

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

CRIMINAL APPLICATION [APL] No. 946/2022.

Namrata w/o Vinod Sahu,
Aged about 26 years, Occupation -
Household, resident of Kanwar Nagar,
Omsode Chandel Apartment,
Taluq and District Amravati. ... **APPLICANT.**

VERSUS

1.State of Maharashtra,
through Police Station Officer,
Gadge Nagar, Amravati.
Taluq and District Amravati.

2.Rajesh Ramachchebar Yadav,
Age 44 years, Vilas Nagar,
Galli No.1, Amravati,
Taluq and District Amravati. ... **NON-APPLICANTS.**

Mr. D.S. Khushlani, Advocate for the Applicant.
Mr. A.M. Kadukar, A.P.P. for Non-applicant No.1.
Mr. B.H. Tekam, Advocate for Non-applicant No.2.

CORAM : VINAY JOSHI AND
BHARAT P. DESHPANDE, JJ.

DATE : APRIL 10, 2023.

ORAL JUDGMENT (PER VINAY JOSHI, J.) :

Heard finally by consent of the learned Counsel appearing for the respective parties.

Admit.

2. This is an application seeking to quash the first information report bearing Crime No.1154/2018 registered with Gadge Nagar Police Station, Amravati for the offence punishable under Sections 306, 506 read with Section 34 of the Indian Penal Code, as also the proceedings pending before the Sessions Judge, Amravati vide Sessions Case No.265/2021.

3. A young person namely Swapnil committed suicide at his house by hanging on 06.11.2019. Father of the deceased lodged a report on 11.11.2018 alleging that due to harassment meted out by the applicant and some others, Swapnil committed suicide. The informant stated that after demise of Swapnil, call details of his mobile have been verified and it was found that one day prior to the suicidal death the deceased has received a phone call from mobile

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no. 930987957. So also on the date of suicide, the deceased received a phone call from mobile no.9834843016. So far as mobile no.9309879571 is concerned the same is of the applicant. It is submitted that both callers gave threat to Swapnil, therefore, he has committed suicide. The police have investigated the matter and filed charge sheet.

4. Beside above allegations, there is nothing on record to suggest that the applicant has instigated the deceased to commit suicide. In order to establish the offence of abetment, there must be adequate mens rea coupled with positive act on the part of the applicant to instigate the deceased to take an extreme step.

5. The learned Counsel for the applicant would submit that another caller holding mobile no.9834843016 has already approached to this Court by filing Criminal Application No.275/2019 seeking quashing of the first information report. The said Application came to be allowed vide judgment and order dated 19.09.2019. Apparently the allegations leveled against the present applicant are exactly similar to the co-accused Sunita, against whom

this Court has quashed the first information report in question.

6. The learned Counsel appearing on behalf of the applicant though has relied on some decisions, however, we prefer to quote some judgments which clarifies the position in the field.

7. 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, further holding that presence of mens rea, therefore, was 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.

8. 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 found 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.

9. Recently the Supreme Court in case of **Ude Singh and others .vrs. State of Haryana - 2019 SCC Online SC 924**, extensively surveyed the law in the field and summarized the principles in cases of alleged abetment of suicide. The relevant observations contained in paragraph nos. 16.1 and 16.2 reads as below :

“16.1. For the purpose of finding out if a person has abetted commission of suicide by another, the consideration would be if the accused is guilty of the act of instigation of the act of suicide. As explained and reiterated by this Court in the decisions above-referred, instigation means to goad, urge forward, provoke, incite or encourage to do an act. If the persons who committed suicide had been hypersensitive and the action of accused is otherwise not ordinarily expected to induce a similarly circumstanced person to commit suicide, it may not be safe to hold the accused guilty of abetment of suicide. But, on the other hand, if the accused by his acts and by his continuous course of conduct creates a situation which leads the deceased perceiving no

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other option except to commit suicide, the case may fall within the four-corners of Section 306 IPC. If the accused plays an active role in tarnishing the self-esteem and self-respect of the victim, which eventually draws the victim to commit suicide, the accused may be held guilty of abetment of suicide. The question of mens rea on the part of the accused in such cases would be examined with reference to the actual acts and deeds of the accused and if the acts and deeds are only of such nature where the accused intended nothing more than harassment or snap show of anger, a particular case may fall short of the offence of abetment of suicide. However, if the accused kept on irritating or annoying the deceased by words or deeds until the deceased reacted or was provoked, a particular case may be that of abetment of suicide. Such being the matter of delicate analysis of human behaviour, each case is required to be examined on its own facts, while taking note of all the surrounding factors having bearing on the actions and psyche of the accused and the deceased.

16.2. We may also observe that human mind could be affected and could react in myriad ways;

and impact of one's action on the mind of another carries several imponderables. Similar actions are dealt with differently by different persons; and so far a particular person's reaction to any other human's action is concerned, there is no specific theorem or yardstick to estimate or assess the same. Even in regard to the factors related with the question of harassment of a girl, many factors are to be considered like age, personality, upbringing, rural or urban set ups, education etc. Even the response to the ill-action of eve-teasing and its impact on a young girl could also vary for a variety of factors, including those of background, selfconfidence and upbringing. Hence, each case is required to be dealt with on its own facts and circumstances.”

10. On the conspectus of above settled proposition of law, we have examined the entire material. Besides bald reference in the first information report regarding phone call made by the applicant, there is nothing on record. By any stretch of imagination that cannot be termed as sufficient instigation to commit suicide. The learned A.P.P. is unable to point out any other material qua any positive act on the part of the applicant to construe as sufficient abetment. Mere

casual call from somebody conveys nothing, rather it is a far fetched imagination that the caller has abetted the deceased to commit suicide. In view of above, this case clearly falls within the ambit of Category Nos.1 and 3 of the guidelines laid down by the Hon'ble Supreme Court in case of **State of Haryana .vrs. Bhajanlal – AIR 1992 SC 604.**

11. In the circumstances, we are inclined to allow the Criminal Application and pass the following order.

ORDER

- (i) Criminal Application is allowed and disposed of.
- (ii) The First Information Report bearing Crime No.1154/2018 registered with Gadge Nagar Police Station, Amravati for the offence punishable under Sections 306, 506 read with Section 34 of the Indian Penal Code, as also the proceedings pending before the Sessions Judge, Amravati vide Sessions Case No.265/2021 is hereby quashed and set aside, so far as the applicant - Namrata Vinod Sahu is concerned.

JUDGE

JUDGE