

Gujarat High Court

Pravinbhai Jivrambhai Deria vs State Of Gujarat on 23 May, 2023

Bench: Ilesh J. Vora

R/CR.MA/11161/2016

JUDGMENT DATED: 23/05/2023

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION NO. 11161 of 2016

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE ILESH J. VORA

Sd/-

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| 1 | Whether Reporters of Local Papers may be allowed to see the judgment ? | Yes |
| 2 | To be referred to the Reporter or not ? | Yes |
| 3 | Whether their Lordships wish to see the fair copy of the judgment ? | No |
| 4 | Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ? | No |

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PRAVINBHAI JIVRAMBHA DERIA & 1 other(s)
Versus
STATE OF GUJARAT & 1 other(s)

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Appearance:

MR MC BAROT(144) for the Applicant(s) No. 1,2
MR TEJAS M BAROT(2964) for the Applicant(s) No. 1,2
MR KP CHAMPANERI(5643) for the Respondent(s) No. 2
MS VRUNDA SHAH, APP for the Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE ILESH J. VORA

Date : 23/05/2023

ORAL JUDGMENT

1. By this application under Section 482 of Cr.P.C., the applicants - original accused Nos. 9 and 8 seek to invoke inherent powers of this Court, praying for R/CR.MA/11161/2016 JUDGMENT DATED: 23/05/2023 quashment of First Information Report (FIR) being I- C.R.No. 25/2016

registered with Gadh Police Station, Dist: Banaskantha, for the offences punishable under Sections 306, 506 (2), 384, 385, 386, 387 read with Section 34 of the Indian Penal Code and Sections 40 and 42 of the Gujarat Money Lenders Act, 2011.

2. Facts and circumstances giving rise to this application are that, the second respondent - Mahendra Panchal, resident of Mumbai is brother of deceased Hasmukhbhai, who ended his life by committing suicide at his village Gad Alvada, Dist. Banaskantha. The deceased was driving a rickshaw for his livelihood. The deceased had borrowed Rs.6 lacs from accused Nos.1 to 10 and was paying unbearable amount of interest. It is the case of the prosecution that the deceased could not repay the principal amount as well as the interest, as a result, he was under tremendous pressure and distress. Before he could commit suicide, he wrote a letter addressed to PSI, Gadh Police Station, mentioning therein the harassment meted out to him by the accused, on the issue of borrowed money. In the letter, he mentioned names of 10 persons including the applicants, alleging therein that after borrowing the money from them, he could not repay the same and upon his request to give some time to repay the amount, they have not extended the time and R/CR.MA/11161/2016 JUDGMENT DATED: 23/05/2023 threatened him to take away his rickshaw and did not allow him to do his business. He had further mentioned in the letter that he is going to end his life by committing suicide and all the persons mentioned in the letter are responsible for my suicide. In this circumstance, on 19.04.2016, the deceased Hasmukhbhai had consumed poisonous substance and committed suicide. Before he could die, he was taken to Palanpur Civil Hospital where his statement in form of dying declaration was recorded by the Executive Magistrate, Palanpur, wherein, he disclosed the facts of borrowed money allegedly taken from persons named in the statement. The names of the present applicants having not been disclosed as the deceased while recording the statement did not recollect their names. The investigating officer had also recorded the statement of the deceased on the same day under Section 161 of the Cr.P.C., wherein, the reasons for his suicide having been disclosed before the police and subsequently, he died at Civil Hospital. The brother of the deceased Mr. Mahendra Panchal went to hospital and he was appraised by the relatives about the financial distress of the deceased and factum of suicide note and dying declaration. The second respondent based on the input gathered by him at the hospital, lodged an FIR against 10 persons, including the applicants herein for the offences as referred above. After completion of investigation of the case, the IO filed R/CR.MA/11161/2016 JUDGMENT DATED: 23/05/2023 a chargesheet against the accused for the aforesaid offences, which has been culminated into Sessions Case No.78/2022, which is pending before the jurisdictional sessions Court at Banaskantha.

3. The applicants arraigned as accused Nos. 8 and 9 in the chargesheet. They have preferred present quashing petition mainly on the ground that the charge against them under Section 306 of Indian Penal Code is not sustainable. Therefore, continuation of the proceedings against them is nothing, but a sheer abuse of process of law and Court.

4. Mr. Tejas Barot, learned counsel appearing for the applicants on instructions does not press this petition qua the offences punishable under Sections 506 (2), 384, 385, 386, 387 of Indian Penal Code and Sections 40 and 42 of the Gujarat Money Lenders Act and confined to this petition so far offence under Section 306 read with Section 34 of Indian Penal Code is concerned. The petition

stands dismissed qua the aforesaid offences except Section 306 read with Section 34 of Indian Penal Code.

5. This Court has heard Mr. Tejas Barot, learned counsel for the applicants, Mr. K.P.Champaneri, learned counsel for the original informant and Ms. Vrunda Shah, learned Additional Public Prosecutor for the respondent State.

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6. Mr. Tejas Barot, the counsel appearing for the applicants submitted that the FIR lacks the ingredients of the offences alleged, more particularly section 306 of Indian Penal Code; that, the facts and circumstances of the case do not, in any way, indicate that the alleged act would constitute abetment to commit suicide; that there is complete absence of any sort of instigation or any positive move on the part of the applicants, causing the deceased to commit suicide; that the ingredients of abetment as laid down in Section 107 of Indian Penal Code is completely absent in this case and as such, section 306 of Indian Penal Code is not at all attracted; that a bare reading of the suicide note and facts disclosed in dying declaration does not itself amount to instigation and also does not reflect mens rea on the part of the applicants which is necessary concomitant of investigation (Sanju @ Sanjay Singh Sengar Vs. State of M.P., AIR 1998 SC 2002); that there was no material to suggest that there was intention on the part of the applicants to provoke incite or encourage the deceased in committing the suicide and therefore, in absence of any material with respect of the charge of abetment of suicide, merely allegations of harassment disclosed in the suicide note and dying declaration are not sufficient to draw inference that the accused have abetted in the commission of suicide.

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7. In support of the aforesaid contentions, reliance has been placed on the judgment of the Apex Court in M.Arjun Vs. State represented by its Inspector of Police (2019) 3 SCC 315, to contend that having advanced money to the deceased by applicant accused might have occurred dispute with regard to repayment of money, but that by itself is not sufficient to constitute offence under Sec. 306 of Indian Penal Code as there should be evidence capable of suggesting that the accused intended by such acts to instigate deceased to commit suicide.

8. In the aforesaid contentions submitted by learned counsel for the applicant Mr. Barot, he thus urged that the FIR so far as charge under Section 306 is concerned having been filed with ulterior motive and to harass the applicants and when prima facie no case is made out against the accused for the alleged offence, then the continuation of trial proceedings would unnecessarily harassment to the applicants which amount to abuse of process of law and Court and therefore, he prayed that the case is made out to exercise inherent powers to quash the FIR and consequential proceedings therefrom.

9. On the other hand, countering to the contentions raised by the applicant, learned counsel Mr. R/CR.MA/11161/2016 JUDGMENT DATED: 23/05/2023 K.P.Champaneri and State counsel Ms.

Vrunda Shah submitted that, after registration of FIR, the IO recovered the material evidence like suicide note, dying declaration of the deceased and considering the sufficient evidence for the commission of alleged offence, the I.O filed a chargesheet for the offences as referred above. Thus, at this stage it cannot be said that no prima facie case is made out against the applicant; that the criminal proceedings cannot be quashed where the allegations made in the FIR and chargesheet disclosed the commission of offence; that the High Court in exercise of jurisdiction under Section 482 is required to be examined whether the averments made in the FIR and chargesheet case papers constitute the ingredients necessary for an offence alleged under Section 306 of Indian Penal Code; that in the present case, the allegations as they stand make out an offence within the meaning of Section 306 of Indian Penal Code; that the deceased was under tremendous stress of the pressure of the accused and it was to the extent that they tried to take away his rickshaw and restrained to do his livelihood work that is what mentioned in the suicide note by the deceased; that this is not a stage where the minutes and meticulous exercise with regard to appreciation of evidence may be done. Thus, therefore, it was urged that at this stage the High Court is not justified in embarking upon an inquiry as to the probability, R/CR.MA/11161/2016 JUDGMENT DATED: 23/05/2023 reliability or genuineness of the allegations made therein and same is required to be considered at the stage of trial.

10. In support of the aforesaid contentions, reliance has been placed by Mr. Champaneri on the judgment of the Apex Court rendered in Pravin Pradhan Vs. State of Uttaranchal [(2012) 9 SCC 734], to contend that an accused by continuing course of these conduct creates such circumstances that the deceased was left with no other option, but to commit suicide which would satisfy the ingredients of instigation to commit suicide.

11. In the aforesaid contentions, learned counsel for the complainant Mr. Champaneri and State Counsel Ms. Shah submitted that the inherent powers vest with the High Court do not confer jurisdiction to act according to whim and caprice and the same is exercised sparingly with circumspection and in the rarest of rare cases. Thus, therefore, it was submitted that no exceptional case is made out to exercise inherent powers of this Court to quash the criminal proceedings and the application is liable to be dismissed.

12. The applicants herein have been charged for the act of abetment of suicide and other provisions as referred in para 1 of this judgment. It is the case of the prosecution that, deceased had borrowed money for personal use from different persons as referred in the R/CR.MA/11161/2016 JUDGMENT DATED: 23/05/2023 suicide note and statement of the deceased in form of dying declaration. The complainant who happens to be a brother of the deceased having no any personal knowledge with respect to alleged financial transactions. He has lodged the FIR based on the factum of suicide note and dying declaration. In such circumstances, the issue falls for determination of this Court is whether the FIR and consequential proceedings are liable to be quashed in exercise of extraordinary and inherent jurisdiction.

13. It is settled law that the High Courts are clothed with inherent powers to make such orders as may be necessary for the ends of justice. Such power though unrestricted and undefined should not be capriciously or arbitrarily exercised but should be exercised in appropriate cases, ex debito

justitiae to do real and substantial justice for administration of which alone the court exists as the powers possess by the High Court under Section 482 of the Code are very wide and very plantitude which requires great caution in exercise and same has to be exercised sparingly with circumspection and in the rarest of rare case. In the case of V.P.Srivastava Vs. Indian Explosives Ltd. 2010 (10) SCC 361, the Apex Court while dealing with the issue of quashing and inherent powers of the High Court, held that where no prima facie case is made out, involving the applicant accused in the alleged offence, R/CR.MA/11161/2016 JUDGMENT DATED: 23/05/2023 then the High Court is obliged in law to exercise the jurisdiction under Section 482 of the Code.

14. Reverting back to the facts of the present case, names of the applicants disclosed by the deceased in his suicide note and further their names had not been disclosed in the statement of the deceased recorded in form of dying declaration as he could not recollect their names. The charge against the applicants is under Section 306 of Indian Penal Code for the offence of abetment of suicide. To bring home the accused for the charge under Section 306, the prosecution has to prove

(i) the deceased committed suicide (ii) the accused instigated or abetted for committing suicide and (iii) direct involvement by the accused in such abetment or instigation is necessary. Section 107 of Indian Penal Code defines abetment as comprising (a) instigation to commit the offence (b) engaging in conspiracy to commit the offence and (c) aiding the commission of offence. The scope and ambit of Section 107 and its co- relation with Section 306 of Indian Penal Code has been settled by catena of decisions of the Apex Court. In Kishori Lal Vs. State of M.P., 2007 (10) SCC 797, the two judge Bench of the Apex Court in para 6, while defining the abetment of things held as under:-

"Section107IPC defines abetment of a thing. The offence of abetment is a separate and distinct offence provided in the Act as an offence. A person, abets the doing of a thing when (1) he instigates any person to do that thing; or (2) engages with one or more other R/CR.MA/11161/2016 JUDGMENT DATED: 23/05/2023 persons in any conspiracy for the doing of that thing; or (3) intentionally aids, by act or illegal omission, the doing of that thing. These things are essential to complete abetment as a crime. The word "instigate" literally means to provoke, incite, urge on or bring about by persuasion to do any thing. The abetment may be by instigation, conspiracy or intentional aid, as provided in the three clauses of Section

107. Section 109provides that if the act abetted is committed in consequence of abetment and there is no provision for the punishment of such abetment, then the offender is to be punished with the punishment provided for the original offence. 'Abetted' in Section 109 means the specific offence abetted. Therefore, the offence for the abetment of which a person is charged with the abetment is normally linked with the proved offence."

15. In M. Mohan Vs. State 2011 (3) SCC 626, the Apex Court while dealing with the abetment, in para 44 and 45 observed thus:-

"45. Abetment involves a mental process of instigating 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.

46. The intention of the Legislature and the ratio of the cases decided by this court are 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 this act must have been intended to push the deceased into such a position that he/she committed suicide."

16. In the facts of the present case, it emerges that the deceased borrowed a total amount of Rs.6 lacs from 10 persons. In the suicide note, on which date and what R/CR.MA/11161/2016 JUDGMENT DATED: 23/05/2023 amount the applicants herein had lent having not been disclosed by the deceased. Even in dying declaration as well as the statement recorded under Section 161 of Cr.P.C., there is no specific disclosure that how much amount and on which date, the applicants had lent the money to the deceased. The allegations of harassment and preventing the deceased in doing his business of rickshaw driving seem to be general in nature and vague. No specific allegations made against the applicants that they individually subjected mental harassment on the issue of finance advanced by them. In such circumstances, prima facie it appears that the deceased was in depression as he could not repay the handy loan obtained from various persons, as a result, he decided to end his life and accordingly, he committed a suicide by consuming poisonous substance. Thus, considering the factual aspects as discussed above and in light of legal proposition on the issue of "abetment of suicide", this Court is of considered opinion that a casual remark that is likely to cause harassment in ordinary course of thing, made against the applicants would not fall within the term "instigation". Thus, the contents of the suicide note and the statement of the deceased, prima facie does not anyway disclosed any incriminating information in the nature of instigation, provocation, compelling the deceased to commit suicide. If we read the entire chargesheet case papers, this Court does not find live R/CR.MA/11161/2016 JUDGMENT DATED: 23/05/2023 link or proximity link between the act of accused and act of committing suicide as nothing specifically disclosed by the deceased that how much amount the accused have lent him or how and on which date, they threatened him and restrained him in doing his business of rickshaw driving. In such circumstances, what role they had played in the act of instigation and how they aided the deceased to commit suicide, having not been established.

17. The contention of the first informant that the facts disclosed in the suicide note and material collected during the course of investigation would suggest that deceased had no option and was frustrated by the continuous act of instigation allegedly done by the accused and therefore, prima facie the offence under Section 306 is made out against the accused and in support of his submission, reliance has been placed on the decision of the Apex Court in Pravin Pradhan (supra). This Court is of considered view that the suicide note referred in the case of Pravin Pradhan (supra) and considering the peculiar facts of the cited case, the Apex Court was of the view that the prima facie case is made out against the accused. The facts of the present case are totally on different footing and the facts of suicide note are also totally different to the case of Pravin Pradhan (supra). Thus, cited case is distinguishable on factual aspects and the same is not R/CR.MA/11161/2016

JUDGMENT DATED: 23/05/2023 applicable to the facts of the present case. Therefore, this Court is of considered view that when there is no prima facie case made out for the offence under Section 306 of Indian Penal Code, then continuation of proceedings would amount to harassment to the applicants and abuse of process of law and Court. In such circumstances, the contention raised by the counsel for the original informant cannot be accepted.

18. In the foregoing reasons, this Court is of prima facie view that this Court is unable to find anything in the FIR or chargesheet case papers which could suggest that the applicants had instigated the deceased to commit a suicide. This court is in total agreement with the contentions raised by learned counsel for the applicants that lending money and asking it to back would not be a ground to hold the applicants responsible for instigation or aiding to the deceased to commit suicide as mere allegations of harassment without there being any positive act or criminal intent on the part of the applicants. In such circumstances, considering the peculiar facts and circumstances of the present case, if the allegations for the charge of offence under Section 306 of Indian Penal Code are accepted as it is, do not prima facie constitute an offence under Section 306 of Indian Penal Code against the applicants herein.

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19. Hence, this is a fit case to exercise inherent power to quash the proceedings of FIR and other consequential proceedings thereof, so far as offences under Section 306 and 34 of Indian Penal Code are concerned. In the case of Ishwarpratap Singh Vs. State of Uttar Pradesh, [2018 (13) SCC 612], the Apex Court held that there is no prohibition under the law for quashing the chargesheet in part. The jurisdictional Court concerned shall proceed further so far other offences registered against the applicants as referred in para 1 of this judgment in accordance with law.

20. Accordingly, present application is partly allowed. FIR being I-C.R.No. 25/2016 registered with Gadh Police Station, Dist: Banaskantha and other consequential proceedings arising therefrom only for the offences under Sections 306 read with 34 of Indian Penal Code, are quashed qua the applicants herein. Rule is made absolute to the aforesaid extent.

Sd/-

(ILESH J. VORA,J) SUCHIT