

(2014) 03 BOM CK 0144

In the Bombay High Court

Case No : Criminal Application No's. 3909 of 2011 and 3231 of 2010

Sudarshan Ramchandra Shelake

APPELLANT

Vs

The State of Maharashtra
 Sharad and Rohan Vs The
State of Maharashtra and Bandu @ Bandopant Gulab
Chitalkar

RESPONDENT

Date of Decision : 11-03-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 174 482
Penal Code, 1860 (IPC) — Section 107 109 306

Citation : (2015) ALLMR(Cri) 1767

Hon'ble Judges : V.M. Deshpande, J;K.U. Chandiwal, J

Bench : Division Bench

Advocate : Dhananjay Mane, Mr. Ganesh J. Kore, in Criminal application No. 3909 of 2011 and Mr. Satej S. Jadhav, Nos. 1 and 2 in Criminal application No. 3231 of 2010, for the Appellant; P.N. Mule, APP for Respondent State in both Appeal and Mr. R.R. Karpe, in Criminal Application No. 3231 of 2010, for the Respondent

Final Decision : Allowed

Judgement

K.U. Chandiwal, J.—Heard. Rule, made returnable forthwith. Both the applications are heard together as they raise common question of quashing FIR vide Crime No. I-29/2010, registered at Rahuri Police Station, district Ahmednagar. Prashant, aged 22 years, was a student of IIInd year L.L.B. Course (Three years" Law degree course after graduation) at Ferguson College Hostel. Unfortunate suicide of Prashant on 25th Jan., 2010, at his relative"s place at Khadambe, Taluka Rahata, district Ahmednagar, made his father (a police officer) to lodge FIR implicating the applicants who were studying in the College or were in the hostel at the relevant time.

2. In the FIR, complainant Bandu says that in December 2009, his son Prashant had been to abode but seen depressed; he informed his father that (1) Sudarshan Shelke, 2) Chetan Mahale, 3) Sharad Lande, 4) Rohan Belve and five/

ten other students were torturing him on different pretext. He conveyed to his father that he desired to study at home. Complainant says, whenever his son Prashant was at abode, he used to receive phone calls from his friends at the college and, even on phone, they used to humiliate him. Prashant did not respond to complainant's query and used to delete such calls. On 2nd January, 2010, at 7 a.m., Prashant attempted to commit suicide by consuming poison. He was relieved of danger at hospital. Thereafter, unfortunate, event of committing suicide on 25th Jan., 2010, has taken place.

3. We quite see, the complainant was jittery; he was crumbled. He has lost even logic, however, at the same time, we are consciously guided by his vocation; a police officer, who has to maintain mental equilibrium in all stages. After sad demise-suicide of Prashant, when inquest was drawn, owing to accidental death, in pursuance to Section 174 Cr.P.C., there was no whisper of doubt; any allegation to have pre-emptive action against the culprits. The sad demise of Prashant is ornamented to implicate applicants. Complainant was quite conscious on 2nd Jan., 2010, of aborted attempt where complainant revealed names of culprits. This should have been an added phenomenon for the complainant to immediately lodge report of protest or grievance at the college against students. He did not avail the rational opportunity; it smacks of his bona fides.

4. Mr. Karpe, learned Counsel for the complainant says, father i.e. the complainant resides 122 kms away from Pune, where the deceased was staying. He had no reason to name few of the students. The FIR being at a preliminary stage, warrants investigation and ingredients of the offense primarily are seen spelt out in the FIR. The report of the fact finding committee to which reference is given by the learned Counsel for the accused/applicant, according to Mr. Karpe, should not weigh while dealing with application u/s 482 of Cr.P.C.

5. The legal position in respect of exercise of powers u/s 482 Cr.P.C. is spelt out by the Hon''ble Supreme Court flowing from judgment in the matter of Sarwarlal and Others Vs. The State of Hyderabad, .

It was again elaborately explained by the Hon''ble Supreme Court in the matters of State of Haryana and others Vs. Ch. Bhajan Lal and others, , G. Sagar Suri v. State of U.P. ((2002) 2 SCC 636), and in the matter of Inder Mohan Goswami & Another vs. State of Uttaranchal & Others, three Judges Bench of Hon''ble Supreme Court reported in Inder Mohan Goswami and Another Vs. State of Uttaranchal and Others, . The sum total of the observations can be culled out this way: where the allegations in the first information report or complaint taken at its face value makes out absolutely no case against the accused or the complaint does not disclose essential ingredients of an offense which are alleged against the accused, there is no inhibition for exercise of powers u/s 482 Cr.P.C. The criteria explained by the Hon''ble Supreme in the matter of Ch. Bhajanlal, also fits to the present case, particularly clause No. 7 thereof. In the matter of Inder Mohan Goswami, in paragraph no. 27, Hon''ble Supreme Court has dealt with the powers possessed by the High Court explained as under:

The powers possessed by the High Court u/s 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. The court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court should normally refrain from giving a prima facie decision in a case where all the facts are incomplete and hazy; more so, when the evidence has not been collected and produced before the court and the issues involved, whether factual or legal, are of such magnitude that they cannot be seen in their true perspective without sufficient material. Of course, no hard and fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceedings at any stage.

6. We are, in the situation referred to above and discussed in latter part of the order, inclined to exercise our powers u/s 482 of Cr.P.C. in favour of the applicants.

7. Unfortunate death of Prashant is not a question; but, a question mark or scar is left: whether it should be called as suicidal death for want of any positive record placed by the complainant-the father. Before attacking the events, let us recapitulate provisions of Sections 109 and 306 of IPC which read as under:

109. Punishment of abetment if the act abetted is committed in consequence, and where no express provision is made for its punishment.-

Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.

306. Abetment of suicide.-If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

In an offense of such character, clarity in the First Information Report is to be seen. Before committing suicide, there should be ill-treatment, harassment, humiliation, making life of the deceased miserable, intolerable and a difficult task to face. There was no situation of mishap or mayhem in the life of Prashant. The Fact Finding Committee constituted in legal frame had occasion to inquire with 28 persons studying in Division A and B of Second LL.B. class of the college. Few were drop out students, few were full time teachers; two were visiting faculty teachers. The Committee had formulated issues and findings and conclusion to the issues are:

8. For bringing the case within the term "abetment", there should be some indication that the applicants herein instigated, provoked or made life of Prashant miserable to live. The circumstances demonstrated, Prashant was frustrated

owing to his examination results as he could not get through in his attempt and re-evaluation was sought. He was not even sure of re-evaluation. He carried books from Library to study afresh.

9. Prashant had a tendency to end his life as is reflected in the event dated 2nd Jan., 2010, but it was, admittedly, averted. However, he succeeded or met his death, may be accidentally, on 25th Jan., 2010. If Prashant was in habit of deleting the mobile calls, there was no injunction for the complainant to immediately report to the superiors or the college authorities of mental depression due to harassment, instigation on the part of these applicants, at the earliest. The slumber demonstrated by the father speaks volumes against his conduct. He desired to implicate these applicants probably to have clean chit for the events of death of Prashant as it could have sent adverse messages of torture, even to his family members. No criminal propensity on the part of the accused/applicant is reflected as none of the witness assert so. There is no indication in the FIR illustrating any direct or indirect conduct of these applicants to said Prashant. Cutting of jokes at occasions by the classmates does not mean that they were instigating for particular cause. It is individual phenomenon, mental set up of a person, which differs. Therefore, uniform formula to apply instigation and abetment to commit suicide should not be branded or attributed against the accused/applicants. They too will have to suffer scar of litigation, adverse influence on future prospects, including losing any assignment. An undesired FIR should not stumble to jostle peace in the life of applicants, at the inception of their career. Survey of above details in tune with Section 482 of Cr.P.C., 306, 107 and 109 of IPC, we find, the FIR calls for interference and is certainly an abuse of process and authority vested in the complainant; being a part of the said Police Station. The FIR is accordingly quashed and set aside. Rule made absolute. Respective applications allowed.