



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.4399 OF 2023

1. Kaduba s/o Tukaram Harde
Age: 49 years, Occu.: Service.,
2. Chaitanya s/o Kaduba Harde
Age: 22 years, Occu.: Education,
Both R/o. Shikshak Colony, Gangapur,
Tq. Gangapur, District Aurangabad.

.. Applicants

Versus

1. The State of Maharashtra
Through Investigation Officer,
Gangapur Police Station,
Tq. Gangapur, District Aurangabad.
2. Rameshwar s/o Nana Dahidar
Age: 32 years, Occu.: Service,
R/o. Butte Wadgaon, Tq. Gangapur,
District Aurangabad.

.. Respondents

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Mr. Ravindra V. Gore, Advocate for the applicants.

Mr. N. R. Dayama, APP for respondent No.1/State.

Ms. Pooja S. Ingle, Advocate h/f Mr. S. J. Salunke, Advocate for respondent No.2.

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

DATE : 23 JULY 2025

ORDER (Per Smt. Vibha Kankanwadi, J.) :-

. Present application has been filed for quashing the proceedings in Regular Criminal Case No.594 of 2020, pending before the learned Judicial Magistrate First Class, Gangapur, District Aurangabad arising

out of the FIR vide Crime No.152 of 2020 dated 25.04.2020 registered with Gangapur Police Station, District Aurangabad for the offences punishable under Sections 306, 323, 504, 506 read with Section 34 of Indian Penal Code.

2. Heard learned Advocate Mr. Ravindra V. Gore for the applicants, learned APP Mr. N. R. Dayama for respondent No.1 and learned Advocate Ms. Pooja S. Ingle holding for learned Advocate Mr. S. J. Salunke for respondent No.2.

3. Learned Advocate appearing for the applicant has taken us through the entire charge-sheet and submits that the present applicants are the original accused Nos.2 and 4. Respondent No.2 has filed the FIR in respect of suicide committed by his brother Dnyaneshwar on 25.04.2020. Applicant No.1 is the father-in-law of deceased Dnyaneshwar and applicant No.2 is the brother-in-law of deceased Dnyaneshwar. Applicant No.1's daughter Vidya got married to Dnyaneshwar on 02.05.2018 and they are blessed with a son by name Ved. Dnyaneshwar was blind by one eye. In the FIR respondent No.2 has stated that Vidya used to go to her parents home frequently and she was insulting Dnyaneshwar on the count at his blindness though the said state of health was known to her prior to marriage. Vidya used to pick up quarrels with Dnyaneshwar and even applicant No.1 used to support

Vidya in her behaviour. But then in the FIR itself it is stated that on 14.03.2020, Vidya went to Gangapur i.e. applicant's home without informing him. In spite of his requests, she was avoiding to join his company. Due to corona pandemic situation, his company in which Dnyaneshwar was serving was closed down on 21.03.2020. Therefore, Dnyaneshwar went to Butte Wadgaon to stay with parents on 22.03.2020. On 16.04.2020, Dnyaneshwar told to father that Vidya has given a message that the health of their son is not proper and, therefore, she would come to Butte Wadgaon. He should come to pick her up and, therefore, by informing it to father, he went to Gangapur. Around 6.45 p.m. on that day, Dnyaneshwar has given a phone call to his father and it was heard by informant's wife also that the accused persons were quarreling with him and they are not permitting him to take son Ved along with him. Though Vidya had called him, now she is refusing to come along with him. Then applicant No.1 talked on the phone that it is too much now, they would call Santosh Kaka and lodge report in the police. Thereafter, the phone was cut. In spite of efforts, the phone of Dnyaneshwar was not picked up for a while and then when the contact was established from the other side, applicant No.1 told that Dnyaneshwar has sustained burn injuries and he has been taken to Bembde Hospital. Informant went to Bembde Hospital, where he could get the information that Dnyaneshwar has sustained 95% of burn injuries

and chances of his survival is less and still they advised him to be taken to Ghati Hospital, Aurangabad. He then states that when Dnyaneshwar was brought to Ghati Hospital, he told that Vidya, her parents, brother-in-law and grandfather-in-law had abused and assaulted him and by saying that they will call police, they drove him out of the house. He was requesting applicant No.1 and Vidya that he should be allowed to take Ved along with him, but they told that he should go and die and, therefore, he poured petrol on his person and set himself to fire.

4. Learned Advocate appearing for the applicants submits that only the statements of the father of the deceased and wife of the informant are supporting the FIR, but they were admittedly not present when the incident took place. The statements of other relatives of deceased have tried to paint a picture that there were disputes between Dnyaneshwar and Vidya and Vidya was harassing Dnyaneshwar. However, it is to be seen that the statement of neighbour viz. Sachin Tenkar would show that applicant No.2 had some dispute with one person and suddenly that person set himself to blaze. The people who had gathered extinguished the fire. Prior to the FIR, on 17.04.2020, in fact, a written A.D. was taken i.e. under Section 174 of the Code of Criminal Procedure, which was by the informant himself. At that time, the story was different. In the inquiry of A.D., then statements of witnesses have been recorded. It includes statement of Talathi, Durgaprasad Falak, who resides adjacent to the

house of the applicants, wherein he has stated that one person was found caught fire in front of applicant No.1 and applicant No.1 was extinguishing the fire. The statements of other neighbours Umesh Pagare and Shivaji Sapkal are on the same line. Immediately, Dnyaneshwar was taken to Bembde Hospital and on 24.04.2020, an application was given by the investigating officer as to what were the documents with that hospital which could be helpful in the investigation. It is then written that Dnyaneshwar was brought to that hospital around 8.40 p.m. on 16.04.2020 and patient did not reveal how exactly he got burn injuries and then brother shifted patient to G.M.C.H., Aurangabad. The statement of that medical officer has also been taken, wherein he reiterates the same thing. After this preliminary inquiry, then the FIR has been lodged on 25.04.2020 with a concocted story. Even if all these things are taken as it is, yet it cannot be stated that by any stretch of imagination, the act of driving Dnyaneshwar out of the house or even saying that he should go and die would amount to abetting the commission of suicide. He relies on the decision in ***Geo Varghese vs. State of Rajasthan and another, (2021) 19 SCC 144***, wherein it is observed that to instigate means to bring about or initiate, incite someone to do something. It is also observed that in the absence of any specific allegation and material of definite nature, not imaginary or inferential one, it would be a travesty of justice, to ask the

appellant/accused to face the trial. A criminal trial is not exactly a pleasant experience and the appellant who is a teacher would certainly suffer great prejudice if he has to face prosecution on absurd allegations of irrelevant nature. He then relies on the decision in ***Binod s/o Ratan Sarkar and Ors. vs. The State of Maharashtra and Anr., [2014 ALL MR (Cri.) 1216]***, wherein it has been observed that :-

“The offence of abetment is a separate and distinct offence provided in the Act as an offence. A person, abets the doing of a thing when he instigates any person to do that thing; or (2) engages with one or more other persons in any conspiracy for the doing of that thing; or (3) intentionally aids, by act or illegal omission, the doing of that thing. These things are essential to complete abetment as a crime. The word “instigate” literally means to provoke, incite, urge on or bring about by persuasion to do any thing. The abetment may be by instigation, conspiracy or intentional aid, as provided in the three clauses of Section 107. As such, in case of abetment of suicide there must be proof of direct or indirect acts of incitement to the commission of suicide.”

Further, reliance has been placed on the decision in ***M. Mohan vs. State Represented by the Deputy Superintendent of Police, [2011 (3) Mh.L.J. (Cri.)]***, wherein it has been held that in order to convict a person under Section 306 of Indian Penal Code, there has to be a clear *mens rea* to commit the offence. The act of the accused must have been

intended to push the deceased into such a position that he/she committed suicide. Further, in ***Shabbir Hussain vs. The State of Madhya Pradesh and Ors., [Petition(s) for Special Leave to Appeal (Crl.) No(s).7284 of 2017] decided by Hon'ble Supreme Court on 26.07.2021***, it has been held that “in order to bring a case within the provision of Section 306 of Indian Penal Code, there must be a case of suicide and in the commission of the said offence, the person who is said to have been abetted the commission of suicide must have played an active role by an act of instigating or by doing a certain act to facilitate the commission of suicide”. In ***Sanju Alias Sanjay Singh Sengar vs. State of M. P., (2002) 5 SCC 371***, it has been observed thus :-

“ Reverting to the facts of the case, both the courts below have erroneously accepted the prosecution story that the suicide by the deceased is the direct result of the quarrel that had taken place on 25th July, 1998 wherein it is alleged that the appellant had used abusive language and had reportedly told the deceased 'to go and die'. For this, the courts relied on a statement of Shashi Bhushan, brother of the deceased, made under Section 161 Cr.P.C. when reportedly the deceased, after coming back from the house of the appellant, told him that the appellant had humiliated him and abused him with filthy words. The statement of Shashi Bhushan, recorded under Section 161 Cr.P.C. is annexed as annexure P-3 to this appeal and going through the statement, we find that he has not stated that the deceased had told him that the appellant had asked him 'to go and die'. Even if we accept the prosecution story that the

appellant did tell the deceased 'to go and die', that itself does not constitute the ingredient of 'instigation'. The word 'instigate' denotes incitement or urging to do some drastic or unadvisable action or to stimulate or incite. Presence of *mens rea*, therefore, is the necessary concomitant of instigation. It is common knowledge that the words uttered in a quarrel or in a spur of the moment cannot be taken to be uttered with *mens rea*. It is in a fit of anger and emotional. Secondly, the alleged abusive words, said to have been told to the deceased were on 25th July, 1998 ensued by quarrel. The deceased was found hanging on 27th July, 1998. Assuming that the deceased had taken the abusive language seriously, he had enough time in between to think over and reflect and, therefore, it cannot be said that the abusive language, which had been used by the appellant on 25th July, 1998 derived the deceased to commit suicide. Suicide by the deceased on 27th July, 1998 is not proximate to the abusive language uttered by the appellant on 25th July, 1998. The fact that the deceased committed suicide on 27th July, 1998 would itself clearly pointed out that it is not the direct result of the quarrel taken place on 25th July, 1998 when it is alleged that the appellant had used the abusive language and also told the deceased to go and die. This fact had escaped notice of the courts below.”

Similar view has been taken in ***Mahendra Awase vs. State of Madhya Pradesh, [2025 SCC OnLine SC 107]***.

5. Per contra, the learned APP for respondent No.1/State and learned Advocate for respondent No.2 strongly object the application. Learned Advocate for respondent No.2 relies on the affidavit-in-reply on

behalf of respondent No.2 i.e. informant, which is almost the reiteration of the contents of the FIR. In fact, we failed to understand as to how the points of arguments can form part of affidavit-in-reply of a party. Whether he really understands what has been written would be a question. Even the law has been pleaded in the affidavit-in-reply. Of course, it is also pleaded in the petition also which is against the doctrine of pleadings.

6. Learned APP submitted that the inquiry that was made under A.D. was consisting of both i.e. the immediate information from the informant as well as the statements of neighbouring persons of the applicants. However, the statements of the neighbours would show that they came to the spot after the chaos was raised. Ultimately, the FIR has been lodged on 25.04.2020. Therefore, we are required to consider the statements, which are taken under Section 161 of the Code of Criminal Procedure. The relatives of deceased Dnyaneshwar, who had the occasion to visit the house, have stated as to how Vidya was behaving with Dnyaneshwar. Even on the day of incident, as to what has been stated, is what is disclosed by the Dnyaneshwar by way of oral dying declaration. Therefore, certainly, when Vidya had called Dnyaneshwar, but still gave him such treatment and then the present applicants were supporting Vidya, were the acts of instigation. Now, the investigation is over and charge-sheet is filed. Therefore, let there be trial.

7. As entire facts have been narrated, we would refrain ourselves from repeating the same, but the fact remains is that in the FIR it is stated that Dnyaneshwar, his wife Vidya and their son Ved were residing at Vitava. Dnyaneshwar's parents were staying at Butte Wadgaon. Informant also resides at Butte Wadgaon. He has stated that on 14.03.2020, Dnyaneshwar had taken father to hospital and returned to Butte Wadgaon. Thereafter, he went to Vitava and found that Vidya had gone to Gangapur i.e. the applicant's house without informing. The suicide is on 16.04.2020. Now, except the alleged statement that on 16.04.2020, Dnyaneshwar had received message and phone of Vidya, there is nothing to show that they were in contact with each other for about a month. Further, in the FIR itself, it is stated that Vidya has asked Dnyaneshwar to come to Gangapur to take herself as well as son, who was ailing and then showed willingness to come to Butte Wadgaon. That means, on phone call there were no quarrels between them. Even if we take that prior to 14.03.2020 the behaviour of Vidya was not proper or of insulting nature to Dnyaneshwar, yet when the offence has been tried to be made out under Section 306 of Indian Penal Code, we will have to consider the proximity and as aforesaid, for about a month, there was no contact between Dnyaneshwar and Vidya. Now, what happened at Gangapur has been tried to be stated in the FIR in the form of phone call by the Dnyaneshwar to father and it is stated that it was heard by the

wife of informant by putting it on speaker phone. When the A.D. was lodged by the same informant, all those facts were missing. In the A.D. it is clearly stated that the applicants refused to send Vidya along with Dnyaneshwar. In A.D. it is also not stated that in fact Vidya had called him and, therefore, he went to Gangapur. Even if we take the FIR as it is and whatever was allegedly told on phone by Vidya, present applicant No.1 and even the mother-in-law, yet it gives an impression that though Vidya had called him, now she has refused to go along with him and refused to send the son along with him. There is room to infer, when it is stated that applicant No.1 also talked on phone and told that it is too much and they would call Santosh Kaka and lodge a police report. This indicates that Dnyaneshwar had gone to the house of applicants without invitation or that the present applicants had not approved the arrival of Dnyaneshwar. Thereafter, the informant states about the oral dying declaration given by Dnyaneshwar, which is specifically missing in A.D. Even if we take the oral dying declaration as it is that the present applicants had told that he should go and die, yet in the said dying declaration itself, it was stated that they had driven him out of the house. That means, they have not aided or abetted the commission of suicide. Here, the medical officer from Bembde Hospital has stated that Dnyaneshwar had not disclosed anything regarding how he sustained burn injuries. We may not go to the extent that he was not in a position

to speak, but the question that arises is that if he was in a position to speak, then immediately after he was admitted to Ghati Hospital, why his dying declaration was not got written either through Executive Magistrate or police. It is rather hard to believe that a person, who has sustained 95% to 98% of burns, was allowed to meet the relatives, in whose statements it is stated that such dying declaration has been given to them. In fact, it was the corona pandemic period and, therefore, the people were not allowed to come out of the house except in the medical emergencies. Statement of witness Ananta Vijay Kumavat under Section 161 and 164 of the Code of Criminal Procedure is important. He is the driver of Ambulance, who had taken Dnyaneshwar from Gangapur to Aurangabad. He states that applicant No.1 and his wife were not ready to go in the Ambulance. Therefore, he took Dnyaneshwar alone, but at Lasur Naka, applicant No.2 was forcibly sent along with him. He states that while driving, he made inquiry with Dnyaneshwar and Dnyaneshwar told him that he had come to take his wife, however, his wife was not sent by her family members, nor his child was shown to him. He was assaulted by his parents-in-law and therefore, in annoyance, he took petrol from his vehicle, poured it upon himself and ablazed. That means, there was no question of aiding or abetting Dnyaneshwar to commit suicide by the present applicants.

8. The decisions relied by the learned Advocate for the applicants are applicable to the facts of the present case and, therefore, we come to the conclusion that ingredients of Section 306 of Indian Penal Code are not made out and, therefore, it would be an abuse of process of law if the applicants are asked to face the trial. Hence, the following order :-

ORDER

I) Criminal Application stands allowed.

II) The proceedings in Regular Criminal Case No.594 of 2020, pending before the learned Judicial Magistrate First Class, Gangapur, District Aurangabad arising out of the FIR vide Crime No.152 of 2020 dated 25.04.2020 registered with Gangapur Police Station, District Aurangabad for the offences punishable under Sections 306, 323, 504, 506 read with Section 34 of Indian Penal Code, stands quashed and set aside as against the present applicants viz. (i) **Kaduba s/o Tukaram Harde** and (ii) **Chaitanya s/o Kaduba Harde**.

[**SANJAY A. DESHMUKH**]
JUDGE

[**SMT. VIBHA KANKANWADI**]
JUDGE

scm