

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION (APL) NO. 744/2022

Mulchand S/o. Namomal Setiya,
Aged 55 yrs., Occ. Business,
R/o. Plot No. 10, Kungu Colony,
Old Post Office, Jaripatka,
Nagpur.

APPLICANT

VERSUS

1. State of Maharashtra,
through Police Station Jaripatka,
Nagpur.
2. Kashish w/o. Sunil Rejhwani,
aged 42 yrs., Occ. Nil,

R/o. SSD Palace, Plot No. 302,
Opp. Rahul Buddha, Kasturba
Nagar, Jaripatka, Nagpur.

NON-APPLICANTS

Mr. Prakash Naidu, Advocate for applicant.
Mr. A. M. Kadukar, APP for non-applicant No.1./State.
Mr. S. P. Bhandarkar, Advocate for non-applicant No. 2.

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

DATE OF JUDGMENT : **28.03.2023**

ORAL JUDGMENT (PER VINAY JOSHI, J.)

Heard.

2. **Admit.**

3. The applicant urged for exercise of jurisdiction under Section 482 of the Code of Criminal Procedure to quash First Information Report in Crime No. 643/2021 for the offence punishable under Sections 306, 384, 387, 504, 506 read with Section 34 of the Indian Penal Code along with charge-sheet No. 102/2022.

4. It is applicant's contention that the allegations made in the FIR, even if taken at their face value and accepted in their entirety, do not prima facie constitute the offence alleged. The allegations levelled in the Police Report and other material fell short to establish the act of abatement in terms of Section 107 of the Indian Penal Code. It is contended that the entire allegation revolves around co-accused Rajesh only. Though a suicide note was traced, it was belated discloser and the note itself does not spell out sufficient instigation on the part of the applicant to constitute the offence. Moreover, it is submitted that there is total absence of mens rea on the part of the applicant.

5. The State as well as learned counsel appearing for the non-applicant No. 2 resisted the application by contending that this is not a fit case to exercise inherent powers of this Court in the background of adequate material. At this stage, the Court shall not embark upon an inquiry whether the evidence in question is reliable or not. It is submitted that there are consistent statements disclosing continuous harassment to the deceased on the part of the applicant as well. Besides,

suicide note, deceased sent video message which is part of evidence. In this background, by all means, trial is warranted.

6. On 09.10.2021, report has been lodged by the sister-in-law of deceased resulting into registration of Crime No. 643/2021 against the applicant and his brother Rajesh. It is informant's case that the applicant's brother Rajesh took a premise on rent from the deceased. However, Rajesh did not pay rent, but has abused and threatened the landlord i.e. to the deceased. She stated that in view of the threats given by Rajesh, deceased met to the applicant who is his real brother. Instead of resolving the dispute, the applicant also threatened deceased and insisted him to comply monetary demand of his brother. The informant as well as other witnesses have stated several instances about the threats given by both brothers. It is her contention that deceased was threatened to pay Rs. 10 lakhs for vacating tenanted premises. She would state that the applicant threatened to make complaint with Income Tax Department against the deceased. The act of threatening and demand was repeated on and often. Finally, on 06.02.2021, due to persistent harassment, informant's brother-in-law Mukesh committed suicide by hanging.

7. During the course of investigation, incriminating statements have been recorded. The Police have seized a detailed suicide note written by the deceased himself. It reveals from the translated copy of suicide note

that deceased has clearly blamed the applicant and his brother as responsible for his death. Suicide note bears reference that the deceased has also took photographs of the accused and videographed about his expression that he is committing suicide due to harassment meted out by the applicant and his brother. The learned counsel appearing for the informant took us through the observations made by this Court in para 9 of the order dated 09.12.202 in Criminal Application (ABA) No. 738/2021, wherein this Court has observed about the existence of prima facie case and declined to grant protection. These observations made in para 9 reads as under:-

“9. The informant has produced pen-drive containing video clip of last message sent by deceased. The said video clip was seen to find out prima facie material. It reveals that deceased has repeatedly said that both brothers have threatened him, made complaints and due to that he is in deep depression, hence committing suicide for which Rajesh and Mulchand (applicant) are solely responsible. The plight of deceased has to be understood that not only he has written detailed suicide note along with photographs of accused but has passed a video recorded message from his mobile blaming accused. Prima facie, it appears that harassment became unbearable hence deceased had video-graphed a message blaming accused so that they cannot be spared. The said act of deceased indicates that he was keen to expose the acts of

deceased. The said material prima facie indicates that deceased was under threat and pressure of both brothers due to which he preferred to die. Whether the continuous threats given by the applicant and monetary demand amounts to intentional aiding is matter of trial. However, prima facie, there is sufficient material to indicate the involvement of the applicant.”

8. There are consistent statement of witnesses, suicide note as well as video clip of deceased himself. It is a function of the Trial Court to assess said material. This is not a stage to infer about the adequacy of material to constitute the offence. Powers possessed by this Court under Section 482 of the Code of Criminal Procedure are very wide, however, the Court must be careful to see that its decision in exercise of this power shall be based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The act of abatement by instigation depends upon variety of factors. It is a matter of trial to see whether the accused by his continues course of conduct, created a situation leading deceased to perceive no other option than to commit suicide. At the threshold, it cannot be said that the material collected, does not constitute the offence nor about inherent improbability. In the circumstances, we are not inclined to exercise our extraordinary powers to throttle the cause at its initiation.

9. In view of above, application stands rejected and disposed of.

(BHARAT P. DESHPANDE, J.)

(VINAY JOSHI, J.)

Gohane