

Bombay High Court

Ravi Balram Agaldivate And Others vs The State Of Maharashtra And Anr on 29 November, 2017

Bench: S.S. Shinde

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Cri.Appln.5132-17.odt

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.5132 OF 2017

1. Ravi Balram Agaldivate,
Age 32 years, Occu. Cook,
2. Yallappa Balram Agaldivate,
Age 30 years, Occu. Cook,
3. Uma Madhukar Kambale,
Age 27 years, Occu. Household,

All R/o 94, Shaniwar Peth,
Solapur.

... Applicants

Versus

1. The State of Maharashtra
Through Nanded Airport Police Station
2. Ambadas Ramchandra Kambale,
Age 36 years, Occu. Labourer,
R/o Shivneri Nagar, Nanded. ... Respondents

...
Mr. J.D.Mane, Advocate for Applicants
Mr. V.M.Kagne, APP for Respondent No.1 - State

...

CORAM : S.S.SHINDE AND
MANGESH S. PATIL, JJ.

RESERVED ON : 13th November, 2017 PRONOUNCED ON : 29th November, 2017 JUDGMENT :
(Per Mangesh S. Patil, J.) :-

2 Cri.Appln.5132-17.odt Rule. The Rule is made returnable forthwith. Heard finally with the consent of learned advocate for the applicants and the learned APP.

2. This is an application under Section 482 of the Criminal Procedure Code seeking quashment of FIR bearing No.155 of 2017, dated 28.05.2017, registered with Nanded Airport Police Station for the offence punishable under Section 306 read with 34 of Indian Penal Code against all the applicants.

3. In sum and substance, the allegations in the FIR are to the effect that the deceased Madhukar Ramchandra Kambale was the husband of applicant No.3. Applicant Nos.1 and 2 are brothers of applicant No.3. Respondent No.2, who has not put appearance inspite of service of the notice, is the brother of the deceased. On 18.05.2017, the deceased along with the applicants attended the marriage at Mumbai. The marriage was that of a cousin brother of the applicants. During the marriage, deceased Madhukar requested his wife - applicant No.3 to dance with him in the 3 Cri.Appln.5132-17.odt procession, but she refused to dance. On the next day, i.e. on 19.05.2017 the applicants and deceased Madhukar came to Solapur, which is a native place of the applicants. When he asked applicant No.3 to tie up her bag for going to Nanded, applicant No.1 asked her to untie the bag and threatened her that else he would kill her. When deceased Madhukar started going to Nanded, applicant No.1 beaten him. On 21.05.2017, Madhukar made a phone call from Nanded to applicant No.2 saying that it was a day of his marriage anniversary and he wanted to talk to applicant No.3. He was told that she had gone for answering nature's call. Later on, applicant No.1 made a phone call to him and abused him in filthy language. Applicant No.3 also told him that she will not come down to Nanded for another 4-5 days.

4. Because of such insult Madhukar bought petrol and by pouring it on his person, set himself ablaze of which he sustained 60 % burns and unfortunately succumbed to the burn injuries in the Civil Hospital, Nanded on 27.05.2017. On the same day, Respondent 4 Cri.Appln.5132-17.odt No.2 lodged the impugned FIR. On the basis of which the offence has been registered.

5. According to the learned Advocate for the applicants, even accepting all the allegations in the FIR, at their face value, all the ingredients for constituting the offence punishable under Section 306 of the Indian Penal Code are not made out. Assuming that the applicants had abused or beaten Madhukar and the latter had felt insulted that would not per se constitute abetment within the meaning of Section 107 of the Indian Penal Code. The necessary mens rea was absent and applying the principles in the case of State of Haryana Vs. Bhajan Lal [AIR 1992 S.C. 604] the applicants cannot be made to face the criminal prosecution and it would be sheer abuse of the process of law. The learned Advocate also referred to the decisions in the case of S. S. Chheena Vs. Vijay Kumar Mahajan and another [2010 ALL MR (Cri.) 3298 (S.C.)], Gangula Mohan Reddy Vs. State of A.P. [2010 ALL MR (Cri) 615 (S.C.)], Sanju @ Sanjay Singh 5 Cri.Appln.5132-17.odt Sengar Vs. State of Madhya Pradesh [2002 CRI.L.J. 2796] and few Division Bench decisions of this Court in the case of Binod S/o Ratan Sarkar and others Vs. The State of Maharashtra and another [2013 (3) Mh.L.J. (Cri) 418], Ms. Lovina Pankaj Bhatia Vs. Central Bureau of Investigation and others [2011 (113) BLR 3192], Dr. Shivanand Shivraj Biradar Vs. The State of Maharashtra and another [2017 ALL MR (Cri) 1401].

6. The learned APP vehemently submitted that the allegations in the impugned FIR will have to be taken at their face value and clearly make out that it is because of the instigation of the applicants that the deceased Madhukar has committed suicide. According to the learned APP, the allegations cannot be said to be inherently improbable and also it cannot be said that the impugned FIR has been lodged with a mala fide intention. Thus according to the learned APP, the application has no merit and is liable to be rejected.

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7. We have carefully perused the application and the papers of the investigation. Needless to state that the scope of the powers to quash the FIR has been crystalized by the Supreme Court in the case of Bhajan Lal (supra). Seven categories of cases have been identified and it has been specifically made clear that the list was not exhaustive. Suffice for the purpose to reproduce these categories :

"108] In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extra-ordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines of rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

1] Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

2] Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156 (1) of the Code except under an order of a Magistrate within the purview of Section 155 (2) of the Code.

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3] Where the uncontroverted allegations made in

the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

4] Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155 (2) of the Code.

5] Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6] Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the

institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7] Where a criminal proceeding is manifestly attended with mala fide and / or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

8. Simultaneously, one needs to bear in mind the ingredients of the offence punishable under Section 306 of the Indian Penal Code which reads thus :

"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. "

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9. The abetment has been defined under Section 107 of the Indian Penal Code and reads thus :

"107. Abetment of a thing.--A person abets the doing of a thing, who--

First.--Instigates any person to do that thing; or Secondly.--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.--Intentionally aids, by any act or illegal omission, the doing of that thing. "

10. It is thus apparent that a person can be said to abet a suicide when either he instigates that person to commit suicide or conspires with some other persons by act or omission and makes the person to commit suicide or intentionally aids the person to commit suicide.

Bearing in mind these ingredients if one carefully peruses the contents of the FIR, we have no manner of doubt that even by accepting the contents at their face value, the ingredients of abetment are not revealed. There is no allegation that the applicants had either instigated or conspired or intentionally aided commission of the suicide. Needless to state that there has to be a legal and logical nexus between the act of 9 Cri.Appln.5132-17.odt suicide and the alleged act which leads the person to commit suicide. Unless such instigation, conspiracy or intentional aid is coupled with necessary mens rea to lead the person to commit suicide, it cannot be said that such a nexus is established. There has to be something more than a mere cause and effect relationship between such abetment and the suicide. In the absence of such a nexus, it cannot be said that the abetment is the proximate and legal cause for commission of suicide.

11. Even accepting the allegations in the FIR to be true, what transpires is that the deceased along with the applicants had attended the marriage at Mumbai on 18.05.2017. He had requested applicant No.3 to dance with him and on her refusal, a quarrel had ensued wherein applicant No.2 had slapped him. On the next day, i.e. on 19.05.2017, they all came down to Solapur. He then, insisted applicant No.3, his wife to go to Nanded but applicant No.1 did not allow her to leave and assaulted him. It is thereafter on 21.05.2017, there was a telephone conversation between the applicant and the deceased and after he was allegedly abused and even 10 Cri.Appln.5132-17.odt applicant No.3 refused to come down to Nanded that he set himself ablaze. Accepting these allegations at the most it can be said that the deceased Madhukar must have felt insulted by the refusal of the applicants to send applicant No.3 to Nanded. A period of 2 to 3 days had lapsed between the episode that had taken place in Mumbai on 18.05.2017 and the date he committed suicide i.e. 21.05.2017. In fact on 19.05.2017 he had left Solapur and had come to Nanded and after an intervening day, he has committed suicide on 21.05.2017. Therefore, at the most it can be said that all these episodes collectively could have led him to a stage of frustration. However, in the absence of any allegations to attribute mens rea on the part of the applicants it cannot legally constitute an abetment within the meaning of Section 107 of the Indian Penal Code. Suffice for the purpose to refer to the decision in the case of Sanju @ Sanjay Singh Sengar (supra). In that case, the accused had said to the deceased 'to go and die' as a sequel to the quarrel that had ensued between the accused and the deceased it was held that even 11 Cri.Appln.5132-17.odt such utterances would not constitute instigation.

12. In the case of Gangula Mohan Reddy (supra), the accused had alleged the deceased of committing theft of gold ear rings and it was held that the suicide committed by the labourer against whom such allegations were levelled by his employer did not constitute abetment or positive act of instigation. In the case of S.S.Chheena (supra), when there was an enquiry conducted by the Head of the Department to ascertain as to who had committed theft of a mobile phone, the student suspected of committing theft committed suicide and in the suicide note it was mentioned that he was annoyed because of a false allegation and as a result of the enquiry he was sure of getting declared innocent and he was committing suicide because of the annoyance caused due to false involvement in commission of theft. The Enquiry Officer Chheena was implicated for abetting the suicide on the basis of such suicide note. It was held in paragraph No.28 and 29 as under :

"28. Abetment involves a mental process of instigating 12 Cri.Appln.5132-17.odt a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. The intention of the legislature and the ratio of the cases decided by this Court is clear that in order to convict a person under Section 306 IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and that act must have been intended to push the deceased into such a position that he committed suicide.

29. In the instant case, the deceased was undoubtedly hypersensitive to ordinary petulance, discord and differences which happen in our day-to- day life. Human sensitivity of each individual differs from the other. Different people behave

differently in the same situation."

13. We do not wish to burden this judgment with the other judgments of the Division Benches of this High Court. We find no hesitation in concluding that applying the principles of law as laid in the afore mentioned cases as also the decision in the case of Bhajan Lal (supra), even by accepting the allegations in the impugned FIR at their face value it cannot be said that all the necessary concomitants for constituting the offence of abetment of suicide punishable under Section 306 of the Indian Penal Code are discernible.

14. It would be sheer abuse of process of law if the applicants are made to face the prosecution on the basis 13 Cri.Appln.5132-17.odt of such FIR. Hence the application deserves to be allowed.

15. The application is allowed.

16. The impugned FIR is quashed and set aside. The rule is made absolute.

(MANGESH S. PATIL, J.) (S.S.SHINDE, J.) ...

vmk/-