



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.3860 OF 2024

- 1 Ganesh Duryodhan Naik,
Age 34 yrs., Occ. Agri./Labourer,
R/o Veergaon, Tq. Vaijapur,
Dist. Chhatrapati Sambhajinagar.
- 2 Ramdas Duryodhan Naik,
Age 32 yrs., Occ. Agri./Labourer,
R/o Veergaon, Tq. Vaijapur,
Dist. Chhatrapati Sambhajinagar.

... Applicants

... Versus ...

- 1 The State of Maharashtra
Through Superintendent of Police,
Chhatrapati Sambhajinagar.
- 2 In-charge Officer,
Veergaon Police Station,
Tq. Vaijapur, Dist. Chh. Sambhajinagar.
- 3 Mohini wd/o Yogesh Somvanshi,
Age 41 yrs., Occ. Housewife,
R/o Satana, Tq. Vaijapur,
Dist. Chhatrapati Sambhajinagar.

... Respondents

...

Mr. D.R. Shelke, Advocate for applicants

Mr. G.A. Kulkarni, APP for respondent Nos.1 and 2

Mr. Shriram Deshmukh, Advocate (appointed) for respondent No.3

...

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

RESERVED ON : 27th JUNE, 2025

PRONOUNCED ON : 24th JULY, 2025

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

1 Present application has been filed under Section 482 of the Code of Criminal Procedure, 1973 for quashment of the proceedings in Sessions Case No.161/2023 pending before learned Additional Sessions Judge, Vaijapur, Tq. Vaijapur, Dist. Aurangabad, arising out of First Information Report vide Crime No.289/2022 dated 19.07.2022 registered with Police Station, Vaijapur, for the offence punishable under Sections 306, 323, 504, 506 read with Section 34 of the Indian Penal Code, 1860.

2 Heard learned Advocate Mr. D.R. Shelke for applicants, learned APP Mr. G.A. Kulkarni for respondent Nos.1 and 2 and learned appointed Advocate Mr. Shriram Deshmukh for respondent No.3.

3 Learned Advocate appearing for applicants has taken us through entire charge sheet and submits that even if we take the contents of First Information Report as it is; yet, the ingredients of offence under Sections 306, 323, 504, 506 read with Section 34 of the Indian Penal Code will not get attracted.

4 Respondent No.3 is the widow of Yogesh Girjaba Somwanshi. She states that agricultural land bearing Gat No.58 in Satana, Tq. Vaijapur, Dist. Aurangabad stands in the name of her husband. Her husband had taken amount of Rs.50,000/- as hand loan from applicant No.1. At that time applicant No.1 had put condition that 20 Gunthas of land from 1½ acre should be given by way of sale deed, then only he would give hand loan. Accordingly, the sale deed was executed by Yogesh in favour of applicant No.1. She has also stated that Yogesh had taken hand loan of Rs.1,00,000/- about a year prior to First Information Report from applicant No.2, who is real brother of applicant No.1. A separate sale deed was executed in favour of applicant No.2 in respect of 20 Gunthas of land from remaining land of Gat No.58. She also states that amount of Rs.20,000/- was taken as hand loan by her husband from one Bhanudas Laxman Sakhare. Then she states that all the three persons were harassing her husband by saying that he should give possession of respective pieces of land to them. Yogesh used to say that he would return the amount and they should execute the exchanged document then. Yogesh was abused and assaulted and threatened to kill by the three persons. Applicants used to visit the house of Yogesh frequently and used to pressurize him for parting with possession. The applicants were continuously harassing and giving threats to kill to Yogesh. Informant says that she went to the field around 11.00 a.m. on 19.07.2022. Her children

were out of the house. She returned home around 6.00 p.m. The door of house was latched from inside and son Soham was playing outside the house. Informant asked Soham as to when his father has slept and why he is not opening the door. Soham told that he returned around 12.00 p.m. and since then he called father to open the door, but father is not opening it and, therefore, he is playing outside the house. They tried to wake Yogesh up, but there was no response. Therefore, she piped from the window and found that Yogesh has hanged himself to the angle of the house. Thereafter, she called the relatives and then door of the house was forcibly opened. Yogesh was brought down. She found mobile of Yogesh in his pocket and there was also one chit, that was found in his pocket along with mobile. Even in the mobile there was a video made by Yogesh informing similarly as per the suicide note and, therefore, the informant lodged First Information Report on 20.07.2022. The learned Advocate for applicants submits that present applicants have lodged a civil suit i.e. Regular Civil Suit No.473/2022 against informant on 16.11.2022 and they had filed an application for interim injunction at Exh.5. Present informant has also filed counter claim and sought temporary injunction by filing application Exh.22. Common order was passed by learned 2nd Joint Civil Judge Junior Division, Vaijapur on 08.03.2023, thereby allowing both the applications and both the parties were directed to maintain status quo till the final decision of the suit. The present

applicants preferred Miscellaneous Civil Appeal No.20/2023 and by order dated 07.12.2023 learned Adhoc District Judge-2, Vaijapur modified the order by allowing the appeal. Application Exh.5 i.e. application filed for temporary injunction by applicants was allowed and informant and others have been restrained from disturbing the possession of plaintiffs i.e. present applicants over the suit property till the decision of the suit. The informant approached this Court by filing Writ Petition No.2638 of 2024 and by order dated 04.02.2025 Hon'ble the Single Bench of this Court dismissed the petition holding that *prima facie* there is evidence to show that present applicants are in possession of the suit property. In fact, if we consider both the sale deeds i.e. in favour of applicant Nos.1 and 2 respectively executed on different dates, then it can be seen that in respect of applicant No.1, 20 Gunthas of land was sold for Rs.3,02,000/-. The informant was party to the document. The entire amount of Rs.3,02,000/- was sent to the bank account of Yogesh through RTGS. The sale deed in favour of applicant No.2 for 20 Gunthas was also for Rs.3,02,000/- and that amount was also given through RTGS on the bank account of Yogesh. The informant is also party to the said document also. Therefore, it cannot be stated that amount of Rs.50,000/- and Rs.1,00,000/- was only taken as hand loan. There was no question of harassing the deceased.

5 Learned Advocate for applicants further submits that as regards suicide note is concerned, it was sent for Handwriting Expert's opinion, but then the Handwriting Expert requested for natural handwriting of the deceased. By communication dated 08.02.2023 the Investigating Officer informed the Handwriting Expert that he had contacted the informant and asked for some more pieces of natural handwriting of deceased, but she expressed inability and, therefore, it was stated that the opinion should be given only on the basis of whatever was sent. Some copies of loan application forms or opening of Savings Account in the bank appears to have been collected and sent, however, the Handwriting Expert's opinion has not been received. As regards the video recording is concerned, the Forensic Science Laboratory, Aurangabad has given a report that since the sample of voice of deceased was not made available, it is not possible for them to analyse the video recording. In spite of all these things if we take the things as it is; yet, the ingredients of offence are not made out. Learned Advocate for applicants relies on the decision in **Mahendra Awase vs. State of Madhya Pradesh** [(2025) 4 SCC 801], **V.P. Singh etc. vs. State of Punjab and others** [2022 SCC OnLine SC 1999] and **Madan Mohan Singh vs. State of Gujarat and another** [(2010) 8 SCC 628] to support his contention that the ingredients are not attracted.

6 Per contra, learned APP and learned Advocate appointed to represent the cause of respondent No.3 – original informant strongly opposed the application and submit that now the investigation is over and charge sheet is filed. Let there be trial. The informant being the wife of deceased was aware about what was happening in the life of deceased. Though it is stated that sale deeds were executed for 20 Gunthas each separately in favour of applicant Nos.1 and 2, this fact is admitted by informant in her First Information Report, but she states that real nature of transaction was different and it is now the subject-matter before the Civil Court. Deceased has left suicide note in writing as well as has made the videography of his last statement leading to the reason for his death. Being the electronic document that can be considered as a Dying Declaration and that can be proved. Everything need not be through a third expert but the near relative can also prove the handwriting and signature as well as can prove the voice of deceased. Therefore, when the circumstances amounting to abetment have been narrated, then let there be a trial.

7 Here, we would also like to rely on **Madan Mohan Singh** (supra), which carves out as to what should be proved or brought on record, even at the *prima facie* stage. In other words, what are the ingredients that those are required to be seen when there is offence under Section 306 of the Indian

Penal Code have been stated in paragraph No.12, which is reproduced thus -

“In order to bring out an offence under Section 306 IPC specific abetment as contemplated by Section 107 IPC on the part of the accused with an intention to bring about the suicide of the person concerned as a result of that abetment is required. The intention of the accused to aid or to instigate or to abet the deceased to commit suicide is a must for this particular offence under Section 306 IPC. We are of the clear opinion that there is no question of there being any material for offence under Section 306 IPC either in the FIR or in the so-called suicide note.”

7.1 Further, in **Mahendra Awase** (supra) it has been observed that -

“14. In **Madan Mohan Singh vs. State of Gujarat and another** [(2010) 8 SCC 628] this Court held that in order to bring out an offence under Section 306 IPC specific abetment as contemplated by Section 107 IPC on the part of the accused with an intention to bring about the suicide of the person concerned as a result of that abetment is required. It was further held that the intention of the accused to aid or to instigate or to abet the deceased to commit suicide is a must for attracting Section 306.”

It reiterates paragraph No.12 from **Madan Mohan Singh** (supra) and further observes in paragraph No.16 that -

“In order to bring a case within the purview of Section 306 IPC there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide

must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide. Therefore, the act of abetment by the person charged with the said offence must be proved and established by the prosecution before he could be convicted under Section 306 IPC.”

Therefore, we cannot confine ourselves to the charge sheet only in the matter but also the legal proceedings those have come up though after the First Information Report are required to be considered. The copies of both sale deeds have been collected by Investigating Officer and those are on record. When informant is party to both the documents, then it is hard to believe that the real nature of transaction was different. Even if for the sake of arguments it is accepted that at the time when sale deeds were executed i.e. on 25.05.2021 and 09.12.2021 the hand loan was taken, then in the entire First Information Report there is absolutely no mention that at any point of time Yogesh had tried to return even part of the loan amount. Further, we will have to consider the nexus. Taking into consideration the dates of sale deed; the suicide has been committed on 19.07.2022 i.e. after about one year to 6-7 months, therefore, the said nexus is also not established. The informant has tried to say that many times the applicants had assaulted and abused her husband, but at no point of time it appears that he had ever approached Police Station. He had not even approached the Civil Court to protect his alleged possession. When and where those

instances of the assault and abuse had taken place has not been explained by her and it appears that all those alleged acts of harassment have been kept as vague as they can be. The transcript has been produced as regards the video clip amounting to Dying Declaration and it is also reflected in statement of nephew of deceased by name Aditya Arun Somwanshi. Even if we take the statement as it is, it is also not giving details. It is stated that he has committed suicide due to harassment in the nature of giving threats to kill by present applicants as well as said Bhanudas Laxman Sakhare. Even if we take the suicide note as it is, it is the same. In the suicide note it is stated that Bhanudas Sakhare has falsely implicated him in an offence and cheated him. How Bhanudas Sakhare is connected to the present applicants has not been stated. In the suicide note it is stated that though the registry has been taken by present applicants by paying the amount; yet, they were saying that without taking the amount he should give the pieces of land, otherwise he would be killed. As aforesaid, in the sale deed it is stated that he has received the amount in both the sale deeds through RTGS in his bank account. If he had not received the amount, he ought to have agitated it and he had the opportunity to get his grievances redressed. The statement of account of bank appears to have not been collected by Investigating Officer. The Investigating Officer could have also made investigation as to from which bank account of applicants they had transferred the said amount and through

RTGS in the bank account of deceased. Now, the prosecution is also relying upon CDR and SDR showing the conversation between deceased and applicants even after the execution of sale deeds. According to us, the said entry regarding conversation cannot be taken as evidence of threat calls. At the most, it would show the conversation, not more than that.

8 Therefore, taking into consideration the analysis of facts as well as law, we are of the opinion that contents of charge sheet do not *prima facie* attract the ingredients of Section 107 and 306 of the Indian Penal Code and, therefore, it would be an abuse of process of law if the applicants are asked to face the trial. Hence, following order.

ORDER

- i) Criminal Application stands allowed.
- ii) The proceedings in Sessions Case No.161/2023 pending before learned Additional Sessions Judge, Vaijapur, Tq. Vaijapur, Dist. Aurangabad, arising out of First Information Report vide Crime No.289/2022 dated 19.07.2022 registered with Police Station, Vaijapur, for the offence punishable under Sections 306, 323, 504, 506 read with Section 34 of the Indian Penal Code, 1860, stands quashed and set aside as against applicant Nos.1) **Ganesh Duryodhan Naik** and 2) **Ramdas Duryodhan Naik**.

iii) Fees of the appointed Advocate is quantified at Rs.8,000/- (Rupees Eight Thousand only), to be paid by High Court Legal Services Sub Committee, Aurangabad.

(SANJAY A. DESHMUKH, J.)

(SMT. VIBHA KANKANWADI, J.)

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