



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION [APL] NO.1368 OF 2019

- 1] Smt. Kalabai @ Kalavati Jeevan Lambat,
Aged about 57 years,
Occupation-Household,
R/o. Plot No.9, Wankhede Layout,
Behind Ashirwad Mangal Karyalay,
Umred, Tahsil-Umred,
District-Nagpur.
- 2] Dhanraj s/o Keshavrao Ladekar,
Aged about 43 years,
Occupation-Service.
R/o. House No.2703, Milan Chowk,
Mangalwaripeth, Umred,
District-Nagpur. .. Applicants

..Versus ..

- 1] The State of Maharashtra,
through Police Station Officer,
Police Station, Umred,
District-Nagpur.
- 2] Praveen s/o Keshavrao Ladekar,
Aged about 38 years,
Occupation-Cultivation,
R/o. House No.2703, Milan Chowk,
Mangalwaripeth, Umred,
District-Nagpur. .. Respondents

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Shri Nitin A. Jachak, Advocate for Applicants,
Shri S.A. Ashirgade, Additional Public Prosecutor for
Respondent No.1/State.
Shri S.P. Kshirsagar, Advocate for Respondent No.2.

.....

**CORAM : NITIN B. SURYAWANSHI AND
PRAVIN S. PATIL, JJ.**

RESERVED ON : 30th JANUARY, 2025.

PRONOUNCED ON : 10th FEBRUARY, 2025.

JUDGMENT [PER : PRAVIN S. PATIL, J.]

1. Heard.
2. The present application has been filed under Section 482 of the Code of Criminal Procedure seeking quashing of Summary Criminal Case No.1017/2019 arising out of First Information Report No.286/2019 registered at Police Station, Umred, District-Nagpur for offences under Sections 309, 109 r/w 34 of the Indian Penal Code.
3. Brief facts of the case are as under :

The second respondent (hereinafter referred to as 'informant') lodged FIR against the present applicants alleging that applicant no.1, by gift-deed dated 14.11.2017, gifted the shop block namely "Laxmi Dairy and Bakeri" to him. Accordingly, on 15.3.2019, he went to the shop to take its possession from the present applicants. However, the applicants refused to hand over the possession to the informant. As such,

there was a heated argument between the applicants and informant on the issue of handing over of possession of the shop. At that time, the informant, who was carrying insecticide/poison with him, threatened the applicants by stating that if possession is not handed over to him, he will consume insecticide/poison. At that time, the present applicants told him that he should die outside the shop. Thereafter, informant consumed poison in front of the shop and attempted to commit suicide. On the basis of this information, the Police Station, Umred, Nagpur (Rural) registered Crime No.286/2019 under Sections 309, 109 r/w 34 of the Indian Penal Code against the present applicants. After completion of investigation, the same is culminated into Summary Criminal Case No.1017/2019 pending before the learned Judicial Magistrate, First Class, Umred, District-Nagpur.

4. Applicants have challenged the said FIR by way of present proceeding. It is the submission of the applicants that there is a dispute between the parties arising out of property i.e. "Laxmi Dairy and Bakeri" shop. It is their contention that informant, on the basis of gift-deed dated 14.11.2017, was

seeking possession of the shop, whereas the applicant no.1 had challenged the said gift-deed by filing Regular Civil Suit No.34/2019 before the learned Civil Judge, Junior Division, Umred. Further submission of the applicants is that the FIR and criminal proceeding are nothing but abuse of process of law, as no offence is made out against them. They assert that the dispute is purely civil in nature as evidenced by the ongoing civil litigation. Moreover, the prosecution also pointed out in their affidavit that there are earlier complaints between the family of applicants as well as applicants and informant. Hence, it is stated that the allegations are motivated and mala-fide. On the basis of this submission, it is stated that the proceeding registered at Judicial Magistrate, First Class, Umred is liable to be quashed and set aside.

5. On the other hand, learned advocate for the second respondent and learned Additional Public Prosecutor supported the FIR. According to them, the allegations made in the FIR clearly makes out a case under Sections 309, 109 r/w 34 of the Indian Penal Code against the applicants and, therefore, the FIR is not liable to be quashed.

6. For considering the merits of the matter, it is apt to reproduce the relevant provisions i.e. Sections 107, 109 and 309 of the Indian Penal Code :

107 – Abetment of a thing – A person abets the doing of a thing who -

First – Instigates any person to do that thing; or

Secondly – Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly – Intentionally aids, by any act or illegal omission, the doing of that thing.

109 – Punishment of abetment if the act abetted is committed in consequence and where no express provision is made for its punishment – *Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.*

309. Attempt to commit suicide. - *Whoever attempts to commit suicide and does any act towards the commission of such offence, shall be punished with simple imprisonment for a term which may extend to one year or with fine, or with both.”*

7. On plain reading of Section 309 of the Indian Penal Code, it is clear that it is attracted against a person who attempts to commit suicide. The words used therein are “whoever attempts to commit suicide and does any act towards the commission of such offence shall be punished.....”. Thus, the informant/second respondent ought to have been made accused in the present case as he had attempted to commit suicide. Instead of making him accused, he is shown as informant and the applicants are arrayed as accused in the present case. It is nothing but abuse of process of law.

8. In respect of offence under Section 107 of the Indian Penal Code registered against the applicants, it is necessary to refer the judgment of the Hon’ble Supreme Court of India in case of *Sanju alias Sanjay Singh Sengar .vs. State of Madhya Pradesh*, reported in *AIR 2002 SC 1998*, in which it is held that accused telling the deceased ‘to go and die’ would not constitute ingredient of ‘instigation’. Presence of *means rea* is necessary concomitant of instigation. Likewise, Hon’ble Supreme Court in case of *Ramesh Kumar .vs. State of Chhattisgarh, (2001) 9 SCC 618*, while considering the offence under Section 306 of the

Indian Penal Code, held that “A word uttered in a fit of anger or emotion without intending the consequences to actually follow can’t be said to be instigation.” It is held that the word ‘instigate’ denotes incitement or urging to do some drastic or unadvisable action or to stimulate or incite. Presence of *means rea*, therefore, is the necessary concomitant of instigation. It is common knowledge that the words uttered in a quarrel or in a spur of moment can’t be taken to be uttered with *means rea*.

9. In the case in hand also, it is alleged by the prosecution that when second respondent threatened to commit suicide if possession is not given, applicants asked the second respondent to commit suicide after going out of the shop. This by itself by no stretch of imagination and in the light of aforesaid observations can be said to be an abetment or instigation on the part of the applicants to the second respondent. In this view of the matter also, the prosecution against the applicants cannot be sustained on any count, as necessary ingredients of Section 107 of the Indian Penal Code are totally absent in the present case. Thus, the FIR, even if, is

taken as it is and the prosecution case is accepted in entirety, it does not make out any case against the applicants for commission of offence under Sections 309, 109 r/w 34 of the Indian Penal Code. Continuation of the prosecution against the applicants on the basis of the FIR in question is, therefore, an abuse of process of law.

10. Admittedly, there is a civil dispute pending between the applicants and the second respondent. An order of injunction is passed in favour of the applicants restraining the informant from entering into the shop. Therefore, the present prosecution appears to be lodged against the applicants with a view to pressurize them and due to personal grudge. As such, the case of applicants squarely covers the principles of law enunciated by Hon'ble Apex Court of India in ***State of Haryana and others .vs. Bhajan Lal and others, reported in 1992 (supp) 1 SCC 335.***

11. In view of aforesaid, prosecution lodged against the applicants deserves to be quashed in exercise of our inherent powers under Section 482 of the Code of Criminal Procedure.

Hence, we pass the following order :

ORDER

(I) The application is allowed.

(ii) Summary Criminal Case No.1017/2019, arising out of First Information Report No.286/2019, registered under Sections 309 and 109 r/w 34 of the Indian Penal Code, pending before the learned Judicial Magistrate, First Class, Umred, District-Nagpur, is hereby quashed and set aside.

12. Rule is made absolute in the above terms.

(Pravin S. Patil, J.)

(Nitin B. Suryawanshi, J.)