

BHARAT
DASHARATH
PANDIT

Digitally signed
by BHARAT
DASHARATH
PANDIT
Date: 2024.01.03
13:29:29 +0530

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 4732 OF 2019

1. Shripal Gangappa Chougule.
2. Laxman Raghunath Choudhari.

PETITIONERS

- **VERSUS** -

1. The State of Maharashtra.
2. Amol Kumar Chougule.
3. The Sr. Police Inspector, Hupari Police Station.

RESPONDENTS

Shri Mahesh Vaswani with Ms Dharini Nagda i/by Ms Shreya Tiwari, counsel for the petitioners.

Ms M.H. Mhatre, Additional Public Prosecutor for the respondent no.1 and 3.

Shri Siddhesen Borulkar i/by Shri Manoj Patil counsel for the respondent no.2.

CORAM : NITIN W. SAMBRE AND R.N. LADDHA, JJ.

DATE : JULY 25, 2023.

ORAL JUDGMENT (PER : NITIN W. SAMBRE, J.)

Heard the respective counsel for the parties.

2. This criminal writ petition is with a prayer for quashing of the First Information Report in Crime No. 175 of 2019 and consequential charge-sheet for the offence punishable under Sections 306, 506, 507, 34 of the Indian Penal Code, 1860 (for short, 'the Code') and Section 45 of the Maharashtra Prevention of Money Lending Act, 2014 (for short, 'the Act of 2014').

3. The facts necessary for deciding the present writ petition are as under :-

The respondent no.2-Complainant was blessed with a son and was staying alongwith his wife, mother and father. The name of father of the respondent no.2 was Kumar Chougule, who allegedly took handloan from the petitioner no.1, so as to support the complainant in his business of jewelry. The loan amount allegedly was of Rupees Fifteen Lakhs and the agreed rate of interest was 24% per annum. Said Kumar committed suicide in the late evening on August 07, 2019 which led to the respondent no.2 lodging the complaint on the same day.

4. In the said complaint, it is claimed by the respondent no.2 that his father took hand loan from the petitioner no.1 about three years prior to the incident. It is further claimed that the petitioner no.2 alongwith the petitioner no.1 used to issue threats to his father for repayment of the outstanding amount of Rupees Twenty Seven Lakhs, which is alongwith the accrued interest, or in the alternative transfer the immovable property, a plot, in favour of the petitioner no.1. On the date of the incident, it is claimed that the father of the respondent no.2 left for the agricultural field in the early morning, however having noticed that he had not returned to the home by late evening, the respondent no.2 went to the field and found the body of his father Kumar. He further noticed that froth was coming out from his mouth. Prior to the body being located/detected by the respondent no.2, it is claimed that Kumar called his wife at around 5.30

p.m. and informed about the alleged threat issued by the petitioner no.1 for return of the amount immediately or else to transfer the plot. As a sequel of above, the offence referred to hereinabove came to be registered and both the petitioners were charge-sheeted.

5. Shri Mahesh Vaswani, learned counsel for the petitioners would invite attention of this Court to the fact that the petitioner no.1 is the holder of the money lending license under the provisions of the Act of 2014 and the Rules framed thereunder. According to him, the license was valid as on the date of the alleged incident. He would further urge that by virtue of the aforesaid license of money lending being in existence, the business carried on by the petitioner no.1 was legal and in that eventuality the petitioner no.1 cannot be booked for the offence punishable under Section 45 of the Act of 2014. According to him, even if what has been stated against the petitioners in the First Information Report is taken to be correct at its face value, the demand of legitimate dues by the petitioner no.1 cannot be said to be an act on the part of the petitioners to commit an offence under the Act of 2014 or the intention of the petitioners to drive deceased Kumar to commit suicide. He would further urge that the necessary ingredients of the offence punishable under Sections 306, 506, 507 and 34 of the Code cannot be inferred in absence of there being evidence of abetment and the fact about the likelihood of deceased Kumar

committing suicide because of the demand of return of amount made by the petitioners. As such, the contentions of the learned counsel for the petitioners are that the satisfaction of the necessary ingredients of the offence punishable under Sections 306, 506, 507 and 34 of the Code and Section 45 of the Act of 2014 could not be inferred. So as to substantiate the contention that the ingredients of the offence alleged against the petitioners are not made out, the learned counsel for the petitioners has drawn support from the judgment of the Hon'ble Apex Court in *Ramesh Kumar Versus State of Chhatisgarh* [(2001) 9 SCC 618].

6. According to him, in the backdrop of the petitioner no.1 holding the money lending license under the Act of 2014 and he has demanded return of his legitimate dues, it cannot be held that the petitioner no.1 by his act or omission or by continued course of conduct created circumstances whereby deceased Kumar was left with no other option except to commit suicide. According to him, there is no material to infer an instigation on the part of the petitioners.

7. According to him the abetment is defined under Section 107 of the Code. The offence under Section 306 of the Code postulates satisfaction of one of the important ingredient viz. the abetment. The alleged case of harassment by the petitioners of persistent demand to get the money back

or in alternate to get transferred the plot, cannot be said to be a harassment which can be viewed as abetting the deceased to commit an offence. The learned counsel for the petitioners also draws support from the judgment of the Hon'ble Apex Court in *Gurcharan Singh Versus State of Punjab* [(2020) 10 SCC 200]. He would claim that there was no intention on the part of the petitioners to commit the offence and hence there was absence of *mens rea*.

8. While countering the aforesaid submissions, Ms M.H. Mhatre learned Additional Public Prosecutor for the respondent no.1 and Shri Siddhesh Borulkar, learned counsel appearing for the respondent no.2 would urge that the petition is liable to be dismissed as the same sans merit. According to them, this Court while dealing with the prayer for quashing cannot appreciate the evidence or its value or its merit and in such an eventuality the available evidence on record has to be read as it is. The statements of witnesses recorded under Sections 161 and 164 of the Code of Criminal Procedure, 1973 sufficiently implicate both the petitioners and that being so the petition is liable to be dismissed directing the petitioners to face the trial on merits.

9. We have appreciated the aforesaid submissions and the material placed on record.

10. The undisputed facts which are borne out of the record are that the petitioner no.1 holds a valid money lending license so as to carry on the money lending business in accordance with the Rules framed under the Act of 2014. The money lending transaction in between deceased Kumar and the petitioner no.1 can also be inferred from the record. In the aforesaid eventuality the perusal of the First Information Report speaks of the petitioner no.1 issuing threats to deceased Kumar and calling upon him to return the outstanding amount forthwith or in alternative to transfer the immovable property, a plot, in his name. The death of Kumar on August 07, 2019 can also be inferred from the record. A perusal of the First Information Report and the Post-Mortem Report categorically depicts the death of Kumar as being due to the Cardio-Respiratory failure. A Doctor's certificate to that effect could be noticed from the record.

11. After the complaint came to be lodged and the investigation was set in motion, the Investigating Officer has recorded the statement of the witnesses in exercise of powers under Section 161 of the Code of Criminal Procedure, 1973. The witnesses in categorical terms stated that there was demand of amount by the petitioners and threats were issued which has prompted Kumar to commit suicide. The statements of witnesses Jayashri, Dhanashri, Darshan, Ishwaraj and Vikram categorically speak about the aforesaid issue. As far as the petitioner no.2 is concerned, he is

not alleged to be in money lending business but it is mentioned in the investigation papers that he alongwith the petitioner no.1 was issuing threats in the matter of demand of the amount.

In addition to above, the statements of the witnesses viz. complainant Amol, Jayashri – wife of deceased Kumar, Dhanashri – wife of complainant Amol, Darshan, Ishwaraj and Vikram were recorded under Section 164 of the code of Criminal Procedure, 1973 by the Judicial Magistrate First Class, Ichalkaranji. These statements in categorical terms speak of the hearsay version of deceased Kumar to his wife before the act of suicide about the alleged threats issued by the petitioners.

12. In the aforesaid backdrop, what can be noticed is that when the prosecution case *qua* the demand of money and failure of deceased Kumar to honour the commitment of return of amount resulting into his harassment by the petitioners is appreciated, all the witnesses in categorical terms have supported the case of the prosecution so far as the petitioner no.1 is concerned. Even in the complaint lodged by the respondent no.2 on August 07, 2019, it could be noticed that there is no reference to the petitioner no.2 having issued threats or having demanded money or having asked to transfer the immovable property, a plot, in favour of the petitioner no.1. Similarly in the statements of witnesses, but for passing remarks about the petitioner no.2, no specific instance or

specific allegations could be noticed against the petitioner no.2. It is only in the statements of complainant Amol and Jayashri, the name of the petitioner no.2 is mentioned for persisting with the return of money and/or transfer of immovable property.

13. As such, considering above referred evidence to the extent of the case of the petitioner no.2, it will be appropriate to infer that even if what has been stated in the First Information Report, the statements of witnesses recorded under Sections 161 and 164 of the Code of Criminal Procedure, 1973 is taken to be true, still the necessary ingredients of the offence of abetment as defined under Section 107 and punishable under Section 306 of the Code are not made out against the petitioner no.2. These allegations against the petitioner no.2 are far away to infer the satisfaction of the necessary ingredients of the offence alleged.

14. As far as the case of the petitioner no.1 is concerned, even if he is holding a license under the provisions of the Act of 2014 that by itself would not absolve him from being prosecuted for the offence punishable under Sections 306, 506, 507 of the Code or the Act of 2014. In the First Information Report so also the statements of the witnesses, a specific mention is made that the petitioner no.1 used to regularly harass deceased Kumar and such harassment has driven Kumar to commit

suicide. *Prima-facie*, it has to be inferred that the allegations against the petitioner no.1 satisfy the ingredients of the offence alleged against him and he can be subjected to trial as his defence can be looked into at the stage of trial.

15. In view of aforesaid observations, what can be inferred is that the offence under Section 34 which cannot be inferred as an independent offence does not attract against the petitioner no.1. Section 45 of the Act of 2014 provides for penalty for molestation. A perusal of the First Information Report and the charge-sheet does not speak of there being any allegation of molestation against the petitioners. Even otherwise, the perusal of the charge-sheet and other documentary material on record does not depicts satisfaction of the necessary ingredients of Section 45 of the Act of 2014 and as such the prosecution under the provisions of the Act of 2014 is also not maintainable. In the aforesaid backdrop, an offence punishable under Section 45 of the Act of 2014 also cannot be inferred against the petitioner no.1 as the petitioner no.1 was holding a valid money lending license at the relevant time. Be that as it may, the said issue can be looked into by the trial Court at an appropriate stage of the proceedings while dealing with the trial against the petitioner no.1.

However, since we have already observed that the ingredients of the offence alleged against the petitioner no.2 cannot be inferred, we are

inclined to allow the present writ petition to the extent of the claim put forth by the petitioner no.2 as there is no iota of evidence to infer the satisfaction of the necessary ingredients of the offence of abetment of suicide against him.

16. Rightly so, the learned counsel for the petitioners has drawn support from the judgment of the Hon'ble Apex Court in the matter of *Ramesh Kumar and Gurcharan Singh* (supra) so as to substantiate his case. The fact remains that the role attributed to the petitioner no.2 is that of an accomplice of the petitioner no.1 and it is claimed that both the petitioners in view of the provisions of Section 34 of the Code were having common intention to commit the offence. The issue of there being common intention on the part of the petitioners, particularly the petitioner no.2, cannot be inferred as but for the incident in question, there is no history that the petitioner no.2 was an accomplice of the petitioner no.1 not only in the matter of advancing the loan but also in the matter of recovery and issuing threats against deceased Kumar.

Though the learned counsel for the petitioners has claimed that Kumar has died because of cardiac arrest, however whether such Cardio Respiratory Failure is because of the effect of the chemical which was consumed by the deceased is an issue to be looked

into at the stage of evidence. The viscera report even speaks of absence of any poisonous substance however, the same can be looked into at the stage of trial and not at the stage of quashing the First Information Report.

17. As such, drawing support from the judgments of the Hon'ble Apex Court in *Ramesh Kumar* and *Gurcharan Singh* (supra), we have formed a view that the prosecution against the petitioner no.2 cannot be said to be sustainable. That being so, we allow the present writ petition partly. The prosecution initiated against the petitioner no.2 is quashed and set aside in terms of Prayer Clause (A). The dismissal of the petition of the petitioner no.1 by itself will not disentitle him from making a prayer for discharge as it is always open for him to move for discharge before the appropriate forum which prayer be considered in accordance with law.

Order accordingly.

(R.N. LADDHA, J.)

(NITIN W. SAMBRE, J.)