



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2423 OF 2023

1. Sunita Jaypalsing Bayas
2. Jaypalsing @ Khushalsing Bayas
3. Shubham Jaypalsing Bayas
4. Shivam @ Shiv Jaypalsing Bayas ...Applicants

versus

1. The State of Maharashtra
2. The Superintendent of Police
Osmanabad
3. Chhayabai Premsing Gahirwar ...Respondents

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Mr. A.B. Jagtap, advocate for the applicants
Mrs. Rashmi P. Gour, A.P.P. for respondent Nos.1 and 2
Mr. S.B. Bhosale and Mr. Y.L. Bidve, advocates for respondent No.3
(absent)

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**CORAM : SMT. VIBHA KANKANWADI AND
SANJAY A. DESHMUKH, JJ.**
DATED : 12th FEBRUARY, 2025

PER COURT (PER SANJAY A. DESHMUKH, J.):-

1. The applicants, by way of this application, filed under Section 482 of the Code of Criminal Procedure, 1973, are seeking quashment of F.I.R. No. 30 of 2023, registered with Murum police Station, Ta. Omerga, district Osmanabad, for the offences punishable under Sections 306 r.w. 34 of I.P.C. as well as the consequential charge sheet No. 34 of 2023 and further proceeding in pursuance to R.C.C. No. 17 of 2023, pending before the learned Sessions Court,

Omerga, district Osmanabad.

2. Learned advocate for the applicants pointed out to us the report lodged by the informant Chhayabai Gahirvar alleging that on 26.08.2021, her cousin Sunita Bayas R/o. Achler, Tq. Lohara, district Osmanabad told her that she will give job to her son Ajay Premsing Gahirvar in the agricultural land and will also perform his marriage there and accordingly had taken said Ajay with her. After 5 to 6 months, Ajay came back without informing anything to Sunita. He told the informant and her daughter-in-law Shweta that sons of Sunita are committing theft of Murram in the night time and they were taking Ajay with them. Ajay was feeling fear of that work. It is alleged that when Ajay refused to do the said work, the sons of the Sunita used to threat and abuse him. They also used to beat him. Therefore, Ajay came back to Solapur. The cousin of the informant viz. Sunita and her sons frequently used to come to Solapur to search Ajay. After searching him, they forcibly took him with them.

3. It is further alleged that on 14.12.2022, Ajay made video call on Whatsapp to his brother Sunil Premsing Gahirvar, he was crying and asking to take him with them as he was suffering a lot. At that time, his mobile hand set was snatched from his hands. Thereupon, Sunil made phone call to Sunita, sister of the informant,

Sunita said that she just scolded Ajay, therefore, he was crying and used to cut the phone call. On 17.12.2022, at about 3.00 to 4.00 p.m. Sunita, sister of the informant made phone call to the informant and informed that Ajay died by falling in the water tank. They all went to Achler, Tq. Lohara, district Osmanabad. They saw that Ajay was lying dead there. When the informant asked Sunita, she started quarreling with her. Thereupon, Sunita said that if the informant thinks that she has done something, then the informant can believe whatever she wants and do whatever she wishes to do. Thereafter, the postmortem was conducted and report was lodged on 20.01.2023.

4. Learned advocate for the applicants submitted that there is no evidence against the applicants of abetment to commit suicide by instigating to all the applicants. He submitted that the applicants are falsely implicated in the crime. Learned advocate submitted that there is delay caused in lodging the report, which is not explained. Therefore, he prayed to quash the report as well as the charge sheet.

5. Learned A.P.P. for respondent Nos.1 and 2 strongly opposed the application by submitting that it is a case of abetment to commit suicide. There is strong evidence against the applicants. The applicant have harassed Ajay mentally and physically. Ajay

committed suicide because of their harassment. Learned A.P.P. submitted that names of the applicants are mentioned in the report. They are involved in serious crime. They compelled Ajay to do the illegal work. Learned A.P.P. also pointed out the post mortem report, which shows that it is a case of suicide. The doctor has given the opinion that the probable cause of death of Ajay is asphyxia due to drowning. Learned A.P.P. submitted that the names of the applicants are mentioned in the report. The specific roles are attributed to each of the applicants. They cannot be exonerated from the criminal liability. It is lastly prayed to reject the application.

6. None present for respondent No.2 informant though served.

7. Perused the report and the charge sheet. The report shows that after the incident, applicant No.1 informed that Ajay died by drowning in the water tank. In the post mortem report, the doctor has opined the probable cause of death is asphyxia due to drowning. Whether it is a death by accident or suicide is a question of fact. However, from reading of the entire charge sheet except the allegations of abetment to commit suicide, there is no other corroborative evidence on record. Nobody was there with Ajay at the time of incident to show that he was abetted and instigated by the applicants for commission of suicide, as contemplated by Section 107

of I.P.C. to constitute an offence punishable under section 306 of I.P.C. Though the incident took place on 17.12.2022, the report is lodged after a period of one month on 20.01.2023. The report was not lodged immediately. It is lodged as an after thought. There is no evidence of abetment on the part of all these applicants, to hold them liable under Section 306 of I.P.C. for causing of abetment to Ajay to commit suicide. In such circumstances, if the applicants are compelled to face the trial, it would be certainly an abuse of process of court. This is a fit case to exercise the inherent powers under Section 482 of Cr.P.C. to quash the report and the charge sheet. Therefore, we are inclined to allow the application. Hence, the following order:-

O R D E R

- I. The application is allowed.
- II. The F.I.R. No. 30 of 2023, registered with Murum police Station, Ta. Omerga, district Osmanabad for the offences punishable under Sections 306 r.w. 34 of I.P.C. as well as the consequential charge sheet No. 34 of 2023 and further proceeding in pursuance to R.C.C. No. 17 of 2023 pending before the learned Sessions Court, Omerga, district Osmanabad, are quashed.

(SANJAY A. DESHMUKH, J.) (SMT. VIBHA KANKANWADI, J.)

rlj/

PER SMT. VIBHA KANKANWADI, J. :

1. I have gone through the order authored by learned Justice Sanjay A. Deshmukh. I agree to the operative part of the order, however, I want to add elaborate reasoning and therefore, present part of the order is added.

2. The contents of the FIR are considered in Para Nos.2 and 3 above. However, the chronology is then required to be considered. According to the informant, her younger son, deceased Ajay was taken by her cousin sister to Aachaler, Taluka-Lohara, District-Osmanabad on 26th August 2021. However, after residing with said cousin sister of the informant, Ajay came back to informant at Solapur after about 5 to 6 months without informing to said cousin sister i.e. applicant No.1. At that time, Ajay had informed about the alleged harassment given by the applicants to him, but the informant has not stated that she had given courage to Ajay to lodge report with the police or she had tried to lodge the report. Then she says that even thereafter the applicants used to come to Solapur and whenever they used to see Ajay, they used to forcibly take him with them. In fact this amounts to abduction, but at no point of time the informant or her three sons had ever tried to lodge report.

3. In the chronology, then next incident is dated 14th December

2022 around 8.45 p.m., when Ajay had given a WhatsApp video call and therefore, his brother Sunil could see that Ajay was crying and asking to take him from there. Then mobile was snatched while ongoing video call. Even Sunil had contacted applicant No.1 but she told that she had scolded Ajay and theref Aachaler, Taluka-Lohara, District-Osmanabad ore he was crying but Sunil should not worry. There was no immediate reaction from Sunil informing the said fact to his brothers and mother i.e. respondent No.2. They had not gone to Aachaler, Taluka-Lohara, District-Osmanabad, where Ajay was taken and had not tried to bring him with them. Then on 17th December 2022, applicant No.1 had given a phone call stating that Ajay has expired due to fall in the water tank in the field belonging to one Pujari in Aachaler. Thus, neither the FIR nor the statements of witnesses including statement of Sunil would show that what had happened between 14th December 2022 to 17th December 2022 with Ajay. In other words, there is no evidence to have nexus between the alleged video call of 14th December 2022 to incident of 17th December 2022.

4. Now, here will have to consider the spot panchnama, inquest panchnama and postmortem report. In the spot panchnama nothing incriminating has been found near the water tank. The postmortem report shows that there was no evidence of injury in Column Nos. 17,

18, 19, still viscera was preserved. But the provisional probable cause of death was shown as "death is asphyxia due to drowning". Thereafter on 20th March 2023 another letter has been given by the medical officer stating that there were no external and internal injuries and therefore, death might have occurred approximately 18 hours prior to the postmortem examination. Thus, the medical evidence is ruling out the possibility of homicidal death. In the entire charge-sheet there is no statement under Section 161 of the Code of Criminal Procedure of a witness who had seen deceased jumping into the water in the tank. Therefore, when there is possibility of accidental death, unless that possibility is ruled out charge under Section 306 of the Indian Penal Code cannot stand.

5. The statements of brothers of deceased are on the same line as that of FIR. No doubt all of them are saying about the rude behaviour of applicant No.1 near the water tank but that cannot be taken even as a prima facie case to state that there was abetment to commit suicide. There is also statement of one Anupsing Udaysing Chouhan, who is the husband of sister of deceased Ajay, which is also on the same line. Then there is statement of one Baldevsing Jaysing Chavan, who is brother of the informant. Witness Baldevsing and witness Anupsing are not supporting the statement of witnesses and informant that applicant No.1 behaved rudely near the water tank

after they had found the dead body of Ajay in the water tank. All of them have stated that the applicants were indulging in theft of *Murum* and transportation of the same with the help of Tractor belonging to applicant No.1 and they were forcing Ajay to join them in the process. When Ajay used to refuse, applicants used to assault and abuse Ajay and due to the said harassment, Ajay has committed suicide. There is no evidence collected by the investigating officer, as to whether the applicants have been ever booked in the offence of theft. From where the applicants used to take out the *Murum* and where they were selling it etc. is absolutely not investigated.

6. Now, as regards the said harassment is concerned, it is the oral information that was given, as per the FIR and the statements, after Ajay had come to Solapur without informing applicant No.1, about 5 to 6 months after 26th August 2021. Even on the WhatsApp call on 14th December 2022, no details were given which would connect with the acts of alleged harassment. Therefore, the said statement made somewhere in February 2022, cannot be taken under Section 32 of the Indian Evidence Act for the alleged suicide by Ajay on 17th December 2022. Therefore, the acts of harassment are not at all disclosed in the entire charge-sheet. Further, no separate role appears to have been assigned to each of the applicants by these witnesses.

7. There is statement of one Rafiq Rasool Inamdar, who has stated that Ajay was doing mason work with him. Ajay used to stay with him and while he was with him, applicant No.1 and her son used to take Ajay to Achler and whenever Ajay used to come back, he used to disclose to Rafiq that applicant No.1 is having tractor and they all commit theft of *Murum* at night time and therefore, he used to fear that he would be arrested in that offence. Similar is the statement of Dawood Ismail Attar, who is the friend of Rafiq. Further, both of them have stated that when Ajay was with Rafiq, on 24th June 2022, applicant No.1 had called on mobile of Rafiq and asked as to whether Ajay is with him, he said yes and then on his phone Ajay had talked to applicant No.1 stating that he is with Rafiq and he put off the phone. After some time applicant No.1 went to the house of Rafiq and took Ajay with her. Again at the cost of repetition, we would say that as regards earlier disclosure is concerned, no date has been given, since when Ajay was doing mason work with Rafiq is also not stated. As regards incident dated 24th June 2022 is concerned, no resistance has been offered by Rafiq and Dawood if Ajay was being taken by applicant No.1 against his wish. Therefore, their statements even prima facie do not give the ingredients of Section 107 together with Section 306 of the Indian Penal Code.

8. There are also statements of the sisters-in-law of Ajay, namely Shweta and Preeti, but those are on the same lines of the statements of their husbands. Then there are two more statements of other relatives. The call details of applicant No.1 with Rafiq have been taken, however, that will not be sufficient to prove abetment.

9. Learned Advocate for the applicant has relied on the decision in ***M. Mohan vs. State, Represented by the Deputy Superintendent of Police, (2011) 3 SCC 626***, wherein it has been observed that when there is no proximate link between event when deceased was tortured on some pretext or other then it does not amount to abetment and if the suicide is committed, then it does not amount to offence under Section 306 of the Indian Penal Code. It is observed while explaining the word “suicide” that “sui” means self and “cide” means killing, implying self-killing. That means person committing suicide must commit it by himself irrespective of means employed by him in achieving his object. Certainly, this decision is helpful to the applicants as here also there is no link, as observed earlier. It was also observed in the said decision that when no such evidence is collected, it is a fit case by implying it under the guidelines given by the Hon’ble Supreme Court in ***the State of Haryana vs. Bhajan Lal, 1992 Supp. (1) SCC 335*** for quashment of FIR under Section 482 of the Code of Criminal Procedure.

10. Learned Advocate for the applicants has also relied upon the decision in ***Hafizur Rahman Sheikh vs. State of Maharashtra and others, by this Court, reported in 2021 All M.R. (Cri.) 3453, Rushikesh Hanumant Sutar vs. State of Maharashtra and others, 2019(1) Bom. C.R. (Cri.) 884***. In all these cases, the decisions in ***S.S. Cheena vs. Vijay Kumar Mahajan and another, 2010 AIR (SCW) 4938, Chitresh Kumar Chopra vs. State (Government of NCT of Delhi), 2009 (16) SCC 605, Dilip Ramrao Shirsao and others vs. State of Maharashtra and another, 2016 All MR (Cri.) 4328***, have been taken note of.

11. Another point which was raised in ***Rushikesh Hanumant Sutar vs. State of Maharashtra and others*** (supra), is also applicable here, which is regarding delay. In the present case, the death of Ajay had occurred on 17th December 2022, however, the FIR has been lodged on 20th January 2023. Inquest panchnama has been drawn on 17th December 2022 itself by police in presence of two panchas and Santoshsing, the brother of the deceased, had identified the dead body. He had received the dead body after postmortem. Therefore, there was no hurdle for the three brothers, who were elder to deceased, to lodge the report and it ought not to have been only by the mother of the deceased who appears to be

barely educated or only knows how to sign. The delay will have to be then counted here.

12. Taking into consideration all these aspects, the ingredients of Section 306 read with Section 34 of the Indian Penal Code are not at all attracted even from the bare perusal of the FIR and the evidence in the charge-sheet. Therefore, it would be an abuse of process of law to ask the applicants to face the trial and here I agree to the operative part of the order above.

**[SMT. VIBHA KANKANWADI]
JUDGE**

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