



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

CRIMINAL APPLICATION (APL) NO. 708/2021

1. Sau. Bhavna w/o Sunil Babre,
Age 36 yrs., Occ. Household,
2. Sunil S/o. Manik Babre,
Age 48 yrs., Occ. Labour,
Applicant Nos. 1 & 2 R/o. near
Birbalnath Mandir, Magrulpir,
Tal. Mangrulpir, Dist. Washim.
3. Sau. Karuna w/o. Ashok Udewal,
Aged about 37 yrs., Occ. Household,
4. Ashok s/o. Ramlal Udewal,
Aged about 49 yrs., Occ. Labour,
Applicant Nos. 3 & 4 R/o. Agarves,
Old City, Akola, Tal. & Dist. Akola.
5. Sau. Nikita w/o. Pankaj Kame,
Age 32 yrs., Occ. Household,
6. Pankaj s/o. Ramesh Kame,
Age 40 yrs., Occ. Labour,

Applicant Nos. 5 & 6 R/o.
near Sai Baba Mandir, Gadegaon
Road, Telhara, Tal. Telhara,
Dist. Akola.
7. Motiram s/o. Lalchand Maliye,
Aged about 70 yrs., Occ. Nil,
R/o. Shivaji Chowk, Telhara,

..... **APPLICANTS**

VERSUS

1. State of Maharashtra, through
Police Station Officer, Police
Station Telhara, Tal. Telhara,
Dist. Akola.

2. Ritesh s/o. Dharmsingh Balode,
Aged about Major, Occ. Business,
R/o. Shivaji Chowk, Telhara,
Tal. Telhara, Dist. Akola.

.... **NON-APPLICANTS**

Mr. S.S. Dhengale, Advocate along with Mr. K. Jain, Advocate and
Ms. S. Jain, Advocate for applicants.

Mr. S. S. Doifode, APP for non-applicant No.1.

Mr. N.b. Mirza, Advocate for non-applicant No.2

CORAM : **VINAY JOSHI AND**
MRS.VRUSHALI V. JOSHI, JJ.

DATE : **17.10.2023**

ORAL JUDGMENT (PER VINAY JOSHI, J.)

Heard.

2. **Admit.**

3. This is an application seeking to quash the charge-sheet arising out of the Crime No. 262/2021 registered with Police Station Telhara, Tal. Telhara, Dist. Akola for the offence punishable under Section 306 read with Section 34 of the Indian Penal Code. A young boy Vishal Maliye has committed suicide on 06.06.2021 by way of hanging. A suicidal note was found in the cloths of dead body which has caused his cousin brother (informant) to lodge report alleging that applicants have abetted the deceased to commit suicide. The Police have carried investigation and having been found sufficient

material, filed final report.

4. The brief facts of the case are that, all applicants (accused) are nearer one to the deceased than the informant. The applicant Nos. 1, 3 and 5 are real sisters, whilst applicant No.7 is father of the deceased. Rest of the applicants are husbands of the sisters of deceased. It is the prosecution case that mother of deceased died long back while deceased was infant. Since then deceased was brought up by his maternal aunt Mandabai at her house. Deceased was doing labour work and was residing with the family of Mandabai. Since beginning, the father of deceased disliked him and always quarreled with him. Informant stated that as and when the deceased went to his father's house, they were not giving him warm treatment, but used to humiliate and beat him. The informant stated that he learnt the things from the deceased.

5. Informant stated that one year preceding to the occurrence, deceased went to his father's house for residing. The deceased spent money for repairs of the house, as well for levelling of the land. Deceased felt that despite those acts, his family members have not behaved with him properly. Deceased conveyed the things to the informant that his father and sisters have abused him and driven him out of the house. The deceased felt that though he did good things for his father and sister, however they were not treating

him well and thus, he has no alternative than to end his life.

6. The deceased wrote suicide note on the day of occurrence which was found by the Police. On the basis of the suicide note, the informant (cousin brother of deceased) has lodged the report. The Police recorded statement of informant, his mother and other family members which are on the similar line. We have minutely examined the suicide note. The deceased stated in suicide note that his father, three sisters and their respective husbands are solely responsible for his death. He stated that his sisters have abused him in filthy language therefore, he got frustrated. Deceased expressed that since his own family has not treated him as their family member, he has no alternative then to commit suicide.

7. Learned counsel appearing for the applicants would submit that the allegation made in Police report even if they are taken at their face value and accepted in their entirety, they do not constitute an offence of abetment within the meaning of Section 107 of the Indian Penal Code. It is submitted that there is total absence of mens rea which would exclude the applicants from the culpability. On the other hand, learned APP as well as learned counsel appearing for the informant would submit that the deceased has written suicide note in his own handwriting. The informant, and his family members stated about the harassment meted out by the applicants to the

deceased. According to them, prima facie case exists hence no interference of this Court is warranted at this stage.

8. On careful scrutiny, we find that perhaps suicide note was a cause for lodging of the report. Suicide note though states that applicants are responsible, however it conveys that, as father and sisters have not treated him with love and affection, he committed suicide. Deceased got frustrated by such feeling resulting into taking extreme step. We have gone through the statement of witnesses. It reveals that most of the life of deceased was spent at the house of informant i.e. in the house of his maternal aunt. The allegation is about giving humiliating treatment by the applicants as and when deceased visits their house. As per informant's statement, deceased did good for his father i.e. spent money for house and land, still he was not accepted by his father. The behaviour of father and sisters with the deceased was rude. Rather deceased was expecting love, affection and humanly treatment from his beloved, but it did not happen. In the above background, the core question is whether rude treatment of father and sister would amount to the abetment as defined under Section 107 of the Indian Penal Code. Section 306 of the Indian Penal Code postulates that there shall be sufficient mens rea to constitute the offence. In catena of decisions, the same issue fell for consideration. In this regard, we may refer some decisions to

complete the point in all respects.

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, 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.

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 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.

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 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 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.**

14. Taking overall view of the matter it is evident that the prosecution case even if accepted as it is, it does not make out prima facie case of the intentional act of the applicants with adequate mens rea. In the circumstances, continuation of criminal prosecution amounts to the abuse of the process of the Court. In view of that application is allowed. We hereby quash and set aside charge-sheet arising out of Crime No. 262/2021 registered with Police Station Telhara, Tal. Telhara, Dist. akola for the offence punishable under Section 306 read with Section 34 of the Indian Penal Code.

15. Application stands disposed of in above terms.

(MRS.VRUSHALI V. JOSHI, J.)

(VINAY JOSHI, J.)