



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

CRIMINAL APPLICATION NO. 985 OF 2023

Pandharinath Sakharam Mutkule
Age : 53 years, Occ : Agri.,
R/o Chanegaon, Post. Chikhali Dabhadi,
Tq. Badnapur, Dist. Jalna.

..APPLICANT

-VERSUS-

1. The State of Maharashtra
Through Police Station,
Badnapur, Dist. Jalna.
2. Krushna Chandu Mutkule
Age : 29 years, Occ : Agri.,
R/o Chanegaon, Post. Chikhali Dabhadi,
Tq. Badnapur, Dist. Jalna.

..RESPONDENTS

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Advocate for the applicant: Mr. Sudarshan J. Salunke
APP for Respondent- State : Mr. A.R. Kale
Advocates for respondent No.2 : Mr. Baliram B. Shinde

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**CORAM : SMT. VIBHA KANKANWADI AND
ROHIT W. JOSHI, JJ.**

RESERVED ON : 7th JANUARY, 2025

PRONOUNCED ON : 19th MARCH, 2025

JUDGMENT (PER ROHIT W. JOSHI, J.) :

. Respondent No.2 in the present matter has lodged F.I.R.
bearing No.0033/2023 with Police Station, Badnapur, Dist. Jalna on
20.01.2023 in relation to the suicidal death of his brother deceased
Sharad on 13.01.2023. Respondent No.2 has alleged that the present

applicant/accused is responsible for the suicidal death of his brother since he has abetted the same.

2. The allegations in the F.I.R. are that great-grandfather of respondent No.2, late Namdeo Mutkule had sold 2 H 2 R i.e. 5 acres of land to one Kaduba Pawar in the year 1978. The said Kaduba Pawar sold the land to applicant – Pandharinath Mutkule. He claims that although the applicant has purchased only 5 acres of land, he has taken possession of 8 acres of land. He states that the additional 3 acres land is illegally in possession of the applicant. The said land admeasuring 3 acres, which is illegally occupied by the applicant, belongs to respondent No.2 and his deceased brother. As per the allegations in the F.I.R., respondent No.2 states that he and his brother were repeatedly requesting the applicant, who is also related to them as their uncle to deliver the possession of the said 3 acres land to them. Respondent No.2 states that in order to find out the exact area illegally in possession of the applicant, measurement of the land was carried out in December, 2022. He claims that on 02.01.2023, he had accompanied his brother deceased Sharad with two uncles to the house of applicant requesting to deliver possession of the said 3 acres land. He states that the applicant behaved in a very rude and rough manner and refused to give away possession of land illegally occupied by him. It is also alleged that the applicant threatened to kill respondent No.2 and his brother

deceased Sharad. It is then alleged that on 12.01.2023, deceased Sharad had been to the house of applicant again requesting to give possession of the said three acres land and at that time, Sharad was verbally abused and physically assaulted by the applicant. It is mentioned in the F.I.R. that deceased Sharad informed the family members about the said incident in the night on 12.01.2023 and that he was deeply disturbed due to the said incident and felt insulted. He had also allegedly expressed to the family members that he felt like committing suicide due to the said incident. Respondent No.2 has stated that on 13.01.2023 at around 6.30 a.m., his mother found body of Sharad hanging from a Gulmohar tree in the agricultural land and she immediately raised a alarm calling all the family members. The deceased had thus committed suicide in the night intervening 12.01.2023 and 13.01.2023 by hanging.

3. On the basis of intimation given to the respondent – Police Station, Accidental Death Case No.2/2023 was registered on 13.01.2023. The postmortem report dated 13.01.2023 confirms that the death was due to hanging. Respondent No.2, who is brother of the deceased lodged the F.I.R. on 20.01.2023 narrating the above facts alleging that the applicant has caused abetment of suicide of Sharad.

4. Pursuant to the said F.I.R., respondent No.1 has conducted

investigation in the matter and has filed charge-sheet, vide Final Report No.136/2023 on 18.07.2023 in the Court of learned Judicial Magistrate, First Class, Badnapur, Dist. Jalna. Statement of respondent No.2, Varsha wife of deceased, Kamalbai, mother of deceased, Damodar, Ganesh and other family members and relatives have been recorded during the course of investigation. The said statements are in tune with the F.I.R. lodged by respondent No.2. It will be pertinent to mention here that Respondent No.1 has got recorded statements of the informant, respondent No.2, Ganesh Mutkule, Varsha Mutkule, widow of deceased under Section 164 of the Criminal Procedure Code. The said statements of respondent No.2, brother and wife respectively of the deceased, have not stated that the applicant had beaten or abused the deceased when he had been to him on 12.01.2023 asking to deliver possession of the disputed 3 acres land. Likewise, the witness Ganesh Mutkule, who claims that after the deceased had visited house of applicant on 12.01.2023, he had called him informing about what had transpired at the house of applicant on 12.01.2023, however, he also does not state that the deceased informed him that the applicant had beaten or abused him as is mentioned in the F.I.R. and statements under Section 161 recorded by respondent No.1.

5. The learned Magistrate has committed the case to the learned Sessions Court and accordingly the case is pending in the Court

of learned Court Additional Sessions Judge, Jalna, vide Sessions Case No.378/2023. The learned Sessions Judge has framed the charge against the applicant for offences under Sections 306, 323, 504, 506 read with Section 34 of the Indian Penal Code on 07.05.2024, vide Exhibit-9. The charge is framed after filing of the present application. A copy of the charge is taken on record and marked as Exhibit-A. Surprisingly, although there is only one person arrayed as accused, the learned Sessions Judge has also framed charge under Section 34 of the Indian Penal Code.

6. Learned counsel for the applicant contends that from the allegations in the F.I.R. and other material on record, it appears that there is a dispute between the parties with respect to possession of 3 acres of land. He however states that even it is assumed that the applicant is in illegal possession of 3 acres land, which he did not return to the deceased and his family, it can not be said that by not doing so, he has abetted the deceased to commit suicide. He submits that the allegations in the F.I.R. and material gathered during the course of investigation, particularly the statements of the witnesses are not sufficient to register offence of abetment of suicide against the applicant. He has also drawn attention to inconsistency in the contents of F.I.R. and 161 statements on one hand and statements recorded under Section 164 on the other with respect to the alleged incident that

had occurred on 12.01.2023 immediately before the suicidal death of the deceased. He, therefore, prays that the F.I.R., Charge-Sheet and Sessions Case deserve to be quashed.

7. As against this, learned APP Shri A.R. Kale and Advocate Shri Baliram Shinde for respondent No.2 submit that the applicant was illegally occupying the portion of around 3 acres of agricultural land belonging to the deceased and his family. The family of the deceased depended on agricultural land for its income and survival. Despite repeated demands, the applicant did not return possession of agricultural land wrongly occupied by him and rather threatened the deceased and his brother respondent No.2 with dire consequences including threat to kill. They, therefore, submitted that such circumstances can drive a person to take drastic action of bringing an end to his life, and therefore, the applicant is not entitled to seek reliefs sought in the present application. They contend that the applicant must be made to face trial on the basis of material, which is sufficient for framing charge against him for offence punishable under Section 306 of the Indian Penal Code.

8. Having heard rival submissions and upon perusal of the record with the able assistance of the learned counsel, we find that there is certainly material contradictions in the contents of the F.I.R.

and 161 statements of witnesses on one side and the statement of witnesses recorded under Section 164 on the other. Whereas, the allegations pertaining to the meeting between deceased and applicant/accused held on 12.01.2023 in the F.I.R. and 161 statements are that the deceased was abused and beaten up by the applicant/accused, under Section 164 statements of respondent No.2, Varsha wife of the deceased and Ganesh, who claims that immediately after meeting the applicant, deceased had called him informing about what had transpired during the meeting, do not state that the deceased was abused or beaten by the applicant during the course of their meeting and conversation on 12.01.2023. However, having regard to limited scope of present proceeding, we are of the opinion that this can not be a ground to be agitated in the present proceeding.

9. We are however of the opinion that statements in the F.I.R. and 161 statements even if accepted to be completely true and correct, are grossly insufficient to make out ingredients of Section 306 of the Indian Penal Code. *Mens rea* is an essential element of offence under Section 306 of the Indian Penal Code. The prosecution must prima facie demonstrate some direct or active act on the part of the accused forcing the deceased to commit suicide in order to make out a case under Section 306 of the Indian Penal Code. In the present case, it appears that the dispute in relation to possession continues from the date on

which the applicant had purchased the agricultural land from Kaduba Pawar, who in turn purchased the same from great grand-father of the deceased. There is no material on record to demonstrate any intent on the part of the applicant indicating instigation to the deceased to commit suicide. The allegations in the F.I.R. and 161 statements taken on their face value do not remotely suggest any *mens rea* for continuation of prosecution against the applicant under Section 306 of the Indian Penal Code. The offence under Sections 323 and 504 of the Indian Penal Code are non-cognizable. We are, therefore, of the opinion that continuation of prosecution against the applicant for offence under Section 306 of the Indian Penal Code is not warranted. Continuation of the prosecution will amount to abuse of legal process. The prosecution, therefore, deserves to be quashed. Hence, we pass the following order :-

ORDER

- (i) The application is allowed.
- (ii) F.I.R. No.0033/2023 registered with Police Station, Badnapur, Dist.Jalna on 20.01.2023 for the offence punishable under Sections 306, 323, 504, 506 of the Indian Penal Code as well as Charge-Sheet No.136/2023 dated 18.07.2023 and Sessions Case No.378/2023 pending on the file of learned Additional Sessions Judge, Jalna are

hereby quashed against the applicant - Pandharinath Sakharam
Mulkule.

[ROHIT W. JOSHI]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

sga/