



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 4464 OF 2023

Akshay s/o Balasaheb Saikar
Age 29 years, Occu. Service,
R/o Khadapura, Tq. Ambajogai,
District : Beed.

... Applicant

Versus

1] The State of Maharashtra
Through Police Inspector,
Ambajogai City Police Station,
District Beed.

2] Sudhakar s/o Baburao Shep
Age Major, Occu. Agri.,
R/o Shepwadi, Tq. Ambajogai,
District Beed.

... Respondents

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Mr. Eknath P. Sawant, Advocate for the Applicant.

Mr. S. S. Dande, APP for Respondent No.1-State.

Mr. R. B. Wankhede, Advocate for Respondent No.2 (appointed)

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**CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

DATED : 19.08.2024

ORDER :

1. Instant application is for quashing of FIR bearing No. 373 of 2023 registered on 01.10.2023 at Ambajogai City Police Station, District Beed for offence punishable under Section 306 r/w 34 of the Indian Penal Code [IPC].

2. Inviting attention of the Court to the FIR, learned counsel for the applicant would submit that informant's son allegedly hanged himself some time after leaving house in the morning of 08.09.2023 and till it was noticed in the morning of 09.09.2023. Learned counsel pointed out that suicide was by hanging to a tree in the very field owned by informant. For what reason and on what background informant's son Sangram hanged himself is not clear. He pointed out that even regarding alleged suicide, there was mere A.D. registered, and after more than three weeks, instant FIR has been lodged i.e. on 01.10.2023. Learned counsel pointed out that allegations are levelled that informant's son was pressurized by present applicant along with two co-accused persons for paying dues to the tune of Rs.30,000/- allegedly taken by him to play online game and his motorcycle was allegedly retained to seek repayment. It is emphasized that very essential ingredients of abetment, inducement or instigation to commit suicide are patently missing. That, on the face of it, FIR is not only delayed but is full of false and afterthought version and information allegedly received by informant from friends of deceased. There was no pressure exerted as alleged, and moreover according to learned counsel, even if amount was demanded to be repaid, it would not constitute offence under Section 306 IPC. According to learned

counsel, making applicant, who is also of young age, face trial of a case in which there is no evidence whatsoever to attract charge, would amount to not only injustice but hardship, and therefore above prayers are pressed into service.

3. Learned APP as well as learned counsel for respondent no.2 both resisted the above application on the ground that there was persistent and consistent demand of money from the deceased. His vehicle was retained. Therefore, deceased was compelled to commit suicide. According to both of them, there is sufficient material for trial to proceed, and thereby they pray to reject the application.

4. After considering the submissions advanced by each of the sides and on taking careful survey of the FIR lodged at Ambajogai City Police Station, it is emerging that deceased, namely, Sangram, who was 21 years old, left house of informant on 08.09.2023 to fill up form of nursing course. He allegedly left on motorcycle. As he did not return in the evening, he was searched for but not found. According to informant, on 09.09.2023 around 08.00 a.m., informant learnt that his son Sangram had hanged himself to a tree in their own field, and therefore on such information, initially A.D. was registered.

5. FIR shows that on 01.10.2023 informant approached Police to lodge a report that his son was addicted to online game, namely, Ludo, and he learnt to that extent from his deceased son's friends. Informant himself states that for said reason, he never gave pocket expenses and even mobile to his son and also instructed about it to other relatives. Informant himself claims that still his deceased son used to play the said game on mobile of one Krishna Adinath Shep by inserting his own sim card and he learnt about it from Krishna himself.

6. Informant further claims that further inquiry was made with Krishna regarding use of his mobile. That, even informant's elder son Rohan had met co-accused Sandesh Pandit Chate and had learnt from him that deceased had taken Rs.30,000/- and he also informed Rohan to ask deceased to return the money and further said that he can recover it in his own way. Resultantly, informant made further inquiries with Krishna and he told that said Sandesh Chate had, two three days back, retained motorcycle of Sangram. Informant alleged that present applicant, through mediation of one Akash Folane, had given Rs.30,000/- to deceased by retaining motorcycle with himself and as such, his son was under mental tension.

7. On above information of Krishna, above report has been lodged against three persons, namely Sandesh Pandit Chate, present applicant and one Akash Rajesh Folane, alleging offence under Section 306 of IPC.

8. In order to attract the charge of section 306 of IPC, it is incumbent upon prosecution to establish incitement, instigation, aiding or abetment to commit suicide. Scope of Sections 107 and 306 has been time and again decided by the Hon'ble Apex Court in the cases viz; *State of West Bengal v. Orilal Jaiswal* (1994) 1 SCC 73; *Ramesh Kumar v. State of Chhatisgarh* reported in (2001) 9 SCC 618; *Sanju @ Sanjay Singh Sengar v. State of M.P.* reported in (2002) 5 SCC 371; *Chitresh Kumar Chopra v. State* (2009) 16 SCC 605; *Amalendu Pal alias Jhantu v. State of West Bengal* (2010) 1 SCC 707; *State of West Bengal v. Indrajit Kundu and others* (2019) 10 SCC 188; *Rajesh v. State of Haryana* (2020) 15 SCC 359; *V.P.Singh etc. v. State of Punjab and others* 2022 SCC Online SC 1999 and very recently in the case of *Kumar @ Shiva Kumar v. State of Karnataka* [Criminal Appeal No. 1427 of 2011 decided on 01.03.2024].

9. In above series of cases, it has been held and reiterated that accused persons should intend that deceased should end up his/her

life. With that object in mind, if they deliberately create circumstances, which are of such nature, that deceased is left with no other alternative but to end up his/her life, only then charge of abetment to commit suicide can be said to be successfully brought home. Abetment is equally an essential factor to be proved by prosecution.

10. Keeping the above settled legal position in mind, if we peruse the FIR, it is evident that informant's son was addicted to online gaming. It seems that deceased borrowed amount from non-applicant Sandesh and dues mounted to the tune of Rs.30,000/-. Informant's other son, namely, Rohan had already met Sandesh on 08.09.2023. But no report was lodged for the alleged threat. Apparently, deceased himself left the house to go to Ambajogai on his own motorcycle on 08.09.2023. But his dead body was noticed in hanging condition on the next morning i.e. to the tree which was in the field owned by informant himself. Initially A.D. was registered. After more than three weeks instant FIR has been lodged, that too on information of one friend of deceased, namely, Krishna. What positive role present applicant played in abetting, instigating or inducing deceased to hang himself is not clear. Law is fairly settled that mere demand of dues would not constitute the offence of abetment to commit suicide.

11. Consequently taking into consideration above nature of accusations, belated FIR and when patently necessary ingredients to constitute offence of Section 306 IPC not being available, it would be unjust to permit present applicant face trial. Resultantly, applicant succeeds and this Court finds it a fit case to exercise powers under Section 482 of Cr.P.C. to quash the FIR.

ORDER

- I. The application stands allowed.
- II. The FIR No. 373 of 2023 registered on 01.10.2023 at Ambajogai City Police Station, District Beed for offence punishable under Section 306 r/w 34 of the Indian Penal Code [IPC] is hereby quashed and set aside.
- III. Fees of the counsel appointed to represent the cause of respondent no.2 is quantified at Rs.5,000/-, to be paid by the High Court Legal Services Sub-Committee, Aurangabad.

[ABHAY S. WAGHWASE, J.]

[SMT. VIBHA KANKANWADI, J.]