

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 1143 OF 2023

1. Kalpana Ashok Bandagale

Age : 47 Years, Occ: Nil,
R/o Anand Vihar, Hingne Khurd,
Sinhgad Road, Dist. Pune.

2. Ashok Gopal Bandagale

Age : 54 Years, Occ: Business,
R/o Anand Vihar, Hingne Khurd,
Sinhgad Road, Dist. Pune.

.. Applicants

Vs.

1. The State of Maharashtra,
at the instance of Sinhgad
Police Station, Pune.
C.R. No. I-233/2023.

2. Mohan Rama Dabholkar

Age : 50 Years, Occ: Service,
Address : Survey No.23/1,
Anand Vihar, Hingne Khurd,
Sinhgad Road, Dist. Pune.

.. Respondents

Mr. Shailesh Kharat for the Applicants.

Mr. Y. M. Nakhwa, APP for the Respondent No.1-State.

Mr. Shridhar Khadake P.S.I., Sinhgad Road Police Station, Pune.

CORAM : A. S. GADKARI AND

SHYAM C. CHANDAK, JJ.

DATE : 30th NOVEMBER, 2023.

JUDGMENT: [PER- SHYAM C. CHANDAK, J.]

1) By this Application under Section 482 of the Code of Criminal Procedure, 1973, the Applicants invoke the inherent powers of this Court and seek quashing and setting aside of F.I.R. bearing C.R. No.233 of 2023 registered with Respondent No.1-Police Station for the Offences Punishable under Sections 306, 506 read with 34 of the Indian Penal Code (I.P.C.), against the Applicants.

2) The impugned F.I.R. has been registered on the report by Respondent No.2, wherein he narrated that he has been residing at Aanand Vihar, Hingane Khurd, Pune. He is doing a furniture work. His wife is a cook. His son Milind has been serving in M/s. Pengiya Global Services, Pune. His deceased son Manoj, aged 24 years, was studying in B.com, II year.

2.1) In the year 1990, Respondent No.2 and Applicant No.2 purchased half *Guntha* land each, adjacent to one-another. Then they made construction on their respective land. One iron staircase was installed in his constructed area. There was one room on the second floor of the house of the Applicants.

2.2) In the year 2017, Respondent No.2 decided to construct the second floor of his house. At that time, the Applicants raised a dispute and were not allowing him to do the said construction. However, on account of mediation, the Applicants permitted for the said construction, hence, they

constructed the second floor. But at that time, it was decided between them that, in case the third floor is to be constructed, then the staircase will be constructed from inside of their respective houses. In the year 2018, Respondent No.2 constructed the third floor and put a tin shed on it and to approach there, a staircase has been constructed at the second floor.

2.3) On 6th April, 2023, Applicant No.2 demolished his room on the second floor. Then, at about 10 p.m. the Applicants came at Respondent No.2 and called Manoj. Therefore, Respondent No.2, his wife and Manoj came there. At that time, the Applicants proposed as, “We would break the said iron staircase and built there a cement staircase and we would spend for it jointly”. On this, Manoj said that, “Presently, their financial condition is not well, similarly, it was decided that, in case the third floor is to be constructed, then the staircase should be built from their respective house. Accordingly, they have constructed the staircase from inside of their house, Applicants too build the staircase from inside of their house”. But the Applicants started disputing with Respondent No.2 and threatened that, they would construct the staircase in the place of the iron staircase only.

2.4) On 8th April, 2023, at about 10 p.m., again the Applicants threatened to Respondent No.2 and Manoj that, they would break the said iron staircase and construct the cement staircase there, the Respondent may do whatever he want. On 9th April, 2023, while Manoj was alone,

the Applicants raised dispute with him. Further, Manoj informed that, Applicant No.2 was constantly pestering him throughout the day, while he was alone at home. On 9th April, 2023, at about 10 p.m., the Applicants came at Respondent No.2 and called Manoj. Therefore, Respondent No.2, his wife, Manoj and Milind came there. At that time, Applicant No.1 said them that, they would remove the iron staircase and put cement column there and they would spend for it jointly. Manoj objected to this on the ground that their financial condition is not well and as agreed earlier, the staircase should be constructed from their respective house. On this, Applicant No.2 threatened that, they will construct the staircase there only and quarreled with the Respondent's side. Thus, Manoj suffered mental harassment due to this every day's annoyance. As a result, on 10th April, 2023, at about 7 p.m., Manoj committed suicide by hanging inside his house. Before that, Manoj saved a message on his mobile screen and left a suicide note that, he is committing suicide due to harassment by the Applicants. Thus, the Applicants abetted the commission of suicide by Manoj.

3) But the Applicants claim that they are innocent, however, they have been falsely implicated in the F.I.R. Hence this Application.

4) Mr. Kharat, learned Advocate for the Applicants submitted that, the allegations in the F.I.R. are accentuated by malafides, hence this is a clear case of misuse of the process of law. It is settled law that, where a

criminal proceeding is manifestly attended with malafied and/or is maliciously instituted with an ulterior motive for wreaking vengeance against the accused, such a proceeding is liable to be quashed and set aside.

4.1) Mr. Kharat, learned Advocate submitted that, even if the narration in the F.I.R. is taken as it is, the same is not sufficient to constitute the abetment defined under Section 107 of the I.P.C. because the element of ‘instigation’ to commit suicide by Manoj, is completely absent in the said narration. Hence, the charge under Section 306 of the I.P.C. cannot be levelled against the Applicants. To persuade this submission, Mr. Kharat, learned Advocate cited the judgment in the case of *Arnab Manoranjan Goswami vs. state of Maharashtra and Ors., reported in 2020 SCC Online SC 964* and submitted that to charge a person for abetment of suicide, there must be material showing that he has played an active role by act of instigation or by doing certain act to facilitate the commission of suicide. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. In order to convict a person under Section 306 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 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. All this is missing in the case in hand, submits learned Advocate.

5) Per contra, learned APP strongly submitted that, notwithstanding the parties had decided to construct separate staircase from inside of their respective houses, the Applicants were unnecessarily pressurising and threatening the family of Respondent No.2 to remove the iron staircase and raise the cement staircase there. But such an arrangement was not possible due to poor financial condition of Respondent No.2. The Applicants, however, were repeatedly forcing to build the cement staircase out of the joint expenditures of the parties. But since Manoj was deadly against this proposal by the Applicants, the latter continuously threatened him that, they would build the cement staircase there only by breaking the iron staircase. Undoubtedly, this intentional behavior of the Applicants caused great mental harassment to Manoj and ultimately it laid him to commit suicide. Hence, there is a prima facie case of the offences alleged against the Applicants. As such, the Application is liable to be dismissed.

6) As provided in Section 107 of the I.P.C., a person can be said to have abetted in doing a thing, if he instigates any person to do that thing. Thus, it is manifest that direct involvement of the person concerned in the commission of the offence of suicide is essential to bring home the offence under Section 306 of the I.P.C. As held in the case of *Chitresh Kumar Chopra vs. State (Govt. of NCT of Delhi)*, reported in AIR 2010 SC 1446, “instigation” is to goad, urge forward, provoke, incite or encourage to do “an

act”. To satisfy the requirement of “instigation”, though it is not necessary that actual words must be used to that effect or what constitutes “instigation” must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. A word uttered in a fit of anger or emotion without intending the consequences to actually follow, cannot be said to be “instigation”.

6.1) It is further observed that, to constitute “instigation”, a person who instigates another has to provoke, incite, urge or encourage doing of an act by the other by “goading” or “urging forward”. The dictionary meaning of the word “goad” is ‘a thing that stimulates someone into action: provoke to action or reaction’; “to keep irritating or annoying somebody until he reacts”. Similarly, ‘urge’ means to advise or try hard to persuade somebody to do something or to make a person to move more quickly and or in a particular direction, especially by pushing or forcing such person. Where the accused by his acts or by a continued course of conduct creates such circumstances that the deceased was left with no other option except to commit suicide, an “instigation” may be inferred.

6.2) It is further observed that, the question as to what is the cause of a suicide has no easy answers because suicidal ideation and behaviours in human beings are complex and multifaceted. Different individuals in the

same situation react and behave differently because of the personal meaning they add to each event, thus accounting for individual vulnerability to suicide. Each individual's suicidability pattern depends on his inner subjective experience of mental pain, fear and loss of self-respect. Each of these factors are crucial and exacerbating contributor to an individual's vulnerability to end his own life, which may either be an attempt for self-protection or an escapism from intolerable self.

7) Guided by the observations in the reported cases referred above, we have carefully considered the facts of the case in hand. As stated in the F.I.R., Respondent No.2 is doing furniture work and his wife is working as cook. Their son Milind is doing a private service. These facts indicate that, the financial condition of Respondent No.2 was not good, therefore, he and Manoj were not willing or say mentally prepared to accept the proposal of the Applicants to break the iron staircase and construct a cement staircase there out of the joint expenditures. Secondly, it was already agreed between the parties that, if third floor is to be constructed, then the parties shall build the staircase from their respective houses. Nevertheless, since 6th April, 2023, the Applicants were continuously pressurising Respondent No.2 to accept their said proposal. But Manoj appeared as great obstacle in accepting that proposal by Respondent No.2. Therefore, the Applicants started harassing Manoj by continuously threatening him and his family

that, they would break the iron staircase and built the cement staircase there only. The F.I.R. indicates that, the said harassment was continued till the date of the incident. Manoj was just 24 years of age. Thus, it is clear that Manoj could not endure the harassment because of his young age and poor financial condition of his family. Consequently, he lost his mental stability and driven to commit suicide. In other words, due to continuous harassment and threatening by the Applicants, Manoj was left with no other option except to commit suicide. No doubt, the duration of the harassment looks small, but the facts and circumstances of the case make it apparent that the intentional harassment and threatening from the Applicants was grave enough in nature. Otherwise, Manoj had no reason to take such an extreme step to end his life so easily. Hence, the observations in the case of *Chitresh Kumar Chopra* (supra) are squarely applicable here.

8) In view of the above discussion, we are of the considered view that, there is prima facie case against the Applicants of the offences stated in the impugned F.I.R. Therefore, this Application is liable to be dismissed. We Order accordingly.

8.1) Criminal Application No.1143 of 2023 is dismissed.

(SHYAM C. CHANDAK, J.)

(A. S. GADKARI, J.)