
(2015) 08 BOM CK 0041

In the Bombay High Court

Case No : Criminal Application (Apl) No. 283 of 2015

Anita and Others

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 19-08-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 227, 482
Penal Code, 1860 (IPC) — Section 107, 306

Citation : (2015) 08 BOM CK 0041

Hon'ble Judges : V.M. Deshpande, J

Bench : Single Bench

Advocate : S. Zia Qazi, for the Appellant; V.A. Thakare, APP, Advocates for the Respondent

Final Decision : Allowed

Judgement

V.M. Deshpande, J—Rule. Rule made returnable forthwith. Heard finally by consent of parties.

2. By the present application under Section 482 of Code of Criminal Procedure the applicants are praying for quashing of the charge-sheet together with the order dated 11.3.2015 passed by the learned Assistant Sessions Judge, Nagpur, in Sessions Trial No. 12 of 2015 whereby the application filed on behalf of the applicants under Section 227 of Code of Criminal Procedure for discharge came to be rejected.

3. Applicant no. 1 is widow of deceased Sanjay Manohar Kubde. Applicant no. 2 is sister of applicant no. 1, applicant no. 3 is brother of applicant no. 1 whereas applicant no. 4 is the mother of applicants 2 and 3.

4. The first information report was lodged by 24.5.2014 with police station Nandanwan, Nagpur. The said report discloses that the first informant Manohar Kubde is having three sons. All the three are married and they reside separately, however in the same house.

5. Deceased Sanjay was youngest. He used to do the work as a private electrician. His marriage was performed prior to seven years of lodging of F.I.R. with applicant no. 1. She works in a private hospital. The first information report further discloses that after the marriage of Sanjay with applicant no. 1, for 2 -3 years the complainant used to reside with them. Applicant no. 1 was having more affection for her parental side rather than the matrimonial side. There used to be quarrel between deceased Sanjay and applicant no. 1 Anita. She used to taunt the first informant. The first information report also discloses that Anita used to pick up quarrel with deceased Sanjay and used to beat him.

6. Two years prior to lodging of F.I.R., at the time of Holi, a dispute arose in the house on trivial issue. Therefore, he call brother of Anita. That time in stead of giving a word of advice to applicant Anita, he started abusing deceased Sanjay.

7. On 11.4.2014 deceased Sanjay along with applicant no. 1 and his son and daughter went to Mandgaon for a marriage ceremony. On 14.4.2014 when another son of first informant, Rajendra, was doing some work for the preparation of Hanuman Jayanti, that time the house of deceased Sanjay was locked. At about 7:15 a.m. Dinesh, another son of first informant, could not notice the lock. At that time Dinesh noticed that Sanjay failed to come for performing Pooja and, therefore, he peeped inside the house and saw that Sanjay has hanged himself.

8. Somebody made a phone call to police. The door was broke open. Accidental death case was registered. That time, during the course of investigation, two chits were found in the pant of the deceased wherein it is written that the present applicants are responsible for his death.

It is pertinent to note that Sanjay committed suicide on 14.4.2014 whereas the F.I.R. came to be lodged on 25.4.2014.

9. During the course of investigation, statement of Ku.Nehali, daughter of Sanjay and applicant no. 1, was recorded. The said statement is in question and answer form. Q. Nos. 5,6,7,8,9, 15 and 16 in vernacular read thus :

10. The statements of neighbours of deceased Sanjay were also recorded. Their statements would reveal that prior to two years there was a dispute in between Sanjay and the family members of his in-laws. Their statements also that Sanjay used to drink. In the two chits found in the pant of the deceased, the names of present applicants find place. It would be useful to reproduce the suicide notes below :

11. According to learned counsel for the applicants, even if the entire prosecution case is taken as it is, it is clear that the applicants cannot be held responsible for the suicide of Sanjay. It would be useful to refer to the observations of Hon''ble Apex Court in Madan Mohan Singh vs. State of Gujarat - 2010 ALL MR (Cri) 3245 (SC). Para 12 of the said judgment reads 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."

12. In paragraph 28, the Apex Court in *S.S. Chheena Vs. Vijay Kumar Mahajan and Another*, (2010) 4 Crimes 101 : (2010) 8 JT 331 : (2010) 12 SCC 190 : (2011) 2 SCC(Cri) 465 : (2010) 9 SCR 1111 observed as under :

"Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. The intention of the legislature and the ratio of the cases decided by this Court is clear that in order to convict a person under Section 306 IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased commit suicide seeing no option and that act must have been intended to push the deceased into such a position that he committed suicide."

13. It could be seen from the first suicide note that applicants 2 to 4 were taking money of applicant no. 1 and they used to raise a dispute and, therefore, he has committed suicide.

14. Insofar as second suicide note is concerned, it shows that the applicants were taking the salary amount of his wife and used to raise a dispute and, therefore, he has committed suicide.

15. From the aforesaid suicide notes it is clear that no intention on the part of any of the applicant is spelt out. That any quarrel or dispute was raised with the deceased with an intention that the deceased should commit suicide. It appears that the deceased was annoyed that the salary of his wife is being spent by the applicants. Further, even from the statements of the neighbours it is clear that the dispute occurred prior to two years of filing of the first information report.

16. Even the statement of Nehali, in my view, shows that the applicants are not responsible for the death of Sanjay. In that view of the matter, this Court exercises its inherent discretion to quash the charge-sheet filed against the present applicants and also set aside the order passed by the learned Assistant Session Judge, Nagpur, dated 11.3.2015 in Sessions Trial No. 12 of 2015 rejecting the application filed under Section 227 of Code of Criminal Procedure. Criminal application is allowed. Rule is made absolute in above terms.