

(2017) 03 BOM CK 0118

In the Bombay High Court

Case No : Criminal Application No. 3149 of 2016

Dr. Shivanand s/o Shivraj Biradar

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 02-03-2017

Acts Referred:

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

Citation : (2017) 1 AIRBomRCri 915 : (2017) ALLMRCri 1401 : (2017) 2 BomCR(Cri) 38 : (2017) 2 MhLJCrI 727

Hon'ble Judges : S.S. Shinde and K.K. Sonawane, JJ.

Bench : Division Bench

Advocate : Mr. Sachin S. Deshmukh Advocate, for the Applicant; Mr. D.R. Kale, A.P.P, for the Respondent No.1; Mr. Ajinkya Kale, Advocate h/f. Mr. S.B. Talekar, Advocate, for the Respondent No.2

Final Decision : Allowed

Judgement

S.S. Shinde, J.—Rule. Rule made returnable forthwith and heard finally with the consent of the learned counsel appearing for the parties.

2. This Application is filed by the Applicant praying therein to quash and set aside the impugned First Information Report bearing Crime No.43 of 2016 for the offence punishable under Section 306 of the Indian Penal Code dated 28th February 2016 registered with Murud Police Station, Taluka and District Latur.

3. It is the case of the Applicant that Baban Surwase was working as driver on the vehicle of Rural Hospital Murud. Respondent No.2 Gurudeo Baban Surwase, son of deceased Baban, who is informant in this case, in one of the incident, had driven the vehicle of department, which he was not supposed to drive and consequently met with an accident on 7th October 2014, wherein Crime No.97 of 2014, has been registered with Murud Police Station for the offence punishable under Section 279, 338, 304A of the Indian Penal Code, and Section 184 of the Motor Vehicles Act, and the trial is pending before the learned J.M.F.C. It is the

further case of the Applicant that, when the deceased Baban was assigned the duties at Nashik for Sinhastha, with vehicle bearing registration No. MH24 F6377 on deputation for the period of one month, on 29th September 2015, while returning back he met with an accident and sustained injuries to his hand, neck and head and thereafter deceased Baban had chosen to remain absent from duties. On 28th December 2016 Baban, father of Respondent No.2 committed suicide by strangulating himself. It is the case of the Applicant that after delay of almost twelve hours crime came to be registered under Section 306 of the Indian Penal Code with frivolous allegations as against the Applicant, which deserves to be quashed and set aside to avoid gross abuse of process of law.

4. Learned counsel for the Applicant submits that there were certain complaints about discharge of duties by deceased Baban Surwase as in one of the incident, Respondent No.2, son of deceased Baban, had driven the vehicle of the department though he was not employed by the department and was not supposed to drive the same. When Respondent No.2 was driving the vehicle of the department, met with an accident on 7th October 2014 wherein Crime No.97 of 2014, has been registered with Murud Police Station and Respondent No.2 is charge-sheeted for the offence punishable under Sections 279, 338, 304A of the Indian Penal Code and Section 184 of the Motor Vehicles Act. The learned counsel appearing for the Applicant has invited our attention to the copy of the charge-sheet. He further submits that coupled with the registration of aforementioned offence against Respondent No.2, when deceased Baban was assigned the duties at Nashik for Sinhastha, with vehicle bearing registration No. MH24 F6377 on deputation for a period of one month, while returning back, deceased Baban met with an accident and consequently remained absent from duties. The said fact was reported by the Medical Superintendent, Rural Hospital to District Civil Surgeon on 29th September 2015. Deceased Baban did not report on his duties therefore Applicant written letter to him stating that deceased Baban would bear the expenses required for the repair work of the official vehicle bearing registration No. MH24 F6377. The absence of deceased Baban was reported by the Applicant to District Civil Surgeon by his letter dated 9th October, 2015, which further makes a reference submitting the vehicle fitness certificate in the wake of occurrence of accident dated 28th September, 2015 and sustaining injuries to the hand, head and neck.

5. Learned counsel appearing for the Applicant further submitted that deceased Baban was treated as outdoor patient on 5th October 2015 with Rural Hospital itself. It is evident from the record maintained in the Rural Hospital itself that on several occasions the deceased Baban was asked to resume the duties, however he avoided to resume the duties. Learned counsel appearing for the Applicant invites our attention to the contents of the letter dated 12th December, 2015, copy of which is placed on record. It is submitted that since Baban remained absent from duties after occurrence of the accident on 29th September 2015, said Baban committed suicide on 28th February 2016 by strangulating himself. Initially, crime as an accidental death bearing Crime No.11 of 2016 was

registered. However Respondent No.2, who is also an accused and is charge-sheeted in Crime No.97 of 2014 for the offence punishable under Sections 279, 338, 304A of the Indian Penal Code and Section 184 of the Motor Vehicles Act, for using unauthorized vehicle of the department, presented complaint with the police station at about 6.37 p.m. after the inordinate delay of more than twelve hours with an unexplained delay, with allegations that the present Applicant is responsible for commission of an offence wherein his father Baban has strangled himself. In fact deceased Baban, avoided to resume the duties in the wake of accident dated 29th September 2015 to the vehicle bearing registration No. MH24 F6377 wherein he sustained injuries, is evident from his own letter. Moreover, the ingredients of Section 306 of the I.P. Code are not attracted at all nor even perusal of F.I.R. satisfy the necessary ingredients. As such, the impugned F.I.R. is nothing but gross abuse of process of law. Apart from the same, the learned counsel appearing for the Applicant submits that the informant in the present case, is accused of driving the unauthorized vehicle of the department resulting into accident and consequently Crime No.97 of 2014 with Murud police station is registered against him and trial is pending.

6. It is submitted that the complaint is lodged with a solitary object to counter the registration of crime against the informant after inordinate delay of twelve hours. Equally, there is complete absence of proximate reason for commission of offence. Applicant is Medical Superintendent and there is no criminal antecedent against present Applicant. It is submitted that Applicant neither abetted or aided in alleged act of commission of suicide and therefore the F.I.R. deserves to be quashed.

7. Learned counsel appearing for the Applicant submits that the Supreme Court in the case of Madan Mohan Singh v. State of Gujarat and another, 2010 A.I.R. S.C.W. 5101, while dealing with the similar fact situation like in the present case, has taken a view that the intention of the accused to aid or to instigate or to abet the deceased to commit suicide is a must for offence under Section 306 of the I.P. Code. It is further observed by the Supreme Court that the Courts have to be extremely careful as the main person is not available for cross-examination by the accused. Unless there is specific allegation and material of definite nature it would be hazardous to ask the accused to face the trial. It is further submitted that, in that case also the Appellant therein was superior officer and the person who committed suicide was driver of his official vehicle. Learned counsel appearing for the Applicant further placed reliance on the ratio laid down by the Supreme Court in the case of State of Kerala and others v. S. Unnikrishnan Nair and others, (2015) 9 Supreme Court Cases 639. In support of his submissions, learned counsel also placed reliance on the ratio laid down by the Bombay High Court, Bench at Aurangabad in unreported Judgments in the case of Tushar s/o Mahadeorao Arsul v. State of Maharashtra and another (Criminal Application No.3683 of 2012) decided on 26th November 2012, Mahesh s/o Shashikant Jape and others v. the State of Maharashtra and another (Criminal Application No.4362 of 2015) decided on 11th December 2015. Learned counsel further

placed reliance on the ratio laid down by the Bombay High Court, Bench at Nagpur in the unreported Judgment in the case of Dilip s/o Ramrao Shirasao and others v. State of Maharashtra and another (Criminal Application No.332 of 2016) dated 5th August 2016. Learned counsel appearing for the Applicant submits that the Application deserves to be allowed.

8. On the other hand, learned A.P.P. appearing for the State, relying upon the investigation papers and in particular contents of suicide note and also the opinion received from the handwriting expert that the said suicide note was written by deceased Baban, submits that the prosecution agency has collected sufficient material and on the basis of said material trial can proceed.

9. Learned counsel appearing for Respondent No.2 submits that as Applicant practically every day harassed the deceased Baban by not allowing him to join the duties and not paying the travelling allowance bill and also sending him notice to disconnect the water connection in case he fails to deposit the water charges of the official residence occupied by deceased Baban, said Baban left with no option but to commit suicide. He submits that the contents of the suicide note and other investigation papers would unequivocally indicate that the Applicant abetted and aided in the act of commission of suicide by Baban. As a matter of fact, admittedly Baban was starving due to harassment caused by the Applicant. In support of his contention that in case there is humiliation and harassment and as a result the person commits suicide, in that case the person who has caused the harassment which led to commission of suicide by the victim and in such case prayer for quashing the F.I.R. may not be considered, the counsel placed reliance on the reported Judgment of the Supreme Court in the case of Praveen Pradhan v. State of Uttaranchal and another, (2012) 9 S.C.C. 734 and also in the case of S.S. Chheena v. Vijay Kumar Mahajan and another, (2010) 12 S.C.C. 190. It is submitted that the Supreme Court in the case of Praveen Pradhan, supra, in Para 19 of the Judgment, in the facts of that case, observed that, alleged harassment had not been a casual feature, rather remained a matter of persistent harassment. The deceased therein was forced to work continuously for long durations in the factory vis-a-vis other employees. He was mercilessly harassed by the employer and ultimately he committed the suicide. Therefore, the Supreme Court declined to quash the proceedings. It is submitted that the statement of the deceased in the nature of suicide note has to be considered like dying declaration under Section 32 of the Indian Evidence Act. In support of aforesaid contentions, the counsel placed reliance on the ratio laid down by the Supreme Court in the case of Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 S.C.C. 116.

10. We have given careful consideration to the submissions made by the learned counsel appearing for the Applicant, learned A.P.P. appearing for State and learned counsel appearing for Respondent No.2. We have also carefully perused the averments in the Application, the grounds taken therein, annexures thereto and other documents placed on record, the original record of the case and also

the Judgments cited across the Bar by the counsel appearing for the parties. It is true that during investigation suicide note written by deceased Baban was seized. It appears from the perusal of the contents of the First Information Report that father of Respondent No.2, i.e. Baban committed suicide on 23rd February 2016 and left chit. In the said chit it is written that, Dr. S.S. Birajdar i.e. present Applicant did not allow him to resume the duties and also caused harassment by not paying T.A. bill, which resulted into commission of suicide by the father of the informant.

11. We have carefully perused the investigation papers and also the documents placed on record and letters written by the Applicant to deceased Baban. There is a letter written in the month of October 2015 and also on 12th December 2015 asking father of the informant i.e. deceased Baban to join the duties. Therefore, the Applicant did write letters to the deceased Baban to join the duties. Upon careful perusal of the allegations against the Applicant, it relates to his duties in official capacity. It appears from the material collected by the Investigating Officer that the Applicant asked the deceased Baban to join the duties after producing the medical certificate. Applicant further did not pay the T.A. bill and also asked Baban to deposit water charges of the water connection at his official residence and also asked the Applicant to deposit the expenses towards repair of the official vehicle since the said vehicle met with an accident which was driven by deceased Baban. In our opinion, neither of the act of the Applicant can be construed to mean that the Applicant abetted or instigated or aided the act of commission of suicide by deceased Baban. The Supreme Court in the case of Madan Mohan Singh (supra), while considering the prayer of the appellant therein for quashing the F.I.R., has made reference to the suicide note written by the deceased who was driver on the official vehicle of the appellant therein, in Para 5 of the Judgment. It appears that, in that case also the deceased who was driver, committed suicide by writing suicide note in following words:

"I am going to commit suicide due to his functioning style. Alone M.M. Singh, D.E.T. Microwave Project is responsible for my death. I pray humbly to the officers of the department that you should not cooperate as human being to defend M.M. Sigh. M.M. Singh has acted in breach of discipline disregarding the norms of discipline. I humbly request the Enquiry Officer that my wife and son may not be harassed. My life has been ruined by M.M. Singh."

The Supreme Court considered the contents of the said suicide note and in Para 8 of the Judgment, observed thus:

"We could not find anything in the FIR or in the so-called suicide note which could be suggested as abetment to commit suicide. In such matters there must be an allegation that the accused had instigated the deceased to commit suicide or secondly, had engaged with some other person in a conspiracy and lastly, that the accused had in any way aided any act or illegal omission to bring about the suicide. In spite of our best efforts and microscopic examination of the suicide note and the FIR, all that we find is that the suicide note is a rhetoric document

in the nature of a departmental complaint. It also suggests some mental imbalance on the part of the deceased which he himself describes as depression. In the so-called suicide note, it cannot be said that the accused ever intended that the driver under him should commit suicide or should end his life and did anything in that behalf. Even if it is accepted that the accused changed the duty of the driver or that the accused asked him not to take the keys of the car and to keep the keys of the car in the office itself, it does not mean that the accused intended or knew that the driver should commit suicide because of this. 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 out the suicide of the concerned person 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 note."

The Supreme Court in Para 9 of the Judgment observed that:

"It is absurd to even think that a superior officer like the appellant would intend to bring about suicide of his driver and, therefore, abet the offence. In fact, there is no nexus between the so-called suicide (if at all it is one for which also there is no material on record) and any of the alleged acts on the part of the appellant. There is no proximity either. In the prosecution under Section 306, IPC, much more material is required. The Courts have to be extremely careful as the main person is not available for cross-examination by the appellant/accused. Unless, therefore, there is specific allegation and material of definite nature (not imaginary or inferential one), it would be hazardous to ask the appellant/accused to face the trial. A criminal trial is not exactly a pleasant experience. The person like the appellant in present case who is serving in a responsible post would certainly suffer great prejudice, were he to face prosecution on absurd allegations of irrelevant nature."

12. In the case of Tushar s/o Mahadeorao Arsul (supra), the Division of the Bombay High Court, Bench at Aurangabad, in para 6 of the Judgment observed that:

"We are of the considered view that the act or acts of accused to insult do not by themselves constitute abetment. It has to be shown from a statement in the complaint that these accused have actually instigated and aided in the victim's act of committing suicide. In absence of any such description, the FIR is liable to be viewed as a text which does not contain the ingredients of offence."

13. In the case of Dilip s/o Ramrao Shirasao (supra), the Division Bench of the Bombay High Court, Bench at Nagpur considered the various Judgments of the Supreme Court and the High Court and in Para 20 of the Judgment, held thus:

"20. As has been held by Their Lordships of the Apex Court that for permitting a

trial to proceed against the accused for the offence punishable under Section 306 of the Indian Penal Code, it is necessary for the prosecution to at least prima facie establish that the accused had an intention to aid or instigate or abet the deceased to commit suicide. In the absence of availability of such material, the accused cannot be compelled to face trial for the offence punishable under Section 306 of the Indian Penal Code. As has been held by Their Lordships of the Apex Court that abetment involves mental process of instigating a person or intentionally aiding a person in doing of a thing and without a positive act on the part of the accused in aiding or instigating or abetting the deceased to commit suicide, the said persons cannot be compelled to face the trial. Unless there is clear mens rea to commit an offence or active act or direct act, which led the deceased to commit suicide seeing no option or the act intending to push the deceased into such a position, the trial against the accused under Section 306 of the Indian Penal Code, in our considered view, would be an abuse or process of law."

14. In the facts of the present case, on perusal of contents of the F.I.R. and also the suicide note, we find that the allegations against the Applicant are that the Applicant did not allow the deceased Baban to resume the duties, not paid his T.A. bills and also asked him to pay the money for repair of the official vehicle which was driven by Baban and met with an accident, and asked him to deposit the water charges else water connection will be discontinued. In our opinion all the acts attributed to the Applicant are in the official capacity. The material placed on record unequivocally indicates that the Applicant had written letters to deceased Baban to resume the duties on furnishing medical certificate. By any stretch of imagination it cannot be said that the Applicant intended or abetted or instigated the deceased Baban to commit suicide. Unless there is clear mens rea to commit an offence or active act or direct act which led the deceased to commit suicide seeing no option or the act intending to push the deceased into such a position, the trial against the Applicant under Section 306 of the I.P. Code, in our considered view, would be an abuse of process of law.

15. In that view of the matter, the Application succeeds. The Criminal Application is allowed in terms of Prayer Clause (B) to the Application. Rule made absolute in above terms.