



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 917 OF 2020

Shri Dharmendra S/o Ishwar Prasad Kumar

.. Applicant

Versus

1] The State of Maharashtra
Through the Police Inspector,
Railway Police Station,
Ahmednagar

2] Jitendrakumar Hariram Meena

.. Respondents

**WITH
CRIMINAL WRIT PETITION NO. 600 OF 2020**

Akhil Bashir Shaikh

.. Applicant

Versus

1] The State of Maharashtra
Through Police Inspector,
Ahmednagar Railway Police Station,
Dist. Ahmednagar

2] Jitendrakumar Hariram Meena

.. Respondents

...
Advocate for applicant : Mr. R.C. Bora h/f. Mr. R.R. Kakani (917/2020)
Advocate for petitioner : Mr. R.S. Shinde h/f. Mr. D.B. hoke (600/2020)
APP for the respondent – State : Mr. G.A. Kulkarni
Advocate for respondent no. 2 : Ms. V.A. Shinde (917/2020) (Appointed)
...

**CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.**

DATE : 6 MARCH 2024

ORDER (MANGESH S. PATIL, J.) :

Heard both the sides finally with their consent.

2. By way of these separate application and writ petition, two of the accused from the same crime being crime no. I-0099 of 2018 registered with Railway Police Station, Ahmednagar for the offences

punishable under section 306, 506 r/w. 34 of the Indian Penal Code are seeking quashment of the crime, chargesheet and the Sessions Case No. 359 of 2023, by invoking the powers of this Court under section 482 of the Code of Criminal Procedure and Article 226 of the Constitution of India.

3. The respondent no. 2 lodged the FIR on the basis of which the crime has been registered inter alia alleging that the deceased was his colleague. Both of them were serving with the Indian Railways and were posted at Ahmednagar as Gangmen. It is alleged that the applicants were their superiors in the office. However, they had persistently harassed the deceased. Leaves were sanctioned to him but used to be cancelled subsequently. Whenever he used to apply for leave, it was being refused. He was not granted leave even when there was a marriage of his sister. Leave was refused when his mother was to undergo surgery. They had abused the deceased and fed up with such constant harassment, the deceased committed suicide by jumping under a running train. It is then alleged that by persistent harassment, the applicants had abetted the suicide.

4. The learned advocate for the applicant / petitioner would submit that accepting the allegations at their face value, no *mens rea* can be attributed to them for leading the deceased to end his life. It will not constitute abetment within the meaning of section 107 of the Indian

Penal Code. They would point out that one of the accused had also prayed for quashment and this Court in Criminal Writ Petition no. 156 of 2018, by the order dated 04-02-2020 quashed the crime and the criminal case to the extent of the co-accused.

5. Learned advocates would submit that mere rejection of leave applications would not constitute abetment. They would seek to rely upon following decisions :-

i) Madan Mohan Singh Vs. State of Gujarat and another; (2010) 8 SCC 628

ii) Vajinath Kondiba Khandke V. State of Maharashtra and another; 2018 SCC OnLine SC 545

iii) Dilip Ramrao Shirasao and others Vs. State of Maharashtra and another; 2016 DGLS (Bom.) 445 and

6. Per Contra, the learned APP and the learned advocate for the respondent no. 2 would oppose the matters. They would submit that there is voluminous evidence and even transcript of the conversation between the applicants and the deceased indicative of the manner and extent to which he was subjected to harassment. There is a suicide note expressly declaring that because of such harassment by the applicant / petitioner, he was committing suicide. The extraordinary power under section 482 of the Code of Criminal Procedure and Article 226 of the Constitution of India may not be exercised for quashing the crime.

7. We have carefully considered the rival submissions and perused the papers.

8. True it is that the conversation of which transcript is available in the chargesheet and the suicide note left behind by the deceased demonstrate that he was perceiving that he was being harassed and was threatened of even suspension. He was granted leave but subsequently it was cancelled and the deceased was fed up to such an extent that even he had disclosed his intention to end his life to his colleagues, a transcript of which conversation is also a part of the chargesheet.

9. However, it is also trite that as laid down by the Supreme Court in the aforementioned decisions, *mens rea* is an essential ingredient for constituting an offence of abetment to suicide punishable under section 306 of the Indian Penal Code. Even if all the allegations are accepted including the statement in the suicide note, those would merely demonstrate the perception of the deceased about the manner in which he was harassed at the work place. However, that in itself does not even indicate that the applicant / petitioner were harbouring some *mens rea* to lead the deceased should commit suicide.

10. Since it is a matter of suicide, as has been consistently observed by the Supreme Court that it all depends upon the mental condition of the person who commits suicide. The level of tolerance of

every individual would vary. As can be gathered, even the informant and some of their colleagues were also annoyed by the manner in which the applicant / petitioner were treating them at the work place. However, it is only the deceased who could not bear it and took the last step. His colleagues could sustain such treatment and did not find a similar escape route. It is precisely for this reason, in our considered view, there is no legal nexus between the suicide and the alleged harassment. In the absence of any material demonstrating / disclosing *mens rea* on the part of the applicant and the petitioner, in our considered view, the alleged harassment though could be a reason for the deceased to commit suicide would not constitute abetment as defined under section 107 of the Indian Penal Code.

11. Abetment as can be understood from section 107 of the Indian Penal Code, could be in the form of conspiracy, intentional aid or instigation. Going by the allegations being attributed, the prosecution is not intending to resort to the former two and is trying to establish that the alleged harassment would constitute abetment in the form of instigation. In our considered view, there being no *mens rea* deducible from the material collected by the Investigating Officer, following the observations in the matters of **Madan Mohan Singh** and **Vaijnath Kondiba Khandke** (supra) and **Prabhat Kumar Mishra V. State of U.P.; 2024 SCC OnLine**, it would be an abuse of the process of law to

allow the prosecution against the applicant / petitioner to go on. We have no manner of doubt that it would be an exercise in futility. Applying the parameters laid down in the matter of ***State of Haryana V/s Bhajan Lal; 1992 Supp (1) SCC 335***, both the matters deserve to be allowed.

12. Criminal application and the Criminal Writ Petition are allowed.

13. Crime no. I-0099 of 2018 registered with Railway Police Station, Ahmednagar for the offences punishable under section 306, 506 r/w. 34 of the Indian Penal Code, chargesheet and the Sessions Case No. 359 of 2023 are quashed and set aside as against the respective applicant / petitioner.

14. We quantify the fees of Ms. V.A. Shinde, learned advocate whom we appointed to represent the respondent no. 2, at Rs.3000/-.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/