



Judgment

935 apl 1647.23

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY :
NAGPUR BENCH : NAGPUR.

CRIMINAL APPLICATION (APL) NO. 1647/2023

1. Shoyeb Nisar Sheikh,
aged about 30 yrs., Occ. Service,
R/o. C/o. Mohd. Jafar, House No.109,
Rajaram Gruha Nirman Society, near
Shyam Lawn, Zingabai Takli, Nagpur,
Maharashtra,
Aadhar No. 5404 7486 5375.
2. Amol s/o. Ramkrishna Bhoge,
Aged about 33 yrs., Occ. Service,
R/o. Plot No. 64, Swami Nagar,
Godhni Road, near Ganpati Nagar,
Mankapur, Nagpur, Maharashtra,
Aadhar No.8990 9659 2709

... **APPLICANTS**

VERSUS

1. The State of Maharashtra,
through Police Station Officer,
Koradi, Nagpur.
2. Sanjay S/o. Vansantrao Madavi,
Aged 52 yrs., Occ. Business,
R/o. Ward No.5, Plot No.574,
near Plasma School, Koradi
Road, Police Station Koradi,
Nagpur Maharashtra.

...**NON-APPLICANTS**

Mr. B.L. Borikar, Advocate for applicants.
Mr. Amit Chutke, APP for non-applicant No.1.

**CORAM : VINAY JOSHI AND
MRS. VRUSHALI V. JOSHI, JJ.**
DATE : 18.04.2024.

ORAL JUDGMENT (PER VINAY JOSHI, J.) :

Heard.

2. **Admit.**

3. Invocation of inherent powers of this Court are sought by the accused to quash First Information Report ('FIR') dated 10.09.2023 vide Crime No.356/2023 for the offence punishable under Section 306 read with Section 34 of the Indian Penal Code registered with Police Station Koradi, Nagpur on account of insufficiency of material to make out prima facie case.

4. One Shubham aged 25 years, committed suicide by drowning into the lake. Father of deceased has lodged report alleging that the applicants who are agents of the Finance Company along with other co-accused have abetted deceased to commit suicide. It is the prosecution case that the informant and deceased Shubham were running snacks stall. In the year 2019, deceased has raised loan from Fed Bank and also purchased various articles by

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raising loan from the Bajaj Finance Ltd. Company. In pandemic period, the business was affected due to which the deceased was unable to pay monthly installments. On 15.02.2022, agents of Fed Bank and Finance Company visited the shop and insisted for payment of monthly installment. The deceased remained under mental tension due to insistence for payment of monthly installment. On 24.05.2022, deceased handed over his mobile phone to his friend with a message to hand over to agent of Banaj Finance Ltd. Co. and then committed suicide. During course of investigation, on 30.05.2022, a handwritten suicidal note was seized. Suicidal note alleges accusation against four personal including applicants as cause for taking extreme step.

5. The learned counsel appearing for applicants submitted that reading of FIR, does not attract essential ingredients to constitute the offence punishable under Section 306 of the Indian Penal Code. It is submitted that the father of deceased raised various loans of which deceased was paying installments. The applicants were agents of the Bajaj finance company who have merely asked deceased to repay the loan installment as a part of their duty and

thus it cannot be construed as an abetment to commit suicide. The learned counsel appearing for applicant relied on the decision of this Court in case of **Rohit s/o Nawanath Nalawade Vs. The State of Maharashtra & anr.** (Criminal Application [APL]No.1052/2018] decided on 17.12.2020) to contend that under similar circumstances, FIR has been quashed against the agents of finance company.

6. Recently the Supreme Court in case of **Ude Singh and others .vrs. State of Haryana - 2019 SCC Online SC 924**, extensively surveyed the law in the field and summarized the principles in cases of alleged abetment of suicide. The relevant observations contained in paragraph nos. 16.1 and 16.2 reads as below :

“16.1. For the purpose of finding out if a person has abetted commission of suicide by another, the consideration would be if the accused is guilty of the act of instigation of the act of suicide. As explained and reiterated by this Court in the decisions above-referred, instigation means to goad, urge forward, provoke, incite or encourage to do an act. If the persons who committed suicide had been hypersensitive and the action of accused is otherwise not ordinarily expected to induce a similarly circumstanced person to commit suicide, it may not

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be safe to hold the accused guilty of abetment of suicide. But, on the other hand, if the accused by his acts and by his continuous course of conduct creates a situation which leads the deceased perceiving no other option except to commit suicide, the case may fall within the four-corners of Section 306 IPC. If the accused plays an active role in tarnishing the self-esteem and self-respect of the victim, which eventually draws the victim to commit suicide, the accused may be held guilty of abetment of suicide. The question of mens rea on the part of the accused in such cases would be examined with reference to the actual acts and deeds of the accused and if the acts and deeds are only of such nature where the accused intended nothing more than harassment or snap show of anger, a particular case may fall short of the offence of abetment of suicide. However, if the accused kept on irritating or annoying the deceased by words or deeds until the deceased reacted or was provoked, a particular case may be that of abetment of suicide. Such being the matter of delicate analysis of human behaviour, each case is required to be examined on its own facts, while taking note of all the surrounding factors having bearing on the actions and psyche of the accused and the deceased.

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16.2. We may also observe that human mind could be affected and could react in myriad ways; and impact of one's action on the mind of another carries several imponderables. Similar actions are dealt with differently by different persons; and so far a particular person's reaction to any other human's action is concerned, there is no specific theorem or yardstick to estimate or assess the same. Even in regard to the factors related with the question of harassment of a girl, many factors are to be considered like age, personality, upbringing, rural or urban set ups, education etc. Even the response to the ill-action of eve-teasing and its impact on a young girl could also vary for a variety of factors, including those of background, selfconfidence and upbringing. Hence, each case is required to be dealt with on its own facts and circumstances."

7. In substance, it is essential to constitute the offence, there must be a positive act in proximity on part of the accused which incited to take extreme steps. It depends upon case to case and

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allegation levelled in the police report. To satisfy the requirement, the instigation must necessarily suggest the consequences. If the accused made such a circumstances which leads the deceased to commit suicide then the offence of abetment can be made. We have examined the facts of the case. Particularly, we have gone through the handwritten suicidal note. The deceased has expressed his dissatisfaction on poor financial condition, particularly he has stated that the agents of the Bajaja Finance Company Ltd., used to scold him. They used to threaten that if money is not returned, they would beat and by sale his belonging would recover the money. Particularly, deceased has stated name of both applicants along with their phone numbers as a person who threatened him for repayment of the loan installments. We have gone through the statement of the family members of the deceased. They have stated that on 15.05.2022 and then continuously, the people from finance company visited and insisted for repayment of loan amount.

8. It is not a case that the agents of the finance company merely requested for repayment, but prima facie, the material discloses that they have threatened with dire consequences on failure

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to pay EMI. Trustfulness of the contents cannot be assessed at this stage. The investigation is in progress. It is a matter of trial to establish whether the act of accused in proximity amounts to abetment. At this stage, the prosecution cannot be stifled. No prima facie case is made out to quash the prosecution.

9. In view of above, application carries no merits, hence stands rejected.

(MRS. VRUSHALI V. JOSHI, J.)

(VINAY JOSHI, J.)