

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

CRIMINAL WRIT PETITION NO. 2845 OF 2022

Haji Taher Khan Haji Yusuf Khan
and Ors.

..Petitioners

V/s.

The State of Maharashtra and Anr.

..Respondents

Mr. Tapan Thatte for the Petitioners.

Ms. M.H. Mhatre, APP for the Respondent No.1/State.

Mr. Pranav Bhoite for Respondent No.2.

**CORAM : SUNIL B. SHUKRE, AND
M.M. SATHAYE, JJ.**

**RESERVED ON : 28th APRIL 2023
PRONOUNCED ON : 05th JUNE 2023**

JUDGMENT (PER : M.M.SATHAYE,J.)

1. Rule. Rule made returnable forthwith. Learned APP waives service for Respondent No.1. Learned counsel appearing for Respondent No.2 waives service. Taken up for final disposal by consent.

2. By this petition filed under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure (Cr.P.C.), the Petitioners are praying to quash and set aside C.R. No. 80 of 2018 registered against them with Daund Police

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Station, Pune under Section 306 read with Section 34 of Indian Penal Code (IPC) and consequent chargesheet.

3. It is the case of the Petitioners that one Nisar Jabbar Shaikh (hereinafter referred to as 'the Deceased') was a real estate agent and RTI activist, who had sought certain information about the properties of the Trust, of which Petitioners are the Trustees. It is the case of the prosecution that the Petitioners have harassed the deceased because he was seeking information about the Trust's property and resultantly the deceased committed suicide.

4. Learned counsel Mr. Thatte appearing for the Petitioners/accused submitted that the ingredients necessary to constitute the offence under Section 306 of the IPC are not at all made out from the averments in the FIR. He submitted that there is nothing to show that the Petitioners have actively incited the deceased to commit suicide. He urged that without such allegations, a charge of abatement of suicide cannot be sustained merely on allegations of so called harassment. He further contended that from the allegations in the FIR, the acts constituting abatement of suicide, proximate in time to actual commission of the act, are not at all made out. Mr. Thatte also pointed out that Respondent No.2/first informant, who happens to be the wife of the deceased, has filed an affidavit in support of the petition as a compromise agreeing for quashing of the FIR.

5. Learned APP appearing for the Respondent No.1 State has opposed the prayer of quashing. He submitted that there is no question of accepting any compromise between the Petitioners/accused and Respondent No.2/wife of the deceased. He submitted that considering the nature of the offence and its gravity, no order can be passed based on compromise and the matter must be heard on merits, so far as quashing is concerned.

6. Learned counsel for Respondent No.2/first informant has submitted to the orders of the Court.

7. At the outset, we clarify that in view of the offence involved i.e. abatement of suicide (Section 306 of IPC), consideration of the so called compromise is out of question. This Court is not considering the alleged or so called consent given by Respondent No.2 at all and as such, there is no need to advert to the consent affidavit. We clarify that we are deciding the matter purely on merits.

8. Heard both the sides. Perused the record including the material gathered during the course of the investigation. Perusal of FIR dated 02.02.2018, shows that it is alleged that on 01.02.2018, the deceased committed suicide in his house and had left a suicide note taped on wall. It is alleged in the FIR that there was certain dispute between the deceased and the Petitioners,

who are Trustees of a Trust, as the deceased was trying to gather certain information about the Trust's property under Right to Information Act. It is alleged that certain information given to the deceased under RTI was incorrect and the Petitioners harassed the deceased and therefore, he committed suicide.

9. Learned APP has assisted us in going through a panchanama in which the suicide note has been reproduced. This suicide note shows that it is stated by the deceased that he is leaving behind the great responsibility upon the readers and he expects that his people will stand by the truth and there will not be any politics in the same. It is further stated that unless all the persons mentioned in the suicide note are brought to the book, he should not be buried. It is further stated that nobody should compromise as there are people in the society who will try to hush-up the matter and will try to emotionally blackmail his family members. It is further stated in the suicide note that persons mentioned in the said note are responsible for the suicide of the deceased.

10. We are informed that the Petitioners are the accused persons as per charge-sheet after investigation. The offence with which Petitioners are charge-sheeted is serious and therefore, the case requires serious consideration by us. It is therefore necessary to consider the basic provisions regarding of abetment as provided in Section 107 of IPC and as those in Section 306

prescribing punishment for abetment of suicide. They are reproduced below for ready reference:

“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.

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.”

11. From the aforesaid two definitions, it is clear that a person who is found guilty of abetting commission of suicide is liable to be punished as provided in Section 306 of IPC and a person is said to abet doing of a thing, who either instigates any person to do that thing or engages in any conspiracy for doing that thing or commits an act or illegal commission in pursuance of any

conspiracy in order to do that thing or intentionally aids doing of such thing. From the averments in the impugned FIR as well as the suicide note there is nothing to infer that the Petitioners have instigated or actually incited the deceased to commit the suicide. So also the allegations about the harassment are not only omnibus but are awefully lacking material particulars. There is also nothing in the FIR or the suicide note, which will indicate any proximity of time between alleged harassment and the actual act of suicide.

12. In that view of the matter, since the basic ingredients of offence alleged to have committed by the Petitioners are not fulfilled, we are of the considered opinion that it will be an abuse of process of law, if the Petitioners are made to face trial. In our view even if the allegations in the FIR are taken at their face value and accepted in their entirety, they do not prima facie constitute the said offence against the Petitioners. This case therefore fits into one of the exceptions carved out by the Hon'ble Supreme Court in the case of **State of Haryana V/s. Ch. Bhajan Lal And Ors.** reported in **1992 AIR SC 604**. For our such view, we also draw support from the caselaw reported in **(2005) 2 SCC 659 - Netaji Dutta V/s. State of West Bengal**, **(2015) 9 SCC 639 - State of Kerala V/s. S. Unnikrishnan** and **(2011) 3 SCC 626 - M. Mohan V/s. State.**

13. This is therefore a fit case to exercise our jurisdiction as invoked. We, therefore, pass following order.

ORDER

(i) The petition is allowed in terms of prayer clause (a), which reads as thus:

“a) Quash and Set aside C.R. No. 80/2018 dated 2nd February 2018 registered with Daund Police Station under Section 306 and 34 of the Indian Penal Code, 1860.”

(ii) Consequent chargesheet filed against the Petitioners and criminal case initiated in the Court, if any, is quashed and set aside.

(iii) Rule is made absolute in above terms. No order as to costs.

(M.M.SATHAYE, J.)

(SUNIL B. SHUKRE, J.)