

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

28 CRIMINAL APPLICATION NO. 941 OF 2021

Subhash s/o Dhanraj Kasliwal
Age : 71 years, Occupation : Nil,
R/o Vihamandva, Tq. Paithan,
Dist. Aurangabad

...APPLICANT

VERSUS

1. The State Of Maharashtra through
Pachod Police Station, Tq. Paithan,
Dist. Aurangabad

2. Vishal S/o. Balasaheb Aware
Age : 27 years, Occu. Agril.,
R/o. Vihamandva,
Tq. Paithan, Dist. Aurangabad

...RESPONDENTS

Advocate for the Applicant : Mr. D. S. Bharuka
APP for Respondent/State : Mr. A. D. Wange

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

DATED : 06 JANUARY 2025

ORAL ORDER:-

1. Present application has been filed under Section 482 of Code of Criminal Procedure, 1973 (for short 'Cr.PC.') initially for quashing the FIR vide C. R. No.26 of 2021 registered with Pachod Police Station, Taluka Paithan, District Aurangabad and by way of amendment quashing charge sheet bearing No.35 of 2022 filed on 07.03.2022, i.e., Sessions Case No.261 of 2023 pending before learned Sessions Judge, Aurangabad for the offence punishable under Section 306 read

with Section 34 of the Indian Penal Code, 1860.

2. Heard learned Advocate for the applicant and learned A.P.P. for respondent No.1. Respondent No.2 though served failed to cause appearance.

3. With the help of learned Advocate for the applicant and learned A.P.P. we have gone through the entire charge sheet. It is the case of the prosecution that one Balasaheb Vitthalrao Aware, r/o Vihamandawa, Taluka Paithan, District Aurangabad committed suicide by hanging himself to a tree in agricultural land bearing gut No.460 in the said village around 10 a.m. on 23.12.2020. The matter was informed to the police and after the dead body was taken down, upon the personal search a cheat was found in which the name of the present applicant and one Natha Ramchandra Narwade was written as the persons because of whose atrocities he has committed suicide. It was stated in the cheat that he was facing hard due to the harassment and the interest that was charged to the loan amount.

4. Respondent No.2 is the son of deceased Balasaheb Aware. It is to be noted that though the incident of suicide is stated to have taken place on 23.12.2020 the FIR has been lodged on 25.01.2021. It has been stated in the FIR that as the informant was in grief he has not approached the Police. Perusal of the charge sheet would show that accidental death, i.e., A.D. No. 85 of 2020 was registered on the same

day, i.e., 23.12.2020 by another son of the deceased. Said Rambhau Aware in the said A. D. has stated about suicide. His A. D. is totally silent about the fact of finding the cheat in the handwriting of Balasaheb on the spot in presence of the Police. The spot panchanama and the post mortem report wherein the cause of death has been given as due to asphyxia with hanging. There are statements of witnesses recorded under Section 161 of Cr.PC. Now, the son who has lodged the A.D. namely, Rambhau in his statement under Section 161 of Cr.PC., taken on 26.1.2021, states about finding of the suicide note on the person of his father after the dead body was taken down from the tree. Therefore, interestingly when his AD was totally silent but then his statement under Section 161 Cr.PC. discloses the suicide note, it will have to be taken as one of the circumstance which is going in favour of the applicant. The other statements are that another son Ganesh, widow Lata which are on the same line and the statement of another person Tatyrao Tade who is the villager of the deceased speak about the cheat found on the person of deceased.

5. It appears that as on today the same cheat has been sent by the Investigating Officer to the hand writing expert. However, even if we take that the said cheat has been left by the deceased in his own hand writing it will have to be considered as to whether the same cheat discloses this fact which would amount abetment to commit suicide. What has been stated in the said note is thus:-

Official Translation :-

“ Balasaheb Vitthal Aware

I am suicidal because of the troubles of the private bank. Even though I paid the money to the private lender two years ago, they ask for it. I have taken this extreme step because I could not bear the wrath of nature and the daily harassment of moneylenders.

Subhash Dhanlal Kasliwal, took my land during year 95-96.

Natha Ramchandra Narwade and Other The sons of my house work hard. And I pay these people money. I can't bear it. No matter how much money I am paying as interest, they are not satisfied. I have taken this step as I do not want to suffer private lenders.

My family members Rambhau, Ganesh, Vishal, Sunita, Neelima, Suvarna, my little grandsons, Vaibhav, etc. Mangesh, Anjali, my beloved Rohini and Ishwari, also my wife, Lata, have worked hard. My sons take good care of her, my hearty blessings to my son-in-law Ganesh, daughter and all as well as grandson Kailas Rao and grandsons and granddaughters.”

Thus, it is to be noted that name of the present applicant has been mentioned but there is no statement in the said note as to how much amount was taken as a loan by the deceased from him when he says that the applicant had taken his land in 1995-1996, stated to be towards interest. There is no explanation either in the cheat or in the statement of three sons of the deceased as to why they had not taken up any legal proceedings to take back their land. What has been collected during the course of investigation is the sale deed executed on 14.07.1995 by deceased in favour of present applicant and it is stated that it was for consideration of Rs.38,000/-. It is in respect of 77 R land out of 7 H. 74 R. from gut No.276 situated at Vihamandva. It appears that thereafter the name of the present applicant came to be mutated in the 7/12 extract. When it was a sale deed back to

executed in the year 1995 and till 2020 no legal step was taken. It is hard to believe that there could have been any insistence of any financial transaction in respect of the said transaction. Important point to be noted is none of the sons have also stated as to how much amount has been taken by their father as loan. Witness Rambhau and Ganesh (sons of deceased) have stated that all the financial transactions were looked out by the father and he used to deal them outside the house that means without informing the sons. General statements are made that deceased had taken some amount some years ago but he could not returned the amount and therefore the applicant had taken the land of the deceased. These statements appeared to be referring to the transaction of 1995, that means soon before 23.12.2020 there were no financial transactions in the nature of loan between the applicant and the deceased.

6. The legal requirement in order to prove an offence under Section 306 with Section 107 of IPC has been reiterated by the Hon'ble Supreme Court in the matters of *Dilip S/o Ramrao Shirasao and others vs. State of Maharashtra and another*, 2016 ALL MR (Cri) 4328, *Sanju alias Sanjay Singh Sengar vs. State of Madhya Pradesh*, 2002 Cri.L.J. 2796; *Madan Mohan Singh vs. State of Gujrat and another*, reported in (2010) 8 SCC 628; *S.S. Cheena vs. Vijay Kumar Mahajan* reported in 2010 All MR (Cri) 3298 (S.C.), *Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi)* (2009) 16 SCC 605, as well as

this Court in the matter of *Uddhav Bhaurao Shinde Vs. The State of Maharashtra & Anr.* (*Criminal Application No. 1067 of 2023, decided on 09.12.2024*)

7. On perusal of the entire charge sheet including the FIR is not sufficient to even attract the basic ingredients of the offence and there is absolutely no evidence collected to show that the present applicant was doing these acts with the common intention of the co-accused, this is a fit case where we can exercise our inherent powers under Section 482 of Cr.P.C.. It would be unjust to ask the applicant to face the trial. Hence we proceed to pass the following order:-

ORDER

- (i) Application stands allowed.
- (ii) The proceedings bearing Sessions Case No.261 of 2023 pending before learned Sessions Judge, Aurangabad arising out of FIR vide C.R. No.26 of 2021 registered with Pachod Police Station, Taluka Paithan, District Aurangabad for the offence punishable under Section 306 read with Section 34 of the Indian Penal Code, 1860 stands quashed and set aside as against applicant, namely, Subhash s/o. Dhanraj Kasliwal.

[ROHIT W. JOSHI]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE