
(2007) 09 BOM CK 0125

In the Bombay High Court

Case No : Criminal Revision Application No. 84/07

Shriram Vishwanathji Milkewar

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 11-09-2007

Acts Referred:

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

Citation : (2007) 09 BOM CK 0125

Hon'ble Judges : C.L. Pangarkar, J

Bench : Single Bench

Advocate : A.S. Mardikar, for the Appellant; S.S. Doifide, Additional Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

C.L. Pangarkar, J.—This revision is filed against the order passed by the Sessions Judge, whereby he refused to discharge the accused.

2. A few facts may be stated thus. The applicant/accused runs an Educational Institution. One Vivek Kelapure was in need of employment. It is alleged that in order to secure the said employment, said Vivek had paid to the applicant/accused a sum of Rs. 1,60,000/-. It is also alleged that inspite of paying a large sum, the accused did not provide employment to Vivek. Vivek got fed up due to the fact that no employment was given to him by the accused and therefore he committed suicide. It is not disputed that Vivek committed suicide and left a suicide note behind. He was found hanging in his own field.

3. His father lodged a report. An offence u/s 306 of Indian Penal Code came to be registered and investigated and a charge-sheet was filed. The case was committed to the court of Sessions, where application for discharge was moved. The said application has been rejected. Hence, this revision.

4. I have heard Shri Anil Mardikar, learned Counsel for the applicant/accused and

Shri S.S. Doifide, Additional Public Prosecutor for the State.

5. Shri Mardikar submits that the the charge-sheet does not disclose that there is any ground to proceed against the accused. He contended that even at the stage of discharge, the court can look into the material to find out if there exist ingredients of offence as alleged. In a case reported in *Niranjan Singh Karam Singh Punjabi and Others Vs. Jitendra Bhimraj Bijja and others*, . The Supreme Court has made following observations.

It seems well settled that at the stage i.e. stage of framing the 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 disclose the existence of all the ingredients constituting the alleged offence. The Court may for this limited purpose sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

It is thus clear that the court has a power to look into the material on record to find out if there is evidence available to make out prima facie the offence alleged.

6. In this case, it is not disputed that Vivek committed suicide. If the statements of all witnesses and the F.I.R. is seen, it would be clear that the only allegation against the accused is that although he took money from deceased to provide job, he did not at all keep the promise. Even in the second part of suicide note, it is alleged as follows

You have given me employment. For that you took from me Rs. 1,60,000/-but the school is not yet started. In future I see no possibility of school being started. There appears to be uncertainty about school and still you expect me to maintain the employees of school. You are solely responsible for my death. You have no right to play with the lives of others. By writing this if I have inadvertently insulted anybody, I may be excused.

Now if this suicide note is read as it is, it is apparent that the accused did provide employment to the deceased and the only thing is that the school had not started even after lapse of three months and the deceased was expected to maintain the employees of the school. At two places in suicide note, it is clearly mentioned that he got an employment. Obviously, the allegations in the F.I.R. and the statements of other witnesses that no employment was provided is not borne out from the suicide note and those statements are contrary to the contents of the suicide note. Assuming that the accused did not provide employment, could it constitute an abetment?. The answer has to be "no". The Supreme Court in *Sanju @ Sanjay Singh Sengar Vs. State of Madhya Pradesh*, . has observed as follows:

12. ...Even if we accept the prosecution story that the appellant did tell the deceased "to go and die", that itself does not constitute the ingredient of "instigation". The word "instigate" denotes incitement or urging to do some

drastic or inadvisable action or to stimulate or incite. Presence of mens rea, therefore, is the necessary concomitant of instigation. It is common knowledge that the words uttered in a quarrel or on the spur of the moment cannot be taken to be uttered with mens rea. It is in a fit of anger and emotion.

Therefore, there must be incitement or urging to do some drastic or inadvisable action to stimulate or incite. The suicide note does not show that there was any incitement in the statement of witnesses speak of any incitement. A plain reading of the second part of the note would show that the Educational Institution run by the accused was perhaps unable to pay the employees working in the school and the deceased being in charge of the school was required to face the displeasure of the employees. Thus, if the employees were not paid and unable to maintain themselves, there was no reason for the deceased to have taken it seriously since it was a school owned and run by the accused and it was his responsibility. Committing a suicide for the non-payment of salary to other employees denotes a feeble mind. There is nothing to suggest that accused had incited or instigated deceased or harassed the deceased any time. On the other hand, the first part of the suicide note clearly shows frustration of the deceased due to behaviour of his close relatives and being unable to stand to his own expectation in life and expectations of the parents. His relative Nanaji was not giving the share in the property and was not allowing to construct the house. Even the sister who is married was not happy. His main grievance is against his uncle Nanaji who was reluctant to give legitimate share. He also says that none from the family of Nanaji should be allowed to touch his dead body. This shows his frustration due to behaviour of his uncle and his frustration has developed into a hatred. If, therefore, the suicide note is read as a whole, it was his frustration due to failure in life and behaviour of his close relative which led him to commit suicide. The deceased had, in fact, closed the suicide note after narrating his own failure in his life and frustration and behaviour of his uncle. He had in fact decided to end his life. After closer of the note, he once again writes the second part which relates to the present accused. In any case, he had decided to end the life due to the behaviour of his relatives. Neither suicide note nor any statement goes to make out any case of instigation, incitement or any kind of harassment by the accused at all. I have already pointed out that the suicide note, in fact, shows that an employment was given to him by the accused and this suicide note falsifies the statements of the witnesses and even the contents of the F.U.I.R. Hence, the ground as is tried to be made out is prima facie not correct. In a case reported in Netaji Dutta Vs. State of West Bengal, Their Lordships have observed as follows:

6. In the suicide note, except referring to the name of the appellant at two places, there is no reference of any act or incidence whereby the appellant herein is alleged to have committed any willful act or omission or intentionally aided or instigated the deceased-Pranab Kumar Nag in committing the act of suicide. There is no case that the appellant has played any part or any role in any conspiracy, which ultimately instigated or resulted in the commission of suicide

by deceased-Pranab Kumar Nag.

7. Apart from the suicide note, there is no allegation made by the complainant that the appellant herein in any way was harassing his brother, Pranab Kumar Nag. The case registered against the appellant is without any factual foundation. The contents of the alleged suicide note do not in any way make out the offence against the appellant. The prosecution initiated against the appellant would only result in sheer harassment to the appellant without any fruitful result. In our opinion, the learned single Judge seriously⁸ erred in holding that the First Information Report against the appellant disclosed the elements of a cognizable offence. There was absolutely no ground to proceed against the appellant herein. We find that this is a fit case where the extraordinary power u/s 482 of the Code of Criminal Procedure is to be involved. We quash the criminal proceedings initiated against the appellant and accordingly allow the appeal.

8. The facts of the case at hand are almost identical and following the above ratio the accused in fact needs to be discharged. There is no evidence to proceed against the accused. The revision is, therefore, allowed. The accused stands discharged.