

(2020) 11 BOM CK 0008

In the Bombay High Court

Case No : Criminal Writ Petition No. 751, 1463 Of 2019

Subhash Ramgopal Bharuka And Ors

APPELLANT

Vs

State Of Maharashtra And Ors

RESPONDENT

Date of Decision : 03-11-2020

Acts Referred:

Indian Penal Code, 1860 — Section 34, 107, 294(b), 306, 506
Maharashtra Money Lending Act, 2014 — Section 23, 29, 45
Negotiable Instruments Act, 1881 — Section 138
Evidence Act, 1872 — Section 113(A), 113(B)
Code Of Criminal Procedure, 1973 — Section 482

Citation : (2020) 11 BOM CK 0008

Hon'ble Judges : T. V. Nalawadem J;M. G. Sewlikar, J

Bench : Division Bench

Advocate : A. V. Patil, A. D. Gaddime, P. G. Borade, Ajit Gaikwad Patil, Sachin S. Panale, A. B. Gaikwad

Final Decision : Allowed

Judgement

T. V. Nalawade, J

1. Rule. Rule made returnable forthwith. By consent, heard both the sides for final disposal.
2. Both the proceedings are filed for relief of quashing of FIR No.12 of 2019 and R.C.C. No.85 of 2019 filed in this FIR in the Court of learned Judicial Magistrate First Class, Kannad, for the offences punishable under Sections 306, 506 and 34 of the Indian Penal Code and Sections 23, 39 and 45 of the Maharashtra Money Lending Act, 2014.
3. The crime came to be registered on the basis of report given by one Suresh Ghuge on 19th January, 2019 to Kannad City Police Station. Deceased Bhausaheb was his elder brother. Bhausaheb was a contractor and he used to take the works of construction of irrigation department. On 15th January, 2019 at about 03:00 pm, Bhausaheb called informant and asked the informant to see

that at the site of Mehgaon, payment of labour is made. He informed that he was sending Rs.20,000/- with one Rambhau and the informant should give some amount from his pocket if more amount is required for distribution of wages. According to informant, he distributed the amount of Rs.70,000/- as the wages on that day.

4. It is the contention of the informant that on 16th January, 2019, at about 07:00 am to 07:30 am, when he called Bhausahab on his mobile phone, Bhausahab did not pick up the phone. When he was making many attempts to call Bhausahab on phone, the persons like Bhagwan Kande, Eknath Ghuge and Ganesh Nagare came to his house and said that it was necessary to go to Kannad as Bhausahab was sick. After reaching Kannad Rural Hospital, informant learnt that Bhausahab was dead. He learnt there that in one room of one hotel from Kannad, Bhausahab had committed suicide by hanging himself.

5. It is the contention of informant that he learnt that deceased had left behind suicide note in which he had blamed the persons like Vishnu Kalagaje, Subhash Bharuka, Sandesh Bharuka and Ashok Pankade for his suicide. It is the contention of the informant that these persons were harassing the deceased on count of money, which was due to them. He contended that the present Petitioner and Applicant, who are father and son, were harassing the deceased and they had filed proceedings against the deceased in Court. He has contended that the deceased was harassed by money lenders and so action should be taken against them. On the basis of this report, crime came to be registered and now charge-sheet is filed.

6. This Court has carefully gone through the so-called suicide note left behind by Bhausahab. The suicide note runs into four pages. The first page of the suicide note shows that it is addressed to P.I. of Kannad Police Station. On this page, it is mentioned that he was committing suicide due to harassment of money lenders. On this page, there is a writing that he had taken rupees fifty lakh as loan from Vishnu Kalagaje about 12 years back. It is mentioned that till that day, he had returned the amount of rupees one crore, but Vishnu was asking him to pay more and due to that he was feeling harassed. He has mentioned that he had recorded the conversation of Vishnu in that regard in his mobile handset.

7. On the first page of the suicide note addressed to police, it is mentioned that deceased had purchased diesel from Subhash Bharuka on credit basis prior to 2011. It is mentioned that after that year, he had not purchased diesel and he had no transaction of any nature with Bharuka. It is mentioned that he owed rupees twenty lakh towards the price of diesel and as against that he had made payment of rupees forty lakh. It is mentioned that he had given some cheques as security, but those cheques were misused by Subhash and by using those cheques, Subhash had filed cases under Section 138 of the Negotiable Instruments Act against him. It is mentioned that Subhash and his son Sandesh, present Petitioner and Applicant used to remain present in the Court on the dates given by the Court and due to that, he was feeling disturbed. It is mentioned that

ordinarily Subhash does not accept the payment by cheque, but in his matter he has shown that cheques were issued. It is mentioned that he has produced some receipts of payment of the amount. On one hand, it is mentioned that he had given the cheques as security and on the other hand it is mentioned that the cheques, which are used by Subhash do not bear his signatures. It is contended that some time back, Subhash had given threat of murder if the interest was not paid within one month. It is mentioned that last threat was given on 10th January, 2019 and due to that he was under tension.

8. In the suicide note addressed to police, there is allegation against one Ashok Pankade. It is contended that about for months prior to the date of suicide, he had taken rupees two lakh on interest basis as loan from Ashok and that amount was repaid by him. It is contended that even after return of the amount Ashok was demanding rupees five lakh more and for that he was giving threat of life to him. It is also mentioned that the conversation with Ashok was recorded by him in mobile handset.

9. The other page of suicide note is addressed to one Gopal Seth, to wife Ratna, to daughter Priyanka and to Ramesh Saheb. It is mentioned that he was sorry that he was leaving their company. He had requested them to see that they take action against the aforesaid persons and the aforesaid persons are punished. He has mentioned the names of atleast seven other persons to whom he owed money and to every person he owed more than rupees one lakh. On one page he has mentioned the amount, which he was entitled to receive and recover and that is in respect of construction works, which he had accepted. He has mentioned the names of some persons to whom money was given by him. It is mentioned that to one Bhausahab Eknath Ghuge, resident of Jalna bypass, he had given rupees five lakh about 15 years back and even after repeated demands, this person was not returning the money. He has mentioned that he was entitled to recover amount of rupees five lakh from Ganesh Bhune as due to fault of Ganesh his car was damaged. Then there is separate wiring addressed to his daughter Priyanka. He has said sorry to the daughter and he has requested her to take care of the family consisting of his wife and son. He has mentioned that some persons had harassed him and due to that he was leaving their company.

10. The submissions made and the record show that Petitioner Subhash Bharuka had filed two complaints under Section 138 of the Negotiable Instruments Act against the deceased in the year 2014 (SCC No.9509 of 2014 and SCC No.9510 of 2014). In the year 2015, Subhash Bharuka had filed Summery Suit No.13 of 2015 for recovery of amount of rupees 27.77 lakh against the deceased. The submissions made and the record show that permission was granted to the deceased to defend the summery suit subject to condition of depositing of 50% of the suit amount within one month. In Civil Writ Petition No.10428 of 2018, the learned Single Judge of this Court granted installments of aforesaid amount and granted some time to the deceased to make the payment. This order was made

on 18th September, 2018. Thus, the record shows that steps for recovery of the amount due, were taken in the years 2014 and 2015. As per the orders made in civil matter, some amount was already deposited by the deceased. The order made by the Trial Court Judge in summary suit shows that the record like correspondence made by the plaintiff to defendant and also the letter given by the defendant to the plaintiff in respect of transaction of diesel on credit basis were produced before the Trial Court. The record showing that some payment made, copies of bills, ledger account and cheques and also demand notices was produced. Account certificate issued by the chartered accountant was also produced. There is record like examination-in-chief and some cross-examination of the chartered accountant recorded in SCC No.9509 of 2014. This record shows that certificate was issued by the chartered accountant with regard to transactions recorded in books of accounts and bills and these transactions were reflected in income tax returns. This cross-examination was made on 4th January, 2018. The aforesaid record shows that Subhash Bharuka had filed legal proceeding for enforcing his right, for recovery of the amount due from the deceased. Some record is produced by other side to show that in other matters filed by Subhash Bharuka under Section 138 of the Negotiable Instruments Act, defence was taken by accused that Subhash was doing money lending business illegally. That circumstances cannot be considered in the present matter as it is not the case of informant and it is not mentioned in so-called suicide note that with him there was money lending transaction. Admittedly, the deceased had purchased diesel for his business on credit basis, cheques were issued by the deceased and on the basis of cheques, which bounced, legal action was taken by Subhash. The Applicant from other proceeding is son of Subhash and he has no connection with these transactions. If Subhash was prosecuting legal proceeding for getting the aforesaid remedies, he cannot be blamed for it. The suicide note and other contentions also do not show as to whether and what rate of interest was claimed by Subhash in respect of the amount due. Everything is vague. The sum and substance of the so-called suicide note shows that the deceased was in financial crunch and he had taken loan from many persons. Naturally, the persons who had given him loan were insisting for return of the amount. The contents of the suicide note show that there were no financial resources left with the deceased and he was expecting his daughter, who had just completed some course, to work and help the family. Thus, financial crunch appears to be the reason behind the suicide.

11. The learned counsel for Respondent informant has submitted notes of arguments, in which the provisions of Sections 107 and 306 of the Indian Penal Code are mentioned. He has produced copies of citations like AIR 2001 Supreme Court 3837, (Ramesh Kumar Vs. State of Chhattisgarh) and AIR 2011 Supreme Court 1238, (M. Mohan Vs. State). In both the matters, the wife of the accused had committed suicide. In the first matter, there was possibility of use of Section 113A and 113B of the Evidence Act and from that angle the facts were considered by the Apex Court. In the second matter, the provisions of Sections

306 and 107 of the Indian Penal Code are considered. In the second matter while interpreting Section 107 of the Indian Penal Code, the Apex Court has made it clear that there has to be clear mens-rea to commit offence and conviction cannot be sustained without positive act on the part of accused to instigate or aid in committing suicide. In the present matter, there is no question of using of presumptions, which are made available under Sections 113A and 113B of the Evidence Act.

12. The learned counsel for Petitioner placed reliance on observations made by the Apex Court in the decision given in Criminal Appeal No.1291 of 2008, (Madan Mohan Singh Vs. State of Gujarat and Ors.) decided on 17th August, 2010 and Criminal Appeal No.2086 of 2014, (State of Kerala and Ors. Vs. S. Unnikrishnan Nair and Ors.), decided on 13th August, 2015. In the second matter, there was suicide note left behind by the deceased and the Apex Court had occasion to discuss the provision of Section 107 of the Indian Penal Code. The Apex Court observed that in suicide note there was no mention of particulars of inducement/instigation. The Court referred the previous case in which the term "instigate" was interpreted. On the basis of facts of those cases, the Apex Court held that if a person is scared of the immediate calamity or self-perceived consequences, the others cannot be blamed for the same. The Apex Court has laid down that in such a situation, the High Court needs to use the power given under Section 482 of the Code of Criminal Procedure. In the other case, there was allegation of commission of offence punishable under Section 294(b) of the Indian Penal Code also. The Apex Court held that the material was not sufficient to infer that such offence was committed and then due to such circumstance the suicide was committed. The learned counsel for Petitioner placed reliance on observations made by this Court in the judgment delivered in Criminal Application No.155 of 2019, (Chandrakant S/o Yadavrao Gavhane Vs. The State of Maharashtra and another), dated 8th November, 2019. This Court has also discussed Section 107 of the Indian Penal Code in similar manner.

13. The position of law given in aforesaid cases show that intention a kind of mens-rea needs to be there for use of Section 107 of the Indian Penal Code. For proving the abetment of suicide, which is made punishable under Section 306 of the Indian Penal Code, Section 107 of the Indian Penal Code needs to be used and if there is nothing to show that there was such intention in existence of the accused, he cannot be prosecuted for the offence of abetment of suicide. The matters of committing suicide by debtors when it becomes impossible to return the debt are increasing day by day. Many persons help their friends and others by giving hand loan or by selling goods on credit. They are bound to ask the debtor to pay the dues. If the debtor feels such demand as harassment, on the basis of that circumstance, inference cannot be drawn that situation was created by the creditors due to which no other alternative was left to the debtor than to commit suicide. If he finds himself unable to return the amount and he takes such step, the persons who are entitled to recover the amount and who have prosecuted legal action, which is permissible under law, cannot be blamed for

suicide of such person even if he has blamed such persons for suicide in suicide note like present one. If the Court goes with the presumption, in such cases, that inference is possible of abetment as defined in Section 107 of the Indian Penal Code, the intention behind the provision of Section 107 of the Indian Penal Code will become otiose.

14. This Court had directed both the sides to see that the matters, which are filed by Subhash against others under Section 138 of the Negotiable Instruments Act are produced and copies of some complaints are produced. In those complaints, Subhash had specifically admitted that he had given hand loan and for re-payment of the hand loan, the cheque was given. Those matters need not be considered in the present matter. In the present matter, this Court is expected to consider as to whether there was money lending transaction between Subhash and the deceased. The aforesaid material does not show that there was such transaction between Subhash and the deceased. In view of these circumstances, this Court holds that the reliefs claimed in the two proceedings need to be granted. In the result, the following order is passed:

ORDER

- I. The criminal writ petition and the criminal application are allowed.
- II. Relief is granted to the Petitioner and the Applicant of quashing of FIR to their extent and quashing of R.C.C. No.85 of 2019 filed against them.
- III. Rule is made absolute in those terms.