

(2019) 01 BOM CK 0133

In the Bombay High Court

Case No : Criminal Writ Petition No. 164 Of 2018

Gulab

APPELLANT

Vs

State Of Maharashtra And Ors

RESPONDENT

Date of Decision : 30-01-2019

Acts Referred:

Indian Penal Code, 1860 — Section 107, 306
Evidence Act, 1872 — Section 32(1)
Constitution Of India, 1950 — Article 226, 227

Citation : (2019) AIIMR(Cri) 753

Hon'ble Judges : S.S. Shinde, J;R.G. Avachat, J

Bench : Division Bench

Advocate : K.C. Sant, K.S. Hoke Patil, V.S. Bedre

Final Decision : Disposed Off

Judgement

R.G. Avachat, J.

1. Rule. Rule made returnable forthwith. With the consent of learned counsel for parties and learned A.P.P., heard finally.

2. By this Writ Petition, under Article 226 and 227 of the Constitution of India, the petitioner has prayed for quashment of the First Information Report ("FIR", for short), lodged by respondent No.2 with Taluka Police Station, Ahmednagar, pursuant to which C.R. No.363/2017, for the offence punishable under Section 306 of the Indian Penal Code ("IPC", for short), came to be registered.

3. Respondent No.2 - Smt. Mandubai is the widow of the deceased - Santosh Bade. She lodged FIR, impugned in this petition, alleging therein that the deceased Subhash had ancestral agricultural land, being Gut No.163, situate at Chandbibi Mahal. The petitioner and the deceased, by entering into a partnership, started hotel business on the said land. The petitioner did not give accounts of the hotel business. The hotel was closed six months after it was opened, on the ground that the partnership incurred loss in the business. It is

further alleged in the FIR that the petitioner started asking the deceased to convey the title of the agricultural land Gut No.163 in his name in consideration for the expenditure incurred by him for construction of hotel premises. The deceased had also received a notice of the court proceeding, initiated by the petitioner. In response to the notice, the deceased had been to the court. The deceased had informed the first informant that so as to ensure that the suit instituted by the petitioner against the deceased would proceed *ex parte*, the petitioner through his henchmen had prevented the deceased from causing appearance in the court proceeding.

It is further alleged in the FIR that on 14th November, 2017, between 12.00 noon and 1.00 p.m., the petitioner called on the cell phone of the deceased. The first informant, the deceased and their daughter, Priyanka were at home. The deceased switched on the speaker of the cell phone. They heard the petitioner asked the deceased to come to his home, at Bhingar and transfer the agricultural land to him, lest he would see to him. It was a threatening call. On intervening night of 14th and 15th November, 2017, the deceased committed suicide by hanging from ceiling iron pipe, at his residence. A suicide note was found on the person of the deceased. It has been mentioned in the suicide note that the petitioner claimed the deceased to have owed him Rs.3,00,000/-.

According to the first informant, the deceased committed suicide due to harassment meted out to him by the petitioner.

4. Pursuant to the FIR, lodged by the widow of the deceased (first informant), crime vide C.R. No.363/2017 has been registered against the petitioner for the offence punishable under Section 306 of the IPC. The petitioner has, therefore, preferred this Writ Petition for quashment of the FIR.

5. Mr. K.C. Sant, learned counsel appearing for the petitioner, would submit that a false FIR has been lodged with the police against the petitioner. The deceased had entered into an agreement with the petitioner on 4th December, 2012 for sale of his agricultural land. The entire consideration amount of Rs.60,000/- had already been paid to the deceased. Sale-deed was to be executed within a period of one year from the date of execution of the agreement for sale. Since the deceased did not keep his word, the petitioner instituted a suit in the Court of Civil Judge, Senior Division at Ahmednagar for specific performance of contract. The deceased had received suit summons. He did not appear before the Court. He has, therefore, been marked as *ex parte*. According to the learned counsel, the petitioner did not have any reason to compel the deceased to commit suicide. NO ingredients of the offence of abetment of suicide are attracted. Learned counsel would further submit that even if the allegations in the FIR are taken as it is and read in its entirety, *prima facie*, no offence is disclosed against the petitioner. Allowing the investigation to proceed pursuant to the FIR, would be nothing but an abuse of process of law. In support of his submissions, learned counsel for the petitioner relied on the decision in the case of M. Mohan Vs. State represented by the Deputy Superintendent of Police 2011 (3) Mh.L.J. (Cri.)127.

6. Learned A.P.P. would, on the other hand, submit that the petitioner and the deceased did hotel business in partnership. Had the petitioner really paid entire consideration amount to the deceased, the petitioner would have got executed sale deed in his favour and not the agreement for sale. The deceased had been marked exparte in the suit instituted by the petitioner. The same indicates that the allegations in the FIR are true and correct. Moreover, the deceased left behind a suicide note implicating the petitioner. The report of the handwriting expert states that the suicide note is in the handwriting of the deceased. As such, there is incriminating material to proceed against the petitioner. Learned A.P.P. ultimately urged for dismissal of the petition.

7. We have carefully considered the submissions advanced by learned counsel appearing for the petitioner and learned A.P.P. for the State. We have also perused the papers of investigation.

8. Before adverting to the factual matrix, it would be apposite to refer to the provisions of law in this regard.

9. Section 306 of the IPC reads as under:

"Abetment of suicide.- If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

Section 107 of the IPC reads as under:

"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.

Explanation 1.- A person who, by willful misrepresentation, or by willful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done,, is said to instigate the doing of that thing."

10. In the case of Ramesh Kumar Vs. State of Chhattisgarh (2001) 9 SCC 618, different shades of the meaning of word "instigation" have been examined.

11. In the case of M. Mohan vs. State Represented by the Deputy Superintendent of Police, [2011 (3) Mh.L.J. (Cri.) 127], the Supreme Court of India has observed as under:

"44. This Court in Chitresh Kumar Chopra vs. State (Govt. of NCT of Delhi), 2011(1) Mh.L.J. (Cri.) (SC) 290 = 2009 (16) SCC 605, had an occasion to deal with this aspect of abetment. The Court dealt with the dictionary meaning of the word "instigation" and "goading". The Court opined that there should be intention

to provoke, incite or encourage the doing of an act by the latter. Each person's suicidability pattern is different from the others. Each person has his own idea of self-esteem and self-respect. Therefore, it is impossible to lay down any straight-jacket formula in dealing with such cases. Each case has to be decided on the basis of its own facts and circumstances.

45. 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.

46. The intention of the Legislature and the ratio of the cases decided by this Court are clear that in order to convict a person under section 306, Indian Penal Code 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 to commit suicide seeking no option and this act must have been intended to push the deceased into such a position that he/she committed suicide.

47. In V.P. Shrivastava vs. Indian Explosives Limited and others, (2010) 10 SCC 361, this Court has held that when prima facie no case is made out against the accused, then the High Court ought to have exercised the jurisdiction under Section 482 of the Criminal Procedure Code and quashed the complaint."

12. Death by commission of suicide must have been the desired object of the abettors; and with that in view they must have instigated, goaded, urged or encouraged the victim in commission of suicide. The instigation may be by provoking or inciting the person committing suicide and this instigation may be gathered by positive acts done by the abettors or by omission in the doing of a thing. Thus, the acts or omission committed by the abettors immediately before the commission of suicide are vital. The mere fact that certain persons have been named in the suicidal note to be responsible for his death is not by itself a ground to fasten one with the charge of abetment. In terms of Section 107, it must prima facie appear to hold that the person named in the suicide note to be responsible for commission of suicide has abetted in the act. The act for conduct of the accused, even if there may be any, however, insulting and abusive those may be, will not by themselves suffice to constitute abetment of commission of suicide, unless those are reasonably capable of suggesting that the accused intended by such acts consequence of suicide.

13. Let us now examine the allegations in the FIR and material collected during the investigation so far made, so as to find whether a prima facie case is made out to proceed against the petitioner.

14. Admittedly, the deceased died because of hanging. The FIR has been lodged by his widow. The allegations in the FIR, in verbatim, read as under:

"????????? ????? ?????????????? ?????????? ?????????? ?????? ?????? ?????? ?? ??? ??????
? ?????? ?????? ?????? ????? ??, ??? ?????? ?? ?????????? ?????? ??? ?????? ??? ?????? ??? ??
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The above quoted allegations are hearsay in nature. We are conscious of the fact that these allegations might be relevant under Section 32 (1) of the Indian Evidence Act, 1872. Those allegations have, however, not been reflected in the suicide note. The petitioner produced on record some material in the nature of public documents. The documents produced on record by the petitioner are certified copies of the plaint in RCS No.322 of 2016 and the roznama thereof. Moreover, the facts proposed to be brought on record, by production of these documents, have, in fact, been admitted by the first informant. The petitioner filed a suit, being Regular Civil Suit (RCS) No.322 of 2016, for specific performance of agreement for sale executed by the deceased in his favour. Admittedly, the deceased had received the suit summons. He appears to have preferred not to cause appearance in the suit. He was, therefore, marked exparte.

15. 'Intention' is one of the main ingredients of the offence of abetment of suicide. When a person owes from the other and for the recovery thereof, initiates legal proceedings, by no stretch of imagination, one could infer that the person initiating such proceeding, would instigate his debtor to commit suicide. By doing so, the wrong doer is going to get nothing but to face music.

16. The allegations in the FIR, in verbatim, read as under:

"???.14.11.2017 ????? ??????? 12.00 ?? 13.00 ??, ?? ?????????? ??, ?????? ??? ?????? ? ???
?? ?????????? ??? ?????????? ???????? ???????? ?????????? ??? ?????? ?????? ?????? ?????? ??????
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????? ?????????? ?????????? ??? ??, ?????????? ?????? ?????? ??????, ??? ?? ?????? ??? ??? ?????."

The above quoted allegations are prima facie found to be unfounded, since had the deceased really received threatening call from the petitioner, the deceased would have made mention thereof in the suicide note. The contents of the suicide note, in verbatim, read as under:

"????? ?????? ?????????? ?? ?????? ?????????????? ?????? ??? ??????????
600000 ??? ?????? ?????? ?????? ??? ?????? ?????? ?? ?????? ?????? ?? ??? ??? ?????. "

17. What can be gathered from the contents of the suicide note is that the deceased decided to end his life since the petitioner claimed to have owed from him (deceased) Rs.3,00,000/- instead of Rs.60,000/-. There is not a whisper in the suicide note that the petitioner tortured the deceased or gave threats to his life on 14th November, 2017, as alleged in the FIR.

18. The Investigating Officer though collected the Call Details Record (CDR) of the Cell phone of the deceased, he appears to have failed to locate the alleged call.

19. True, it is unfortunate that the deceased committed suicide. It is not a case of persistent torture or harassment of the deceased. The allegations in FIR and contents of the suicide note do not even remotely suggest that the petitioner had ever tortured the deceased with a view (intention) to drive him to commit suicide. As such, on examination of the entire material on record, in the light of the relevant provisions of law and their interpretation, we reach the conclusion that there is no material to proceed against the petitioner. It would be an abuse of process of law to allow the investigation machinery to investigate into the crime pursuant to the FIR vide C.R. No.363/2017 and ultimately prosecute the petitioner therefor.

20. Consequently, the Writ Petition succeeds. In the result, the Writ Petition is allowed in terms of prayer clause "A" thereof. Rule is made absolute accordingly. The Writ Petition stands disposed of.