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

CRIMINAL APPLICATION (APL) NO. 1640 OF 2022

APPLICANTS : 1. Maroti Pralhad Ingole,
Age about 52 years, Occ : Service,
R/o Chandika Vesh, Washim,
Tq. & Dist. Washim.

2. Tejrao Kaduji Wankhade,
Age about 53 years, Occ. : Service,
R/o Allada Plot, Washim,
Tq. & Dist. Washim.

V E R S U S

RESPONDENTS : 1. State of Maharashtra
Through PSO, Kholapuri Gate
Police Station, Amravati,
Tq. & Dist. Amravati.

2. Navneet S/o Santosh Sahu,
Age about 21 years, Occ. : Student,
R/o Chhaya Colony, Near Parwati
Nagar, Amravati, Tq. & Dist. Amravati.

S/Shri K.P. Mahalle and Pranav Deshmukh, Advocates for applicants.
Shri V. A. Thakare, Additional Public Prosecutor for respondent No.1.
Shri Bhavin Suchak, Advocate h/f Shri D. S. Khushalani, Advocate for respondent No.2.

CORAM: VINAY JOSHI AND
BHARAT P. DESHPANDE, JJ.
DATE : 18/04/2023.

ORAL JUDGMENT : (PER VINAY JOSHI, J.) :

1. **Admit**. Heard finally with the consent of learned counsel appearing for the parties.

2. By way of this application in terms of Section 482 of the Code of Criminal Procedure, applicants are seeking to quash First Information Repert in Crime No.0190/2022 registered with Kholapuri Gate Police Station, Dist. Amravati for the offence punishable under Section 306 r/w Section 34 of the Indian Penal Code.

3. A crime has been registered at the instance of report lodged by the son of deceased on 13/07/2022. The deceased – Santosh was father of the informant. It is prosecution case that in the year 2017, deceased has availed loan to the tune of Rs.14,50,000/- from Washim Urban Co-operative Bank Ltd. of which applicant No.1 – Maroti Ingole is a Chief Manager and applicant No.2 – Tejrao Wankhade is Authorized Officer and Manager at Washim Branch. The deceased – Santosh has constructed a house by raising aforesaid loan. The deceased could not pay loan installments in regular terms. Therefore, bank has issued demand notice in the year 2020. From the date of receipt of notice, deceased - Santosh got worried and remained frustrated. It was followed by another notice on 06/05/2022 informing that the possession of the house property will be taken. The deceased again got frustrated and thus, on 27/05/2022, he has committed suicide by consuming poisonous substance. The police found suicidal note

in the pocket of the deceased contending that both applicants are responsible for his death.

4. Learned counsel appearing for the applicants would submit that the contents of FIR coupled with suicidal note, even if accepted at its face value, does not make out an offence of abetment to commit suicide punishable under Section 306 of the Indian Penal Code. Learned counsel for the applicants has attracted our attention to the several documents to indicate that the applicants who are bank officers had adopted legal recourse provided under the provisions of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act).

5. On the other hand, learned APP as well as learned counsel appearing for informant resisted the application by contending that the informant has specifically stated about the harassment meted out to the applicants. Moreover, there is suicidal note specifically pointing towards the applicants and thus, the case for putting applicants on trial is made out.

6. It is not in dispute that the deceased has availed loan of Rs.14,50,000/- from Washim Urban Co-operative Bank Ltd. in the year 2017. Indisputably, applicants are the officers of concerned

creditor bank. The applicants' learned counsel has produced notice dated 12/01/2021 issued by the Bank in terms of Section 13(2) of the SARFAESI Act and another notice dated 18/03/2021 issued in terms of Section 13(4) of the SARFAESI Act. It was followed by Washim Urban Co-operative Bank a Secured Creditor approaching to the District Magistrate in terms of Section 14 of the SARFAESI Act to take possession of secured assets. There is no dispute that the house property was a secured asset for the loan availed by the deceased. A copy of order dated 11/03/2022 passed by the District Magistrate allowing the bank to take possession, has been produced. In pursuance of said order of District Magistrate, Tahsildar has issued a notice on 06/05/2022 to the applicants informing that possession of secured asset will be taken on 27/05/2022. In the wake of said position, the matter needs to be examined.

7. As per the prosecution case, on 27/05/2022 i.e. on the proposed date of possession itself, borrower Santosh has committed suicide. Apparently, the bank has adopted legal recourse as provided by Statute for taking possession of secured assets. By no stretch of imagination, the same can be termed as an “abetment" within the meaning of Section 107 of the Indian Penal Code. Besides that, we have examined the contents of FIR to find

out whether besides legal action, did applicants do anything which could be considered as abetment. The First Information Report only states about the receipt of repeated notices and telephonic talk between the deceased and bank officers. There are no allegations that the bank authorities have repeatedly visited the house of borrower or have given threats. We have gone through the suicidal note which also exposes the mind of deceased that as the bank has issued possession notice, therefore, the officers are responsible. Rather, the deceased made some other grievance that the bank has not given sufficient time for taking possession or the interest has not been properly charged. Obviously, those acts even if presumed to be true, cannot be considered as an intentional act of applicants to instigate to commit suicide.

8. The abetment involves mental process of instigating a person or intentionally aiding a person into doing a thing and without positive act on the part of accused, instigation cannot be construed. We could only see that an act of applicants is in the shape of taking statutory steps under the provisions of law and thus, the allegation does not make out a prima facie case to constitute the offence punishable under Section 306 of the Indian Penal Code.

9. Learned counsel for applicants would submit that under similar circumstances, this Court in the case of **Amit vrs. State of Maharashtra and another,** reported in **2018 SCC OnLine Bom 1399** and in Criminal Application (APL) No.1052/2018 (Rohit s/o Nawanath Nalawade Vrs. The State of Maharashtra and another) decided on 17/12/2020 has quashed the FIR holding that the insistence for return of loan amount, cannot be termed as an abetment.

10. In view of above, in absence of prima facie case continuation of criminal prosecution amounts to abuse of the process of Court. We find it is a fit case to invoke our inherent jurisdiction.

11. In the circumstances, the application is allowed. We hereby quash and set aside the First Information Report in Crime No.0190/2022 registered with Kholapuri Gate Police Station, Dist. Amravati for the offence punishable under Section 306 r/w Section 34 of the Indian Penal Code.

12. The application is disposed of accordingly.

[BHARAT P. DESHPANDE, J.] **[VINAY JOSHI, J.]**

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