



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO.1136 OF 2023

Balasaheb @ Sushilkumar s/o.
Revappa Mane

... **APPLICANT**

VERSUS

1. The State of Maharashtra
2. Govind Popat Misal

... **RESPONDENTS**

...

Advocate for Applicant : Mr. Vijay B. Jogdand Patil
A.P.P. for respondents/State : Mr. S.S. Dande

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

Date : 26.04.2024

ORDER (PER : MANGESH S. PATIL, J.) :

This is an application under Section 482 of the Code of Criminal Procedure seeking quashment of Crime No.30/2017 registered with Bembli Police Station, District Osmanabad for the offences punishable under Section 306 of the Indian Penal Code and the Sessions Case No.46/2023 pending before the Sessions Court at Dharashiv.

2. At the joint request of the parties, we have heard the matter finally.

3. The sum and substance of the allegations are to the effect that deceased was aged about 65 years and was working as a watchman in a liquor shop. The Manager of this shop Mr. Sunil Misal filed the FIR stating that on 20.02.2017, as usual he had opened the shop on

20.02.2017, the deceased used to stay in the shop itself but he noticed that the shop was locked from outside and the rear door of the shop was closed from inside. When he peeped from the window he saw that the deceased hanging to a bed sheet tied to an iron door. The matter was reported to police, shop was opened, inquest was done, postmortem was undertaken. The cause of death was shown as asphyxia due to hanging.

4. It is then alleged that the deceased had left a suicide note which was found in the pocket of his shirt. It was mentioned therein that he was allotted a house in a Government Scheme in the year 2012. He had also received money, however, the applicant whom he had described as Balu Mane had appropriated the money and cheated him, as the reason for committing suicide. Accordingly the offence was registered.

5. Learned advocate for the applicant would submit that accepting the allegations at there face value, the deceased had received the money way back in the year 2012. He had not even disclosed this fact to his family members. There is nothing in the investigation about the deceased having ever disclosed this fact to anybody. After lapse of five years, he has taken this step of committing suicide. There is no *mens rea* attributable to the applicant assuming that the applicant had duped the deceased that cannot constitute abetment *per se*. There is no other circumstance to link it to the cause being attributed to him in the suicide note. It would be abuse of the process of law and harassment to the applicant if he is made to face the prosecution.

6. Per contra, the learned APP would submit that apart from the direct allegations in the suicide note, there is material collected by the Investigating Officer demonstrating that the applicant had accompanied the deceased to the bank in the year 2012 and had tendered a withdrawal slip signed by the deceased but requesting for transferring the money to the applicant's account. In view of such material, coupled with the suicide note, the applicant is liable to be prosecuted of abetting suicide.

7. We have considered the rival submissions and perused the papers. Indeed there is a suicide note and even a statement identifying the handwriting in the suicide note which had specifically mentioned that the deceased had betrayed by the applicant having duped him of the money received by him as a grant under a housing scheme. There are also papers of the bank and the statements of the bank employees showing that the deceased had received the money which was made payable to the applicant by the deceased by signing a withdrawal slip way back in the year 2012. At this juncture, even it can be safely said that the deceased was perceiving about the applicant having duped him.

8. Accepting the fact that for whatever reason, by deception or otherwise, the deceased was made to pay money to the applicant, that incident had taken place way back in June 2012. There is absolutely no iota of record in the charge-sheet to demonstrate about the deceased having made any grievance about it to anybody at any earlier point of

time till he took the last step and left behind the suicide note. Considering the fact that there is a time gap of five years between this episode and the date of suicide, irrespective of the perception of the deceased there is nothing to demonstrate that by indulging in such cheating, the applicant was harboring *mens rea* to instigate the deceased to commit suicide.

9. For that matter, the statements of the wife and major sons of the deceased have been recorded during the course of investigation and even they have expressed ignorance about such transaction and having no grievance or suspicion against anybody in respect of death of the deceased. They have expressly stated that they are not even knowing who this Balu Mane referred to in the suicide note, is. Obviously, the wife and the sons of the deceased are oblivious of not only the deceased having ever received any grant under a housing scheme or having disclosed to them about the applicant having cheated him.

10. In view of above state of affairs, it is abundantly clear that though the deceased was harboring a feeling about applicant having cheated him, that by itself in our considered view would not constitute abetment as defined under Section 107 of the Indian Penal Code, taking into account that five years period was intervened between the date of alleged cheating and the date of suicide and dearth of any material to reveal *mens rea* on the part of the applicant.

11. It would be abuse of the process of law to allow the applicant

to face the prosecution with the material collected during the investing.
The case is squarely covered by **State of Haryana V/s Bhajan Lal; 1992 Supp (1) SCC 335.**

12. The Application is allowed. The Crime No.30/2017 registered with Bembli Police Station, District Osmanabad for the offences punishable under Section 306 of the Indian Penal Code and the Sessions Case No.46/2023 pending before the Sessions Court at Dharashiv are quashed and set aside.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

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