



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.2985 OF 2023

- 1 Umesh Shivram Patil,
Age 35 yrs., Occ. Service,
R/o Sy.No.20/2, Vinayak Park,
Alandi Road, in front of Old Water Tank,
Pune, Tq. & Dist. Pune.
- 2 Pradeep Bhimrao Bhosale,
Age 67 yrs., Occ. Retired,
R/o Shri Balaji Moti Chowk,
Sangli, Tq. & Dist. Sangli.
- 3 Ashwaq Iqbal Sayyed,
Age 47 yrs., Occ. Service,
R/o Sy.No.51, Plot No.73,
Flat No.8, Unique Corner,
Bhairav Nagar, Dhanori,
Pune, Tq. & Dist. Pune.
- 4 Anil Tulshiram Mane,
Age 32 yrs., Occ. Service,
R/o Sy.No.52/1/1/3/1,
Plot No.17, Behind Gagangiri
Karyalaya, Bhairav Nagar, Dhanori,
Pune, Tq. & Dist. Pune.

... Applicants

... **Versus** ...

- 1 The State of Maharashtra
Through Railway Police Station,
Chalisgaon, Tq. Chalisgaon,
Dist. Jalgaon.
- 2 Vijaysingh Raghunathsingh Pardeshi,
Age 64 yrs., Occ. Agri.,
R/o Nagardevla, Tq. Pachora,

Dist. Jalgaon.

... **Respondents**

...

Mr. V.B. Patil, Advocate for applicants

Mr. A.D. Wange, APP for respondent No.1

Mr. S.V. Dixit, Advocate (appointed) for respondent No.2

...

**CORAM : SMT. VIBHA KANKANWADI &
SANJAY A. DESHMUKH, JJ.**

RESERVED ON : 11th MARCH, 2025

PRONOUNCED ON : 21st APRIL, 2025

ORDER : (PER : SMT. VIBHA KANKANWADI, J.)

1 Present application has been filed for quashment of the proceedings in Sessions Case No.86/2022 pending before Additional Sessions Judge, Bhusawal, Dist. Jalgaon arising out of First Information Report vide Crime No.104/2018 dated 03.04.2018 registered with Railway Police Station, Chalisgaon, Dist. Jalgaon, for the offence punishable under Section 306 read with Section 34 of the Indian Penal Code, 1860.

2 Heard learned Advocate Mr. V.B. Patil for applicants, learned APP Mr. A.D. Wange for respondent No.1 and learned appointed Advocate Mr. S.V. Dixit for respondent No.2.

3 Learned Advocate appearing for applicants has taken us through the entire charge sheet including First Information Report and submits that even after taking into consideration entire material, that has been collected during the course of investigation, it cannot be stated that present applicants had abetted the commission of suicide. Present applicant Nos.1 and 3 were working in the Pune office and applicant No.2 was working in Mumbai office of one Writers Safeguard Private Limited Company. The said company had made an agreement through Hitachi India Private Limited and accepted the work of feeding cash amount, that is, the currency notes in ATM machines of Axis Bank, HDFC, ICICI, SBI, Bank of Maharashtra, Dena Bank and Canara Bank etc. Hitachi company used to send e-mail in respect of indent loading plan thereafter the company of applicants used to accept the cash i.e. currency notes from the concerned Bank and used to deposit the same amount in the specified ATM machines. Their company had sought employee from one Adecco India Private Limited and accordingly, the said company had forwarded Yogesh Vijaysingh Pardeshi as 'ATM Operator' on contract basis from 25.09.2017 to 24.09.2018. Around 28.10.2017 it was found that said Yogesh had stolen amount of Rs.13,65,000/- from ATM machine by misusing password. This fact came to knowledge on 01.11.2017 at the time of inspection. Applicant No.1 had approached Ranjangaon Police Station and lodged First Information Report against Yogesh for the offence punishable

under Section 380 read with Section 34 of the Indian Penal Code. Deepak, brother of Yogesh, was co-accused. When the investigation in the said Crime No.161/2017 was going on, unfortunately, Yogesh committed suicide on 05.11.2017. Now, in connection with the said suicide it is stated that Yogesh has left a suicide note involving present applicants. However, if the suicide note is perused, it is dated 02.11.2017 and there is gap of about three days between writing of suicide note and actual commission of the same. At no point of time present applicants were in contact with Yogesh. The entire charge sheet does not give a specific incidences which could be said to be the incidences of abetment. Applicant Nos.1 to 3 had approached this Court by filing Criminal Application No.2812 of 2018 and it was decided on 25.02.2019 i.e. prior to filing of charge sheet. The said application was rejected by giving reasons, however, it was prior to filing of charge sheet i.e. on 02.03.2022. Now, every evidence is before this Court and it would clear that there was absolutely no contact between applicants and deceased. If we take contents of charge sheet as it is, it is only stated that Manager Ashwaq, Umesh, Supervisor Anil Mane, Bhosale were torturing him. Acts of torture were not stated by him at all and, therefore, it would be unjust to ask applicants to face the trial.

represent cause of respondent No.2, as he failed to appear though served, strongly opposed the application. They submit that even the handwriting expert's opinion has been received and it states that suicide note is in the handwriting of deceased. It was clearly stated in the suicide note that present applicants used to harass deceased. Informant is father of deceased Yogesh. Statement of his brother Deepak would show that Yogesh was falsely involved in the said case of theft of amount from ATM machine and they were pressurizing him to make that amount good to the company. Such indirect confession and recovery would certainly amounts to abet the commission of crime and, therefore, this is not a fit case where the Court should exercise its powers under Section 482 of the Code of Criminal Procedure.

5 Before turning to the facts, we would like to consider the legal point involved in the matter, that is, what are the ingredients to be even *prima facie* shown by prosecution in such matters and for that purpose we would like to rely on the decision in **Dilip 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** [(2010) 8 SCC 628], **S.S. Chheena vs. Vijay Kumar Mahajan** [2010 All MR (Cri) 3298 (S.C.)] and

R. Shashirekha vs. State of Karnataka and others [2025 INSC 402]. Taking into consideration the ratio laid down in all these authorities and the fact in the present case, definitely, ingredients of any of the offences under which charge sheet is filed are not at all attracted. Further, it has been observed in one of the recent Judgments in **Mahendra Awase vs. The State of Madhya Pradesh** [2025 INSC 76] that merely for the satisfaction of informant Investigating Officer should not file charge sheet against accused, arrayed in offence under Section 306 of the Indian Penal Code. In **Amalendu Pal @ Jhantu vs. State of West Bengal** [(2010) 1 SCC 707] similar view that of **M. Mohan** (supra) is taken, wherein it was held that -

“In a case of abetment of suicide, there must be proof of direct or indirect act(s) of incitement to the commission of suicide. 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 deceased to commit suicide, conviction in terms of Section 306 of the Indian Penal Code would not be sustainable.”

6 Taking into consideration the above legal position, the factual situation in the matter is considered. It appears that deceased Yogesh committed suicide by jumping before train. This fact is coming on record through the AD, Postmortem Report, statement of train driver Vijaykumar Ankaluram Kureti. Therefore, there is no dispute of the fact that Yogesh

committed suicide, but the question is, whether the present applicants had abetted commission of suicide ? Therefore, in order to show the said *prima facie* fact the prosecution appears to be relying mainly on statement of his brother Deepak, who is in fact, the co-accused in the offence registered against him. His statement would show that he was called on 02.11.2017 by Nagardevla Police Station, wherein he was told about the fact that cash has been stolen by deceased Yogesh and if that amount is returned then the offence will not be registered. He was asked to come on the next date. He went to Police Station on the next date, but simultaneously the process of registering First Information Report was going on. He started searching for his brother, but his brother could not be found on that day and thereafter he could not establish contact with his brother. He could get the information about the suicide only on 05.11.2017. That means, even Deepak had no knowledge about the whereabouts of Yogesh from 02.11.2017 to 05.11.2017. He does not say that when it was made known to him that Yogesh has committed theft of the cash on 02.11.2017, then whether he had contacted Yogesh and what was the reaction of Yogesh ? But witness Deepak says that he had call from Yogesh on 01.11.2017 around 1.30 p.m., whereupon it was disclosed that applicants are pressurizing him to accept the fact that he has committed theft of cash. Rather Deepak says that after 01.11.2017 till 05.11.2017 he had no talks with Yogesh. If we consider the suicide note, for

which now there is opinion of handwriting expert that it is written by deceased, it would show that it was written on 02.11.2017. However, the actual suicide has been committed on 05.11.2017. Therefore, the said suicide note cannot be considered under Section 32(1) of the Indian Evidence Act. Further, as aforesaid, in **R. Shashirekha** (supra) there has to be a proximity between the suicide note and actual commission of suicide. None of the witnesses has stated that after 01.11.2017 present applicants had met or tried to contact Yogesh in any manner. The CDR has been produced, but it is not giving any further details regarding communication between any of the applicants and Yogesh. The rejection of earlier application by applicant Nos.1 to 3 will not be the hurdle here, because after filing of charge sheet certainly applicants can approach this Court. As the basic ingredients of offence are not even *prima facie* shown, we take this to be the fit case where we should exercise our inherent powers under Section 482 of the Code of Criminal Procedure. Hence, following order.

ORDER

- i) Criminal Application stands allowed.
- ii) The proceedings in Sessions Case No.86/2022 pending before Additional Sessions Judge, Bhusawal, Dist. Jalgaon arising out of First

Information Report vide Crime No.104/2018 dated 03.04.2018 registered with Railway Police Station, Chalisgaon, Dist. Jalgaon, for the offence punishable under Section 306 read with Section 34 of the Indian Penal Code, 1860, stands quashed and set aside as against applicants viz. 1) **Umesh Shivram Patil**, 2) **Pradeep Bhimrao Bhosale**, 3) **Ashwaq Iqbal Sayyed** and 4) **Anil Tulshiram Mane**.

iii) Fees of appointed Advocate is quantified at Rs.10,000/- (Rupees Ten Thousand only), to be paid by High Court Legal Services Sub Committee, Aurangabad.

(SANJAY A. DESHMUKH, J.)

(SMT. VIBHA KANKANWADI, J.)

agd