

(2012) 10 BOM CK 0031

In the Bombay High Court

Case No : Criminal Application (APL) No. 423 of 2012

Girish Bole

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 16-10-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 155(2), 156(1), 482
Penal Code, 1860 (IPC) — Section 107, 109, 294(b), 306, 34

Citation : (2013) BomCR(Cri) 134

Hon'ble Judges : P.V. Hardas, J;A.P. Bhangale, J

Bench : Division Bench

Advocate : S.S. Dhengale, for the Appellant; T.A. Mirza, Additional Public Prosecutor for State, for the Respondent

Final Decision : Allowed

Judgement

A.P. Bhangale, J.—The applicant prayed for to quash and set aside FIR bearing no 44 of 2012 dated 16-03-2012 registered u/s 306 read with Section 34 of the Indian Penal Code at Mangrulpur Police station, District Washim against the applicant, Chaitanya Neval, Manoj Janjal, and Swapnil Tayade. The case against the applicant is that a girl Miss Ekta Ajabrao Pradhan aged about 18 years resident of Shahapur Taluka Taluka Mangarulpur decided to commit suicide at her residence by pouring kerosene on her body and setting herself ablaze on 29-02-2012 at about 10.00 p.m. While she was receiving medical treatment at Sarvopchar Rugnalaya at Akola, her dying declaration was recorded by Executive Magistrate, Akola at about 7.30 a.m. after obtaining endorsement from the doctor attending the patient Ekta, about her fitness and consciousness to give statement in the nature of dying declaration. Ekta made a statement on oath that she had poured kerosene on her body and burnt herself due to the one-sided love by Chaitanya Newal while she did not love him. He used to harass her as he was exerting pressure upon her to love him. She had informed about this to her family members. Friends of Chaitanya, namely Manoj Janjal, Swapnil Tayade and Girish were also mentally harassing her. Fed up with their

harassment she burnt herself. Doctor had certified consciousness of the maker of the statement during declaration. Police had recorded statement of witnesses who stated about the oral dying declaration made by Ekata in identical terms.

2. Learned Advocate Shri Dhengale argued that it is really unfortunate that a girl who out of frustration ended her own life but unless there is any material to show that the accused has abetted suicide by any act or omission which caused the incident of suicide, there is no ground to proceed further against him in the court. With this submission he invited our attention to the ruling in Madan Mohan Singh Vs. State of Gujarat and Another, to argue that proceedings were quashed in the absence of material to base prosecution under Sections 306 and 294(b) of the Indian Penal Code. We have perused the ruling. In that petition the accused/appellant had challenged the First Information Report (FIR) registered as C.R. No. 166 of 2008 at Naranpura Police Station. The said FIR was a long document which has been filed by one Harshida Ben, widow of Krishnalal Joshi. It was apparent from the said report that she was married to Deepakbhai Krishnalal Joshi serving in Ahmadabad Bharat Sanchar Nigam Ltd. as a driver in the Microwave Project Department. He had undergone a heart bypass surgery in the year 2002 and he was asked by the doctor to avoid lifting heavy weights. She further stated that the appellant, Madan Mohan Singh was working as a D.E.T. and her husband who was driving a Tata Sumo car was working under Madan Mohan Singh (accused herein). She then complained that Madan Mohan Singh used to tell his private errands to her husband and was harassing him. Though Madan Mohan Singh was transferred, yet he kept on continuously using her husband. In the year 2007, Madam Mohan Singh came back on transfer in the Microwave Project as D.E.T. It is alleged that on the day when Madan Mohan Singh joined, he told her husband to keep the keys of the vehicle on the table. However, according to her, her husband did not listen to that and took back the key on account of which Madan Mohan Singh had become angry and had threatened her husband of suspending him. He also rebuked her husband that if he did not listen to him, he would create difficulties for her husband. Madan Mohan Singh said to her husband as how he is still alive in spite of the insults. It is then contended that on 21.2.2008, her husband left at 10 o'clock as per rules with tiffin but did not return back in the evening and, therefore, his search was taken by his son Jatin from his colleagues like Raji Saheb and his absence was reported to the police on 22.2.2008 and 23.2.2008. Ultimately, she came to know that her husband's body was lying in the dead condition in the vehicle No. GJ 1 G 3472 at Kiran Park opposite Gayatri Hospital, New Vadaj. She also suggested further that a telephone call had come from Gujarat High Court informing her that there was a Xerox copy of the suicide note. Lastly, it is stated that during the period between 2003 to 21.2.2008 the Head of the department D.E.T. Project was entrusting his house work to her husband but her husband had not done the work entrusted to him and, therefore, he had bias against her husband and insulted him in front of the staff several times and because of this her husband got depressed and committed suicide. It is under these

circumstances the Apex Court found that there was absolutely nothing in the FIR and the alleged suicide note which was not yet on record. The Apex Court expressed that in spite of the best efforts and microscopic examination of the FIR and the suicide note, there was no material for the offence u/s 306 IPC either in the FIR or so called Suicide note. 15 pages suicide note was described as an anguish expressed by the driver who felt that his boss had wronged him. Nothing intentional was imputed to the accused so that deceased might commit suicide. In the facts of that case therefore the Apex Court was of the clear opinion and observed that there was no material for the offences u/s 306 and 294(b) of the Indian Penal code. Therefore the proceedings were quashed.

3. Now coming back to the facts of the present case it appears that the allegations are spelt out from the dying declaration of Ekta to the effect the accused Chaitanya Newal had one sided love for her but she did not love him. He was exerting pressure upon her to love him. Chaitanya's friend also mentally harassed Miss Ekta, then she got frustrated due to harassment from the accused persons and burnt herself. Statement of Ekta to her parents and Brother in the nature of oral dying declaration appears in same terms. It is not in dispute that there is no material in addition whatsoever to prima facie believe that the deceased was either instigated, or aided by the accused to commit suicide. There is no material to point out against the applicant that he had entered in to any criminal conspiracy with any of his friends for to harass the alleged victim and to drive her to commit suicide. Section 107 Indian Penal Code defines abetment of a thing. 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. Section 109 provides that if the act abetted is committed in consequence of abetment and there is no provision for the punishment of such abetment, then the offender is to be punished with the punishment provided for the original offence. "Abetted" in Section 109 means the specific offence abetted. Therefore, the offence for the abetment of which a person is charged with the abetment is normally linked with the proved offence In cases of alleged abetment of suicide there must be proof of direct or indirect acts of incitement to the commission of suicide.

4. In the landmark case of State of Haryana and others Vs. Ch. Bhajan Lal and others, the Apex Court considered in detail the provisions of Section 482 and the power of the High Court to quash criminal proceedings or FIR. The Apex Court summarized the legal position by laying down the following guidelines to be followed by High Courts in exercise of their inherent powers to quash a criminal complaint:

10. (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers u/s 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated u/s 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused. (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

5. We have considered the rival submissions at the Bar with reference to material collected during the investigation.

6. Applying the principles stated as above and perusing the material collected we agree with the submission made by Shri Dhengale. We have found that during the course of the investigation, the investigating agency could not make out any case to believe even prima facie involvement of the applicant in the accusation punishable u/s 306 read with Section 107 of the Indian Penal Code even if we assume that the entire material collected during the investigation is true. The proceeding in our opinion on the basis of available material would result in nothing except unnecessary harassment to the applicant who is young student pursuing his educational career and it may affect his career if these proceedings are allowed to continue in the Court while chances of the conviction for the offences alleged are absolutely bleak. If material collected by the investigating agency can not constitute the offence alleged, prosecution in such case would be an empty exercise in futility. It would be waste of judicial time and

public money and would result in loss of precious time of the student/applicant as well if the prosecution continues to linger on fruitlessly on the basis of omnibus and vague accusations which are not at all supported by any additional material during the investigation to justify any ground to proceed further. We therefore quash and set aside the proceedings against the applicant arising from the FIR No. 44 of 2012 dated 16-03-2012 registered by Mangrulpeer Police Station. In the result, Criminal Application is allowed in terms of prayer clause (a) thereof.