



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

CRIMINAL APPLICATION NO. 1237 OF 2023

Ramprasad s/o Vithoba Sanap, aged
about 46 years, Occupation : Grocery
Shop, R/o Pimphalner, Tah. Lonar,
District Buldhana.

... APPLICANT

VERSUS

1. State of Maharashtra, through
Police Station Officer, Police Station
Lonar, Tah. Lonar, District –
Buldhana.
2. Kiran wd/o Anil Sanap, Aged about
27 years, Occupation : R/o
Pimpalner, Tah. Lonar, District –
Buldhana.

... NON-APPLICANT.

Shri N.R. Tekade, Advocate for the applicant.
Shri Ghodeswar, Addl.PP. for the State.
Shri P.S. Wathore, Advocate for non-applicant no.2.

CORAM : VINAY JOSHI AND M.W. CHANDWANI, JJ.
DATED : 26.10.2023.

ORAL JUDGMENT : (Per : Vinay Joshi, J.)

Heard. **ADMIT.**

2. This is an application seeking to quash the First Information Report (FIR) in Crime No.219 of 2023 registered with the Lonar Police Station, District Buldhana for the offence Punishable under Sections 306 read with Section 34 of the Indian Penal Code (IPC).

3. On 23.07.2023 one Anil Sanap has committed suicide by way of hanging. After three days, wife of the deceased has lodged the report alleging that the applicant along with co-accused have abated the deceased to commit suicide. Particularly, the informant stated that the applicant made accusation of theft against the deceased and such message was circulated on what's app. It is the prosecution case that due to such applicant's act, the deceased got frustrated and commit suicide.

4. Learned Counsel appearing for the applicant would submit that mere allegation of theft, would not amount to abetment to commit suicide. It is submitted that there is total absence of *mens rea* and therefore, even if the prosecution case is accepted, it would not construe the offence of abetment to commit suicide. Learned Addl.P.P. resisted this application by contending that one day prior to the occurrence, the applicant had been to the house of the deceased and threatened him to defame. The applicant has circulated defaming

message on What's App and thus, abetted deceased to commit suicide.

5. We have gone through the statement of various witnesses. The applicant was merely one of the villager, who has no prior nexus with the deceased. The only allegation is that co-accused took a photograph of the accused while beating and send it to the applicant on What's App. It is alleged that the applicant put a footnote to said photograph, that the deceased is thief and uploaded on the What's App group. The question is whether such an isolated act coupled with allegation of theft on earlier date, amounts to abetment within the meaning of Section 107 of the IPC. Certainly, the act of the applicant amounts to humiliating or defaming the deceased. But it is difficult to infer intentional act of the applicant so as to consider it as abetment or instigation to commit suicide. The Law in that regard fairly well settled.

6. In this regard, we may refer the decision of the Supreme Court in 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 the 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.

7. 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.”

8. 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 Judgment 914 apl 407.21 8 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.”

9. In the light of the above decision, we have taken a review of entire allegations. The applicant has defamed the deceased and given threat. There is no material to show that there was continuous threat at the hands of the applicant. Material collected during the investigation does not make out a case of intentional instigation. Taking the allegations made in the FIR and Police papers, at their face value and accepted as they are, they does not make out a *prima facie* case. We find that the present case squarely falls in guidelines nos. 1 and 3 of para 108 of the decision of the Supreme Court in case of ***State of***

Haryana vs. Bhajan Lal, AIR 1992 (SC) 604. There is no suicidal note left by the deceased. The entire material falls short to constitute the offence.

10. In view of the above, we are inclined to invoke our inherent powers. The application is allowed. We hereby quash and set aside the First Information Report (FIR) in Crime No.219 of 2023 registered with the Lonar Police Station, District Buldhana for the offence Punishable under Sections 306 read with Section 34 of the Indian Penal Code.

(M.W. CHANDWANI, J.)

(VINAY JOSHI, J.)

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