



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 550 OF 2023

1. Vitthal Jijaba More
Age. 33 years, Occ. Business,
R/o. Rajuri, Tal. Rahata,
Dist. Ahmednagar.
 2. Dyaneshwar Jagannath Wakhchaure
Age. 31 years, Occ. Business,
R/o. Khokar, Tq. Shrirampur,
Dist. Ahmednagar.
-Petitioners

Versus

1. The State of Maharashtra
 2. Ravindra Gorakh Thorat
Age. 38 Occ. Business,
R/o. Ukkalgaon, Tal. Shrirampur,
Dist. Ahmednagar.
-Respondents

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Advocate for Petitioners : Mr. Rahul A. Tambe
APP for Respondent No. 1 : Mr. A.D. Wange
Advocate for Respondent No. 2 : Mr. Rahul R. Karpe

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

DATE : 18 APRIL 2024

ORAL JUDGMENT (Per : Shailesh P. Brahme, J.) :

Rule. Rule is made returnable with the consent of the parties. Heard both the sides finally.

2. Petitioners are seeking quashment of First Information Report bearing C.R. No. I - 196 of 2023 registered with Shrirampur City Police Station, Shrirampur, District Ahmednagar, for the offence punishable under Section 306 of the Indian Penal Code. Respondent no. 2 is the informant who is the brother of deceased Ganesh Gorakh Thorat.

3. Report was lodged by the respondent no. 2 with Shrirampur City Police Station, contending that his brother – Ganesh was running Saiprasad Hotel in partnership with petitioner no. 1 – Vitthal More. Previously also, they were running Hotel Sayali at Babhleshwar. Deceased used to inform that petitioner no. 1 was harassing and insulting him. There was dispute over payment of money. Deceased was not happy with his partner and was thinking of running a different hotel. It is further alleged that petitioner no. 1 used to threaten the deceased and insisted to run business with petitioner no. 2. In a night intervening 27.02.2023 and 28.02.2023, deceased committed suicide at his residence. A suicide note and diary were discovered.

4. Learned counsel for the petitioners submits that there was business dispute between deceased and the petitioners.

However, no case for abetment is made out. He would submit that taking the allegations as they are no offence under Section 306 of IPC, can be made out. There is absence of *mens rea*. FIR and material collected during the course of investigation do not indicate such gravity of harassment so as to have no alternative for the deceased, than to commit suicide. He would rely upon judgment of *Mohit Singhal and another Versus State of Uttarakhand and others*, (2024) 1 SCC 417.

5. Learned APP and learned counsel for respondent no.2 oppose the submissions of the petitioners. Learned APP has produced on record papers of investigation. It is submitted that suicide note and a diary are recovered disclosing names of the petitioners. The statements of wife and other family members are referred to show abetment. Learned counsel for respondent no. 2 would refer to judgment of Supreme Court in the matter of *State of A.P Versus Bajjori Kanthaiah and another*, 2008 AIR SCW 7860.

6. We have considered rival submissions of the parties. We have gone through papers of investigation which are made

available by the respondents. Deceased Ganesh committed suicide in a night intervening 27.02.2023 and 28.02.2023 at his residence. Suicide note and the diary maintained by the deceased disclose the names of the petitioners.

7. We have gone through the statements of the owner of the hotel who had let out hotel to petitioner no. 1 and deceased, servants engaged by the petitioners in Hotel Saiprasad namely Babasaheb, Chandrabaga, Taratai, Mahesh and Prakash. We have also gone through statements of the family members of the deceased namely father and mother and wife of the deceased. They do not indicate that there was any torture at the hands of petitioners to the deceased.

8. There appears to be a dispute between petitioner no. 1 and deceased. Deceased was being insulted by the petitioner no. 1 and there were disputes over financial transactions. However, no case can be made out for the degree of harassment or torture so as that it could have driven the deceased to commit suicide. Material collected during the course of investigation shows absence of *mens rea*. The dispute or differences between the petitioners and the deceased are not of such intensity so as to push deceased to such a

position under which he would not have any choice but to commit suicide.

9. Though there is a suicide note and the diary recovered during the investigation, there is no material to indicate abetment as contemplated by Section 107 of IPC. Learned counsel for the petitioner has rightly referred to judgment of Supreme Court in the matter of *Mohit Singhal and another* (supra). Its relevant portion is in para 10, which is as follows :

“10. In the facts of the case, Secondly and Thirdly in Section 107, will have no application. Hence, the question is whether the appellants instigated the deceased to commit suicide. To attract the first clause, there must be instigation in some form on the part of the accused to cause the deceased to commit suicide. Hence, the accused must have mens rea to instigate the deceased to commit suicide. The act of instigation must be of such intensity that it is intended to push the deceased to such a position under which he or she has no choice but to commit suicide. Such instigation must be in close proximity to the act of committing suicide.”

10. Considering over all circumstances in the matter, we have no hesitation to hold that it would be an abuse of process of law to make the petitioners to face the trial. No offence is made out under Section 306 of IPC against them. We therefore, pass following :

ORDER

- i. Rule is made absolute in terms of prayer clause 'B'.
- ii. Impugned FIR is quashed and set aside.

[SHAILESH P. BRAHME, J.]

[MANGESH S. PATIL, J.]