
(2016) 03 BOM CK 0224

In the Bombay High Court

Case No : Criminal Application (Apl) No. 865 of 2015.

Ramesh Someshwarrao Tayde and other

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 28-03-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 306

Citation : (2016) 2 AIRBomRCri 281 : (2016) ALLMRCri 5049 : (2017) 1 MhLJCri 509

Hon'ble Judges : B. R. Gavai;A. S. Chandurkar, JJ.

Bench : Division Bench

Advocate : P.V. Navlani, Advocate, for the Appellant; J.Y. Ghurde, Additional Public Prosecutor and M.N. Hiwase, Advocate, for the Respondent

Final Decision : Allowed

Judgement

A.S. Chandurkar J. (Oral) - Admit. Heard finally with consent of counsel for the parties.

2. This application has been filed under Section 482 of the Code of Criminal Procedure, 1973 by the applicants who have been named in Crime No. 314 of 2015 registered at Chandur Bazar Police Station, Taluka and District Amravati for the offence under provisions of Section 306 read with Section 34 of the Indian Penal Code (for short the Penal Code). The applicants seek quashing of said First Information Report.

3. It is the case of non-applicant no.2 who was the father of one Purushottam that his joint family was possessing various agricultural lands. Some land was standing in the name of his son Purushottam. However, due to drought conditions said Purushottam had taken loan of Rs. 4,50,000/- from a bank which had not being repaid. On 07.10.2015 at about 6 P. M. the son of non-applicant no. 2 came home and was found to be tense. Said Purushottam told the non-applicant no. 2 that he had borrowed an amount of Rs. 20,000/- from the

applicant no. 2. In lieu thereof he had given a blank cheque as well as a blank stamp paper valued at Rs. 100/-. Though the borrowed amount was repaid, the cheque and stamp paper were not returned. On the contrary one Nilesh Bhetalu issued a notice to the son of the non-applicant no.2 stating therein that an amount of Rs. 70,000/- for which the cheque had been issued was due and payable. According to the non-applicant no.2 his son further told him that when he went to Chandurbazar the applicants along with said Nilesh Bhetalu had given him threats of life and had stated that they would approach the Court of law. Purushottam therefore told the non-applicant no.2 that there was no other option left but to commit suicide. Though the non applicant no. 2 tried to find reason with his son, at about 8 P. M. on the same day his son consumed poison resulting in his death. According to the non-applicant no.2 even prior to his death his son had stated that on account of fear and harassment by the applicants and said Nilesh Bhetalu he had consumed poison. This report was lodged by the non-applicant no. 2.

4. Shri P.V. Navlani, the learned counsel for the applicants submitted that a bare perusal of the first information report would reveal that the same did not disclose of any offence having been committed by the applicants under Section 306 of the Penal Code. According to him there was neither any abetment on the part of the applicants nor were there any allegations that the applicants had instigated the son of the non-applicant no. 2 to commit suicide. There was no positive act on the part of the applicants in either aiding or instigating or abetting Purushottam to commit suicide. It was therefore submitted that even if the statements as made in the first information report are taken at their face value, no offence under Section 306 read with Section 34 of the Penal Code was made out. In support of his submissions the learned counsel relied upon the judgment of the Hon'ble Supreme Court in *S.S. Chheena v. Vijay Kumar Mahjan and Anr.* 2010 ALL MR (Cri.) 3298, judgment of the learned Single Judge in *Seema Ajay Bhoosreddy v. State of Maharashtra* 2012(2) Maharashtra Law Journal (Cri.) 459; and judgment of the learned Division Bench in *Binod s/o Ratan Sarkar and others v. State of Maharashtra and another* 2013(3) Maharashtra Law Journal (Cri.) 418. It was therefore submitted that as no offence has been made out under Section 306 read with Section 34 of the Penal Code, the proceedings deserve to be quashed as their continuation would amount to abuse of the process of law.

5. These submissions were opposed by Shri J.Y. Gurde, learned Additional Public Prosecutor for the non-applicant no. 1 and Ms. M.N. Hiwase, learned counsel for the non-applicant no. 2. It was submitted that on a plain reading of the report lodged by the non-applicant no.2, it was clear that an offence punishable under Section 306 of the Penal Code was made out. It was only on account of the threats given by the applicants along with one Nilesh Bhetalu that the son of the non-applicant no. 2 had committed suicide. The applicants were also named by the son of non applicant no.2 as being responsible for giving trouble to him. It was, therefore, submitted that if on a plain reading of the First Information Report an offence has been made out, there would be no occasion to quash the

same as prayed. The decisions on which reliance was placed by the learned counsel for the applicants were also sought to be distinguished. The learned counsel prayed for dismissal of the application.

6. We have given due consideration to the respective submissions and we have also gone through the material placed on record. Before considering the prayer for quashing the proceedings under Section 482 of the Criminal Procedure Code, 1973 it would be first necessary to keep in mind the essential ingredients necessary to attract the provisions of Section 306 of the Penal Code. The legal position in that regard stands settled in the light of various decisions of the Hon"ble Supreme Court as well of this Court. In Seema Ajay Bhoosreddy (supra) decided by one of us (B. R. Gavai J .) the decisions of the Hon"ble Supreme Court in Madan Mohan Singh v. State of Gujrat (2010) 8 SCC 628 and S.S. Chheema v. Vijay Kumar Mahajan 2010 ALL MR (Cri.) 3298 were considered. It was held in Seema Ajay Bhoosreddy (supra) in para 18:

"18. It can thus, be clearly seen that for proceeding further with the trial against the accused for an offence punishable under Section 306, it is necessary for the prosecution to at least, prima facie, establish that the accused had an intention to aid or instigate or abet the deceased to commit suicide. In the absence of availability of such material, the accused cannot be compelled to face trial for the offence punishable under Section 306. As held by the Apex Court, an abetment involves mental process of instigating the person or intentionally aiding the person for doing of a thing. Without a positive act on the part of the accused in aiding or instigating or abetting the deceased to commit suicide, the said person cannot be compelled to face a trial. Unless there is clear mens rea to commit the offence or an active act or direct act which led the deceased to commit suicide seeing no option or the act intending to push the deceased into such a position, the trial against the accused under Section 306 cannot be permitted."

Similarly in Binod s/o Ratan Sarkar (supra) the Division Bench reiterated the aforesaid legal position.

7. If in the light of the aforesaid legal position the material on record is perused on its face value, it can be seen that except the statements that the son of non-applicant no.2 had borrowed some amount from the applicant no.2 and that a notice had been issued by one Nilesch Bhetalu seeking repayment of Rs. 70,000/- coupled with threats of life being given, there is no material to even prima facie establish that the applicants had either an intention to aid or instigate or abet Purushottam to commit suicide. There is neither any active or direct act on the part of the applicants which led said Purushottam to commit suicide. There is neither any instigation nor any intentional act done which compelled the son of non-applicant no.2 to commit suicide. In fact in the first information report it is stated that as the son of non-applicant no.2 was cheated and he had received a notice from the Court, he had committed suicide. Issuance of a legal notice by one of the accused cannot be said to be an act being committed with an intention to aid or instigate or abet the deceased to commit suicide. Thus, the basic and

vital ingredients to enable the prosecution to proceed with the trial for an offence punishable under Section 306 of the Penal Code are conspicuously missing. In absence of this basic material, the continuation of the proceedings against the applicants would amount to permitting an unwanted prosecution. The present is therefore a fit case to exercise powers under Section 482 of the Code of Criminal Procedure, 1973 to quash the proceedings. There is no reason what so ever to compel the applicants to face the trial.

8. In view of aforesaid, the criminal application is allowed in terms of prayer clause (i).

9. The fees of the learned counsel appointed for non applicant no.2 are quantified at Rs. 1500/-.