



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.441 OF 2023

1. Narendra s/o Gopal Sabale,
age 34 years, Occ. Service,
R/o Jaitapur, Post Mulher,
Tq. Satana, District Nashik.
 2. Prakash s/o Rambhau Nimse,
age 59 years, Occ. Service,
R/o Takali Dhokeshvar, Parner,
Tq. Parner, District Ahmednagar.
 3. Ashwini Vasantrao Raut,
age 30 years, Occ. Service,
R/o. Shedgaon, Tq. Shrigonda,
District Ahmednagar.
 4. Shivaji s/o Mahadeo Funde,
age 54 years, Occ. Service,
R/o Flat No.97, Sury Nagar,
Aurangabad Road, Behind Sani Pales Hotel,
Ahmednagar.
- Applicants.

Versus

1. The State of Maharashtra,
Through Incharge Police Inspector,
Rahuri, Police Station, Tq. Rahuri,
District Ahmednagar.
 2. The Superintendent of Police,
Ahmednagar.
 3. Premkumar s/o Bhausahab Aghav,
age 23 years, Occ. Education,
R/o Bargaon Nadur,
Tq. Rahuri, District Ahmednagar.
- Respondents.

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Advocate for Applicants : Mr. Adinath B. Jagtap
APP for Respondents : Mr. A.V. Lavte
Advocate for Respondent no.2 : Mr. N.N. Bhagwat
...

CORAM : **SMT. VIBHA KANKANWADI &
S. G. CHAPALGAONKAR, JJ.**

Reserved on : **16th October, 2024.**

Pronounced on : **22nd October, 2024.**

JUDGMENT :- (Per S.G. Chapalgaonkar, J.)

1. The applicants have approached this Court under section 482 of the Criminal Procedure Code for quashment of the FIR in Crime No.944 of 2022, dated 1.10.2022, registered with Police Station Rahuri, Tq. Rahuri, District Ahmednagar for the offences punishable under section 306, 385, 34 of the Indian Penal Code (for short IPC).

2. The Respondent No.3 lodged a report dated 1.10.2022 alleging that his father Bhausahab Dagadu Aghav was serving as Police Constable at Police Head Quarters, Ahmednagar. He was posted as Temporary Guard at Mula Dam Rahuri. On 1.10.2022 at about 9.45 am, informant received WhatsApp message from his father containing PDF of letter (chit), which states that :-

“While I had been to Akole in pursuance of duty, PSI Sabale, Rajur Police Station met me. He told that while I was posted at Shendi Outpost, illegal activities were suppressed. Consequently, he had suffered loss of Rs.5.00 Lakhs. Therefore, in connivance with PSI Nimse and Lady Police

Constable Raut, he managed to get registered an offence against me. PSI Sabale further asked me to pay an amount of Rs.10.00 Lakhs so that acquittal can be ensured in that offence. When I asked as to why he shall pay Rs.10.00 Lakh, PSI Sabale explained that he will have to pay Rs.2.00 Lakhs to ASI Nimse, Rs.3.00 Lakhs to Lady Constable Raut and Rs.1.00 Lakh to the officer in-charge of Departmental Inquiry and rest amount for himself. I refused to pay the amount. Thereafter, report of the Departmental Inquiry was submitted by Mr. Funde, who asked me to satisfy the demand as indicated by ASI Nimse. However, on refusal to pay the amount, he left saying me to bear with the consequences.”

3. The aforesaid chit/letter has been seized by the police. It was further stated in the chit that, father of the informant is committing suicide and PSI Sable, PSI Nimse, Lady Constable Raut and Mr. Shivaji Funde are responsible for his death.

4. It is further alleged that, immediately the informant rushed to the Guard Room at Mula Dam, which was locked from inside. When he peeped from the window, he noted that dead body of his father was laying in the pool of blood. His rifle was laying on the floor. It is further alleged that informant's father was tortured owing to registration of false FIR, he used to tell family members about harassment at the hands of PSI Sable, lady constable Raut as well as Shivaji

Funde. The informant alleges that his father committed suicide due to abatement at the hands of the accused persons.

5. Mr. A.B. Jagtap, learned advocate appearing for the applicants submits that applicants are the employees of the police department. Late Bhausaheb Aghav was also employee of the police department. The applicant no.3 had filed FIR dated 5.6.2021 against late Bhausaheb. Consequently, the offence under section 354-A, 506 of the IPC was registered against him on 5.6.2021. Eventually, departmental Inquiry was initiated. On conclusion of the Departmental Inquiry, late Bhausaheb Aghav was held guilty and dismissed from service before his suicide. The applicants are not responsible for the suicide. According to him, contents of the FIR or investigation papers are not sufficient to make out any offence of abetment to commit the suicide or extortion by putting the person in fear of injury or order. He would therefore urge to quash and set aside the FIR and consequential proceeding.

6. Per contra, Mr. A.V. Lavte, learned APP appearing for respondents-State and Mr N.N. Bhagwat, learned advocate appearing for respondent no.3 vehemently opposed the application contending that there was continuous torture to Late Bhausaheb at the hands of the accused persons. A false criminal case was instituted against him by the applicant no.3 in connivance with accused no.2. Further, he was put to threat of Departmental Inquiry and demand of Rs.10.00 Lakh was raised from him to ensure acquittal in criminal case and exoneration from the departmental action. Due to aforesaid

acts of the accused persons, he committed suicide. By inviting attention of this Court to the suicide note, it is submitted that the applicants have been named in the chit written by Bhausahab stipulating overt acts of accused persons, about attempt of extortion leading to his suicide.

7. We have considered the submissions advanced on behalf of the learned advocates appearing for the respective parties. We have perused contents of the FIR and investigation papers, which are made available by the learned APP. Apparently, late Bhausahab Dagadu Aghav committed suicide. A suicide note is alleged to have recovered from his pocket, which refers to demand of money by the applicant no.1 so as to secure acquittal in criminal case registered against the deceased and also to facilitate his exoneration from the departmental inquiry. The suicide note further mentions that being fed up with harassment by the accused persons, he committed suicide.

8. Contents of the suicide note and allegations in the FIR needs to be understood in light of the certain admitted facts. The applicant no.3 had filed FIR dated 5.6.2021 against deceased Bhausahab alleging that he outraged her modesty. In pursuance of the said FIR, investigation progressed and charge-sheet was filed against the deceased for the offences punishable under section 354, 354-A, 506 of the IPC in crime no.85 of 2021. Similarly, a departmental proceeding was initiated against him. Applicant no.3 was the inquiry officer. He had submitted report of the inquiry. Deceased Bhausahab

was held guilty and a show cause notice dated 28.9.2022 for removal from service was issued by the Superintendent of Police, Ahmednagar. Consequently, he was removed from service. He was asked to deposit his rifle. In this background, the question posed before us is as to whether any offence can be made out against the applicants punishable under section 306 r/w 34 of IPC.

9. Section 107 of the IPC defines abatement of thing, which reads thus :-

“Section 107. Abetment of a thing. - A person abets the doing of a thing, who—

First.—Instigates any person to do that thing; or

Secondly.—Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly.—Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1.—A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Illustration

A, a public officer, is authorized by a warrant from a Court of Justice to apprehend Z, B, knowing that fact and also that C is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C.

Explanation 2.—Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the

commission thereof, is said to aid the doing of that act."

10. Similarly, section 306 of the IPC provides for punishment for abetment of suicide, which reads thus :-

306. Abetment of suicide.—

If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

11. The Supreme Court of India in case of ***Madan Mohan Singh Vs. State of Gujarat and another reported in 2010 (8) SCC 628*** observed in paragraph no.11 as under :-

"11. In spite of our best efforts and microscopic examination of the suicide note and the FIR, all that we find is that the suicide note is a rhetoric document in the nature of a departmental complaint. It also suggests some mental imbalance on the part of the deceased which he himself describes as depression. In the so-called suicide note, it cannot be said that the accused ever intended that the driver under him should commit suicide or should end his life and did anything in that behalf. Even if it is accepted that the accused changed the duty of the driver or that the accused asked him not to take the keys of the car and to keep the keys of the car in the office itself, it does not mean that the accused intended or knew that the driver should commit suicide because of this."

and further observed that the suicide note and the F.I.R. do not impress at all as they cannot be depicted as expressing anything intentional on the part of the accused that the deceased might commit suicide. If the prosecutions are allowed to continue on such basis, it will be difficult for every superior officer even to work.

12. Similarly, in case of **Dr. Mrs. Seema Ajay Bhoosreaddy Vs. State of Maharashtra reported in 2012(2) Mh.L.J. (Cri.) 459**, this Court considered the scope of section 306 of the IPC and observed that :-

“for proceeding further with the trial against the accused for an offence punishable under [section 306](#), it is necessary for the prosecution to at least, prima facie; establish that the accused had an intention to aid or instigate or abet the deceased to commit suicide. In the absence of availability of such material, the accused cannot be compelled to face trial for the offence punishable under [section 306](#). As held by the Apex Court, an abatement involves mental process of instigating the person or intentionally aiding the person for doing of a thing. Without a positive act on the part of the accused in aiding or instigating or abetting the deceased to commit suicide, the said person cannot be compelled to face a trial. Unless there is clear mens rea to commit the offence or an active act or direct act which led the deceased to commit suicide seeing no option or the act intending to push the deceased into such a position, the trial against the accused under [section 306](#) cannot be permitted.”

13. In light of the legal position deduced from the aforesaid judgment, if we look to the allegations in the suicide note, it is discernible that applicant no.1 has raised demand of Rs.10.00 Lakhs to secure acquittal of the deceased from criminal case that was instituted by the applicant no.3. Amount of Rs.10.00 Lakh was to be distributed amongst all the accused persons. It does not refer to the date when the accused had met the deceased. It does not refer to any direct communication between the deceased and applicant nos.2 to 4. Suicide note do not refer to any particular incident of recent

past, which is in the proximity of date of suicide. Apparently, the deceased committed suicide immediately after receipt of order of removal from service, passed by the Disciplinary Authority i.e. Superintendent of Police Ahmednagar. From contents of the FIR or suicide note, only inference can be drawn that deceased was under mental pressure because of pending criminal proceeding and departmental action.

14. At this stage, learned APP invites our attention to the 161 statement of police constable Namdev Londhe, who was colleague of the deceased, who alleges that Departmental Inquiry initiated against the deceased was ill-motivated. The tone of the statement appears to be against the District Administration of the Police Department. However, on the basis of such statement, ingredients of section 107 of the IPC cannot be made out against the applicants. Apparently, the applicants could not have any intention to abet commission of suicide by the deceased. The criminal proceeding initiated on the complaint of applicant no.3 was pending since May, 2021. Departmental Inquiry against the deceased was also pending for more than one year. The deceased took decision to commit suicide only when he was found guilty and the punishment of removal from service was inflicted upon him by the disciplinary authority. In this background, the applicants cannot be held responsible for extreme step of suicide by the deceased.

15. At this stage, Mr. N.N. Bhagwat, learned advocate appearing for respondent no.3 relying upon the judgment of the Supreme Court in case of **Narayan Malhari Thorat Vs. Vinayak Deorao Bhagat** and another reported in **2019 AIR (SC)**

224 submitted that the issue as regards to requisite intention of the accused persons to aid or instigate or abate commission of suicide cannot be considered at this stage when investigation is yet to be completed and charge-sheet, if any, was yet to be filed. The aspect whether there was requisite mental element or intention on the part of the respondent may be relegated to the trial on completion of the investigation.

16. There cannot be any quarrel as to proposition of law espoused in case of Narayan Thorat (supra). However, in the present case, investigation is almost complete. The entire investigation papers are made available for our perusal. The formality of filing of Charge-sheet or Final report is remaining. We have taken note of the statements of witnesses, material of investigation, contents of the suicide note and found that ingredients of section 107 of the IPC to make out punishable offence u/s 306 of the IPC cannot be made out in facts of the case. Apparently, the entire case of the prosecution is based on contents of the suicide note, which we have discussed in detail.

17. In that view of the matter, we are of the considered view that in the facts of the case, no offence can be made out against the applicants for the offences punishable under section 306 of the IPC.

18. The FIR indicates that the applicants are also charged for the offence punishable under section 385 of the IPC, which reads as under :-

S.385: Putting person in fear of injury in order to commit extortion :-

Whoever, in order to the committing of extortion, puts any person in fear, or attempts to put any person in fear, of any injury, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

19. To make out the aforesaid offence, it is necessary that the victim is put in fear of any injury. In the present case, from contents of the suicide note or otherwise, nothing can be gathered that would bring ingredients of the offence against the applicants. Resultantly, no triable case can be made out against the applicants. Consequently, we proceed to pass the following order.

ORDER

- i. Criminal Application is **allowed**.
- ii. The First Information Report in Crime No.944 of 2022, dated 1.10.2022 registered with Rahuri Police Station, Tq. Rahuri, District Ahmednagar for the offences punishable under section 306, 385 r/w 34 of the Indian Penal Code and consequential proceeding, if any, is hereby quashed and set aside.
- iii. Criminal application stands **disposed off**.

(S. G. CHAPALGAONKAR)
Judge

(SMT. VIBHA KANKANWADI)
Judge