



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

CRIMINAL APPLICATION NO. 2488 OF 2022

Vitthal Sambhajirao Gutte
Age : 69 years, Occ : Agri.,
R/o Laxmi Narayan Apartment,
Near Aadhar Hospital,
Shivaji Nagar, Nanded.

..APPLICANT

-VERSUS-

1. The State of Maharashtra
2. Swati Narayan Pawar
Age : 33 years, Occ : Housewife,
R/o Shaikh Rajur, Tq. Palam,
Dist. Parbhani

..RESPONDENTS

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Advocate for the applicant: Mr. Joydeep Chatterji
APP for Respondent- State : Mr. G.A. Kulkarni
Advocates for respondent No.2 : Mr. Girish K. Naik Thigle

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

DATED : 9th JANUARY, 2025

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

. The present application is filed under Section 482 of the Code of Criminal Procedure (Cr.PC.) praying to quash F.I.R. No.0213/2021 dated 16.09.2021 registered with Police Station, Palam, Dist.Parbhani, for offence punishable under Section 306 of the Indian Penal Code (I.P.C.). The F.I.R. is lodged in relation to suicidal death of one Narayan Pawar on 16.09.2021. The informant respondent No.2 is widow of the deceased.

2. The allegation in the F.I.R. is that the applicant was a office bearer of a society, which intended to start a residential school for blind and deaf and dumb students. The applicant asked the deceased to donate his land for the purpose of construction of school building and hostel on an assurance that he would offer job to the deceased and his wife (respondent No.2) as peon and a cook, respectively. Respondent No.2 states that the deceased accordingly gave land admeasuring one and half acres in Gut No.149/1 at Shekhrapur Shivar to the applicant, however, the applicant resiled from his word and did not provide employment to the deceased and his wife as promised. Respondent No.2 states that she has two children from wedlock with the deceased. The family was facing serious financial crisis and hardship as a consequence of which the deceased was forced to commit suicide. The F.I.R. refers to suicide note, which was found on the person of the deceased. English translation of the suicide note reads as under :-

“I, Narayan Kishanrao Pawar, am committing suicide because Vitthal Sambhaji Gutte, who runs a society, had taken my land admeasuring one and half acres in the year 2006, on the promise that he would offer me employment. However, although he took my land, he did not provide employment. I am facing starvation. Lastly, I request to the administration to return this land back to my family.

Sd/-

Narayan Kishanrao Pawar”

3. The complainant has stated that the suicide note is in handwriting of her husband/deceased.

4. On the basis of the said F.I.R., respondent No.1 conducted investigation in the matter and has filed charge-sheet under Section 173 of the Cr.P.C., vide Final Report No.95/2022 on 28.02.2022 before the learned Judicial Magistrate, First Class, Palam and same came to be registered as Regular Criminal Case No. 55/2022. The learned Magistrate has thereafter committed the case to the learned Sessions Court and accordingly, the case is pending in the Court of learned Additional Sessions Judge, Gangakhed, vide Sessions Case No.80/2022.

5. Learned counsel Shri Joydeep Chatterji for the applicant would contend that the allegations in the F.I.R. and the suicide note are grossly inadequate to remotely make out any ingredients of the offence of abetment to suicide punishable under Section 306 of the I.P.C. He, therefore, states that the prosecution can not be sustained and deserves to be quashed.

6. As against this, Shri G.A. Kulkarni, learned APP appearing for respondent No.1 and Advocate Shri Girish Naik appearing for respondent No.2 would contend that the deceased was falsely promised

that he would be offered employment, if he donates his property to the society of the applicant. Relying on the promise, the deceased donated his land to the society of applicant in the year 2006 itself. However, the applicant did not give employment to the deceased and his wife as promised by him causing immense financial hardship to the deceased thereby forcing him to take drastic action of committing suicide. They, therefore, submit that the F.I.R. and criminal prosecution should not be quashed having regard to the allegations made in the F.I.R., suicide note and other material forming part of the charge-sheet.

7. Perusal of the charge-sheet prima facie demonstrates that the deceased had indeed donated his land to Jyotiba Phule Seva Trust, Nanded on 13.11.2006 vide a registered document titled as “***Dan Patra***” i.e. Gift Deed. The applicant is a Secretary of the said Society. His name is mentioned in the said document dated 13.11.2006 and he has executed the said document on behalf of the society - Jyotiba Phule Seva Trust. It is really unfortunate that the applicant has taken agricultural land of a person making promise to offer an employment and then resiled from his promise. Although, we find that the said act is highly deplorable, the issue which falls for our consideration is as to whether it is enough and sufficient to attract ingredients of Section 306 of the I.P.C. It is well settled that any act howsoever unethical or undesirable or deplorable will not constitute any crime unless the act

falls within four corners of provisions of law defining the offence. A penal provision defining offence is required to be interpreted strictly. With this backdrop of facts and legal principles, we proceed to deal with the matter.

8. As noted above, there is substance in the allegation that the applicant has obtained gift of immovable property belonging to the deceased for his society. It is clearly stated that the property was donated only on the promise that the applicant would grant employment to the deceased and his wife. It is also clearly stated that the applicant did not offer any employment to the deceased or his wife as promised. We are however of the opinion that all these allegations even if assumed to be true will not make out essential ingredients of Section 306 of the I.P.C. The failure to keep his promise would not amount to instigation to the deceased to commit suicide. It does not appear that the applicant had any *mens rea* of causing suicidal death of the deceased. We may also mention that the failure to keep promise does not have any proximity with the date of unfortunate occurrence of suicidal death of deceased. The gift deed is dated 13.11.2006. It is obvious that promise to offer employment was made prior to that. The tragic incident has occurred on 16.09.2021. There is a time lag of about 15 years in between.

9. The Hon'ble Supreme Court has held in the matter of ***Ude Singh Vs. State of Haryana*** reported in ***(2019) 17 SCC 301*** as under :-

“16. In the case of suicide, mere allegation of harassment of the deceased by another person would not suffice unless there be such action on the part of the accused which compels the person to commit suicide; and such an offending action ought to be proximate to the time of occurrence.”

10. Similar view is taken in the matter of ***Amalendu Pal Vs. State of W.B.*** reported in ***(2010) 1 SCC 707*** as under :-

“12. Merely on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide, conviction in terms of Section 306 IPC is not sustainable.”

11. Similar view is taken in the matter of ***Rajesh Vs. State of Haryana*** reported in ***(2020) 15 SCC 359*** as under :-

“9. Conviction under Section 306 IPC is not sustainable on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the accused, which led or compelled the person to commit suicide.”

12. In these judgments, the Hon'ble Supreme Court has clearly laid down that the alleged wrongful act must have proximity with the act of suicide. Thus, mere harassment without any positive act on the part of the accused in proximity with the time of suicide will not make out a case of abetment of suicide punishable under Section 306 of the I.P.C.

13. Apart from the fact that proximity is clearly not established in the present case, we also find that *means rea* to cause abetment of suicide is also not established in the present case. *Mens rea* is an essential element of the offence punishable under Section 306 of the IPC. The act of deceased howsoever wrong it may be will not by itself be sufficient to constitute an offence under Section 306 of IPC unless the accused intended by such act to instigate the deceased to commit suicide. The Hon'ble Supreme Court has clarified legal position in this regard in the matter of ***M. Arjunan Vs. State*** reported in ***(2019) 3 SCC 315*** in paragraph 7 as under :-

“7. The essential ingredients of the offence under Section 306 IPC are: (i) the abetment; (ii) the intention of the accused to aid or instigate or abet the deceased to commit suicide. The act of the accused, however, insulting the deceased by using abusive language will not, by itself, constitute the abetment of suicide. There

should be evidence capable of suggesting that the accused intended by such act to instigate the deceased to commit suicide. Unless the ingredients of instigation/abetment to commit suicide are satisfied the accused cannot be convicted under Section 306 IPC.”

14. Similar view is taken in the matter of ***Gurcharan Singh Vs. State of Punjab*** reported in ***(2020) 10 SCC 200*** as under :-

“15. As in all crimes, mens rea has to be established. To prove the offence of abetment, as specified under Section 107 IPC, the state of mind to commit a particular crime must be visible, to determine the culpability. In order to prove mens rea, there has to be something on record to establish or show that the appellant herein had a guilty mind and in furtherance of that state of mind, abetted the suicide of the deceased.”

15. We may also refer to judgment of the Hon’ble Supreme Court in the matter of ***Arnab Manoranjan Goswami Vs. State of Maharashtra and others*** reported in ***(2021) 2 SCC 427***. The Hon’ble Supreme Court has dealt with a catena of decisions dealing with essential ingredients of offence of abetment of suicide. A F.I.R. was lodged against appellant in the said matter for offence under Section 306 of the IPC. The allegations in the F.I.R were that the husband of the informant was running a company doing business of interior designing, engineering consultancy and architecture. According to the informant,

wife of the deceased the appellant had not made payment for the work done by company of her husband (deceased) for a period of over two years resulting in financial pressure on the deceased. It was also alleged that the deceased husband had visited the office of appellant on several occasions making demand of payment of money. He had left a suicide note mentioning that the persons named in the said note were not paying legitimate dues of his company. The appellant had unsuccessfully challenged the F.I.R. before the High Court. The appellant then carried the order passed by the High Court to the Hon'ble Supreme Court. In this backdrop of facts, the Hon'ble Supreme Court has held as under :-

“62. Prima facie, on the application of the test which has been laid down by this Court in a consistent line of authority which has been noted above, it cannot be said that the appellant was guilty of having abetted the suicide within the meaning of Section 306 IPC. These observations, we must note, are prima facie at this stage since the High Court is still to take up the petition for quashing. Clearly however, the High Court in failing to notice the contents of the FIR and to make a prima facie evaluation abdicated its role, functions and jurisdiction when seized of a petition under Section 482 CrPC. The High Court recited the legal position that the jurisdiction to quash under Section 482 has to be exercised sparingly. These words, however, are not meaningless incantations, but have to be assessed with reference to the contents of the particular FIR before

the High Court. If the High Court were to carry out a prima facie evaluation, it would have been impossible for it not to notice the disconnect between the FIR and the provisions of Section 306 IPC. The failure of the High Court to do so has led it to adopting a position where it left the appellant to pursue his remedies for regular bail under Section 439. The High Court was clearly in error in failing to perform a duty which is entrusted to it while evaluating a petition under Section 482 albeit at the interim stage.”

16. It may be mentioned that the aforesaid judgment was pertaining to grant of bail and not quashing of F.I.R. However, legal principles with respect to essential ingredients of an offence punishable under Section 306 of IPC have been reiterated in the said judgment by following several judgments of the Hon’ble Supreme Court including the judgments, we have referred to above.

17. In the facts of the present case undisputedly the land was gifted by the deceased on a representation that employment will be offered on 13.11.2006 and he has committed suicide on account of failure on the part of the applicant to grant employment as promised after a period of around 15 years on 16.09.2021. There is obviously no proximity between the wrongful act and suicide committed by the deceased. Likewise, there is nothing to interfere that the applicant did

not offer employment as promised by him with an intention that the deceased should commit suicide. The undisputed facts of the case miserably failed to establish any mens rea. The continuation of criminal prosecution against the applicant will, therefore, serve no purpose. Since the ingredients of offence of abetment to commit suicide are not made out, the criminal prosecution against the applicant deserves to be quashed. Hence, we pass the following order :-

ORDER

- (i) The application is allowed.
- (ii) F.I.R. No.0213/2021 dated 16.09.2021 registered with Police Station, Palam, Dist.Parbhani, for offence punishable under Section 306 of the Indian Penal Code, Charge-Sheet No.95/2022 dated 28.02.2022 and Sessions Case No.80/2022 pending on the file of learned Additional Sessions Judge, Gangakhed are hereby quashed against applicant - Vitthal Sambhajirao Gutte.

[ROHIT W. JOSHI]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

sga/