

(2017) 03 BOM CK 0113

In the Bombay High Court

Case No : Criminal Revision Application No. 687 of 2016

Gurunath Laxman Gawli

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 24-03-2017

Acts Referred:

Penal Code, 1860 (IPC) — Section 107, Section 306, Section 307

Citation : (2017) 2 AIRBomRCri 192 : (2017) ALLMRCri 2324 : (2017) 2 MhLJCri 521 : (2017) 2 RCRCriminal 528

Hon'ble Judges : A.M. Badar, J.

Bench : Single Bench

Advocate : Aditya Gore, Advocate, for the Applicants; S.V. Gavand, APP, for the Respondents-State; Sandeep Singh, Advocate, for the Respondent No. 2

Final Decision : Dismissed

Judgement

A.M. Badar, J. (Oral) - Petitioners Gurunath Gawli and Sangita Gawli who are accused in Crime No.455 of 2014 registered with Police Station, Mulund at the instance of Sunita Bomble, (widow of the deceased Umesh Bomble) for offences punishable under Sections 306, 323, 504, 506, 427 read with Section 34 of IPC and under Section 32B and 33 of the Bombay Money Lenders Act, by this application are challenging the order dated 21.11.2016 passed by the learned Additional Sessions Judge, Greater Bombay thereby rejecting their application for discharge in Sessions Case No.680 of 2015 and 278 of 2016 so far as offences punishable under Sections 306, 323, 504, 506 read with Section 34 of IPC and under Section 33 of the Bombay Money Lenders Act, (presently Maharashtra Money Lenders Act) are concerned.

2. Heard the learned advocate for revision petitioners/accused. By taking me extensively through the entire chargesheet and particularly, through the FIR lodged by Sunita Bomble and statements of witnesses such as Nagesh Bomble, Sanjay Patel, Datta and Shailendra Rokde, the learned Advocate argued that there are several deficiencies in statements of prosecution witnesses and it

appears that loop holes are being plugged in by recording statements of witnesses by the Investigator. It is argued that Sanjay Patel, who was employee of the deceased Umesh Bomble had not averred anything against the present revision petitioners-accused. Witness Datta has stated about the stale incident which allegedly took place prior to two months. Shailendra Rokde has stated whatever he heard from the sister of the deceased and, therefore, his statement is also of no assistance for proceeding against accused persons. The charge-sheet shows that revision petitioners-accused have not done anything on the day of incident. The learned advocate further argued that there is no documentary evidence about taking of loan by the deceased from revision petitioners-accused persons. Even the deceased had not written any suicidal note implicating revision petitioners-accused persons.

3. The learned advocate for revision petitioners-accused relied on several rulings on interpretation of Section 306 as well as Section 107 of IPC to demonstrate ingredients necessary for constituting the offence punishable under Section 306 of IPC. By placing reliance on the judgment in Criminal Writ Petition No.855 of 2013 with connected matter in Suresh Ramlu Aulwar and Ors. v. State of Maharashtra decided on 10.10.2013 by the learned Single Judge of this Court, the learned advocate argued that torments caused to the deceased are required to be coupled with the intention of the accused for making out the offence punishable under Section 306 of IPC. Reliance is placed on observations made in paragraph 18 of this judgment. By relying upon paragraph 15 of the judgment of the learned Single Judge of this Court in the matter in Criminal Writ Petition NO.2622 of 2012 Raviraj Ramchandra Deshpande v. State of Maharashtra and Anr., decided on 18.6.2014, it is argued that for making out offence punishable under Section 306 of IPC, it is necessary to demonstrate that the accused has instigated or intentionally aided or had done any act as contemplated under Section 107 of IPC which results in commission of suicide by the deceased. Reliance is also placed on paragraphs 9 and 21 of the judgment of this Court dated 25.2.2015 in Criminal Revision Application No.417 of 2013 Mr. Wasim Hussain Shaikh v. State of Maharashtra to demonstrate that even if it is assumed that the deceased committed suicide on account of humiliation felt by him due to treatment given to him by accused persons that, by itself, would not render accused persons liable for having abetted commission of suicide by the deceased. Reliance is also placed on paragraph 19 of the judgment dated 26.4.2012 of the learned Single Judge of this Court in Writ Petition No.1113 of 2011 Shivraj Shitole & Others v. State and Another decided on 26.4.2012 wherein law in respect of offence of abetment is summarised in paragraph 19 of the said judgment. To demonstrate that establishing molestation punishable under the Bombay Money Lenders Act multiple act of money lending is required, reliance is placed on the judgment of the learned Single Judge pronounced on 22.9.2015 in Writ Petition No.627 of 2015 Mandubai Vitthoba Pawar v. State of Maharashtra and others. To demonstrate that there must be reasonable certainty to incite consequences of commission of suicide by the deceased, reliance is placed on the

judgment of the Hon''ble Apex Court in the matter of Ramesh Kumar v. State of Chhatisgarh, (2001)9 SCC 618. The judgment of the Hon''ble Apex Court in the matter of Sanju alias Sanjay Singh Sengar v. State of Madhya Pradesh, AIR 2002 SC 1998 is relied to buttress the contention that mensrea is necessary ingredient of the offence of abetment. The learned advocate for revision petitioners-accused also relied upon the judgment of the Hon''ble Apex Court in the matter of Gangula Mohan Reddy v. State of Andhra Pradesh, Criminal Appeal No.1301 of 2002. D/d. 5.1.2010. and Criminal Appeal No. 1135 of 2016, Gurcharan Singh v. State of Punjab decided on 2.12.2016 by the Hon''ble Supreme Court for contending that there should be live link or nexus between the abetment and commission of result thereof. With the aid of these reported rulings, it is argued by the learned advocate for revision petitioners-accused that the evidence collected by the investigator submitted in the form of chargesheet doesnot show any instigation or abetment by revision petitioners-accused to deceased Umesh Bomble in commission of suicide by him and, therefore, they are entitled for the discharge.

4. The learned APP by placing reliance on the judgment of the Hon''ble Apex Court in the matter of Palwinder Singh v. Balwinder Singh and Others reported in AIR 2009 SC 887 argued that at the stage of discharge drawing suspicion is enough to frame the charge and marshalling or appreciation of evidence is not in the domain of the Court at the point of framing of charge. By placing reliance on the explanation to Section 107 which defines abetment, the learned APP argued that conduct of revision petitioners-accused prior to commission of act, offence, i.e. suicide by deceased Umesh Bomble shows that they had facilitated commission of suicide by Umesh Bomble, making out sufficient grounds for proceeding against them.

5. I have also heard the learned advocate appearing for the respondent no.2 i.e. the first informant.

6. The instant revision petition challenges the order rejecting the application for discharge from the offences which are mentioned in opening paragraph of this judgment. Accused persons have invoked revisional jurisdiction of this Court and it is well settled that this jurisdiction is to be exercised sparingly when there is glaring defect of procedure or manifest error on the point of law which results in miscarriage of justice. As the matter pertains to discharge, it is apposite to quote law on this subject crystalized by catena of judgments by the Hon''ble Apex Court. In the matter of State of Tamil Nadu v. N. Suresh Rajan & Ors.,AIR 2014 SCW 942, it has been held thus by following law laid down in several other rulings by the Hon''ble Apex Court:

"We have bestowed our consideration to the rival submissions and the submissions made by Mr.Ranjit Kumar commend us. True it is that at the time of consideration of the applications for discharge, the court cannot act as a mouth piece of the prosecution or act as a post-office and may sift evidence in order to find out whether or not the allegations made are groundless so as to pass an

order of discharge. It is trite that at the stage of consideration of an application for discharge, the court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate the said materials and documents with a view to find out whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage. Reference in this connection can be made to a recent decision of this Court in the case of Sheoraj Singh Ahlawat and Ors. v. State of Uttar Pradesh and Anr., AIR 2013 SC 52 : (2012 AIR SCW 6171), in which, after analyzing various decisions on the point, this Court endorsed the following view taken in Onkar Nath Mishra v. State (NCT of Delhi), (2008) 2 SCC 561 : (AIR 2008 SC (Supp) 204 : 2008 AIR SCW 96):

"11. It is trite that at the stage of framing of charge the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclosed the existence of all the ingredients constituting the alleged offence. At that stage, the court is not expected to go deep into the probative value of the material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out. At that stage, even strong suspicion founded on material which leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of the commission of that offence."

7. It is thus, clear that at the stage of discharge probative value of material has to be gone into for limited purpose for determining whether there are grounds for framing charges against accused persons and whether there are grounds for presuming that the offence has been committed. Whether such grounds are sufficient for recording conviction against the accused cannot be examined at the stage of framing of the charge or considering the material from the angle whether accused persons are entitled for discharge from alleged offences. Deep probe of probative value of the material collected by the Investigating Officer is not necessary. Even strong suspicion founded on the material which leads the Court to form presumptive opinion about ingredients of alleged offence is sufficient and would justify framing of charge.

8. Keeping in mind this law on the aspect of framing of charge or discharge of

the accused persons from offences alleged against them, let us note facts of the prosecution case.

9. Umesh Bomble committed suicide by hanging at his residential house on 28.9.2014. His widow Sunita Umesh Bomble lodged the FIR on the very same day with Mulund Police Station which has resulted in registration of crime in question. According to the prosecution case, deceased Umesh Bomble was a small time vendor doing business of sale of cutlery on the footpath of a road in Mumbai. He was not a well educated person. He had passed only 5th standard school examination. It is case of the prosecution that said Umesh Bomble had started "Bhishi" a term used in common parlance for chit fund scheme (Best Chit) whereby several persons collect certain determined amount at regular intervals and pays that amount to one member whose chit is taken out randomly. According to the prosecution case, this scheme started by Umesh Bomble met with a failure as persons to whom the amount was paid as per chits drawn left that scheme without making further contribution for remaining members of that scheme. This had occasioned Umesh Bomble to obtain loan from several persons in order to meet his financial obligations towards other unpaid members of the Bhishi group. Accordingly, he obtained loan of Rs. 18 Lakhs from revision petitioner-Ganesh Gawli and that of Rs. 1 Lakh from revision petitioner-Sangita Gawli. In a similar fashion, he has obtained loans from other persons also who are arraigned as accused persons by the Investigator. However, in the case in hand we are concerned with revision petitioners-accused namely, Ganesh Gawli and his wife Sangita Gawli.

10. It is case of the prosecution that because of consistent harassment by present revision petitioners-accused to Umesh Bomble for and on account of recovery of loan allegedly advanced by them, Umesh Bomble committed suicide and present revision petitioners are abetors to this act of offence by Umesh Bomble.

11. The term "abetment" is defined in Section 107 of the IPC. It reads thus,

"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 wilful misrepresentation, or by wilful 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.

Explanation 2. - Whoever, either prior to or at the time of the commission of an

act, does anything in order to facilitate the commission of that act, and thereby facilitate the commission thereof, is said to aid the doing of that act.

12. Perusal of the definition of the term "abetment" as such makes it clear that abetment does not involve actual commission of crime but it is crime apart. Abetment involves actual active complicity on the part of abettor at point of time prior to or at the time of commission of offence. Abetment is complete when other is instigated to commit an act of offence. Thus, for making out the offence punishable under Section 306 of IPC, the prosecution is enjoined to establish that there was instigation, provocation, incitement or encouragement by accused persons to the deceased to commit suicide. Some active suggestions or some stimulations by accused persons are required to be indicated in order to frame the charge for the offence punishable under Section 306 of IPC. Similarly, it is well settled that for making out the offence punishable under Section 306 of IPC, mens-rea which is an essential ingredient of the offence defined in Section 107 of IPC is required to be shown as without knowledge and intention there cannot be abetment. This is a ratio which can be culled out from the cited rulings. Keeping in mind this aspect, one will have to examine prima-facie whether suicide of Umesh Bomble is a common course of events and natural result of normal human conduct so as to constitute sufficient ground for framing charge under this head.

13. Prima-facie, it is seen from the report of autopsy that the deceased Umesh Bomble died due to asphyxia due to hanging indicating commission of suicide by him as report of his medical examination does not show any external injury on the dead body. Suicide is an act of offence punishable under Section 309 of IPC and, therefore, question is whether there are primafacie grounds for proceeding against present revision petitioners for the offence punishable under Section 306 of IPC which makes a person abetting of suicide by another liable for imprisonment which may extend to 10 years apart from imposition of fine.

14. The FIR lodged with promptitude on the date of incident itself by the widow contains averments regarding failure of BC scheme started by deceased Umesh Bomble and consequently taking of hand loans amounting to Rs. 18 Lakhs and 1 Lakh respectively from revision petitioners by him for discharging his liability towards other unpaid members of that scheme. The chargesheet reflects that revision petitioner no.1/accused Ganesh Gawli is a licenced money lender. Acts of revision petitioners for getting refund of that amount from the deceased are also finding their place in the FIR. As per the version of the first informant/widow, she along with her deceased husband as well as father-in-law Nagesh, mother-in-law Shakuntala and brother-in-law Arun were residing jointly at Vijay Nagar area of Mulund. His twelve years old son and eight years old daughter of the couple were also residing with the deceased. This family background is relevant for deciding whether there are primafacie sufficient grounds for proceeding for the offence punishable under Section 306 of IPC. As per version of the first informant/widow, there was some delay on part of her deceased husband-Umesh Bomble in

refunding the amount taken as a hand loan from revision petitioners-accused, and, therefore, both revision petitioners-accused were frequently visiting work place as well as place of residence of the deceased Umesh Bomble. At both these places as per the version of the first informant/widow, revision petitioners-accused were abusing deceased Umesh Bomble and also assaulting him. Apart from this, the first informant/widow has also stated in the FIR that as her deceased husband Umesh Bomble was not in a position to refund hand loan, revision petitioner no.1 Ganesh Gawli was insisting him to hand over to him the document of title of their residential house and on that count was frequently abusing and assaulting her husband i.e. deceased Umesh Bomble. The first informant-widow also narrated consequences of these assaults and threats by stating that her deceased husband went into depression and started drinking liquor and also attempted to commit suicide in June, 2014. Similar is the statement of Nagesh Bomble father of the deceased Umesh Bomble. Datta who is vendor having shop in the area has stated that two months prior to the incident of commission of suicide of Umesh Bomble, revision petitioner no.1 Ganesh Gawli had threatened deceased Umesh Bomble in the market place by asking him to refund the amount of hand loan. At that time, threat of assault was also given and then, as per version of Datta, revision petitioner no.1 Ganesh Gawli had abducted deceased Umesh Bomble by taking him somewhere else. Statement of Datta also contains oral dying declaration made by deceased Umesh Bomble to him to the effect that revision petitioners accused comes to his house in odd night hours and threatens him for refund of money and demands documents of title of his house.

15. Sarika Gawli is sister of the deceased Umesh Bomble. She has also disclosed the incident of assault by revision petitioners-accused to the deceased Umesh Bomble for extorting money and visits of revision petitioners-accused at odd night hours to the house of the deceased Umesh Bomble.

16. As noted in forgoing paragraphs, intention and mensrea are prerequisite of offence of abetment. There should be reasonable nexus between the act of the offence and abetment by accused persons. Intention harboured by an accused is mental state of mind and no tangible evidence can be produced by the prosecution to establish intention. Therefore, intention of accused persons is required to be gathered from all surrounding circumstances by applying test of a prudent person. In the case in hand, deceased Umesh was family man having joint family. He was residing his parents, his children and his wife as well as a brother. Material collected by the Investigator shows that in order to seek repayment of hand loans advanced to deceased Umesh, revision petitioners-accused were visiting him not only at his work place but also at his residential house and that too not only at day hours but at odd night hours i.e. at about 1.30 a.m. for getting back hand loan. Recitals in the FIR as well as statement of witnesses show that on failure to pay back the amount, deceased Umesh Bomble was receiving beating and abuses in front of his family members as well as at his work place from revision petitioners-accused. The truthfulness of these

allegations spoken out by witnesses cannot be gone into at this stage but these allegations are considered for determining whether they are constituting sufficient grounds for proceeding against revision petitioners-accused for the offence punishable under Section 306 of IPC. In my considered view, a prudent family man may met with such treatment day in and the day out would certainly think of commission of suicide by believing that the life is now not worth living and he should die. Statement of witnesses and the FIR lodged by the widow shows unbearable, continuous and repeated attacks and demands of money to the deceased by revision petitioners-accused. Conduct of revision petitioners-accused in assaulting the deceased for getting back the amount appears to be wilful and its gravity seems to propel or compel a person of ordinary prudence to commit suicide. Cornered to a wall by such behaviour of revision petitioners-accused, deceased Umesh was bound to think that it is better to die rather than suffering such humiliations in front of his children and other family members. Matter is required to be viewed from the angle whether accused persons could reasonably foresee result of their act and whether they can apprehend that with such acts, they are likely to propel or compel the deceased to commit suicide. Continuously beating a family man in presence of his family members at his home and at the work place so also demanding documents of title of his residential house to him in my considered view certainly amounts to instigation and provocation to him to commit an act of offence i.e. suicide. Explanation (ii) of Section 107 of IPC is rightly pointed out by the learned APP to demonstrate that doing anything in order to facilitate commission of act of offence also amounts to abetment. Act of revision petitioners-accused spoken by witnesses prima facie reflects their mens rea. Suicide committed by deceased Umesh is seen to be the common course of event and natural result of normal conduct of a man of ordinary prudence.

17. In this view of the matter, if material gathered in the charge-sheet is appreciated in proper perspective then it cannot be said that ingredients of the offence of abetment to commit suicide are not reflected from the material gathered by the prosecution. Therefore, no case for interference in revisional jurisdiction is made out. Revision is, therefore, dismissed. Needless to mention that all these observations are prima facie in nature which shall not have bearing on the trial of the case.