



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

29 CRIMINAL APPLICATION NO.1067 OF 2023

Uddhav Bhaurao Shinde,
Age 23 yrs., Occ. Agri.,
R/o Rohipimpalgaon, Tq. Mudkhed,
Dist. Nanded.

... Applicant

... Versus ...

- 1 The State of Maharashtra
Through Police Station, Mudkhed,
Tq. Mudkhed, Dist. Nanded.
- 2 Prakash Vyankatrao Shinde,
Age 45 yrs., Occ. Agri.,
R/o Rohipimpalgaon,
Tq. Mudkhed, Dist. Nanded.

... Respondents

...

Mr. P.S. Anerao, Advocate for applicant

Mr. A.V. Lavte, APP for respondent No.1

Mr. V.S. Valse, Advocate (appointed) for respondent No.2

...

CORAM : SMT. VIBHA KANKANWADI &
ROHIT W. JOSHI, JJ.

DATE : 09th DECEMBER, 2024

ORDER : (PER : SMT. VIBHA KANKANWADI, J.)

1 Present application has been filed initially for quashing First

Information Report vide Crime No.19/2023 dated 22.01.2023 registered with Police Station, Mudkhed, Tq. Mudkhed, Dist. Nanded and later on by way of amendment for quashing the proceedings in Sessions Case No.193/2024 pending before learned Sessions Judge, Nanded, for the offence punishable under Sections 306, 294, 354(A)(D), 341, 323, 506 of the Indian Penal Code, 1860.

2 Heard learned Advocate Mr. P.S. Anerao for applicant and learned APP Mr. A.V. Lavte for respondent No.1. Since respondent No.2, though served had failed to appear, we had appointed Advocate Mr. V.S. Valse to represent the cause of respondent No.2. We have heard him also. All of them have taken us through First Information Report and contents of charge sheet and they made submissions in favour of respective parties they were representing.

3 Unfortunately, it appears that daughter of respondent No.2 had committed suicide on 21.01.2023. In the First Information Report respondent No.2 contends that his daughter was aged 20 years. The present applicant, who is also from the same village, used to stalk the daughter of informant on road whenever she used to go and then the applicant used to abuse her, do such obscene act which would cause her harassment and used

to say that he will not let her live. The girl could not sustain the said behaviour of the applicant and told the same to informant. Informant had gone to the house of applicant and tried to give advise, however, the applicant did not stop his activities. Even on 20.01.2023 the applicant had gone in front of the house of informant, abused the daughter of informant and gave her threat to kill. The girl could not sustain the said act and thought that she herself and her parents have been defamed and, therefore, she committed suicide by hanging.

4 The Inquest Panchnama and the Postmortem Report would give a clear picture of death due to hanging. Supplementary statement of the informant has been taken, wherein he has given the incidences in detail and has explained that since he was under grief he had not quoted the incidences independently. According to him, since six months prior to the incident the applicant was harassing her by saying that they should run away and perform marriage. The daughter of the informant used to attend sewing class in the village. The applicant used to stalk her. Whenever she used to be alone, he used to say that he loves her and they should marry. He also used to abuse her in filthy language. There was an attempt by the informant, his brother and relatives by going to the house of the applicant and requesting the applicant to behave properly with the girl, as the father of applicant promised

them to persuade applicant. The informant and others came back to the house. However, on 20.01.2023 around 4.30 to 5.00 p.m. applicant went in front of the house of informant, abused deceased, informant and his wife and threatened that he would forcibly take the deceased along with him and would perform marriage. Again he was tried to persuade, at that time, the applicant had pulled the dupatta of the girl in front of people. The girl became frightened and kept crying throughout the night. Though she was consoled by the informant and the relatives around 10.00 a.m., cousin brother of the informant told the informant, who was then in his field, that the girl has committed suicide by hanging.

5 The charge sheet contains statements of witnesses and it appears that all of them are the relatives of informant. Statement of Vijay Gopiraj Shinde, who is a neighbour, shows that he had witnessed the incident dated 20.01.2023. In the past also it appears that the informant had lodged Non Cognizable report on 02.02.2023 against the applicant. The question is, as to whether the applicant has abetted the commission of suicide by the deceased ? There is no direct instigation to the deceased. It appears that the applicant was expressing his love for the girl, which may not be in a proper way, to which the girl was not responding. Such incidences are rising nowadays. The applicant is 23 years old person. He might be liking the girl,

but he cannot presume and/or insist that the girl should also like him. It ought to have been left to the girl whether to accept the expression of love by the applicant to her. But boy should also learn to accept rejection by a girl. Here, it appears that deceased daughter of the informant was not ready to accept the love allegedly expressed by the applicant towards her. In such situation, the applicant ought to have left the thing as it is. Even if we take that the way the applicant behaved was not proper; yet, whether he had intention that the daughter of the informant should commit suicide, would be a question. If we consider the First Information Report, which was lodged on 21.01.2023 i.e. on the day of incident, there are no much details but the supplementary statement that was recorded on 24.01.2023 (wrongly written as 24.01.2022) have more details, and now it is stated that as he was in grief, he had not given those details. Even if those details are considered; yet, it is to be noted that the informant or the deceased had never thought to report the act of the accused/applicant to the police. It may be then stated that since they are from village, they had stressed on sorting out the problem by dialogue. Yet, then at no point of time it was found that any such incident would happen.

6 It was tried to be stated on behalf of respondents that the incident that had taken place between 4.30 p.m. to 5.00 p.m. on 20.01.2023

in front of the house of informant is the cause, however, the informant has not explained as to why that incident has not reported to the police. Even in his First Information Report dated 21.01.2023 he has made statement that the applicant had gone in front of his house, abused in filthy language and gave threat to kill to the daughter and left. Now, more details are tried to be given and even the names of witnesses have also been given. As per the First Information Report, it is stated that girl thought about the defamation that has been caused and then she committed suicide, whereas the supplementary statement gives a picture that she was crying throughout the night and she was saying as to why the applicant was behind her every time and she has been defamed.

7 As regards the legal position in respect of offence under Section 306 of the Indian Penal Code is concerned, we would like to rely on **Dilip Ramrao Shirasao and others vs. State of Maharashtra and another** [2016 ALL MR (Cri) 4328], wherein this Court, relying upon the catena of the decisions of the Hon'ble Supreme Court including the decisions in **Sanju alias Sanjay Singh Sengar vs. State of Madhya Pradesh** [2002 Cri.L.J. 2796]; **Madan Mohan Singh vs. State of Gujrat and another** [(2010) 8 SCC 628]; and in the case of **S.S. Chheena vs. Vijay Kumar Mahajan** [2010 All MR (Cri) 3298 (S.C.)] held that 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 and in the absence of availability of such material, the accused cannot be compelled to face trial for the offence punishable under Section 306 of the Indian Penal Code. We would like to reproduce paragraph No.17 of the said decision :

17. In case of ***S.S. Cheena*** (cited supra) , there was a dispute between one Saurav Mahajan, who was a final year student of Law Department and Harminder Singh, a fellow student of the same class with regard to the theft of a mobile phone. This came to the notice of M.D.Singh, the then Head of the Law Department who asked both the students to submit their versions of the incident in writing. The deceased and Harminder gave their versions and, thereafter, M.D.Singh forwarded their versions to the University authorities for taking necessary action. An inquiry was conducted on 13th October 2003 by the Security Officer of the University Shri S.S. Cheena. During the course of inquiry, on 17th October 2003, Saurav Mahajan committed suicide by jumping in front of the train. A suicide note was seized from the the pocket of the deceased. On the complaint of father of the deceased, an offence under Section 306 of I.P.C. was registered against Harminder Singh. During the course of trial, S.S. Cheena was also impleaded as accused. Being aggrieved by the framing of charge, S.S. Cheena approached the High Court. The High Court refused to interfere. Being aggrieved thereby, said S.S. Cheena approached the Supreme Court. The Apex Court observed thus :

"27. This Court in ***Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi) (2009) 16 SCC 605*** had an occasion to deal with this aspect of abetment. The Court dealt with the dictionary meaning of

the words "instigation" and "goading". The Court opined that there should be intention to provoke, incite or encourage the doing of an act by the latter. Each person's suicidability pattern is different from the other. Each person has his own idea of self-esteem and self-respect. Therefore, it is impossible to lay down any straitjacket formula in dealing with such cases. Each case has to be decided on the basis of its own facts and circumstances.

28. 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.

29. In the instant case, the deceased was undoubtedly hypersensitive to ordinary petulance, discord and differences which happen in our day-to-day life. Human sensitivity of each individual differs from the other. Different people behave differently in the same situation.

30. When we carefully scrutinize and critically examine the facts of this case in the light of the settled legal position the conclusion becomes obvious that no conviction can be legally sustained without any credible evidence or material on record against the appellant. The order of framing a charge under Section 306 IPC

against the appellant is palpably erroneous and unsustainable. It would be criminal travesty of justice to compel the appellant to face a trial without any credible material whatsoever. Consequently, the order of framing charge under Section 306 IPC against the appellant is quashed and all proceedings pending against him are also set aside." (emphasis supplied)

8 It requires some overt act to arrive at a conclusion that a particular person has abetted the commission of suicide of a person going in front of the house of informant giving abuses and threats as alleged will not amount to abetment. Because at the time those abuses and threats were given, it could not have been in the mind of the applicant that the girl would commit suicide. Therefore, as per our opinion ingredients of Section 306 of the Indian Penal Code are not made out and to that extent the proceedings deserves to be quashed and set aside.

9 As regards other offences are concerned, certainly, there are statements of witnesses supporting the First Information Report and the supplementary statement. As a result of which, we proceed to pass following order.

ORDER

i) Criminal Application stands partly allowed.

- ii) The proceeding in Sessions Case No.193/2024 pending before learned Sessions Judge, Nanded arising out of First Information Report vide Crime No.19/2023 dated 22.01.2023 registered with Police Station, Mudkhed, Tq. Mudkhed, Dist. Nanded stands quashed and set aside to the extent of offence punishable under Section 306 of the Indian Penal Code only.
- iii) It is clarified that the relief of quashing the said proceedings for other offences stands rejected.
- iv) The concerned Court to take further steps as against applicant.
- v) Fees of the appointed Advocate is quantified at Rs.5,000/- (Rupees Five Thousand only), to be paid by High Court Legal Services Sub Committee, Aurangabad.

(ROHIT W. JOSHI, J.)

(SMT. VIBHA KANKANWADI, J.)