



Judgment

914 apl 407.21

IN THE HIGH COURT OF JUDICATURE AT BOMBAY :
NAGPUR BENCH : NAGPUR.

CRIMINAL APPLICATION (APL) NO. 407/2021

1. Smt. Sangita Sachin Giradkar,
Aged about 29 yrs., Occ. Housewife,
2. Shri Puneshwarrao s/o. Kisan Yenurkar,
Aged about 57 yrs., Occ. Agriculture,

Both 1 and 2 are R/o. Ankush Zade
Layout, Post-Salod (Hirapur), Tah. Wardha,
Dist. Wardha.

.....APPLICANTS

VERSUS

1. State of Maharashtra,
through Police Station Officer,
Police Station Ramnagar,
Dist. Chandrapur.
2. Bharati w/o. Ashok Giradkar,
Aged 57 yrs., Occ. Housewife,
Permanent R/o. Mitra Nagar Stadium
Road, Near Ambedkar Collage,
Chandrapur 442401.

NON-APPLICANTS

Mr. B.H. Tekam, Advocate for applicants.
Mr. J.Y. Ghurde, APP for non-applicant No.1/State.
Mr. P.D. Rane, Advocate (appointed) for non-applicant No.2.

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**CORAM : VINAY JOSHI AND
M. W. CHANDWANI, JJ.**

DATE : 20.10.2023.

ORAL JUDGMENT (PER VINAY JOSHI, J.) :

Heard.

2. **Admit.**

3. This is an application seeking to quash charge-sheet arising out of Crime No. 176/2021 registered with Police Station Ramngar, Chandrapur for the offence punishable under Section 306 of the Indian Penal Code pending on the file of Judicial Magistrate First Class, Chandrapur vide RCC No.770/2021. Though initially application was filed by two applicants, however application as regards to applicant No.2 Puneshwarrao s/o. Kisan Yenurkar was not pressed since no charge-sheet was filed against him.

4. The facts leading to the filing of this application are that on 14.02.2021 son of informant namely Sachin Giradkar committed suicide by hanging which resulting into filing of report. The applicant Sangita is wife of deceased. The couple got married in the

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year 2010 and was living together. The couple had two issues. It is informant's case that all the time there used to be matrimonial dispute in between the couple. The applicant was quarreling with her husband on various counts. She was in habit of going to her father's house without reason. The deceased husband was convincing her and bringing back for cohabitation. The applicant was suspecting the deceased's character as well as on account of consuming liquor used to quarrel.

5. Finally, in the month of December 2020, applicant returned to her parents' house. At that time, deceased went to bring her back, but he was assaulted by his father-in-law and mother-in-law. The applicant returned for cohabitation, but again within 4 to 5 days, she returned to her parents' house. Deceased was requesting her to resume cohabitation, but she was not listening. The deceased got frustrated by such behaviour of his wife i.e. applicant and therefore, committed suicide.

6. The learned counsel appearing for applicant would submit that even though the contents of the Police report are accepted at its

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face value, it does not make out an offence of abetment to commit suicide. Merely on the allegation of harassment by wife, there is nothing to infer that the wife took positive steps with an intention to instigate her husband to commit suicide.

7. In opposition, learned APP as well as learned counsel appearing for the informant resisted the application. It is submitted that there are consistent statement of witnesses who says about quarrelsome nature and habit of the applicant returning to her parental house. Our attention is invited to the statement of child of couple who equally stated about quarrel and blamed his mother responsible for the suicidal death. We have been taken through the suicidal note, wherein deceased stated about the applicant's habit of quarreling and returned to her father's house. Deceased got depressed by such uncalled behaviour of his wife and therefore, he is committing suicide.

8. It is apparent that the marital relation was not smooth though the couple was living for 12 years. All the statements would suggest that the applicant was not behaving properly with her

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husband, without reason used to quarrel with him and returning to her father's house. Certainly, this can be a cause for husband to seek appropriate relief, but it is difficult to accept that such act of the wife amounts to intentional abetment.

9. In the case of **Sanju Alias Sanjay Singh Sengar Vs. State of M.P., - (2002) 5 SCC 371**, the Supreme Court was considering a situation where the deceased had left behind a suicide note, wherein it was specifically stated that the accused was responsible for his death. In the said case, the Supreme Court considered the liability of the accused to face investigation and prosecution under Section 306 of the IPC, in the context of Section 107 thereof and it was held that the word "instigate" denotes incitement or urging to do some drastic or inadvisable action or to stimulate or incite, It is also held that presence of mens rea, is a necessary concomitant of instigation. It was found that in the said case the alleged abusive words were used by the accused against the deceased, two days prior to the date when the deceased was found hanging. In these circumstances, the Supreme Court found it fit to quash the criminal proceedings.

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10. In the case of **Madan Mohan Singh Vs. State of Gujarat and another - (2010) 8 SCC 628**, the accused was alleged to have instigated his driver to commit suicide. There was a detailed suicidal note left behind by the deceased and the accused had approached the High Court for quashing of the FIR and the criminal proceedings, but his prayer was rejected, as consequence of which, the accused was before the Supreme Court seeking relief. The Supreme Court analyzed Section 306 read with 107 of the IPC and held that there has to be proximity between the alleged acts of the accused and the extreme step taken by the deceased of committing suicide. It was held that the allegations made and the material ought to be of a definite nature and not imaginary or inferential. The Supreme Court went into the suicidal note of about 15 pages and found that the contents thereof expressed the anguish of the deceased, who felt that his boss (the accused) had wronged him, but it was noted that the contents fell short of depicting an intentional act on the part of the accused for driving the deceased to commit suicide. On this basis, the judgment of the High Court was set aside and the FIR and criminal proceedings were quashed.

11. Observations made by the Supreme Court in paragraph No.25 of the decision in case of **S.S. Chheena Vs. Vijay Kumar Mahajan and another - (2010) 12 SCC 190**, are relevant, which reads as under :

“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 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.”

12. Similarly, in the case of **M.Mohan Vs. State Represented by the Deputy Superintendent of Police - (2011) 3 SCC 626**, the Supreme Court held in the context of abetment as follows: -

“44. 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.

45. The intention of the legislature and the ratio of the cases decided by this court are

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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 the deceased to commit suicide seeing no option and this act must have been intended to push the deceased into such a position that he/she committed suicide.”

13. In the light of above legal position, we have gone through the entire material. The act of wife nowhere suggest that she possesses the knowledge or intention that her act would lead her husband to commit suicide. In our Society, it is usual wear and tear situation in between the husband and wife. It reveals that for 12 years there was bickering in the couple, but there is no material to indicate the proximate act of wife which has prompted deceased to commit suicide. Certainly, the act of wife may cause frustration to the husband, but cannot be construed as wife intend that her husband shall commit suicide. The evidence collected by the prosecution is totally insufficient to infer that the applicant lady abetted deceased to commit suicide. In the result, we are of the view that even though the prosecution case is accepted, it fails short to make out prima facie case to constitute the offence of abetment. Certainly, continuation of trial amounts to abuse of

process of the Court.

14. In view of above settled position of law, we do not see any prima facie material to prosecute further. The facts of the case squarely falls in guideline Nos. 1 and 3 of para 108 as the decision of the Supreme Court in case of **State of Haryana Vs. Bhajan Lal, AIR 1992 (SC) 604.**

15. In view of above, we are inclined to invoke our inherent powers. Application is allowed. We hereby quash and set aside charge-sheet No.318/2021 arising out of Crime No. 176/2021 registered with Police Station Ramngar, Chandrapur for the offence punishable under Section 306 of the Indian Penal Code which is pending before the Judicial Magistrate First Class, Chandrapur vide RCC No.770/2021.

16. Application stands dispose of in above terms.

17. Fees for appointed counsel be paid as per Rules.

(M. W. CHANDWANI, J.)

(VINAY JOSHI, J.)