

(2015) 12 BOM CK 0082

In the Bombay High Court

Case No : Criminal Application No. 814 of 2014

Kishor Dattatraya Shinde

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 02-12-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 107, 109, 294, 306, 34

Citation : (2016) ALLMR(Cri) 333 : (2016) 1 CCR 426 : (2016) 1 Crimes 273

Hon'ble Judges : R.V. More and V.L. Achliya, JJ.

Bench : Division Bench

Advocate : S.B. Shetye i/b I.A. Shaikh, for the Appellant; K.V. Saste, Learned APP, for the Respondent

Judgement

R.V. More, J.—The Applicant has approached this Court resorting to the provisions of section 482 of the Code of Criminal Procedure, 1973, seeking to quash the FIR bearing CR. No. I-148/2014 registered with Lonikand Police Station at the instance of Respondent No. 2 for the offence punishable under section 306 read with 34 of the Indian Penal Code, 1860.

2. The case of the Applicant is as follows:

"That, the Applicant is working in the Maharashtra State Electricity Distribution Company Limited as Assistant Engineer, and at the relevant time stationed at Hadapsar Rural Sub Division Office. Deceased Dilip Magar - the husband of Respondent No. 2 herein was also working in the said company as junior technician. On 20th March 2014, Dilip Magar (the deceased) and one S.B. Bhamgar who was working as technician were directed by Perne Section Office to go to Phulgaon to shut down a line supply of a high tension wire to conduct certain tests of a consumer. It was decided between Dilip and said Bhamgar that Dilip would go to take the line permit to shut down the line supply and Bhamgar would wait at the site for Dilip's call to proceed. After getting go-ahead instructions from Dilip, Bhamgar climbed the electric pole to open the connection

but received massive electric shock. Bhamgar was rushed to hospital for treatment. The Applicant was on casual leave on 20th March 2014 and was in Mumbai when the said accident had taken place. The Applicant came to know about the incident on phone from one Sheetal Kinkar, Junior Engineer. Statements of Sarvesh Kapsime and Dilip came to be recorded on 20th March 2014. The Applicant reported to the duty next day and his statement came to be recorded. The Applicant thereafter submitted report of the said incident to the Electric Inspector for necessary action and investigation on 28th March 2014. While undergoing treatment, Bhamgar expired on 4th April 2014. Due to this incident, Dilip was in great mental shock. The Applicant was on sanctioned leave during 6th April to 10th April 2014 and while he was at Kashmir, on 8th April 2014 he was informed that Dilip had committed suicide and his body was found hanging to the tree. The Applicant came back to Pune on 9th April 2014 and resumed his duty on 10th April 2014. Suicide note was found on the body of deceased Dilip. Thereafter Respondent No. 2 lodged an FIR on 13th April 2014 against the Applicant, Amit Lanjewar and Santosh Darekar for abetting suicide of her husband."

3. It is the case of the Applicant that allegations in the complaint do not constitute an offence as the ingredients required to attract section 306 of IPC are completely absent in the complaint. So also the ingredients for offence of conspiracy are also completely amiss. The suicide note does not disclose any conspiracy to abet the commission of suicide by the Applicant.

4. By the order dated 3rd November 2014, we directed the Applicant to implead the Complainant as party Respondent in this petition and a notice was issued to her. It was also observed that the application will be finally disposed of at the stage of admission itself. Respondent No. 2 is duly served, however, none appears on her behalf. Therefore, we were constrained to proceed to hear and dispose of the matter. Accordingly, we heard at length learned Counsel appearing for the Applicant and learned APP for the State.

5. Mr. Shetye, learned Counsel appearing for the Applicant took us through copy of FIR as all as alleged suicide note and submitted that both these documents even if accepted at their face value do not disclose any offence muchless the offence punishable under section 306 of IPC. He relied upon the decision of the Apex Court in Madan Mohan Singh Vs. State of Gujarat and Another, .

6. Learned APP opposed the application very vehemently. He submitted that FIR coupled with suicide note prima facie makes out a case for the prosecution of the Applicant for the offence punishable under sections 306 and 109 of IPC. He lastly submitted that application is without any merit and should be dismissed with costs.

7. To appreciate the rival contentions, reference to the suicide note and FIR is necessary. Respondent No. 2 in her FIR has alleged that her husband Dilip was working as technician, his office is situated at Hadpsar. Villages Tulapur and

Bhawadi were assigned to him, however, he used to go for work at any other place as asked by his senior officers. It is alleged by her that her husband was harassed by the senior officers and they used to call him on his phone at any time for the work. It alleged in the FIR that on the day when Bhamgar met with an accidental death, i.e., on 20th March 2014, Dilip had asked for leave but his superior officers had not granted the same. The FIR reveals that on 7th April 2014 the Complainant's husband left for the work at 11.00 a.m. He did not come back for lunch, therefore, calls were made on his mobile phone. Mobile was switched off. In the night, Respondent No. 2 lodged missing person complaint at Lonikand Police Station. Thereafter on the next day, i.e., on 8th April 2014, at about 3.30 p.m., Respondent No. 2 received a call that her husband has committed suicide. Upon receipt of such information, Respondent No. 2 along with other family members went to the spot and found that deceased was Dilip Magar. Police were present on the spot. They informed that before suicide, Dilip has written a note. Respondent No. 2 read the said note and found that Dilip has committed suicide due to harassment by his seniors - K.D. Shinde, Amit Lanjewar, Darekar. She thereafter filed the FIR as stated above.

8. At this stage, reference deserves to be made to the suicide note, english translation of which is provided by the learned Counsel for the Applicant. The said suicide note reads thus:

"Om Namo Shivay Date: 5/04/014

Day Sunday

(Page 1) Bowed at the feet of my Sadguru, today at 05.4.14 this letter is written. I have devoted my life for last 34 years happily taking the name of god and working. But now I am worried about my future hardships. I have taken utmost care and efforts for being good to all living beings and human beings. I have tried my level best not to mis behave with them. But due to an accident in 2009, my guru bandhu expired. I was very much sad. Inspite of my sorrow I have tried to continue with my word. I am unable to find the reason. Yet there should not be any problems to my colleagues and family members. The main reason for this is my officers K.D. Shinde, Darekar, Amit Lanjewar. These 3 persons have troubles us a lot and made to face hardships. Two weeks before by saying, you take salaries sitting like cattle, even though we both worked very honestly.

(Page 2) Though we worked several days by travelling on motor bike, we were transferred and gave us pain. After bearing such pain and hardships in life, now suddenly colleague got injured and died in accident therefore I also felt very sad"s his family had felt. Bore unbearable pain.

Mentally I am shocked. Remaining in this world is an offence and the only way to come out of this without troubling anybody is to punish myself and I am punishing myself. Therese three persons not only transferred both of us but troubled us a lot. New officer came since 5 days muster is also not in office. In the morning, I came to office to sign the muster was not there. I met Navale,

only spoke few words.

(page 3) then Yogeshwar stone started at last _____ at this place concerned the wire kamaldara wire also joined yet now the only possible thing means end the life. All my family members, my tai is expecting child. I name the child as Narayan before I go. My god give courage to my son Narendra, wife Meenakshi to bear the pain. My work is incomplete yet I am going. Please do not misunderstand because I have worked as per capacity. I apologise by bowing at the feet of my God(Mauli) and take leave.

Magar D. H.

Sd."

9. Before going into question whether FIR or suicide note constitutes an offence under section 306 of IPC, we must take note of the decision of the Apex Court in Madan Mohan Singh (supra). The Petitioner therein was working as a DET in Bharat Sanchar Nigam Limited. The deceased Deepakbhai had committed suicide. On the basis of complaint filed by his wife, an FIR came to be registered. The FIR came to be challenged before the High Court by filing an application under section 482 . However, the same was dismissed. The Apex Court allowed the SLP negating the approach of the High Court and observed thus in paragraphs 8, 9 and 10.:

"8 It is on this that Shri Tulsi contended that all this is absolutely absurd. If a person writes a suicide note on 4.2.2008, he had no business to send the suicide note to High Court and keep a copy thereof in the house. Learned Senior Counsel said that even if all this is accepted as it is, there is nothing to suggest that the appellant has committed any offence or that any offence could be spelt out from the said suicide note or the FIR much less offence under Sections 306 and 294 , IPC. We are convinced that there is absolutely nothing in this suicide note or the FIR which would even distantly be viewed as an offence much less under Section 306 , IPC. 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.

9. 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. In the similar circumstances, as reported in *Netai Dutta Vs. State of West Bengal* , this Court had quashed the proceedings initiated against the accused.

10. As regards the suicide note, which is a document of about 15 pages, all that we can say is that it is an anguish expressed by the driver who felt that his boss (the accused) had wronged him. The suicide note and the FIR do not impress us at all. They cannot be depicted as expressing anything intentional on the part of the accused that the deceased might commit suicide. If the prosecutions are allowed to continue on such basis, it will be difficult for every superior officer even to work."

10. The above observations of the Apex Court make it abundantly clear that in order to attract the provisions of section 306 of IPC, there must be an allegation that 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. So also in order to bring out an offence under section 306 , specific abetment as contemplated by section 107 of IPC on the part of 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 of IPC.

11. The allegations made in the FIR in the present case reveal that the senior officers of deceased - Dilip were harassing him. He was not given leave and

because of that he committed suicide. In the suicide note, deceased has stated that the Applicant as well as Darkear and Amit Lanjewar made him suffer hardships. The suicide note reveals that the deceased was mentally shocked due to death of his colleague Bhamgar in electric accident and he was sad and because of all these reasons he decided to end his life. In our view, there is nothing in the FIR or suicide-note so as to suggest that the Applicant or other officers had instigated the deceased Dilip to commit suicide or engaged in conspiracy to bring about the suicide of Dilip. There is nothing to infer that the Applicant or other officers had conspiracy with an intention to bring about the suicide of deceased Dilip as a result of abetment. The 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, the offence under section 306 of IPC cannot be said to have been made out. In order to attract the provisions of section 306, there has to be a direct or clear intention or means *rea* to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide. In the present case, the deceased seems to be a hypersensitive to minor or ordinary petulance, discord and difference which happen in our day-to-day life.

12. In our view, the allegations made in the FIR or alleged suicide-note even if taken at their face value do not constitute an offence under section 306 of IPC and therefore continuation of the prosecution against the Applicant would result in the abuse of the process of law.

13. Even assuming for the sake of argument that there was harassment by the Applicant and other officers, it cannot be said to be a positive act on their part that the deceased should commit suicide. It appears that the deceased being hypersensitive, was unable to face the ground realities and has committed unfortunate act of ending his life. However, we find that there is no material to say that the Applicant has abetted the death of deceased Dilip. In above circumstances, the application is made absolute in terms of prayer clause (a).