

Prabhakar S/o Bhausahab Thombare Vs State Of Maharashtra

Court: Bombay High Court (Aurangabad Bench)

Date of Decision: Jan. 10, 2025

Acts Referred: Code of Criminal Procedure, 1973 " Section 161, 482

Indian Penal Code, 1860 " Section 34, 107, 306

Maharashtra MoneyLending (Regulation) Act, 2014 " Section 39

Hon'ble Judges: Vibha Kankanwadi, J; Rohit W. Joshi, J

Bench: Division Bench

Advocate: Vijay V. Deshmukh, V.K. Kotecha, R.R. Karpe

Final Decision: Allowed

Judgement

Vibha Kankanwadi, J

1. Present Application has been filed initially, for quashing the First information Report (for short "the FIR", vide Crime No.434 of 2022 dated

14th October 2022, registered with Belwandi Police Station, Taluka-Shrigonda, District-Ahmednagar and by way of amendment, for quashing the

proceedings in Charge-sheet No.31 of 2023 dated 15th February 2023 pending before the learned Judicial Magistrate First Class, Shrigonda, District-

Ahmednagar and Sessions Case, if any, arising out of the same, for the offence punishable under Section 306 read with Section 34 of the Indian Penal

Code and Section 39 of the Maharashtra Money Lending (Regulation) Act (for short "the Maharashtra Money Lending Act").

2. Heard learned Advocate Mr. Deshmukh for the applicant, learned APP Mr. Kotecha for respondent No.1 and learned Advocate Mr. Karpe for

respondent No.2.

3. It has been vehemently submitted on behalf of the applicant that FIR has been lodged by the father of the deceased. In the FIR it is stated that

respondent No.2 " father has land at Raigavhan. He along with his two sons, namely Jitendra and Ravindra, run a bakery at Karegaon, Taluka

Shirur, District-Pune. For his business purpose, when he was in need of money, he decided to sale 50 Gunthas of land situated at Raigavhan, Taluka-

Shrigonda, District-Ahmednagar. He had entered into an agreement with one Nasir Abdul Shaikh on 15th December 2020. The said transaction was

settled with the mediation by one Sampat Shankar Mapari and Prabhakar Bhausaheb Thombare i.e. the present applicant. Earnest amount of

Rs.2,30,000/- was given in cash on the date of agreement to sell. It was decided to complete the transaction within a period of two months thereafter

by giving remaining amount of Rs.18,00,000/-. The informant in his FIR then says when he himself, his wife and both the sons were in the bakery on

13th October 2022, son Ravindra (now deceased) told them that he would go to Raigavhan and look-after the house and the land. He left Karegaon

around 4.00 p.m. Elder son Jitendra has given a WhatsApp call around 5.00 p.m. to deceased Ravindra whereupon Ravindra told that he has reached

the house and he is showing the land to proposed customer as the land is to be sold. After a while when son Jitendra had given call again to deceased

Ravindra, then Ravindra was not picking up the phone. Therefore, Jitendra made phone call to his cousin Aniket and asked to see as to where

Ravindra is, he should go to the house and see what has happened. Then Aniket went to the house of the informant at Raigavhan and noticed that

Ravindra has committed suicide. He told the said fact to the informant. Therefore, informant along with other family members came to Raigavhan

around 7.45 p.m. They saw that Ravindra had hanged himself to an iron angle in the house. Jitendra then gave intimation about the same to Belwandi

Police Station. At the time of drawing inquest panchnama, suicide note was found in the left side pocket of the pant of the deceased Ravindra,

wherein he had blamed one Anil Diwate from whom he had taken amount of Rs.5,00,000/- as hand-loan on interest and in spite of payment of entire

amount, still said Diwate was insisting upon the payment and it was also stated that Ravindra became fed up with the harassment given by Sampat

Shankar Mapari and Vishnu Thombare (whose complete name was not known to the deceased) and further stated that these were the persons who

were responsible for the suicide. In the FIR then it is stated by respondent No.2 that in fact present applicant was the mediator in the transaction and

not Vishnu Thombare. Vishnu Thombare was never involved in any transaction and has not given harassment to them.

4. Learned Advocate for the applicant has taken us through the entire charge-sheet and submits that taking the contents of the FIR as it is, taking the

suicide note as it is, yet offence under Section 306 of the Indian Penal Code, together with common intention punishable under Section 34 of the Indian

Penal Code and Section 39 of the Money Lending Act will not get attracted. Whatever transaction had arrived at between the informant and Nasir

Abdul Shaikh was on 15th December 2020. Thereafter there was no occasion for the applicant to get involved himself in the transaction. In fact, if we

consider the agreement to sell, then it can be seen that the present applicant is a witness to the transaction and not more than that. No positive role

and positive act amounting to ill-treatment or abetment to commit suicide is stated in the suicide note nor told by the informant and the witnesses.

Therefore, it would be unjust to ask the applicant to face the trial.

5. Per contra, learned APP and learned Advocate for respondent No.2 strongly opposed the application. They submitted that though the real name of

the applicant is not appearing in the suicide note and he has been stated as Vishnu Thombare, whose complete name was not known to the deceased,

yet the informant has clarified that Vishnu Thombare was never in the transaction nor he has then done any such act which would then amount to

abetment to commit suicide. Statements of witnesses have been recorded who have stated that such suicide note was found from the dead body of

the deceased Ravindra and therefore, now the said suicide note has been sent for opinion of the handwriting expert to establish that the said note was

left by the deceased, let the trial be held.

6. At the outset, we would like to say that pendency of the suicide note for the opinion of the handwriting expert is not a hurdle in this case. We may

presume that the said note has been left by the deceased and it is in the handwriting of the deceased. It is then required to be seen, as to whether the

offence has been made out against the present applicant. Neither in the FIR nor in the suicide note nor in the statement of any of the witness under

Section 161 of the Code of Criminal Procedure it has come on record that the present applicant had extended any amount as loan either to the

deceased or to the informant. Therefore, provisions of Section 39 of the Money Lending Act cannot be attracted against the applicant. At the most,

taking the contentions in the suicide note as it is, that Section was referring to the alleged loan transaction between the deceased and Anil Diwate.

7. As regards Section 306 of the Indian Penal Code is concerned, the prosecution will have to prove that the applicant had abetted the commission of

suicide by Ravindra in a particular manner or due to particular acts. For this purpose, we will have to consider Section 107 of the Indian Penal Code

which defines "Abetment of a thing". In order to constitute abetment, the person who abets must either instigate any person to do that thing i.e.

suicide or had engaged with one or more other person or persons in any conspiracy for the doing of that act or illegal omission pursuant to that

conspiracy or intentionally aids by any act or illegal omission so that the person commits suicide. We may also take note of the decision of this Court in

the case of Dilip S/o Ramrao Shirasao and others vs. State of Maharashtra and another, 2016 ALL MR (Cri) 4328a, and certain decisions of

the Hon'ble Supreme Court, which we are referring here to consider the legal position, i.e. the decisions in the case of Sanju alias Sanjay Singh

Sengar vs. State of Madhya Pradesh, 2002 Cri.L.J. 2796; Madan Mohan Singh vs. State of Gujarat and another, reported in (2010) 8 SCC

628; S.S. Chheena vs. Vijay Kumar Mahajan reported in 2010 All MR (Cri) 3298 (S.C.), Chitresh Kumar Chopra v. State (Govt. of NCT of

Delhi) (2009) 16 SCC 605, Jayadeepsinh Pravinsinh Chavda and others vs. State of Gujarat, 2024 SCC OnLine SC 3679.

8. Perusal of the entire charge-sheet would show that initially A.D. (Accidental Death) was registered by Jitendra around 1.06 a.m. on 14th October

2022. At that time he has not stated anything regarding the suicide note but it appears that at that time the dead body was not even brought down.

Then the inquest panchnama is prepared at the spot and at that time the chit was found from the left side pocket of the pant of the deceased. The

dead body was then sent for postmortem and the postmortem report gives cause of death as "Asphyxia due to hanging". Therefore, there is prima

facie evidence to come to a conclusion that Ravindra had committed suicide. Now, it is required to be seen, as to whether there is evidence collected

by the police to show that prima facie applicant had abetted commission of suicide by Ravindra and/or with the common intention on the part of the

co-accused. In order to consider this, we need not repeat the contents of the FIR as the entire contents are already reflected and the statements of

witnesses under Section 161 of the Code of Criminal Procedure are on the same line.

9. The transaction regarding agreement to sell had taken place on 15th December 2020, to which the present applicant appears to be the mediator or

witness. The said document is on record. But then in the FIR it is absolutely not stated nor any other witness has tried to explain, as to why the said

transaction could not be materialized, whether it is cancelled or still the informant considers it as an agreement to sell which is alive. There is also no

further fact given whether any legal step has been taken by the informant against said Nasir Abdul Shaikh or not. Further all the witnesses including

the informant are silent on the point, as to when the loan was taken by Ravindra from Anil Diwate and when the repayment has been made. No

documentary evidence is produced to support the said contention. Rather, there is a document which is collected, which appears to be the consent

deed between the informant on one side and his wife and both the sons (including the deceased) on other side, allegedly executed on 23rd October

2021, wherein it is stated that due to continuous illness of the informant, they have decided to sell 50 R. land situated at Raigavhan and the other

members of the family have no objection for the same. Then there is affidavit of one Kishor Sampat Mapari, who appears to be the son of mediator

Sampat Shankar Mapari, stating that he wants to purchase the said land belonging to the informant and this affidavit has been done on 13th October

2021. These documents do not show involvement of the present applicant.

That means, present applicant was only the witness to the transaction i.e. registered instrument between Nasir Abdul Shaikh and the informant dated

15th December 2020. If certain different agreement has been entered into by the informant with somebody else, then how the applicant is responsible

for the same. These subsequent transactions appeared to be behind the back of the applicant.

10. We are taking the suicide note as it is, wherein the name of the present applicant is not mentioned at all. Name of one Vishnu Thombare has been

mentioned and then the informant now insists upon that in fact the said name ought to have been Prabhakar Bhausahab Thombare. The informant is

not ruling out the existence of a person by name, Vishnu Thombare. What he says is that Vishnu Thombare was not involved in their transaction and

has not given them any harassment. Informant cannot give different meaning, as per his convenience, to the statements from the suicide note. The

suicide note was left by the deceased and it will have to be interpreted without any subtraction or addition. In the FIR, informant has also stated that:

आचार्य, - "जोअन, ;kyk, Bksacjs, ;kaps, iq.kZ, uko ekgr ulY; kus R; kus fo.kq Bksacjs, ;kps uko Vkdys vkg-sAch, -
(as Ravindra was not knowing the

full name of Thombare, he has stated name of Vishnu Thombare). That means, if the deceased was not knowing the name of the person who had

allegedly given harassment, then where is the scope to interpret that the alleged acts amounted to abetment and the applicant had the intention that the

deceased should commit suicide.

11. From the entire evidence, it can be seen that there is no overt act or active role attributed to the applicant. His role in the transaction that had

taken place about two years prior to the incident, is limited to the extent of attesting witness to the document. Further there is no connection between

the loan allegedly taken by the deceased from Anil Diwate and the applicant; we, therefore, arrive at a conclusion that there is absolutely no evidence

against the applicant for arraying him as an accused.

12. There is total suppression on the part of the informant that who had taken the loan and when. When informant says that he himself along with his

two sons were doing the business of the bakery, that too at the different place i.e. at Karegaon, Taluka-Shirur, District-Pune, then it is hard to believe

that only deceased would have taken the loan. When and in which manner the amount of Rs.5,00,000/- was repaid to Anil Diwate has also been

suppressed. How all the accused would have harassed, abetted or insisted the deceased alone for the repayment of loan, is also a question. Therefore,

taking the case as it is, yet there is no element of mens rea on the part of the applicant to insist the deceased to repay the loan amount and such

insistence then amounting to abetment to commit suicide; it would be unjust to ask the applicant to face the trial. The present case is well within the

guidelines of State of Haryana and others vs. Ch. Bhajanlal and others, AIR 1992 SC 60,4 and therefore, a fit case for exercise of powers under

Section 482 of the Code of Criminal Procedure. Hence, we pass following order:-

ORDER

(I) The Application stands allowed.

(II) The First information Report vide Crime No.434 of 2022 dated 14th October 2022, registered with Belwandi Police Station, Taluka-Shrigonda,

District-Ahmednagar and the proceedings in Charge-sheet No.31 of 2023 dated 15th February 2023 pending before the learned Judicial Magistrate

First Class, Shrigonda, District-Ahmednagar and Sessions Case, if any, arising out of the same, for the offence punishable under Section 306 read with

Section 34 of the Indian Penal Code and Section 39 (in the FIR wrongly written as Section 14) of the Maharashtra Money Lending (Regulation) Act,

stands quashed and set aside as against applicant - Prabhakar S/o Bhausaheb Thombare.