



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.804 OF 2022

1. Devanand S/o Manohar Gaikwad,
Age : 29 years, Occu. : Education,
R/o : Temburni, Taluka : Ahmedpur,
District : Latur
2. Suhas S/o Kahnderao Gaikwad,
Age : 20 years, Occu. : Education,
R/o Temburni, Taluka : Ahmedpur,
District : Latur
3. Akshay S/o Jalba Gaikwad,
Age : 26 years, Occu. : Meson,
R/o Mohija(paranda), Taluka : Kandhar,
District : Nanded
4. Eknath S/o Nivrutti Gaikwad,
Age : 81 years, Occu. Agril.,
R/o Temburni, Taluka : Ahmedpur,
District : Latur
5. Vishwamber S/o Ganpati Masure,
Age : 38 years, Occu. : Business,
R/o Hali, Taluka : Udgir,
District : Latur
6. Suraj S/o Nivrattirao Sherlikar,
Age : 26 years, Occu. : Service,
R/o. Udgir, Taluka : Udgir,
District : Latur

... Applicants

Versus

1. The State of Maharashtra,
Through Ahmedpur Police Station,
Latur, District Latur
2. Shashikala Shripati Kasle,
Aged : 51 years, Occu. : Labour,
R/o. Tembhurni, Taluka : Ahmedpur,
District : Latur

... Respondents.

(Resp. No.2 Orig. Informant)

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Mr. Babasaheb S. Bhale, Advocate for Applicants.

Mr. S. A. Gaikwad, APP for Respondent – State.

Mr Onkar Waghule, Advocate for Respondent No.2 (Appointed).

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**CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

DATED : 12th AUGUST, 2024

ORDER (PER ABHAY S. WAGHWASE, J.) :

1. The FIR at the instance of respondent no.2 bearing No. 444 of 2021 registered with Ahmedpur Police Station, Tq. Ahmedpur, District Latur for the offence punishable under Sections 306, 323, 506 r/w section 34 of the Indian Penal Code (for short, “IPC”) and the consequential proceedings arising out of it, are both sought to be quashed by the applicants herein praying to invoke inherent powers of this Court under Section 482 of the Code of Criminal Procedure (for short, “Cr.P.C.”).

2. Pleading innocence and false implication, learned counsel for applicants submitted that, deceased Kondiba allegedly had some relations with daughter of one Khandu Gaikwad. In that backdrop, relatives of Khandu Gaikwad were beating deceased Kondiba. Learned counsel pointed out that, two instances are quoted by informant, but there are general allegations that relatives of Khandu beat deceased and

because of harassment at their instance, deceased committed suicide. Details of relatives and their relations are not given. It is pointed out that, alleged suicide is noticed on 19.10.2021, whereas missing report is of 17.10.2021. It is pointed out that, no specific acts of any of the applicants are defined and moreover according to him, required ingredients of abetment, inducement or positive act on the part of present applicants is patently missing from the FIR. That, present FIR is merely out of annoyance. That, it is abuse of process of law and with such allegations, he submitted that, FIR as well as charge-sheet resulting into trial will put them to hardship and when none of the essential requirements are present, it is his submissions that, said exercise would be a futility and rather including inflict injustice and hardship for applicant and hence he prays to grant the relief as prayed.

3. In answer to above, learned APP submitted that, there are specific allegations about beating deceased at two times. That, there was no other reason for Kondiba to commit suicide. That, his family members have noticed that he was under mental stress and applicants are solely responsible for the same, according to learned APP, applicants need to face trial.

4. Perused the FIR and papers placed before the court. It seems

that Ahmedpur police station registered crime on report dated 19.10.2021 regarding commission of offence punishable under sections 306, 323, 506 read with section 34 of IPC.

5. After hearing learned counsel for the applicants as well as on going through the FIR, it is emerging that, report is at the instance of mother of deceased Kondiba. The sum and substance of FIR is that, there was love affair between deceased Kondiba and daughter of Khandu Gaikwad. In that backdrop, it is alleged that twice her son Kondiba was given thrashing by relatives of the girl, of which crime was registered bearing No.220 of 2021. According to informant, on 16.10.2021 around 8:00 p.m. after having meals, all of them retired and went to sleep. Around midnight of 17.10.2021, her other son, namely Santosh returned home and asked where was deceased Kondiba and she told him that, he was sleeping in the shed outside the room. That, her son Kondiba was not seen in the shed, however, his mobile, shirt and footwear were lying there, and therefore search was undertaken and consequently missing report was lodged. Informant has alleged that, on 18.10.2021, grandfather of the girl namely Eknath Nivrutti Gaikwad had also paid visit to the house of informant and issued threats. According to informant, on 19.10.2021, one Mahadeo Jabhade came and informed about seeing dead body of Kondiba lying in the well belonging to one

Wani when he had been to fetch water. Therefore, mother has alleged that, because of beating and harassment at the hands of relatives of the girl, her son committed suicide by jumping in the well.

6. It is conspicuously emerging from the report that, two instances are quoted by informant. While alleging that, there was love relations between her son Kondiba and daughter of Khandu and that twice Kondiba was beaten by relatives, she has not specified the names of said relatives of the girl. Second instance which she has quoted is that, once when her son went to Ambajogai, there also relatives of the girl beat her son. Even in the second instance also, none of the so called relatives are named. Apparently, it is also emerging that, deceased was in the house on the night of 17.10.2021. His dead body was traced in the well on 19.10.2021 i.e. in the well of a person named Prakash Bharade at village Tembhurni. Informant has not stated that, the present applicants had indulged in any overt act prior to her son leaving the house to go and jump in the well i.e. on 17.10.2021. She has quoted incident of visit of grandfather, namely Eknath, but it is of 18.10.2021 i.e. the day after Kondiba went missing from the house.

7. Therefore, taking all above dates into consideration and when there is no material to show that there was any act or overt act at

the instance of present applicants, not specifically naming them for beating Kondiba or harassing him in any manner, it cannot be said that because of the treatment meted out by them to deceased, he ended up his life. There is no material suggesting their role in proximity to deceased going missing or deceased found dead. Admittedly, dead body of deceased was not noticed in the village itself even when search was taken from the night of 17.10.2021 till 19.10.2021.

8. Autopsy doctor has merely attributed death to be drowning by preserving viscera. Viscera report is also nil.

9. In order to attract the charge of section 306 of IPC, it is incumbent upon prosecution to establish incitement, instigation, aiding or abetment to commit suicide. Law to this extent has been fairly settled in series of cases. Scope of Sections 107 and 306 has been time and again decided by the Hon'ble Apex Court in the cases viz; ***Ramesh Kumar v. State of Chhatisgarh*** reported in (2001) 9 SCC 618; ***Sanju @ Sanjay Singh Sengar v. State of M.P.*** reported in (2002) 5 SCC 371; ***State of West Bengal v. Indrajit Kundu and others*** reported in (2019) 10 SCC 188; ***V. P. Singh etc. v. State of Punjab and others*** reported in 2022 SCC Online SC 1999; and very recently in the case of ***Kumar @ Shiva Kumar v. State of Karnataka*** [Criminal Appeal No.1427 of 2011 decided by the Hon'ble Apex Court on 01.03.2024].

In above series of cases, it has been held and reiterated that accused persons should intend that deceased should end up his/her life. With that object in mind, if they deliberately create circumstances, which are of such nature, that deceased is left with no other alternative but to end up his/her life, only then charge of abetment to commit suicide can be said to be successfully brought home. Abetment is equally an essential factor to be proved by prosecution.

10. Keeping the above settled legal position in mind and considering the quality of allegations in the FIR in the instant case as discussed above, more particularly, when role of none of the applicants is defined or spelt out, in the considered opinion of this court, it is unsafe to attribute abetment to commit suicide. There are no allegations directly alleging abetment, instigation or inducement at their hands. Therefore, this court finds it a fit case to exercise the inherent powers under section 482 of Cr.P.C. as it would apparently amount to abuse of process of law against applicants. Resultantly, application deserves to be allowed and we proceed to pass the following order :-

ORDER

(i) Criminal Application is allowed.

(ii) The F.I.R. vide Crime bearing No.444 of 2021, dated 19.10.2021 registered with Ahmedpur Police Station, Tq.

Ahmedpur, Dist. Latur for the offences punishable under sections 306, 323 and 506 r/w section 34 of Indian Penal Code and case bearing Sessions Case No.29 of 2023 pending on the file of learned Sessions Judge at Ahmedpur are quashed and set aside.

(iii) Remaining fees amount of Rs.5,000/- (Rupees Five thousand) be paid to the counsel appointed to represent respondent no.2 as per order dated 07.12.2023.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)