

(2023) 11 BOM CK 0016

Bombay High Court

Case No: Criminal Application No. 86 Of 2023

Sheezan Mohd. Khan

APPELLANT

Vs

State Of Maharashtra And
Others

RESPONDENT

Date of Decision: Nov. 10, 2023

Acts Referred:

- Code Of Criminal Procedure, 1973 - Section 161, 173(2), 482
- Indian Penal Code, 1860 - Section 107, 302, 306, 482

Hon'ble Judges: A.S. Gadkari, J; Sharmila U. Deshmukh, J

Bench: Division Bench

Advocate: Dhiraj U. Mirajkar, Shailendra Mishra, Sharad Rai, Prem Tanna, Elton George, Ritika Chamaria, Vikas Kapile, Raja Thakare, Aishwarya Sharma, M.H. Mhatre, Hansraj Solanki, Tarun Sharma

Final Decision: Dismissed

Judgement

Sharmila U. Deshmukh, J

1) Invoking jurisdiction of this Court under Section 482 of the Code of Criminal Procedure, 1973, the Applicant seeks quashing of chargesheet in

Regular Criminal Case No.553 of 2023, pending before the learned Judicial Magistrate First Class, Vasai, District Palghar, arising out of CR No.1359

of 2022, registered with Waliv Police Station, Vasai, District Palghar for the offence under Section 306 of the Indian Penal Code, 1860.

2) Heard Mr. Dhiraj U.Mirajkar, learned counsel for the Applicant, Mr.Raja Thakare, learned Special Counsel, Ms. M.H. Mhatre, APP for

Respondent No.1-State and Ms.Hansraj Solanki, learned counsel for Respondent No.2.

3) The first informant is the mother of the victim.

Perused record. The case of the prosecution as spelt out from the FIR is that, the victim was an actor working in a TV Serial since June-2022 and

used to confide in the first informant about the happenings on the set of the shoot. About two months prior to the lodgment of crime, the victim

confided in the informant that she is emotionally and romantically involved with the Applicant, who is a co-actor in the TV serial. The victim used to

visit the residence of the Applicant and she was treated well by his family members. That, the Applicant had visited the residence of the informant on

three to four occasions and had told the informant that, he is very friendly with the victim and is romantically involved with her.

3.1) It is alleged that, about 15 days back, the victim was very upset and tearfully told the informant that, the Applicant has ended the relationship and

does not want to live with the victim. That, the informant called the Applicant's mother and informed her that, the victim is upset due to the

breakup with the Applicant, and the Applicant's mother told the informant that, she has reprimanded the Applicant over this issue. The victim then

visited the Applicant's house and when she came back she told the informant that, the Applicant does not want to continue with the relationship as

he is romantically involved with another girl.

3.2) It is further alleged that, since that day the victim was very upset and on 10th December, 2022, in the evening the victim suffered a panic attack

and visited a hospital in Kandivali. At that time, the doctor called the informant to Lotus Hospital, Kandivali and advised the informant that, the

victim's physical and mental health was not proper and medicine was given to her. The informant brought her back to their residence and the

victim kept on repeating that the Applicant has left her. That, the victim was constantly upset and pleaded with the informant to speak with the

Applicant to get him back in her life.

3.3) It is further alleged that, on 23rd December, 2022, the informant visited the set at Naigaon, where the TV serial was being shot to speak with the

Applicant, however, the Applicant in front of the victim told the informant that, he will not come back in the life of the victim as he does not love her

any more. It is alleged that, on 24th December, 2022, in the evening the informant received a call from the Manager of the set informing her that, the

victim had shut herself up in the room and after breaking open the door she has been taken to the hospital. That, upon reaching the Fever and Brain

Multispeciality Hospital in Naigaon, the informant was informed that, the victim is dead and the informant noticed marks on the neck of the victim. The

allegation is that, the victim, who was aged about 21 years was romantically involved with the Applicant, however, 15 days prior thereto the Applicant

ended the relationship, as a result of which she was depressed and on the set of her shoot at Naigaon, she committed suicide by hanging.

4) During the pendency of the proceedings, the chargesheet came to be filed, which is annexed to the Application. As the investigation was completed

and the chargesheet was filed, at the inception of arguments, the decisions of the Apex Court in (i) Central Bureau of Investigation vs. Aryan Singh

dated 10th April, 2023 passed in Criminal Appeal No.1025-1026 of 2023 [@ SLP (CRL.) Nos.12794-12795 of 2022], (ii) Manik B. vs. Kadapala

Sreyes Reddy and Anr. dated 7th August, 2023 passed in SLP (Crl) No.2924 of 2023 and (iii) Supriya Jain vs. State of Haryana and Another,

reported in (2023) 7 SCC 711 were pointed out to learned counsel for the Applicant by us.

4.1) In the case of Central Bureau of Investigation vs. Aryan Singh (supra), the Apex Court has held that, while deciding an Application under Section

482 of Cr.P.C., the High Court can not conduct a mini trial. That, as per the cardinal principle of law, at the stage of discharge and/or quashing of

criminal proceedings, while exercising powers under Section 482 of Cr.P.C., the Court is not required to conduct a mini trial.

4.2) In the case of Manik B. vs. Kadapala Sreyes Reddy (supra), the Apex Court has held that, the scope of interference while quashing the

proceedings under Section 482 of Cr.P.C. is very limited. That, the Court would exercise its power to quash the proceeding only if it finds that taking

the case at its face value, no case is made out at all. The Apex Court also held that, at the stage of deciding an Application under Section 482 of

Cr.P.C., it is not permissible for the High Court to go into the correctness or otherwise of the material placed by the prosecution in the chargesheet.

4.3) In the case of Supriya Jain vs. State of Haryana (supra), the Apex Court held that, the small window that the law through judicial precedents provides, is to look at the allegations in the FIR and the material collected in the course of investigation, without a rebuttal thereof by the accused and to form an opinion upon consideration thereof that, an offence is indeed not disclosed from it. It was further held that, unless the prosecution is shown to be illegitimate so as to result in an abuse of the process of law, it would not be proper to scuttle it.

5) Despite the aforementioned decisions being pointed out to the learned counsel for the Applicant, he insisted that this Court proceed with the hearing of the Application on merits. Due to the persistent/insistence of learned counsel for the Applicant, we have heard the learned counsel for the Applicant.

6) Learned counsel for the Applicant submitted that, the romantic relationship between the Applicant and victim lasted only for a period of two months and thereafter the relationship was terminated by consent. He submitted that, the victim had medical history of psychiatric disorders namely depression, anxiety, panic attack and OCD etc. He points out that in the FIR it is stated that, on 10th December, 2022, the victim had a panic attack for which she was treated at the hospital. He would further submit that, despite the relationship having ended the Applicant and the victim continued to be good friends and she had disclosed to the Applicant that, she was dating some other person. He would submit that, on the date of the incident, the victim was spending time in the Applicant's room and thereafter, the Applicant was required to go for his shot. He would submit that, based on the last seen theory, which is applicable to the offences under Section 302 of the IPC, the Applicant cannot be prosecuted. He would further point out the definition of the "Abetment" in Section 107 of the IPC and would submit that, none of the ingredients of Section 107 are satisfied in the present case. According to him, considering that, the victim was an hyper sensitive individual, the victim has taken the extreme step for which the Applicant cannot be prosecuted. He would submit that, mens rea of the Applicant is clearly lacking. According to him, in today's modern society, the youngsters indulge in relationships and breakups happens which are a normal facet of life and that the breakup cannot be viewed as a direct and proximate cause

leaving the victim with no other option but to commit suicide.

7) We have considered the submissions and perused the record. After the lodgment of crime, the investigation commenced and chargesheet came to

be filed. As held by Apex Court in Supriya Jain (supra), the allegations in the FIR and material collected will have to be looked into to ascertain that,

no offence is disclosed from it. During the investigation further statement of the first informant as well as of other witnesses have been recorded.

Whether the testimony of the witnesses is trustworthy or not has to be tested at the time of the trial after the evidence will be led. We have therefore,

refrained ourselves from discussing the veracity of statements of the witnesses recorded under Section 161 of the Cr.P.C.

During the investigation, it was revealed that, on 24th December, 2022, the victim and the Applicant were together in the Applicant's makeup

room during 3:15 p.m. to 3:26 p.m. and at that time the Applicant had an altercation with the victim and immediately thereafter the victim committed

suicide by hanging herself in the Applicant's makeup room using the strip of cloth which was used by the Applicant during the shoot for tying his

hand.

8) The Applicant has been charged for offence under Section 306 of IPC, which reads thus:

â€œ306. Abetment of suicide. â€" 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.â€

Plain reading of the provision indicates that to constitute an offence under Section 306 of IPC, the prosecution has to establish that the suicide of a

person has been abetted by the accused and as such, the offence under Section 306 would be attracted only in event of an abetment of the

commission of suicide.

9) Abetment has been defined in Section 107 of the IPC, which reads as under:

â€œ107. Abetment of a thing. - A person abets the doing of a thing, who â€

First.â€" Instigates any person to do that thing; or

Secondly.â€" Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place

in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly. â€" Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1.- A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes

or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Explanation 2.- Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and

thereby facilitate the commission thereof, is said to aid the doing of that act.â€"

10) The provision indicates that, to constitute abetment under Section 107, there has to be instigation by the person to do that thing, or an intentional aid

by any act or illegal omission to the doing of that thing. Pertinent to note is Explanation 2 to the section which provides that whoever, either prior to or

at the time of commission of an act, does anything in order to facilitate the commission of that act and thereby facilitate the commission thereof is said

to aid the doing of that act. The explanation assumes importance in facts of instant case in view of the finding of the investigating officer that

immediately prior to the incident in question, the Applicant and the victim were together in one room and there was an altercation between them and

after the Applicant left the room, the victim committed suicide.

11) The provisions of Sections 306 and 107 of the IPC have been interpreted by the Apex Court in various decisions. In the case of Chitresh Kumar

Chopra vs. State (Government of NCT of Delhi), reported in (2009) 16 SCC 605, the Apex Court noted the decision in Ramesh Kumar v. State of

Chhattisgarh, reported in (2001) 9 SCC 618, which held that, â€œWhere the accused had, by his acts or omission or by a continued course of conduct,

created such circumstances that the deceased was left with no other option except to commit suicide, in which case, an ""instigation"" may have to be

inferred. A word uttered in a fit of anger or emotion without intending the consequences to actually follow, cannot be said to be instigation.â€". The

Apex Court held in paragraph Nos.17 to 19, as under:

17. Thus, to constitute "instigation", a person who instigates another has to provoke, incite, urge or encourage the doing of an act by the other by goading" or "urging forward" The dictionary meaning of the word "goad" is "a thing that stimulates someone into action, provoke to action or reaction (See Concise Oxford English Dictionary); "to keep irritating or annoying somebody until he reacts" (see Oxford Advanced Learner's Dictionary, 7th Edn.).

18. Similarly, "urge" means to advise or try hard to persuade somebody to do something or to make a person to move more quickly and or in a particular direction, especially by pushing or forcing such person. Therefore, a person who instigates another has to "goad" or "urge forward" the latter with intention to provoke, incite or encourage the doing of an act by the latter.

19. As observed in Ramesh Kumar, where the accused by his acts or by a continued course of conduct creates such circumstances that the deceased was left with no other option except to commit suicide, an "instigation" may be inferred. In other words, in order to prove that the accused abetted commission of suicide by a person, it has to be established that:

- (i) the accused kept on irritating or annoying the deceased by words, deeds or wilful omission or conduct which may even be a wilful silence until the deceased reacted or pushed or forced the deceased by his deeds, words or wilful omission or conduct to make the deceased move forward more quickly in a forward direction; and
- (ii) that the accused had the intention to provoke, urge or encourage the deceased to commit suicide while acting in the manner noted above.

Undoubtedly, presence of mens rea is the necessary concomitant of instigation.

12) In the case of Amalendu Pal alias Jhantu vs State of West Bengal reported in (2010) 1 SCC 707 , the Apex Court held as under:

12. It is also to be borne in mind that in cases of alleged abetment of suicide there must be proof of direct or indirect acts of incitement to the commission of suicide. Merely on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide, conviction in terms of Section 306 IPC is not

sustainable.â€

13. Section 302 of the Indian Penal Code states that "Whoever abets the commission of suicide must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide."

13) In the case Ude Singh and Others Vs. State of Harayana, reported in (2019) 17 SCC 301, the Apex Court held in paragraph 16 as under:

¶16. In cases of alleged abetment of suicide, there must be a proof of direct or indirect act/s of incitement to the commission of suicide. It could

hardly be disputed that the question of cause of a suicide, particularly in the context of an offence of abetment of suicide, remains a vexed one,

involving multifaceted and complex attributes of human behaviour and responses/reactions. In the case of accusation for abetment of suicide, the

Court would be looking for cogent and convincing proof of the act/s of incitement to the commission of suicide. In the case of suicide, mere allegation

of harassment of the deceased by another person would not suffice unless there be such action on the part of the accused which compels the person

to commit suicide; and such an offending action ought to be proximate to the time of occurrence. Whether a person has abetted in the commission of

suicide by another or not, could only be gathered from the facts and circumstances of each case.â€

14) Conspectus of the above decisions indicates that, a continuous course of conduct creating a situation which instigates the victim to take the

extreme step coupled with an direct or indirect act of incitement proximate to the incident in-question would prima facie constitute abetment within

meaning of Section 107 of IPC. The commission of an act proximate to the time of occurrence of the incident in question which facilitates the incident

prima facie would reveal an act of instigation. The mens rea will therefore have to be prima facie inferred.

15) In the present case, the victim and the Applicant were co-actors working together in a serial. Admitted fact is that, both of them were emotionally

involved which was ended by the Applicant. The victim - a young girl of 21 years was deeply affected by the breakup and continued with her efforts

to resurrect the relationship. The defence taken is that the breakup was mutual, which defence cannot be tested in an application under Section 482 of

Cr.P.C. What is required to be seen is whether there was any direct or indirect act of incitement to the commission of suicide and whether by a

continuous course of conduct, circumstances were created that the victim was left with no option but to take the extreme step.

16) If we consider the sequence of events, the Applicant ended the relationship with the victim in the month of December, 2022. The allegation is that

the victim was deeply affected and had even been to the residence of the Applicant. After coming from the Applicant's residence she had

informed the first informant that the Applicant had ended the relationship as he is in love with another female. On 10th December, 2022, the victim

suffered a panic attack. On 23rd December, 2022, when the informant visited the set to speak with the Applicant, the Applicant humiliated the victim

by stating that he does not love the victim and relationship cannot be continued. On 24th December, 2022 from 3:15 p.m. to 3:26 p.m. the victim and

the Applicant were together in the Applicant's makeup room and there was an altercation between them. Thereafter, the Applicant left the room

for his shoot and victim committed suicide. The allegation is that, the Applicant caused mental trauma to the victim and humiliated her by frequently

quarreling with her. The allegations prima facie reveals that, the conduct of the Applicant in ending the relationship with the victim, having relationship

with another female and constant quarrel had deeply affected the victim. Prima facie it appears that, the self esteem of the victim was tarnished by

the humiliation at the hands of the Applicant. As the Applicant and victim were working together in the serial, it can be inferred that the Applicant was

aware of the mental trauma being faced by the victim and the effect his conduct had on the Applicant. To submit that the breakup of a relationship

cannot be viewed seriously and is to be considered a normal facet of life which is best termed as insensitive and adding insult to injury, particularly,

when in the instant case, a young girl of 21 years has lost her life.

17) The final report submitted under Section 173(2) of CR.P.C concludes that Applicant was aware of the sensitive nature of the victim and despite

the same established a romantic relationship with her getting her emotionally and physically involved with him. That after getting the victim mentally and physically completely involved with him, the Applicant started ignoring her and ended the relationship and got close to Soniya i.e. another girl.

That, the Applicant intentionally mentally harassed the victim and humiliated her by frequently fighting with her. That on the date of incident the

Applicant and victim were together in the room and there was an altercation between them and after the Applicant left for the shoot, the victim

committed suicide by hanging herself with the strip of cloth used by the Applicant for tying his hand during the shoot. In light of the material available

on record, we are of the view that, at this stage the proceedings are not at all required to be scuttled.

18) The record of investigation prima facie reveals the complicity of the Applicant. The altercation proximate to the incident in question prima facie

constitutes a direct act of incitement leading to the commission of the offence. Knowing fully well about the condition of the victim, whether by the act

of quarrelling with the victim the requisite intention to aid or instigate or abet the commission of suicide was present will have to be adjudged during

trial, however the same can safely prima facie be inferred. The fact that the chargesheet has been filed would indicate that, there is sufficient

evidence to connect the Applicant to the offence.

The arguments advanced by the counsel for the Applicant, according to us, indisputably amounts conducting a mini trial, which is not permissible under

the law.

19) At this stage of quashing of the proceedings, the veracity of the allegations is not to be tested. It is only if, upon the reading of the FIR, in the

absence of any rebuttal from the Applicant, there is no allegation to connect the Applicant with the alleged offence that the FIR can be quashed. In

light of the foregoing discussion, in our opinion, it cannot be stated that there is no material at all to connect the Applicant with the alleged offence. It is

settled that it is only if no case at all is made out the proceedings would be quashed. In our view, such is not the case in the present application.

20) For the reasons recorded hereinabove, in our considered opinion, this is not a fit case to exercise our powers under Section 482 of Cr.P.C.

Application is accordingly dismissed.