



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

CRIMINAL APPLICATION NO. 2522 OF 2021

1. Raosaheb S/o Madhavrao Upase
Age : 67 years, Occ : Agri.,
R/o Hibbat, Tq. Mukhed,
Dist. Nanded.
2. Vijaymala W/o Raosaheb Upase
Age : 61 years, Occ : Household,
R/o as above.
3. Nagnath S/o. Madhavrao Umate
Age : 67 years, Occ : Agri.,
R/o Pala, Tq. Mukhed,
Dist. Nanded.

..APPLICANTS

-VERSUS-

1. The State of Maharashtra
Through Police Station,
Mukhed, Dist. Nanded.
2. Satish S/o Ashokrao Munde
Age : 31 years, Occ : Agri.,
R/o Hibbat, Tq. Mukhed,
Dist. Nanded.

..RESPONDENTS

Advocate for the applicants : Mr. Suraj R. Bagal h/f Mr. Bharat N.
Badegaonkar

APP for Respondent- State : Mr. N.R. Dayama

Advocates for respondent No.2 : Mr. Bipinchandra K. Patil

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

DATED : 7th JANUARY, 2025

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

. The applicants in the present matter are arrayed as accused Nos.1, 2 and 4 in an offence registered with Mukhed Police Station, Dist.Nanded on 08.09.2021, vide C.R. No. 0265/2021 on a report lodged by respondent No.2 for offence of abetment to commit suicide punishable under Section 306 read with Section 34 of the Indian Penal Code (I.P.C.). Accused No.3 is son of accused nos.1 and 2.

2. The father of respondent No.2 late Ashokrao Patane (Hereinafter referred to as “the deceased”) has committed suicide by consuming some insecticide in the night intervening 07.09.2021 and 08.09.2021. Respondent No.2 has lodged the above F.I.R. in relation to his suicidal death.

3. Respondent No.2 has stated in the F.I.R. that the deceased had obtained a loan of Rs.2,00,000/- from accused No.1 somewhere in the year 2004 in order to augment funds for education of his two sons, who are younger than respondent No.2. He claims that in order to obtain security for the said loan, accused No.1 got two sale deeds executed from the deceased in favour of his son Venkatesh, who is accused No.3. Respondent No.2 claims that the loan amount was returned along with interest by the deceased in the year 2009 itself. He

claims that possession of the lands sold as security to accused No.1 was retained by the deceased and his family members and they were cultivating the said land. He claims that the deceased had repeatedly asked accused No.1 to execute the document of reconveyance of the property in his favour, however, accused No.1 avoided the same making excuses. He then claims that in the year 2020, accused No.1 bluntly refused to return the lands to the deceased and also started making attempt to take forcible possession thereof. He has alleged that accused Nos.1 to 4 used to repeatedly visit the house asking to deliver the possession of the said property. Apart from this, even at places where the accused and deceased used to meet, they would exert pressure for delivering possession of the land.

4. On the basis of this report, F.I.R. has been registered against the applicants and Venkatesh for the offence punishable under Section 306 read with Section 34 of the I.P.C.

5. Respondent No.1 has conducted the investigation and has filed Charge-Sheet in the matter bearing Final Report No.146/2023. The learned Magistrate has committed the case to the learned Sessions Court, pursuant to which Sessions Case No.17/2024 is registered which is pending for adjudication before the learned Sessions Judge, Mukhed,

Dist.Nanded.

6. The charge-sheet contains a suicide note dated 02.09.2021 purportedly written by the deceased disclosing the reason for committing suicide. This note was recovered from the corpse during inquest panchanama. Two separate samples/viscera collected during the course of postmortem comprising of stomach contents, large and small intestine and another containing pieces of lungs, liver, spleen, kidney heart and brain were forwarded for chemical analysis. The Regional Forensic Science Laboratory has given a report confirming presence of organophosphorus insecticide Monocropophos (Nuvacron) in both viscera samples and it is also confirmed that level of Monocrotophos (Nuvacron) detected in both viscera samples is as it is found in fatal poisoning cases involving Monocropophos. Apart from this, the suicide note was also forwarded for comparison of the handwriting with the admitted handwriting samples of the deceased. The Central Forensic Science Laboratory has given examination report dated 30.06.2023 expressing that it was not possible to link the authorship of suicide note with admitted writings and admitted signatures of the deceased. Author of the report has requested Respondent No.1 to forward more samples of handwriting and signatures for comparison. The handwriting expert report is, therefore,

inconclusive as on date.

7. Perusal of the suicide note will indicate that the deceased has stated that he had taken loan of Rs.2,00,000/- from applicant No.1 and had executed sale deeds with respect to his land towards security. The suicide note records that within a period of around three years, he had returned the principal loan amount of Rs.2,00,000/-. He states that from 2009 onwards he was requesting accused No.1 to return the security documents i.e. two sale deeds and then raises a grievance that till the year 2020, he did not return the documents on the pretext that his son was residing at Dubai and he would return the documents when his son returns. He then claims that in the year 2021, Venkatesh accused No.3 and Balasaheb another son of accused No.1 had come for marriage of their cousin and at that time, he had been to the house of accused No.1 asking to return the security documents along with 4-5 other persons. He claims that at that time, the accused persons claimed that the said land was not belonging to the deceased. The deceased has further stated that he had fed up with the harassment of money lenders and tried to commit suicide. In the suicide note, he holds accused Nos.1 to 3 and Balasaheb Upase responsible for his death.

8. The applicants have challenged the F.I.R. and consequent

criminal case on the ground that assuming the entire contents of the F.I.R., the suicide note, statements of the witnesses and other material in the charge-sheet to be true, ingredients of Sections 306 and 107 of the I.P.C. are not made out. The applicants have filed copies of two sale deeds dated 22.06.2004. These sale deeds are pertaining to 1.11 HR land and 1.00 HR land in Gut No.180 of village Hibbat, Tq.Mukhed, Dist. Nanded, for consideration mentioned in the sale deeds as Rs.87,000/- and Rs.75,000/- respectively. The applicants have also filed 7/12 extracts of the subject property showing that their names as purchasers were mutated as per the said sale deeds. Apart from this, the applicants have filed a certificate dated 13.02.2014 issued by Nanded District Central Co-operative Bank Ltd., Nanded, in which it is stated that deceased Ashok Munde had obtained the loan from the said bank and total outstanding amount of the said loan was Rs.83,570/-. The certificate further records that the deceased had sold 2.01 HR land out of Gut No.180 to accused No.3 – Venkatesh and that the purchaser Venkatesh had deposited a sum of Rs.46,400/- with the bank on 13.02.2014 and accordingly, no dues certificate was issued in favour of Venkatesh and further withdrawing the recovery notice dated 16.01.2014 issued by the Bank to him. At the foot of the notice, there is endorsement that remaining loan amount of Rs.37,110/- was to be recovered from Satish Munde and Chhabubai Munde.

9. We have heard Advocate Shri Suraj R. Bagal h/f Advocate Shri Bharat N. Badegaonkar on behalf of the applicants. He contends that the sale transactions dated 22.06.2004 are genuine transactions and not security documents. He has drawn our attention to the 7/12 extracts to contend that the sale deeds were acted upon by the parties. He has also drawn attention to the certificate dated 13.02.2014 to point out that proportionate amount of loan that was taken by the deceased was repaid by him in order to get the properties released from the bank loan. With respect to the sale deeds and the no dues certificate dated 13.02.2014, he states that although these documents are not part of the charge-sheet, the same should be taken into consideration in as much as execution of the sale deeds is admitted in the F.I.R. itself and the no dues certificate issued by the District Central Co-operative Bank is a document which cannot be doubted. As regards the contents in the suicide note, F.I.R. and statements recorded under Section 161 of the Code of Criminal Procedure, he claims that even if it is assumed that the sale deeds do not record a genuine transaction and were executed only in order to camouflage the loan transaction and further that the property was sought to be usurped on the basis of such sale deeds, the offence under Section 306 of the IPC will not be made out in as much as all that is alleged is that the applicants used to ask the deceased to

deliver possession of the property and had not returned the title deeds with respect to the said property. This according to him will not amount to abetment to commit suicide. He states that the sale deeds are dated 22.06.2004 and as per the case of the informant, respondent No.2 the entire loan amount was repaid in 2009, if the sale was not a genuine sale and loan was repaid in the year 2009, no person would sit idle and not take appropriate steps including legal recourse for getting reconveyance of the property. He argues that there was no intention on the part of the applicants to compel the deceased to commit suicide and that such intention can not be made out from the material gathered by the prosecution during the course of investigation. He, therefore, claims that F.I.R. and criminal case should be quashed.

10. His contention is that even if pressure being amounted for obtaining possession of the agricultural land the same would not mean that the applicants had caused abetment to the deceased to commit suicide.

11. Per-contra, Shri N.R. Dayama, learned APP representing respondent No.1 contends that the menace of illegal money lending transaction is on the rise in the State. He contends that helpless farmers and poor villagers often fall in trap of such money lenders. They are

often forced to execute sale deed with respect to their properties for offering security of loan amount. The money lenders charge interest at exorbitant rates and there are innumerable examples where even after repayment of loan, properties are not returned to helpless poor borrowers. He claims that the present case is one such case where money lenders have refused to return immovable property to the deceased despite receiving the entire loan amount leaving the helpless borrower with no other option than to take drastic action of ending his own life. He submits that contents of the suicide note are clear pointer towards harassment caused by the accused persons resulting in forcing the deceased to end his life by consuming insecticide. As regards date of suicide note which is 02.09.2021 i.e. six days prior to the date of suicide, the learned APP states that it is quite possible that the deceased was contemplating to commit suicide for certain period of time and could ultimately muster courage to do so after a few days. He states that time gap is very small, and therefore, the suicide note can not be discarded on this count. He further states that the F.I.R., statements of the witnesses and suicide note will have to be accepted as true and correct for the present, since we are not conducting the trial but considering the application under Section 482 of Cr.P.C. for quashing the F.I.R. and resultant criminal prosecution.

12. Shri. Bipinchandra K. Patil, learned Advocate for respondent No.2 has canvassed similar arguments and submitted that the F.I.R. and other material in the charge-sheet is sufficient to make out prima facie case against the applicants, and therefore, the F.I.R. and criminal case should not be nipped in the bud. He submits that the material is sufficient for framing charge against the accused for offence under Section 306 read with section 34 of the Indian Penal Code.

13. Having heard the respective Advocates and having perused the record with their able assistance, we find that the deceased has committed suicide by consuming pesticide. The Medical Analyzer's report establishes the said fact.

14. The issue is whether the applicants can be held responsible for suicidal death of the deceased and the material on record taken on its face value sufficient to establish essential ingredients of offence of abetment of commit suicide under Section 306 of the Indian Penal Code.

15. The allegations in the F.I.R. reveal that the deceased had obtained the loan of Rs.2,00,000/- from accused No.1 in the year 2004 and had sold his agricultural land admeasuring 2.11 HR to children of

accused No.1 towards security of the loan amount. As per the version of respondent No.2, the said sale transactions were sham in nature and not genuine sale transactions. The sale deeds were executed only towards security of the loan amount. It is then stated that the loan amount was refunded with interest in the year 2009 itself. Respondent No.2 claims that despite having received the loan amount with interest accused No.1 avoided to return the sale deeds and further to cancel the sale transactions right from the year 2009 till the year 2020 and thereafter in the year 2020, he bluntly refused to cancel the sale transaction. It is further alleged that accused Nos.1 to 4 used to exert pressure for delivery of possession of the agricultural lands which were all throughout is in cultivation of the deceased and his family. Respondent No.2 claims that the deceased committed suicide succumbing to the pressure exerted by the accused persons for delivery of possession of the agricultural lands offered to them towards security under two sale deeds.

16. The allegations even if accepted on its face value would at best demonstrate that the applicants were trying to take possession of the agricultural land from the deceased and were insisting that physical possession thereof be delivered to them. The dispute between the parties is in relation to nature of the sale transactions and possession of

property. The allegations in the F.I.R. as also statements of the witnesses examined during the course of investigation do not whisper about any intention on the part of the applicants to create a situation whereby the deceased would be forced to commit suicide. An intention for forcing the deceased to commit suicide can not be gathered from the entire material collected during the course of investigation including the F.I.R. and suicide note. Assuming though not admitting that the accused persons were exerting pressure for obtaining the possession of the agricultural lands purchased by them or offered to them towards security, by itself will not show any intention on their part to instigate or abet commitment of suicide by the deceased.

17. In the matter of ***S.S. Chheena Vs. Vijay Kumar Mahajan and another*** reported in ***(2010) 12 SCC 190***, the Hon'ble Supreme Court has held that abetment involves a mental process towards instigation to a person or intentionally offering any aid for doing of a particular thing or performing a particular act. Therefore, in cases of offence under Section 306 of the Indian Penal Code, the material on record must positively indicate instigation or extension of aid or assistance towards the act of deceased in committing suicide. A clear case of *mens rea* must be established in order to drive home charge of Section 306 of the I.P.C. Similar view is also taken in the matter of ***Dilip***

Ramrao Shirasrao Vs. State of Maharashtra reported in **2022 SCC Online 1732**. The Hon'ble Supreme Court has held that for allowing criminal prosecution to continue against an accused for the offence of abetment to commit suicide, the prosecution must prima facie establish an intention on the part of the accused to aid or abet the act of suicide. Unless there is material which undisputedly demonstrates clear *mens rea* in the form of active or direct act, which makes the deceased to take recourse to the drastic action that he has no other option available, the essential ingredients of Section 306 of the I.P.C. are not made out. In the absence of such prima facie material accused can not be forced to face criminal trial. The Hon'ble Supreme Court has held in the matter of ***Amalendu Pal Vs. State of West Bengal*** reported in **2010(1) SCC 707** mere harassment without any positive action on the part of the accused in close proximity with the time of suicide will not amount to an offence under Section 306 of the Indian Penal Code.

18. Guided by the above principles, we find that apart from the allegations of harassment in relation to possession of immovable property and refusal to cancel sale deeds, there is nothing to remotely infer any *mens rea* on the part of the applicants to attract an offence under Section 306 of the Indian Penal Code against them. The suicide note merely records that although loan amount was repaid in the year

2009 itself, applicant No.1 had not returned the agricultural land and despite having received the loan amount, he was trying to take forcible possession of agricultural land. The F.I.R. also reveals similar allegations.

19. It will be pertinent to mention here that the applicants have filed a certificate dated 13.02.2014 issued by Nanded District Central Co-operative Bank Ltd. Perusal of the certificate indicates that the deceased had obtained loan against agricultural land bearing Gut No.180, which was not repaid. The bank had, therefore, issued a recovery notice for the outstanding loan amount. Accused No.2 - son of the applicant Nos.1 and 2 herein has paid loan amount of Rs.45,400/- which is proportionate to the land admeasuring 2.01 HR covered under the sale deeds dated 22.06.2004, which are purportedly security documents. Based on this, the Bank has issued no dues certificate dated 13.02.2024 in favour of accused No.2. It is recorded in the said certificate that for the remaining loan amount, Satish Munde- son of the deceased and Chhabubai Munde will be liable and further that accused No.2 is fully discharged from the loan liability. The said document is undisputable in nature. Learned counsel for the applicants placed reliance on the said document during the course of hearing. Learned counsel for respondent No.2 did not dispute the said

document. Likewise, we further find that pursuant to the sale deeds executed in the year 2004, name of accused No.2 was also mutated in the revenue records. 7/12 extracts showing mutation of name of accused No.2 from the year 2004-2005 have been placed on record, which have also not been disputed during the course of hearing. The sale deeds and 7/12 extracts are also not disputed. These documents are part of charge-sheet. The sale deeds are executed in the year 2004 and the loan amount alleged to be repaid in the year 2009, despite this for a period of over 12 years, the deceased and his family members have not taken any action for cancellation of the sale deeds and for mandatory injunction to direct the accused persons to deliver the sale deeds/security documents back to them. The silence for inordinately long period of around 12 years also creates doubt as regards the prosecution case in relation to nature of transactions between the parties. It will be pertinent to mention here that all the complaints made to authorities under the Money Lending Act are of the year 2020-2021. We are not deciding the veracity of the sale transaction or title dispute between rival parties, however, we have referred to the above documents only in order to indicate that there are rival claims in respect to sale deeds, which are alleged to be security documents by respondent No.2 and his deceased father, who has committed suicide.

20. The charge-sheet contains a document titled as "Affidavit" which is in fact a complaint addressed by deceased to the District Deputy Registrar, wherein he has stated that he had borrowed a sum of Rs.3,55,000/- from accused No.2- son of applicant Nos.1 and 2, who was engaged in illegal money lending business, out of which a sum of Rs.2,00,000/- was outstanding towards the interest which the deceased was ready to pay but still accused No.2 wanted to illegal usurp the property offered to him towards security of loan amount. The contents of this complaint are contrary to the allegations in the F.I.R. that loan amount of Rs.2,00,000/- was fully repaid in the year 2009 itself. It will be pertinent to state that this document titled as Affidavit is undated. However, it is written on a stamp paper issued from State Treasury on 29.12.2020, which appears to be purchased on 03.02.2021 and acknowledgment of the receipt of the said letter is also dated 03.02.2021. Thus, contrary to the claim that the entire alleged loan amount was paid along with interest in the year 2009 itself, the contents of this complaint of the year 2021 indicate that amount of Rs.2,00,000/- was outstanding as on the date of complaint, which the deceased was ready to pay to accused No.1. The contents of this complaint are thus clearly contrary to the contents of suicide note as also the F.I.R. It will be pertinent to mention here that we are not considering the case of Venkatesh in whose name one of the sale deeds

is executed since he is not applicant before us. We however record that respondent No.2 has stated that the money lending transaction was done with applicant No.1 and security document i.e. sale deeds were executed in the names of his sons Venkatesh, accused No.2 and another son Raosaheb. However, in the complaint/affidavit submitted to office of the District Deputy Registrar on 03.02.2021 refers two sons Venkatesh and Raosaheb as money lenders. The stand of the deceased and his son respondent No.2 lack consistency with respect to allegations against the accused persons, which also create a reasonable doubt as regards veracity of allegations.

21. Apart from the above documents which show a genuine dispute between the rival parties, we have also held above that the contents of F.I.R., the suicide note and 161 statements are grossly inadequate to attribute any *mens rea* for abetment to commit suicide, and therefore, it will be completely unjustified to force the applicants to face criminal prosecution on the basis of such material.

22. The principal allegations appear to be against applicant No.1. Applicant No.2 is wife of applicant No.1. There are no allegations against her. Likewise applicant No.3 i.e. accused No.4 also appears to have been arrayed as accused in the matter for no good reason. The only allegation against applicant No.3 – Nagnath Umate is that he used

to accompany accused Nos.1 to 3 while they used to visit the residential house of the deceased asking him to deliver physical possession of the agricultural land. We find that there are no allegations either in the F.I.R., suicide note or other statements against him.

23. We are, therefore, of the opinion that the F.I.R. and consequent criminal prosecution against the applicants need to be quashed in the interest of justice. Hence, we pass the following order :-

ORDER

- (i) The application is allowed.
- (ii) The F.I.R. No.0265/2021 registered with Mukhed Police Station, Dist.Nanded on 08.09.2021 for offence punishable under Section 306 read with Section 34 of the Indian Penal Code along with Charge-Sheet No.146/2023 and Sessions Case No.17 of 2024 pending on the file of learned Sessions Court, Mukhed, Dist.Nanded are hereby quashed against applicants namely (i) Raosaheb S/o Madhavrao Upase, (ii) Vijaymala W/o Raosaheb Upase and (iii) Nagnath S/o. Madhavrao Umate.

[ROHIT W. JOSHI]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

sga/