yrs, Occu.Household
Applicant No.2 and 3

R/o Tadsar, Tal Kadegaon, Dist.Sangli
V/s.

... **Petitioners.**

1. The State of Maharashtra
(C.R.No.49/2022 at the Chinchani
Wangi Police Station, Sangli)

2.Mr Kiran Alias Kamlesh Dattatreya
Holmukhe
Address-R/o. Tadsar, Chinchani Wangi
Tal-Kadegaon, Dist.-Sangli

... **Respondents.**

Mr Nilesh Wable i/by Umesh Mankapure, Advocate for the
petitioners.

Mr J.P. Yagnik, APP for the State.

Ms Reshma Mutha, Advocate for respondent No.2.

**Coram : Nitin W. Sambre &
R.N.Laddha, JJ.**

**Reserved on : 20 July 2023.
Pronounced on : 31 August 2023.**

Judgment (Per R.N.Laddha, J.)

Rule. The Rule is made returnable forthwith. Heard finally with the consent of the learned Counsel for the rival parties.

2. The petitioners are the accused in First Information Report No.49 of 2022, registered at Chinchani Wangi Police Station, Sangli, for offences punishable under Section 306 read with 34 of the Indian Penal Code, 1860 (IPC). The present writ petition is filed seeking quashing of the charge sheet filed against the petitioners accused in respect of the aforesaid FIR.

3. The first informant, who is the son of deceased Dattatraya, alleged in the FIR that since 2017, he has been facing threats from the accused Suryakant and his brother Sambhaji, as on his complaint, a criminal prosecution was launched against them under the provisions of The

Maharashtra Money-Lending (Regulation) Act, 2014. Since then, there has been an outgoing feud between his family and the family of the petitioners. It is alleged that the petitioners are residing near the house of the first informant (respondent No.2 herein) and they frequently threatened to vacate the house where the first informant, along with his family members, is residing. It is alleged that the petitioners used to damage the water pipes, block drains, damage utensils, dump waste in the yard of the first informant, and even throw animal bones in front of the Informant's house, which caused distress to him and his family. It is alleged that the petitioners made life difficult for the first informant's family and caused trouble for a long. It is stated that the deceased informed the first informant that on 03-04-2022, accused Pramila threatened him of lodging a false complaint of outraging her modesty. It is stated that on 05-04-2022, frustrated by the petitioners' harassment, the deceased committed suicide.

4. Pursuant to the aforesaid FIR, crime vide CR No.49 of 2022 was registered against the petitioners for the offence punishable under Sections 306 read with 34 of the Indian Penal Code. After investigation, the charge sheet was filed against the accused petitioners.

5. Mr Nilesh Wable, learned Counsel appearing for the petitioners, submitted that the FIR, charge sheet and the material on record did not support the charge of abetment to suicide under Section 306 IPC. He claimed that the essential element of abetment, as defined in Section 107 IPC, was missing and that the petitioners could not be held liable for instigating the deceased to commit suicide. According to learned Counsel, there is nothing on record to suggest that the petitioners intentionally aided, instigated or abetted the deceased to commit suicide. Mr Wable further submitted that the allegations in the FIR were absurd and improbable and did not make a case against the petitioners. According to him, there was no evidence to suggest that the petitioners' actions were intended to drive Dattatraya to harm himself or commit suicide.

6. It is submitted that there was an inordinate and unexplained delay in lodging FIR, which renders it wholly unreliable and that the prosecution initiated against the petitioners is an attempt to harass the petitioners and only to settle the personal scores with them.

7. In support of his contentions, he relied on **Madan**

Mohan Singh Vs. State of Gujrat and Anr.¹; Rajendrakumar s/o Bajranglal Sharma & Ors. Vs. State of Maharashtra & Anr.²; Gurucharan Singh Vs.State of Punjab³; Vaijnath Kondiba Khandke Vs. State of Maharashtra & Anr.⁴; Suresh Hindurao Patil Vs. State of Maharashtra & Anr⁵.; Lata w/o Pramod Dangre Vs. State of Maharashtra & Anr.⁶

8. On the other hand, Mr J.P.Yagnik the learned Additional Public Prosecutor, submitted that the veracity of the allegations against the petitioners would be considered only after a full-fledged trial and no interference is warranted at this stage.

9. Ms Reshma Mutha, the learned Counsel appearing on behalf of the second respondent/first informant, submitted that the merits of the charge sheet, including the FIR, should not be examined at this stage. She submitted that the material placed on record demonstrates harassment by the petitioners to such an extent that the deceased had no other alternative but to end his life. She submitted that the petitioners were

1 (2010)8 SCC 628.

2 2017 ALL MR (Cri.)1869.

3 (2017)1 SCC 433.

4 (2018)7 SCC 781.

5 2019(6) Mh.L.J.(Cri.)777.

6 2022 ALL MR (Cri.)3892.

charged by the respondent State for the offence under Section 306 IPC as per the final report submitted by the Investigating Officer. According to her, there is a prima facie case against the petitioners.

10. The rival contentions now fall for our determination.

11. In *Amalendu Pal Vs. State of West Bengal*⁷, it was held that the 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 IPC.

12. In *S.S.Cheena Vs. Vijay Kumar Mahajan & Anr. (2010) 12 SCC 190*, it was observed that;

“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

⁷ (2010)1 SCC 707.

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.

26. In the instant case, the deceased was undoubtedly hypersensitive to ordinary petulance, discord and differences which happen in our day-to-day life. Human sensitivity of each individual differs from the other. Difference people behave differently in the same situation.”

13. Similarly, in *Dilip s/o Ramrao Shirasao & Ors. Vs. State of Maharashtra & Anr.*⁸, the Division Bench of this Court observed as under:

“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 u/s 306 of the IPC, it is necessary for the prosecution to at least prima facie establish that the accused had an intention to aid or abet the deceased to commit suicide. In the absence of such material, the accused cannot be compelled to face trial for the offence punishable u/s 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

8 2016 ALL MR (Cri.)4328.

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 u/s 306 of the Indian Penal Code, in out considered view, would be an abuse of process of law.”

14. The record shows that an FIR came to be lodged on 17-04-2022 wherein it is alleged that on 05-04-2022, frustrated by the harassment of the accused, the deceased had committed suicide. The first informant in the FIR alleged that the accused had threatened him and his family members to vacate the house where they were residing; that on 16-12-2021 and 23-02-2022, his father informed him that accused individuals, Suryakant and Pralhad had met with him and asked his father to instruct him to withdraw the criminal case filed against accused Suryakant else to face the consequences; the accused used to damage the water pipes, block drains, damage utensils, dump waste in the yard and throw animal bones in front of his house; and on 03-04-2022 his father informed him that accused Pramila threatened to lodge a false complaint of outraging her modesty against him.

15. After examining the allegations in light of the above-quoted decisions, it was found that there was a sufficient gap

between the incidents involving the accused and the deceased's act of suicide. There is no direct link between the two, as the deceased had ample time to consider the consequences of suicide. No direct or active act was found that led the deceased to commit suicide. The charge sheet contains nothing that could be remotely considered an offence, let alone one under Section 306 IPC. The charge sheet does not suggest any abetment to commit suicide. There is no material of any positive action taken by the accused that could have caused or forced the deceased to commit suicide at the time of the incident. Simply alleging harassment of the deceased is not sufficient to sustain the charge under Section 306 IPC.

16. Moreover, there is no material to suggest that the accused intended for the deceased to commit suicide, nor is there any indication that the accused created a situation that caused extreme mental stress, leading the deceased to take his own life.

17. It is a settled principle in law that if an FIR contains some material allegations, it and any subsequent proceedings should not be quashed under Section 482 Code of Criminal

Procedure, 1973. However, in the present case, the accusations in the FIR are completely inadequate and do not meet the criteria specified under Sections 107 and 306 IPC.

18. That apart, on 05-04-2022, the first informant went to the police station to report his father's suicide. In his report, he stated that his father had been struggling with alcohol addiction and had committed suicide by hanging himself. He did not make any complaints against the petitioners until 17-05-2022. According to Mr Wable, this delay, in the backdrop of the long-standing conflict between the parties, is sufficient grounds to quash the proceedings based on the earlier report dated 05-04-2022. The legal position on the aspect of delay in lodging an FIR is fairly crystalised to the effect that if there is a delay in lodging an FIR and no satisfactory explanation is given, it can have a negative impact on the prosecution's case. Although a delay in filing an FIR does not automatically lead to its dismissal, it can raise doubts and prompt the Court to investigate possible motives. However, if a satisfactory explanation for the delay is provided, it may be disregarded, and the delay may be condoned. In the present case, the first informant initially reported that his father had committed suicide due to struggles with alcohol addiction and had

hanged himself. However, after 12 days, the informant came forward with a case stating that he was unable to report the matter earlier as he was occupied with his father's last rituals. In such a situation, we are not inclined to accept the explanation for the delay in lodging FIR.

19. In *Hasmukhlal D. Vora & Anr. Vs. State of Tamil Nadu*⁹, it was held that though inordinate delay in itself may not be a ground for quashing a criminal complaint, unexplained inordinate delay must be taken into consideration as a very crucial factor as grounds for quashing a criminal complaint.

20. For the aforesaid reasons, the present writ petition is allowed, and the FIR bearing C.R.No.49 of 2022 registered at Chinchani Wangi Police Station, Sangli, against the petitioners and the proceedings arising therefrom are quashed.

21. Rule made absolute in the above terms.

[R.N.Laddha, J.]

[Nitin W. Sambre, J.]

9 2022 SCC OnLine SC 1732.