



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

38 CRIMINAL APPLICATION NO.4018 OF 2022

- 1 Vacchalabai w/o Pralhad Jondhale,
Age 55 yrs., Occ. Household,
- 2 Mangalbai @ Bayabai w/o Ashok Khillare,
Age 54 yrs., Occ. Household,

Both are r/o Ambedkarnagar, Basmath,
Tq. Basmath, Dist. Hingoli.

... Applicants

... **Versus** ...

- 1 The State of Maharashtra
Through Police Station Officer,
Police Station, Basmath,
Tq. Basmath, Dist. Hingoli.
- 2 Anita Kishor Sarkate,
Age 40 yrs., Occ. Household,
R/o Ambedkarnagar, Basmath,
Tq. Basmath, Dist. Hingoli.

... Respondents

...

Mr. B.N. Magar, Advocate for applicants

Mr. V.K. Kotecha, APP for respondent No.1

Mr. G.K. Naik Thigle, Advocate for respondent No.2 - **absent**

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CORAM : SMT. VIBHA KANKANWADI &
MANJUSHA DESHPANDE, JJ.

DATE : 10th FEBRUARY, 2025

ORDER :

1 Present application has been filed initially for quashing First Information Report vide Crime No.383/2022 registered with Basmath City Police Station, Tq. Basmath, Dist. Hingoli on 19.09.2022 and thereafter by way of amendment for quashing Charge Sheet bearing No.301/2023 i.e. proceedings in Regular Criminal Case No.252/2023 pending before learned Judicial Magistrate First Class, Basmath, for the offence punishable under Section 306 read with Section 34 of the Indian Penal Code, 1860.

2 Heard learned Advocate Mr. B.N. Magar for applicants and learned APP Mr. V.K. Kotecha for respondent No.1. Learned Advocate for respondent No.2 is absent.

3 It has been vehemently submitted on behalf of applicants that perusal of contents of First Information Report and charge sheet will not make the offence under Sections 306, 323, 504 read with Section 34 of the Indian Penal Code. Learned Advocate for applicants has taken us through contents of First Information Report and material collected in the charge sheet. He submits that informant – respondent No.2 was admittedly not present on the day of incident, but she states about taking hand loan of

Rs.5,000/- a year prior to First Information Report on account of treatment to the deceased. She states that when after two months applicant No.1 had asked for the refund of hand loan, the informant and her husband were not having money, whereupon, applicant No.1 asked them to give their Aadhar cards, Voters cards, SBI passbook of both of them under the pretext that she would take her amount through the Bachat Gat. She did not return those documents. Thereafter, several times applicant No.1 and sometimes applicant No.2 used to make demand of the remaining amount. The informant says that they had returned about Rs.45,000/- towards loan amount but the applicants have not returned the documents of informant and her husband. Informant has relied on the information that was supplied to her by her son that in the morning there was quarrel between the present applicants and deceased. The said dispute was witnessed by several witnesses and when the present applicants had demanded the money, assaulted deceased, deceased committed suicide by hanging himself in the house. According to witness Amol Landge, the Branch Manager of one Spandana Sphurti Finance Limited, who had given loan for purchase of she goats, cow, she buffaloes, hen etc., in that group of more than four ladies such loan was given but the informant had not repaid her loan amount. Ultimately, the said bank has made the account of the informant as NPA on 07.08.2022 itself. Therefore, prior to 15.09.2022 there was no outstanding

amount in respect of that loan. In the Postmortem Report as well as the C.A. report it has come on record that there was alcoholic substance in the stomach of the deceased. Therefore, possibility of he committing suicide under the influence of liquor cannot be ruled out. Therefore, it would be unjust to ask the applicants to face the trial.

4 Learned APP has strongly opposed the application and he submits that the informant has clearly stated that the documents of informant and deceased were kept by applicant No.1 with her and in spite of repayment of huge amount towards hand loan those documents have not been returned. Just few hours prior to suicide present applicants had assaulted deceased in public on the demand of amount and demand of deceased to return the documents. It was the active role that is played by applicants and due to the harassment of applicants the suicide has been committed, which is definitely covered under the definition under Section 109 and 306 of the Indian Penal Code. Now, the charge sheet is filed, therefore, let the trial is proceed.

5 The first and the foremost is the legal position of law. We would like to take note of 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] and **S.S. Chheena vs. Vijay Kumar Mahajan** [2010 All MR (Cri) 3298 (S.C.)]. In all these cases Hon'ble Supreme Court has clarified about the ingredients those are required to be considered in a case involving Section 306 of the Indian Penal Code. Here, the postmortem report, inquest panchnama and the basic facts would certainly show that deceased Kishor Sarkate had committed suicide by hanging on 15.09.2022. Now, the question is – Whether that suicide was the result of abetment by present applicants ? As per First Information Report, the amount of Rs.5,000/- was taken somewhere around September, 2021 by deceased Kishor for his treatment. She had demanded the amount within a period of two months. At that time, the informant was not having the amount and according to her, upon the promise that the applicant would take the said amount from Bachat Gat by way of land, he would treat that the said loan amount has been mitigated. Here, in this case, the informant has not clarified as to whether the applications were presented stating to be the papers of loan by informant with the finance company. Now, when words those are used are “..... मला बचत गटाचे उचलून देतो.....” is to be interpreted. It would show that the amount has to be raised from a finance company or some other form where the amount is so disbursed as loan. For that purpose definitely documents are necessary in the form of application whether surety is to be taken or not would then depend

upon the approach of the bank and for what purpose the amount is raised. No such documents have been seized under the investigation nor it is the case of respondent No.2 that whatever the documents are with the finance company those do not bear her thumb marks. The finance company Manager Mr. Amol Landge says that they take Aadhar card and other documents along with application, but they take the original for scanning the bar code and they give the original documents to the customer. Therefore, there was no question of documents being withheld by finance company. Even if for the sake of arguments it is accepted that those documents are with the applicants and she was demanding the so called repayment of loan since about a year prior to 15.09.2022, that cannot be taken as an act of abetment for suicide.

6 We would then consider the evidence that is collected in respect of alleged incident dated 15.09.2022. For that purpose the prosecution intends to rely on the statements of Akash Kishor Sarkate – son of deceased and respondent No.2, Smt. Vachchhalabai Haribhau Bhalerao – mother of informant residing in the vicinity in same town and Ranjana Prakash Dhabdge, r/o same area. All these three persons have stated that there were altercations between present applicants, witness Vachchhalabai Bhalerao and deceased Kishor when the present applicants demanded the refund of loan from Vachchhalabai Bhalerao and Kishor. It is also stated by them that these

two applicants had then abused Kishor in filthy language. Applicant No.1 caught hold of collar of Kishor and applicant No.2 had assaulted him by chappal. They had pushed Vachchhalabai Bhalerao, as a result of which she fell down on the ground. We take this incident as it is; yet, this incident cannot be termed as an act of abetment as the intention behind the same was not at all that Kishor should go and commit suicide. Deceased Kishor could have approached police for the alleged act of applicants. In other words, he could have resorted to the legal method. In this background the lodging of First Information Report on 19.09.2022 i.e. four days after the incident appears to be an afterthought act. Even when son Akash had left father to their house and asked him to go to sleep, it appears to be that it was not in his mind nor there was any such dialogue between him and deceased Kishor that Kishor felt like committing suicide because of the act. Therefore, whatever the reaction is, does not appear to be proportionate to the alleged act of assault. We do not want to go into aspect as to whether the said suicide was as a result of drinking of liquor, but the final cause of death that has been given is “hanging with alcohol consumption”.

7

We would like to rely on the decision in **Ayyub and others vs. State of Uttar Pradesh and another** in Criminal Appeal No.461 of 2025 [@ Special Leave Petition (Cri.) No.7371 of 2024] decided on 07.02.2025,

wherein it has been observed that -

“19. By a long line of judgments, this Court has reiterated that in order to make 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 has been further held that the intention of the accused to aid or instigate or to abet the deceased to commit suicide is a must for attracting Section 306 IPC [See **Madan Mohan Singh vs. State of Gujarat and Another**, (2010) 8 SCC 628]. Further, the alleged harassment meted out should have left the victim with no other alternative but to put an end to her life and that in cases of abetment of suicide there must be proof of direct or indirect acts of incitement to commit suicide [See **Amalendu Pal alias Jhantu vs. State of West Bengal**, (2010) 1 SCC 707 and **M. Mohan vs. State**, (2011) 3 SCC 626 and **Ramesh Kumar vs. State of Chhattisgarh**, (2001) 9 SCC 618].

20. These principles have been reiterated recently by this Court in **Mahendra Awase vs. The State of Madhya Pradesh**, [2025 INSC 76].”

8 As the entire material that has been collected in the investigation fails to make out the ingredients of the offence under Section 306 of the Indian Penal Code, case is made out for interference under Section 482 of the Code of Criminal Procedure. As regards the other sections are concerned, that is Sections 323, 504 read with Section 34 of the Indian Penal Code,

those are non cognizable. With these observations, we pass following order

ORDER

- i) Criminal Application stands allowed.
- ii) Sessions Case No.10/2024 pending before learned Additional Sessions Judge, Basmath arising out of First Information Report vide Crime No.383/2022 dated 19.09.2022 registered with City Police Station, Basmath and Charge Sheet No.301/2023 i.e. proceedings in Regular Criminal Case No.252/2023, for the offence punishable under Sections 306, 323, 504 read with Section 34 of the Indian Penal Code, 1860, stands quashed and set aside as against applicants viz. 1) **Vacchalabai w/o Pralhad Jondhale** and 2) **Mangalbai @ Bayabai w/o Ashok Khillare**.

(MANJUSHA DESHPANDE, J.)

(SMT. VIBHA KANKANWADI, J.)

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