



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

CRIMINAL WRIT PETITION NO. 674 2022

1. Haridas S/o. Uttamrao Ghule
2. Nikhil Haridas Ghule
3. Samadhan Haridas Ghule
4. Kaushalya Haridas GhulePetitioners

Versus

1. The State of Maharashtra
2. Pravin Gukuldas GhuleRespondents

....

Advocate for Petitioner : Mr. Abhijit S. More
APP for Respondent No. 1 : Mr. M.M. Nerlikar
Advocate for Respondent No. 2 : Mr. V.P. Savant

....

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

DATE : 18 MARCH 2024

ORAL JUDGMENT [PER : SHAILESH P. BRAHME, J.] :

1. Rule. Rule is made returnable forthwith. Heard learned counsel for both the sides finally at the admission stage with their consent.

2. Petitioner is seeking quashment of First Information Report bearing C.R. No. 53 of 2022 registered with Washi Police Station, Washi, District Osmanabad, for the offence punishable under Section 306 read with 34 of the Indian Penal Code and consequential Charge-sheet dated 24.11.2022. Respondent no. 2 is the informant, who is the son of deceased Gokuldas Ghule. Undisputedly, petitioner no. 1 is real brother of deceased Gokuldas. Petitioner nos. 2 and 3 are sons and petitioner no.4 is wife of petitioner no.1 – Haridas.

3. Respondent no. 2 lodged report on 22.03.2023 with Vashi Police Station against petitioners as his father committed suicide on 21.03.2022 by hanging himself in the agricultural field. It is the case of the prosecution that there were joint family properties of deceased, his uncle and aunt. Deceased was in military services. In the year 1992-1993 two pieces of lands were purchased by him. But sale deeds were executed in the name of petitioner no. 1. After retirement deceased settled at Pune with his son - informant and used to visit native place Rui, Taluka Vashi, District Osmanabad, where the petitioners were residing and where the joint family properties were located. Deceased was demanding partition and separate possession in the joint family properties as well as the lands which were purchased in the name of petitioner no.1. It is further alleged that petitioners were not ready to

transfer the land and to have any share in the joint family properties. On 21.03.2021, the deceased had been to village Rui and insisted the petitioners to settle the dispute. They refused to accede and deceased felt-betrayed. He was found hanging in Gat No. 21/B. The petitioners are held responsible for the suicide of the deceased and the FIR was lodged for abetting suicide.

4. Learned counsel for the petitioners Mr. More submits that there is no material on record to make out abetment as contemplated by Section 107 of the IPC. There was no intention to eliminate deceased. Learned counsel submits that already deceased had filed RCS No.457 of 2016 against the petitioner no. 1 and others for partition which was pending. The petitioner no. 1 had also filed RCC No. 593 of 2016 for partition and declaration which is also sub judice. There was dispute over the joint family properties and there was no reason or the circumstances for the deceased to commit suicide.

5. Learned counsel for the petitioners would further submit that telephonic talk collected during the course of investigation of which the transcript is placed on record does not indicate any intention. It shows disagreement between the parties over the immovable properties and the deceased was over sentimental. Considering the material, learned counsel seeks quashment of the proceedings on the basis of the judgment

rendered in the matter of *Sewakram Perumal Motwani and others Versus State of Maharashtra and others*, **2019 (2) AIR Bom.R (Cri.) 954** ; *Dilip and others Versus State of Maharashtra and another*, **2016 SCC OnLine Bom 5240** ; *Gurcharan Singh Versus State of Punjab*, **(2020) 10 Supreme Court Cases 200** and *Madan Mohan Singh Versus State of Gurarat and another*, **(2010) 8 Supreme Court Cases 628**.

6. Per contra, learned APP and learned counsel for respondent no. 2 oppose the submissions of learned counsel for the petitioners. They would refer to the statements of the witnesses recorded during course of investigation to show that petitioners have deceived deceased and refused to return the land or to give him his share in the joint family properties. There is incriminating role attributable to petitioners and, therefore, this is not a fit case to quash the proceedings. It is also being pointed out that deceased was in military services and at that time he had purchased property in the name of petitioner no. 1 who refused to retransfer to the deceased. The learned counsel for respondent no. 2 has relied on the affidavit-in-reply to demonstrate that the petitioners are responsible for suicide.

7. We have considered rival submissions of the parties. We have gone through the charge-sheet. The relationship between the petitioners, informant and deceased is undisputed. Record reveals that

RCS No. 457 of 2016 has been filed by the deceased against petitioner no. 1 and other members of the family for partition and declaration. Petitioner no. 1 has also filed RCS No. 593 of 2016 against deceased and other members of the family. Both the suits are pending before the Competent Court. It reveals from record that there was dispute between deceased and the petitioners over the joint family properties and the properties purchased benami in the name of petitioner no. 1.

8. We have gone through the First Information Report and statements of witnesses namely Shripati Uttamrao Ghule, Shrirang Bajirao Ghule, Tulshiram Bappasaheb Ghule and Prakash Navnath Mothe. The discord between deceased and petitioner no. 1 is apparent. It appears that deceased was insisting to return the land which was purchased in the name of petitioner no. 1 and to allot him his share in the joint family property. It also reveals from the statements that deceased was found to be more disturbed by alienation of the properties by petitioner no. 1 to his son petitioner no. 2 – Nikhil. We have also considered the transcription of telephonic chat between petitioner no. 1 and the deceased occurred on 17.03.2022.

9. We do not find that the material on record is cogent enough to indicate abetment as contemplated by Section 107 of IPC. The dispute

between the parties has already reached the court of law. Deceased was staying at Pune with informant having visiting terms with the petitioners. There appears to be difference between deceased and the petitioners but that does not partake the abetment contemplated by section 107 of IPC. We do not find that there was any *mens rea* on part of petitioners. The instigation of the petitioner is not of such a nature that deceased had no alternative than to commit suicide.

10. Telephonic conversation between deceased and petitioner no. 1 shows that the deceased was hypersensitive to the petulance and discord due to the property disputes. During the telephonic conversation he appeared to have cried at times. But, equally he appears to be on a talking term with the petitioners. There is no material to show that deceased was helpless and had no alternative than to end his life. We are of the considered view that no case can be made out for the offence under Section 306 of IPC.

11. Learned counsel for the petitioners has rightly relied upon the judgments of Sewakram Perumal Motwani and others (supra), Dilip and others (supra), Gurcharan Singh (supra) and Madan Mohan Singh (supra). It would be futile exercise to prosecute the petitioners for the offence in question. We therefore, pass following order :

ORDER

- i. Criminal Writ Petition is allowed.
- ii. Rule is made absolute in terms of prayer clause 'B' and 'B-1'.

[SHAILESH P. BRAHME, J.]**[MANGESH S. PATIL, J.]**