
(2017) 03 BOM CK 0122

In the Bombay High Court

Case No : Criminal Writ Petition No. 1296 of 2016

Padmakar Ramdas Agresar

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 02-03-2017

Acts Referred:

Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 306

Citation : (2017) 1 AIRBomRCri 856 : (2017) 2 BomCR(Cri) 54 : (2017) 2 MhLJCrI 718

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

Bench : Division Bench

Advocate : Mr. N.B. Suryawanshi, Advocate, for the Petitioner; Mr. S.B. Yawalkar, APP, for the Respondent No.1/State; Mr. G.A. Nagori, Advocate, for the Respondent No.2

Final Decision : Disposed Off

Judgement

S.S. Shinde, J.—Heard.

2. Rule. Rule made returnable forthwith, and heard finally with the consent of the parties.

3. This Petition is filed with the following prayer:

b) Quash and set aside impugned FIR (Exhibit-I) at Crime No.99 of 2016 registered with Ramanand Nagar Police Station Jalgaon for the offence punishable under section 306 of the Indian Penal Code and investigation in pursuance of the same and for that purpose issue necessary orders.

4. Brief facts leading for filing the Petition are as under:

The petitioner is the Chairman of Dhanvarsha Cooperative Credit Society for the second time. The said society has advanced loan of Rs.23 lacs to Devidas Pachpol against mortgage of agriculture land and house property. After Devidas Pachpol

expired, the loan became outstanding. Since the said loan was overdue, steps in accordance with law for recovery of loan amount were initiated.

5. It is the case of the petitioner that even father of respondent no.2 had obtained loan of Rs.9 lacs from the said society by mortgaging his agricultural land and dwelling house situated at Dhar and the same is overdue. Since the cheque given by father of respondent no.2 towards repayment of the loan was not honoured, proceedings bearing Summary Criminal Case No.973 of 2006 came to be initiated against respondent no.2 under Section 138 of the Negotiable Instruments Act. Since loan was overdue against father of respondent no.2, recovery certificate under Section 101 of the Maharashtra Cooperative Societies Act, was applied for and the same was issued in favour of the society and against respondent no.2.

6. On 09.08.2014, Sagar Pachpol, son of late Devidas Pachpol, who was enraged due to recovery of loan outstanding, assaulted the petitioner with an axe at the instigation of one Chetan and respondent no.2 Lakhichand and hence an offence was registered with Zilla Peth Police Station, Jalgaon, against Sagar, Chetan and Lakhichand. Sagar was arrested in connection with the said offence.

7. It is further the case of the petitioner that after completion of investigation, charge sheet came to be filed against Sagar and others and the case is numbered as Regular Criminal Case No.5 of 2015 and the same is pending for adjudication. On 30th October, 2014, Special Recovery Officer was appointed by the society for recovery of the loan. On 29th December, 2014, since the land, which was mortgaged by father of respondent no.2 with said society was sold by him to one Shanoorbi Akbarkha, FIR was lodged by the Recovery Officer against respondent no.2, with Zilla Peth Police Station. Accordingly, notices in accordance with law were issued by the Recovery Officer to the Pachpol family for repayment of the loan.

8. It is further the case of the petitioner that in the month of August, 2016, Chetan, cousin of respondent no.2 committed suicide by leaving a suicide note that due to unbearable sorrow of his father, mother and brother he is committing suicide and nobody should be blamed or held responsible for the same. On 7th August, 2016, respondent no.2 lodged FIR with Ramanand Nagar Police Station against the petitioner for the offence punishable under Section 306 of the Indian Penal Code.

9. It is further the case of the petitioner that thereafter, the petitioner filed Bail Application before the learned Sessions Judge, Jalgaon. The prosecution filed say at Exhibit 5 opposing the said Bail Application. The petitioner has been granted anticipatory bail. The petitioner is innocent and he is involved in the alleged offence only with a view to settle personal scores and to give counter blow to the complaint filed by the petitioner against members of Pachpol family and with a view to pressurize the Officers of the society to stall the recovery of loan against the members of the Pachpol family. Hence this Criminal Writ Petition.

10. It is submitted that the FIR and investigation conducted so far do not make out any prima facie case of offence punishable under Section 306 of the Indian Penal Code. The involvement of the petitioner in the alleged offence is at the behest of Pachpol family only with a view to give counter blast to the FIR filed by the petitioner for the offence punishable under Section 307 of the Indian Penal Code against members of said family. During the course of investigation, a suicide note was found with deceased Chetan, which categorically states not to blame anybody for the suicide. However, in spite of that only due to previous grudge and with a view to settle scores with a prejudiced attitude, the FIR has been lodged by respondent no.2, in collusion with his father to pressurize the petitioner and Officers of Dhanvarsha Credit Cooperative Society for not to effect recovery from Pachpol family. There is absolutely no material to warrant continuation of the proceedings of the FIR, as no material is there to show abetment in the present case.

11. It is further submitted that it is necessary to mention here that still loan amount is outstanding against Pachpol family, which is borrowed from Dhanvarsha Credit Cooperative Society. For recovery of said loan outstanding, Dhanvarsha Credit Cooperative Society has initiated proceedings under Section 101 of the Maharashtra Cooperative Societies Act and certificate under Section 101 of the Maharashtra Cooperative Societies Act has been issued against Pachpol family in favour of the Dhanvarsha Credit Cooperative Society and legal recourse is adopted to recover the unpaid dues. It is submitted that the FIR or the investigation does not disclose any ingredient of abetment, instigation and aid, which are the basic ingredients of Section 306 of the Indian Penal Code and in absence of the same, continuation of the proceedings is an abuse of process of law and the Court. The suicide note found on the person of the deceased, which states that nobody should be blamed for the suicide. Taking recourse to legal proceedings for recovery of loan against a borrower by following due process of law, cannot, by any stretch of imagination, be said to be abetment to suicide and hence no offence punishable under Section 306 of the Indian Penal Code can be attributed to the petitioner. There is absolutely no mens rea and the petitioner cannot be said to be even remotely connected with the offence punishable under Section 306 of the Indian Penal Code. Whatever proceedings are initiated for recovery of outstanding loan of the society are initiated at the instance of the Recovery Officer specially appointed for said purpose and hence the petitioner cannot, even remotely said to be connected with the said recovery, merely because he is Chairman of the said society.

12. It is submitted that the proceedings are lodged against the petitioner only with a view to give counter blast to the prosecution of father of respondent no.2, Sagar and Chetan and hence continuation of the same is an abuse of process of law and the court. It is submitted that only with a view to pressurize the petitioner and to Officer of the society from taking legal recourse for recovery of outstanding dues from Pachpol family, the petitioner is mala fide involved in the present crime. In this view of the matter also continuation of the proceedings of

present crime is an abuse of process of law and court and the same is liable to be quashed and set aside.

13. The learned counsel appearing for the petitioner submits that to attract the ingredients of Section 107 and 306 of the Indian Penal Code, it is necessary to prove that there was abetment or intention by the accused that the person should commit suicide. In the absence of intention to aid or instigate or abet that the deceased should commit suicide, the accused cannot be compelled to face trial for the offence punishable under Section 306 of the Indian Penal Code. In support of the said contention, the reliance is placed on the unreported judgment of the Bombay High Court Bench at Nagpur in the case of Dilip s/o. Ramrao Shirasao and others v. State of Maharashtra and another in Criminal Application [APL] No.332 of 2016 decided on 05.08.2016.

14. On the other hand, the learned APP appearing for respondent ? State and the learned counsel appearing for respondent no.2 submits that the allegations in the FIR attract the ingredients of the alleged offences. The learned APP invited our attention to the investigation papers and submits that, there is sufficient material collected by the Investigating Officer and trial can proceed on the basis of the material collected by the prosecution.

15. We have given thoughtful consideration to the submissions of the learned counsel appearing for the petitioner, learned APP appearing for respondent ? State and the learned counsel appearing for respondent no.2. With their able assistance, we have carefully perused the pleadings in the Petition, grounds taken therein and annexures thereto and investigation papers. It appears that the present petitioner lodged First Information Report with Zilla Peth Police Station, Jalgaon on 9th August, 2014, wherein there are allegations of assaulting the petitioner by an axe by Sagar Pachpol. It is also mentioned in the said FIR that prior to the said incident, Sagar Pachpol, Chetan Pachpol and Lakhichand Pachpol came to the office of Dhanvarsha Patsanstha and threatened the petitioner that, attempt should not be made to recover the loan amount borrowed by the members of the Pachpol family. Upon careful perusal of the allegation in the FIR lodged by Ulhas Lakhichand Pachpol, it is stated thus:

"Eg.kqu psru nsfonkl ikpiksG ;kus /kuo"kkZ vcZu dks0 vkWi0 lkslk;Vh o vxzslj vcZu lkslk;Vh tGxkao ;kaps ojhy "ksrhoj vlysys dtkZps osGksosGh iSlS Hk:u lq)k R;kph Fkdckdh vLY;kps nk[koqu okjaokj rxknk ykowu R;kolqyhps rxk|keqGs o psvjeu inekdj jkenkl vxzslj ;kaps tkpkl daVVGqu vkRegR;k dj.ksl izo`Rr gksoqu ek>k pqyrHkkm psru nsfonkl ikpiksG ;kus dky fnukad 06-08-2016 jksth jk=h 07-40 ok0 lqekjkl tGxkao "kgjkrhy f"kjlkSyh rs tGxkao jsYos viykbZuoj fiaizkGk f"kokjkr vlysy;k [kkack dz0 417@20&24 ps njE;ku /kkoR;k jsYos[kkyh Lorkyk >ksdqu nsoqu vkRegR;k dsyh vkgs0"

In order to appreciate the said allegations, we have carefully perused the evidence collected by the Investigating Officer. The contents of the note written by the deceased Chetan Pachpol before committing suicide are as under:

t; nsok

Jh x.ks"kk; ue%

nhi Hkh pysxk jkt Hkh djsxk dke gqvk rks nhi ejs nhi dj.kkj ukgh ekjsu- eh psru mQZ equk nsohnkl ikpiksy vkbZ] oM+hy rlsp Hkkokps nq[k% lgu u >kY;keqys eh vkRegR;k djhr vkgs ;kr dq.kkykgh tckcnkj /k: u;s- ljdkj ts eyk enr djsy rs vukFk vkJe eqykauk n;kos gh uez fouarh-

psru ikpiksy

lgh

t; egkjk"Vz~

;srks ckck

16. Upon considering the facts of the case and investigation papers in its entirety, we are of the considered view that, neither the petitioner instigated, nor intentionally aided or abetted the act of commission of suicide by the deceased Chetan. We find considerable force in the submission of the learned counsel appearing for the petitioner that in order to take revenge for filing the FIR bearing Crime No.102/2014, registered with Zilla Peth Police Station, Jalgaon, on 9th August, 2014 by the petitioner, the petitioner is falsely implicated in the alleged commission of the offences.

17. The Supreme Court in the case of State of Haryana v. Bhajan Lal, AIR 1992 SC 604 held that, in following categories the Court would be able to quash the F.I.R.

108. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

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 F.I.R. do not disclose a cognisable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of Magistrate within the purview of Section 155(2) of the Code.

3. Where the uncontroverted 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 applicant.

4. Where, the allegations in the F.I.R. do not constitute a cognisable offence but constitute only a noncognizable, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 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.

18. In our opinion, case of the petitioner is covered in categories 1 and 7 of the said categories. In the result, the Criminal Writ Petition succeeds. The First Information Report bearing Crime No.99 of 2016 registered with Ramanand Nagar Police Station for the offence punishable under Section 306 of the Indian Penal Code to the extent of petitioner stands quashed and set aside.

19. The rule is made absolute in terms of prayer clause and the Writ Petition stands disposed of accordingly.