



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

Criminal Application No. 3522 / 2022

Subhash s/o Dhondiba Munde
Age : 56 years, Occu. Business,
R/o : Bank Colony, Parli V.
Dist. Beed.

...Applicant
(Original Accused No.1)

Versus

1. The State of Maharashtra
Through police station officer,
Police Station Parli,
Dist. Beed.

2. Megha w/o Pravin Malewar,
Age : 38 years, Occu. Household,
R/o behind Nath Talkies, Shivaji Nagar,
Parli V., Dist. Beed.

(Respondent No.2/Original Informant)

...Respondents

WITH

Criminal Writ Petition No. 557 / 2023

Shrikrushna s/o Jivan Bhangе,
Age : 29 years, Occu. Business,
R/o Dhardighol, Tq. Sonpeth,
Dist. Parbhani.

At present : Bank Colony,
Tq. Parali V., Dist. Beed.

...Petitioner
(Original Accused No.12)

Versus

1. The State of Maharashtra
Through police station officer,
City Police Station, Parli,
Dist. Beed.

2. Megha w/o Pravin Malewar,
Age : 38 years, Occu. Household,
R/o behind Nath Talkies, Shivaji Nagar,
Parli V., Dist. Beed.

(Respondent No.2/Original Informant)

...Respondents

Criminal Writ Petition No. 603 / 2023

Prakash s/o Bharat Chidrewar
Age : 55 years, Occu. Business,
R/o Madhav Bagh, Parali V.,
Tq. Parali V., Dist. Beed.

...Petitioner

Versus

1. The State of Maharashtra
Through police station officer,
Parali City Police Station, Parali,
Dist. Beed.

2. Megha w/o Pravin Malewar,
Age : 38 years, Occu. Household,
R/o behind Nath Talkies, Shivaji Nagar,
Parli V., Dist. Beed.

(Respondent No.2/Original Informant)

...Respondents

Criminal Writ Petition No. 604 / 2023

Vishnu s/o Nathrao Munde
Age : 38 years, Occu. Business & Agri.,
R/o Indapwadi, Tq. Parli V.
Dist. Beed.

...Petitioner

(Original Accused No.5)

Versus

1. The State of Maharashtra
Through police station officer,
Parali City Police Station, Parali,
Dist. Beed.

2. Megha w/o Pravin Malewar,
Age : 38 years, Occu. Household,
R/o behind Nath Talkies, Shivaji Nagar,
Parli V., Dist. Beed.

(Respondent No.2/Original Informant)

...Respondents

Criminal Writ Petition No. 729 / 2023

Shamrao s/o Manikrao Katkade
Age : 60 years, Occu. Business/Contractor,
R/o TPS Colony Road, Shivaji Nagar,
Tq. Parli V., Dist. Beed.

...Petitioner

(Original Accused No.7)

Versus

1. The State of Maharashtra
Through police station officer,
Parali City Police Station, Parali,
Dist. Beed.

2. Megha w/o Pravin Malewar,
Age : 38 years, Occu. Household,
R/o behind Nath Talkies, Shivaji Nagar,
Parli V., Dist. Beed.

(Respondent No.2/Original Informant)

...Respondents

...

Advocate for Applicant in Cri. Application No.3522/2022 : Mr. Dhananjay
Shinde h/f Mr. A.M. Reddy

Advocate for Petitioners in all petitions : Mr. Avinash A. Phad

APP for the Respondent No.1/State : Mr. G.A. Kulkarni
Advocate for Respondent No.2 in Cri. Application No.3522/2022 : Mr. R.D.
Kawade (Appointed)

Advocate for Respondent No.2 in all petitions : Mr. Avinash S. Londhe

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

DATE : 30 APRIL 2024

FINAL ORDER [Per Shailesh P. Brahme, J.] :

. Heard both the sides finally.

2. The applicant/petitioners in all these matters are arrayed as accused in F.I.R. bearing C.R. No.34/2022 registered with Parli City Police Station, Beed for offence under Section 306 read with 34 of the Indian Penal Code and under Section 39 of Money Lending Act. They are seeking quashment of F.I.R. and consequential R.C.C. No.279/2022 pending before the Judicial Magistrate First Class, Parli.

3. Respondent No.2/Megha is the wife of deceased Pravin who is informant in the offence in question. The gist of the complaint lodged by her is that she was residing with her children and deceased husband who was running business at Parli. In the year 2013, they had purchased a house but due to indebtedness, it was required to be sold in 2013. Her husband was constantly under pressure because he

was unable to repay loan despite selling house. It is further contended that on 17.02.2022, deceased was under depression and he scribed note stating the names of the creditors, their mobile numbers and outstandings. Informant disclosed that the creditors mentioned in it, were harassing him, despite repayment with the interest. He further expressed his frustration for dishonest claims. The note was forwarded by the informant to her brother. On 18.02.2022 in the morning, he was found hanged in the shop.

4. A report was lodged on 18.02.2022 by the respondent no.2 against sixteen persons who are creditors and whose names are mentioned in the note given by deceased to the informant. The applicants are amongst them who are alleged to have harassed deceased for repayment of loan. In view of the note scribed by the deceased, law is set into motion against the applicants. A charge-sheet is filed and Section 39 of Money Lending Act has been added to original Section 306 read with 34 of IPC.

5. Learned Counsel for the applicants/petitioners submits that demanding outstandings cannot be said to be abetment as contemplated by Section 107 of IPC. Mere mentioning of their names in the note scribed by the deceased would not make out offence under

Section 306 of IPC. It is vehemently submitted that there was no intention on the part of the applicants so as to eliminate the deceased. They would submit that the statements recorded and the material collected during the investigation cannot make out offence under Section 306 of IPC.

6. They would further submit that there is correspondence between the Investigating Officer and Assistant Registrar, Money Lending to show that no complaint was ever received against accused persons alleging money lending business. Isolated instance of money lending would not attract penal action under Money Lending Act. It is further submitted that no case of abetment or torture is made out so as to drive the deceased to commit suicide.

7. Learned Counsel Mr. Shinde would rely upon following judgments :

- (i) Netai Dutta Vs. State of W.B. (2005) 2 SCC 659
- (ii) Amalendu Pal alias Jhantu Vs. State of West Bengal (2010) 1 SCC 707
- (iii) M. Arjunan Vs. State represented by its Inspector of Police (2019) 3 SCC 315
- (iv) Parbatbhai Aahir alias Parbatbhai Bhimsinhbhai Karmur and Others, (2017) 9 SCC 641.
- (v) Jitendra Mohan Gupta Vs. State of Maharashtra & Anr. Criminal Writ Petition No.138/2019

(vi) *Mandubai Vitthoba Pawar Vs. State of Maharashtra through Superintendent of Police and Others*, 2016(1) Bom.C.R. (Cri.) 794.

8. Per-contra, learned APP and learned Counsel for the respondent no.2 would oppose the submissions of the applicants. It is being submitted that the applicants were insisting for repayment and constantly pressurizing the deceased though there was repayment. Due to such dishonesty, the deceased was left with no alternative but to commit suicide. Supplementary statements of the informant, her brother and statement under Section 164 are referred to show involvement of the applicants. Learned Counsel would rely on the judgment of the Supreme Court in the matter of **Didigam Bikshapathi and Another Vs. State of Andhra Pradesh**, (2008) 2 SCC 403.

9. Learned Counsel for respondent no.2 would submit that full-fledged trial is required to determine involvement or innocence of the applicants. It would be too hazy to quash the proceeding at this stage. They would rely upon note scribed by the deceased mentioning details of the applicants and the harassment. Learned Counsel for the respondent no.2 would point out the report contained in the charge-sheet to show that there were online transactions.

10. We have considered rival submissions of the parties and relevant papers of investigation. A note scribed by deceased which was handed over to informant shows that names of fifteen persons are mentioned with their mobile numbers with amounts and rate of interest. At the bottom of the list, it is scribed that deceased sustained harassment. We have carefully gone through F.I.R., supplementary statements of the informant and her brother. It transpires that deceased was indebted. He had borrowed money from the applicants and other persons. Applicants and others were insisting for repayment. Deceased was being harassed on telephone and by visiting his shop.

11. The note scribed by the deceased except mentioning names and the amount outstanding does not disclose the manner in which the harassment was caused. Similar is the case with the statement recorded during the investigation. What emerges is that the applicants and others were demanding their outstanding and persisting for the same. There is nothing on record to indicate that all the applicants conspired together and with common intention subjected the deceased to such a torture to drive him to commit suicide. The magnitude of the harassment is not of such a nature so as to leave no alternative to the deceased but to commit suicide. We find no material which satisfies parameters of Section 107 of IPC.

12. Though it is mentioned in FIR that deceased had repaid outstandings with interest, no material is collected during investigation to support this allegation. Some endeavour should have been made by informant or witnesses to indicate repayment. In all probability the deceased would not have sustained the claims of the accused.

13. F.I.R. and supplementary statement of the informant disclose that she was not even knowing few creditors like Mrs. Aghav, Mrs. Agarwal. We have gone through letter dated 08.03.2022 addressed by the Assistant Registrar to the Investigating Officer stating that no complaint was received against the applicants for having undertaken money lending transaction against the applicants and others. The material on record does not indicate multiple money lending transaction with individual applicants. At the most it can be said to be isolated instance of money lending. We are of the considered opinion that it does not fall within the purview of Section 39 of the Maharashtra Money Lending Act.

14. Learned Counsel for the applicants has rightly referred to judgment in the matter of Mandubai Vitthoba Pawar (supra). Relevant paragraph nos. 11 and 12 are as follows :

“11. The above discussion makes it clear that for it to be a business there has to be a continuous and systematic activity by application of labour or skill with a view of earning

income when it could be called "business". In order to do business of money lending, it would be necessary for the State to point out multiple activities of money lending done by the petitioner. Merely referring to one isolated transaction claimed to be a loan transaction or money lending would not be enough to show that the petitioner was involved in "business of money lending" without licence. The FIR in the present matter read as a whole does not spell out that the petitioner was doing "business of money lending". This being so, on the basis of such FIR the prosecution cannot be maintained."

"12. We have gone through the various documents put on record by the petitioner as well as the respondents. There are not even vague allegations, apart from the present transaction of 1982, that petitioner was advancing loans to people and getting properties transferred. This is apart from the fact that it would be necessary for the FIR itself to spell out in clear terms the transactions which would prima facie show that business as such of money lending was being involved into without there being a valid licence."

15. Learned Counsel for the applicants have referred to judgment in the matter of Netai Dutta (supra) to buttress that mere mentioning names of accused in the suicide note would not be sufficient, in the absence of any specific act or incident. We follow the ratio. We have considered judgment of the Supreme Court in the matter of Amalendu Pal alias Jhantu (supra). We follow ratio laid down in paragraph no.12 which is as follows:

"12. At the outset, we intend to address the issue regarding the applicability of Section 306 IPC in the facts of the present case. Section 306 deals with abetment of suicide and Section 107 deals with abetment of a thing. They read as follows:

306. Abetment of suicide.--If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

16. Further reliance is placed on judgment rendered in Jitendra

Mohan Gupta (supra). We are in agreement with a view taken in that matter. Paragraph no.6 is as follows :

“6. We have carefully gone through the charge-sheet and the suicide note. A bare perusal of the suicide note reveals that the debt which the petitioner owed to the deceased was only one of the three reasons which had put the deceased under stress. It is necessary to remember that abetment involves a mental process of instigating or intentionally aiding a person to do a thing. Each person has his own ideas of self-esteem and self-respect. Merely because a person is unable to bear the stress, one cannot jump to the conclusion that the act or the circumstance which causes the stress is a situation created with an intention that the deceased should commit suicide.”

17. Learned APP refers to judgment of Didigam Bikshapathi (supra) to buttress that the suicide note refers to act of harassment and name of the applicants/petitioners so as to make out a case for offence under Section 306 of IPC. We have considered relevant facts of that case. There, the suicide note referred to the background in which the victim took extreme step of committing suicide and roles played by the accused persons. In the present matter, note is silent regarding role played by the applicants/petitioners as well as extent of harassment. The judgment is distinguishable and cannot be made applicable.

18. For the reasons stated above, we pass following order :

ORDER

- i. Criminal Application and Criminal Writ Petitions are allowed to the extent of applicants/petitioners.

- ii. Impugned FIR and consequential R.C.C. No.279/2022 are quashed and set aside to the extent of applicants/petitioners.

SHAILESH P. BRAHME
JUDGE

MANGESH S. PATIL
JUDGE