



CORRECTED COPY

This order is corrected as per Court's order dated 19.03.2024

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

CRIMINAL APPLICATION NO. 3922 OF 2022

1. Zameer Ahmed Zaheroddin Shaikh
2. Saheblal Sohrab ShaikhApplicants

Versus

1. The State of Maharashtra
2. Varshita W/o. Shrikant PotdarRespondents

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Advocate for Applicants : Ms. Priyanka R. Deshpande

APP for Respondent No. 1 : Mr. K.N. Lokhande

Advocate for Respondent No. 2 : Mr. S.S. Thombre

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

DATE : 06 MARCH 2024

FINAL ORDER (PER : SHAILESH P. BRAHME, J.) :

1. Heard both the sides finally.
2. Applicants are praying for quashment of FIR bearing C.R. No. 84 of 2021 registered with Naldurg Police Station, Taluka Tuljapur, District Osmanabad, for the offences punishable under Sections 306, 420 read with 34 of the Indian Penal Code, Charge-sheet No. 144 of 2021

dated 31.08.2021 and consequential RCC No. 119 of 2022 pending in the Court of Judicial Magistrate First Class, Tuljapur, District Osmanabad.

3. Respondent No. 2 is informant who filed report against applicants on 25.03.2021 alleging that applicants abetted suicide of her husband. It is alleged that deceased Shrikant suffered losses in the business. He was required to execute mortgage deed of the shop in favour of applicant no. 1. Applicant no. 1 incurred loan on the shop which was disliked by deceased. Applicants further transferred the shop to Kalpana Rajendra Gaikwad without consent of deceased. It is alleged that due to the deception and severe depression for which the applicants were responsible, deceased committed suicide.

4. Learned counsel for the applicants submit that the transaction between applicants and the deceased was civil in nature. A sale deed was executed on 06.12.2017 was executed RCS No. 315 of 2020 is pending between the parties before Civil Judge Junior Division, Tuljapur, for injunction and declaration in respect of sale transaction. It is further submitted that there was no instigation or overt act on part of the applicants. There was no legal nexus between the dispute and death. No, *prima facie* case is made out for offence under Section 306 of IPC as there is no abetment as such. She would rely upon judgment of the

Supreme Court in the matter of *Madan Mohan Singh Versus State of Gujrat and another*, **(2010) 8 SCC 628**, and judgment of Division Bench in the matter of *Balaji Kamble Versus State of Maharashtra*, passed by High Court Bench at Aurangabad, in Criminal Application No. 3959 of 2019 on 05 August 2021.

5. Learned APP and learned counsel for respondent no. 2 submit that there is overwhelming material on record to make out a case of abetment as contemplated under Section 107 of IPC. The statements of Prashant, Ravindra and suicide note would indicate overt act of the applicants. They would submit that due to their harassment deceased had no alternative than to end his life. Our attention is invited to paragraph nos. 4, 5 and 6 of the plaint of RCS No. 315 of 2020 to indicate the situation created by applicants.

6. We have considered rival submissions of the parties. We have considered the charge-sheet. Record reveals that RCS No. 315 of 2020 was filed by deceased Shrikant for injunction and declaration. A suicide note was collected during the course of investigation referring to the applicants.

7. Careful perusal of the FIR shows that applicants were the friends of deceased and to overcome the losses suffered by deceased,

they executed document on 06.12.2017. The applicants cannot be said to be responsible for the losses suffered by deceased in his business or for his indebtedness. There was dispute between them regarding the nature of transaction. Deceased felt betrayed. He had to resort to the civil proceedings.

8. We have perused plaint of RCS No. 315 of 2023 which clearly shows that deceased was upset due to the conduct of the applicants and was under depression. The statements of witnesses indicate that deceased was in dismay and was having grudge against the applicants. However, we do not find any cogent material on record to show the overt act on the part of the applicants as contemplated by Section 107 of IPC, so as to constitute instigation.

9. The document was executed by deceased on 06.12.2017. Thereafter, suit was filed in the year 2020. We find a non cognizable offence was registered on 27.02.2020 by the deceased against applicant no. 2. Suicide was committed in a night intervening 23.03.2021 and 24.03.2021. Learned counsel for the applicants is right in her submission that there is no proximity between the alleged act of abetment and the death. Material on record is short to make out such a decree of instigation so as to infer that deceased was left with no alternative than to commit suicide.

10. Learned APP and learned counsel for respondent no. 2 are unable to point out *mens rea* on the part of the applicants for driving the deceased to commit suicide. The transactions between the applicants and the deceased are basically monetary in nature. There is no material on record to suggest that both the applicants wanted to do away with the life of the deceased.

11. Learned counsel for the applicants has rightly relied upon judgment of the Supreme Court in the matter of *Madan Mohan Singh* (supra) and judgment of Division Bench in *Balaji Rajkumar Kamble* (supra). It would be useful to refer to paragraph nos. 19 and 21 of the judgment of the Division Bench.

“19. The Hon’ble Supreme Court in a recent judgment in case of Shabbir Husaain Vs. The State of Madhya Pradesh and others (supra), held as under :

“In order to bring a case within the provision of Section 306 IPC, there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigating or by doing a certain act to facilitate the commission of suicide.

Mere harassment without any positive action on the part of the accused proximate to the time of occurrence which led to the suicide would not amount to an offence under Section 306 of IPC [Amalendu Pal V. State of West Bengal (2010) 1 SCC 707].

Abetment by a person is when a person instigates another to do something. Instigation can be inferred where the accused had, by his acts or omission created such circumstances that the deceased was left with no other option except to commit suicide. [Chitrewsh Kumar Chopra v. State (Government of NCT of Delhi) (1009) 16 SCC 605].”

21. *The prosecution case is based upon the suicide note, wherein the name of the applicant is figured. It is important to note that alleged suicidal note is itself in doubt. There is a big question mark about the genuineness of suicidal note. According to the first informant, suicide note is written by his father. On the other hand, it is disclosed during the course of investigation that one Sopan Nagorao Mandale resident of Rahul Nagar, Latur has written that note and handed over to the deceased. Thus, it is clear that the very foundation of the prosecution case is shaky. It seems that by way of adopting pressurize mode, the first informant has put the criminal law in motion to*

implicate the applicant. No material is on record to attract Section 306 of the Indian Penal Code.”

(As verbatim)

12. For the reasons stated above, we find that there is no iota of material to proceed against the applicants. The proceedings are liable to be quashed. Hence, we pass following order :

ORDER

- i. Criminal Application is allowed.
- ii. FIR bearing CR No. No. 84 of 2021 registered with Naldurg Police Station, Taluka Tuljapur, District Osmanabad, for the offences punishable under Sections 306, 420 read with 34 of the Indian Penal Code, Charge-sheet No. 144 of 2021 dated 31.08.2021 and consequential RCC No. 119 of 2022 pending in the court of Judicial Magistrate First Class, Tuljapur, District Osmanabad, are quashed and set aside.

[SHAILESH P. BRAHME, J.]

[MANGESH S. PATIL, J.]