



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.2130 OF 2021

1. Ramdas s/o Shankarrao Ballore,
age 55 years, Occ. Agri,
R/o Landagewadi, Tq. Loha,
District Nanded.
 2. Balu @ Shivhar Rangnath Gangane,
age 55 years, Occ. Agri,
R/o. Malegaon, Tq. Loha,
District Nanded.
- Applicants.

Versus

1. The State of Maharashtra
 2. Sunmitra Balaji Chavan,
age 42 years, Occ. Service,
R/o Dongargaon Tanda,
Tq. Loha, District Nanded.
- Respondents.

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Advocate for Applicants : Mr. A M Gaikwad
APP for Respondent no.1 : Mr. A V Lavte
Advocate for Respondent no.2 : Mr. Vinod Y Bhide

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CORAM : SMT. VIBHA KANKANWADI &
S. G. CHAPALGAONKAR, JJ.

Dated : September 26, 2024.

JUDGMENT :- (Per S.G. Chapalgaonkar, J.)

1. The applicants have approached this Court under section 482 of the Criminal Procedure Code seeking to quash and set aside the FIR in Crime No.46 of 2021 registered with Malakoli Police Station, District Nanded for the offences

punishable under section 306, 504, 506, 34 of the Indian Penal Code.

2. Since during pendency of this application, charge-sheet is filed, applicants have incorporated amended prayers to quash and set aside the charge-sheet no.92 of 2021 dated 1.12.2021 filed before the Judicial Magistrate First Class, Kandhar.

3. Respondent No.2 lodged a report dated 4.3.2021 with Malakoli Police Station alleging that her husband was serving as a Teacher in Matoshri Ashram School at Malakoli since last 15 years. He was maintaining a large family. As such used to face financial crunch. Consequently, in the year 2013, he had borrowed an amount of Rs.1,50,000/- from Achyut Namdev Kendre on interest @ 5% p.m. The interest amount was regularly paid by her husband, however, said Achyut was charging compound interest for recovery of the amount by giving threats. Similarly, two years ago her husband had obtained the loan of Rs.4.00 Lakhs from Ramdas Kishan Ballore on interest @ 3% p.m. Although, her husband had regularly paid interest and also part of principal amount, he grabbed the land of her husband. Similarly, in the year 2014, her husband had borrowed loan of Rs.2.00 Lakh from Babu Rangnath Gangane on interest @ 5% p.m. By way of security of the said land, two blank cheques were given. Her husband refunded Rs.20,000/- out of principal amount and regularly paid interest. However, Babu was persistent in raising demand of exponential interest. Due to constant torture by accused in pursuance to recovery of excessive interest, her husband

committed suicide on 25.2.2021 by hanging himself. The aforesaid information culminated into FIR in crime no.46 of 2021 for the offences punishable under sections 306, 504, 506, r/w 34 of the IPC.

4. During pendency of this application, investigation progressed and charge-sheet has been filed in the Court of Judicial Magistrate First Class, at Kandhar against in all three accused persons including applicants under for aforesaid penal provisions.

5. Mr. A.M. Gaikwad, learned advocate appearing for the applicants submits that applicants are innocent persons and falsely implicated in the aforesaid crime. Deceased Balaji committed suicide on 25.2.2021. However, FIR is lodged on 4.3.2021. He would submit that applicants are the agriculturists. False allegations regarding loan transaction are made. During lifetime of the deceased, he never made any complaint in respect of stipulations in the FIR. He would submit that, even assuming money transaction between applicants and deceased or demand of money by the applicants, itself, would not constitute offence of abetment to commit suicide.

6. Mr. Gaikwad would submit that deceased was teacher in the school receiving grant-in-aid. First informant is also in service as Anganwadi Sevika. Applicants are the agriculturists holding meager lands. In these circumstances, it cannot be believed that deceased had obtained any loan from the applicants and in pursuance of recovery of loan, deceased

was tortured by them. Mr. Gaikwad would also invite attention of this Court to the statements of witnesses recorded during course of the investigation and submit that stereo type allegations are made by all family members of the deceased. Statement of two witnesses, who were co-employees of the deceased, do not show that deceased was tortured at the hands of the applicants.

7. Per contra, Mr. A.V. Lavte, learned APP appearing for respondent no.1-State and Mr. V.Y Bhide, learned advocate appearing for respondent no.2 vehemently opposed the application contending that contents of the FIR and material surfaced during investigation is sufficient to make out a triable case. Hence, no interference is required under section 482 of the Criminal Procedure Code.

8. We heard learned advocates appearing for the respective parties and considered contents of the FIR and charge-sheet.

9. On minute scrutiny of the FIR, it can be observed that both the applicants alleged to have advanced money to the deceased and they have recovered the amount charging compound interest. In pursuance of recovery of such amount, they continuously persuaded the deceased. In last paragraph, statement is made that all three money lenders named in the FIR used to abuse and give threats to the deceased at public places and school in pursuance of demand of money and mentally tortured him. Consequently, he committed suicide. In light of the allegations made in the FIR, we have to find out

whether the ingredients of offence punishable under section 306 of the IPC would attract in the present case.

10. Section 107 of the IPC defines abetment, which reads thus :-

Section 107:- Abetment of a thing :-

- 1. Instigates any person to do that thing; or 2.*
- 2. Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or.*
- 3. Intentionally aids, by any act or illegal omission, the doing of that thing.*

Explanation 1.— A person who, by willful misrepresentation, or by willful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Illustration A, a public officer, is authorized by a warrant from a Court of Justice to apprehend Z. B, knowing that fact and also that C is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C.

Explanation 2.— Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitate the commission thereof, is said to aid the doing of that act.

11. Essence of abetment lies in instigating a person to do a thing or the intentional doing of that thing by an act or illegal omission. The instigation is to goad, urge, forward, provoke incite or encourage to “an act”. The Supreme Court of

India in case of **Chitresh Kumar Chopra Vs. State** made following observations :-

“In order to prove that accused abetted commission of suicide by a person has, it has to be established that :-

- (i) the accused kept on irritation or annoying the deceased by words, deeds or willful omission or conduct which may even be a willful silence until the deceased reacted or pushed or forced the deceased by his deeds, words or willful omission or conduct to make the deceased move forward more quickly in a forward direction; and
- (ii) that the accused had the intention to provoke, urge or encourage the deceased to commit suicide while acting in the manner noted above. Presence of mens rea is the necessary concomitant of instigation.”

12. Adverting to the facts of the present case, what is discernible from allegations in the FIR that deceased had borrowed loan from the accused persons and they were persistently demanding the amount by charging compound interest. There is further stipulation that in pursuance of such demand, accused persons visited the school i.e. place of employment of the deceased, or even raised the demand in the midway. Pertinently, no specific instances with particulars of overtact at the hands of the accused towards deceased on the date of incident or within the proximity of his death is given. The FIR only states that applicant no.1 Ramdas Ballore had advanced loan amount almost two years prior to date of incident and he had tortured for recovery of the interest. Similarly, applicant no.2 Balu Gangane had advanced loan of

Rs.2.00 Lakhs in the year 2014 and persistent in recovery of interest on the loan. From the aforesaid allegations, it can be gathered that applicants were pursuing for recovery of the amount of interest from the deceased. Consequently, whatever acts they were doing can be said to be for the purpose of recovery of the amount. In absence of particulars of any incident, that would create a circumstance that deceased was left with no other option except to commit suicide or he was irritated or annoyed by words or deeds or conduct that would push him or force him to commit suicide. Such ingredients of abetment of suicide are required to make out an offence under section 306 of the Indian Penal Code .

13. We are oblivious that powers under section 482 of the Criminal Procedure Code can be exercised sparingly to prevent abuse of legal process or otherwise to secure the ends of justice. Parameters of the jurisdiction under section 482 of the Criminal Procedure Code are elaborated by the Supreme Court of India in case of **State of Haryana and Ors. Vs. Ch. Bhajan Lal and Ors** reported in **AIR 1992 SC 604** . The recourse reiterated by way of illustrations wherein such powers could be exercised either to prevent abuse of process or otherwise to secure the ends of justice are as under :-

“108. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles law enunciated by this Court in a series of decisions relating to the exercise of the extra-ordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice,

though it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

- 1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*
- 2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156 (1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.*
- 3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*
- 4. Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.*
- 5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*
- 6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*
- 7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking*

vengeance on the accused and with a view to spite him due to private and personal grudge.”

14. In light of the aforesaid guidelines, when we examined contents of the charge-sheet, we could notice that apart from the FIR, statement of two brothers and sons of deceased are recorded, which are stereo type and reiterates contents of the FIR without any additional particulars of abatement or overt act at the hands of the accused persons that would constitute abatement within the meaning of section 107 of the IPC. Apart from family members of the deceased, we could found statement of two witnesses namely Prakash Rathod and Umakant Kendre, who were co-workers of the deceased in the school. They simply asserts that deceased was under the mental stress since few years and used to tell them that he had responsibility of large family hence, he is always in the crunch of money. Further some persons used to visit him in the school and after return of those persons, deceased used to be under stress. Pertinently, in these statements also no specific date or incident has been mentioned so that inference of abetment to commit suicide or circumstances depicting abetment to commit suicide can be gathered.

15. Pertinently, from the entire material on record, there is nothing to discern intention of the accused persons to drive deceased to commit suicide or even to create any circumstance by which deceased would be tend to commit suicide. As rightly pointed out by the learned advocate appearing for applicants, deceased was a teacher in a school with grant-in-aid. The informant, who is wife of the deceased

was also serving as Anganwadi Sevika. In this background, it is difficult to believe that deceased had obtained private loans from the money lenders and since 2013 onwards he was repaying loan installments. Contents of the charge-sheet are silent as regards to money lending business of the applicants. Pertinently, section 39 of The Maharashtra Money-Lending (Regulation) Act, 2014 which provides punishment for carrying money lending business without necessary permit is not charged against the applicants. We find that this is a fit case to exercise our jurisdiction under section 482 of the Criminal Procedure Code as continuation of the criminal proceeding would be abuse of process of law particularly, when the ingredients of alleged offences are absent. Hence, we proceed to pass the following order.

ORDER

- i. Criminal Application is **allowed**.
- ii. The First Information Report the FIR in Crime No.46 of 2021 registered with Malakoli Police Station, District Nanded for the offences punishable under section 306, 504, 506 r/w 34 of the Indian Penal Code and the charge-sheet no.92 of 2021 dated 1.12.2021 filed before the Judicial Magistrate First Class, Kandhar for the offences punishable under section 306, 504, 506 r/w 34 of the Indian Penal Code are hereby quashed and set aside as against the applicants herein.

iii. Criminal application stands **disposed off**.

(S. G. CHAPALGAONKAR)
Judge

(SMT. VIBHA KANKANWADI)
Judge

aaa/- (f).
