

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH, NAGPUR.**

**CRIMINAL APPLICATION (APL) NO. 1052 OF 2018**

Rohit S/o Nawanath Nalawade,  
Aged 27 Years, Occupation : Service,  
R/o Sadaguru Heights, Flat No.17, Pune,  
Tah. And Dist. Pune

.... **APPLICANT**

// **VERSUS** //

1. The State of Maharashtra,  
Through Police Station Officer,  
Police Station Shripur, Tah. Washim,  
Dist. Washim
2. Sanjay S/o Shivalal Shipane,  
Aged about 37 years, Occ. Service  
Assistant Police Inspector, Police Station  
Shripur, Tah. Washim, Dist. Washim.

....**NON-APPLICANTS**

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Shri N.B. Kalwage, Advocate for the applicant.

Shri M.J.Khan, Additional Public Prosecutor for the non-applicant no.1.

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**CORAM** : **V. M. DESHPANDE AND**  
**ANIL S. KILOR, JJ.**

**DATE** : 17<sup>th</sup> DECEMBER, 2020.

**ORAL JUDGMENT: [PER: ANIL S. KILOR, J.]**

**Rule.** Rule made returnable forthwith. The matter is heard finally with the consent of the learned counsel for the parties.

2. By way of this present application under Section 482 of the Code of Criminal Procedure, the applicant is praying for quashing and setting aside the First Information Report vide Crime

No. 143 of 2018 dated 8<sup>th</sup> August, 2018 registered with Police Station, Shripur, Dist. Washim, for the offence punishable under Section 306 of Indian Penal Code.

3. It is the case of the prosecution that deceased Pramod Prakash Chouhan had taken a loan from Mahindra and Mahindra Financial Service Limited for purchasing new vehicle namely TATA ZEST bearing registration no. MH-14 GB-1292 through loan agreement. It is further alleged in the First Information Report that the Finance Company sanctioned the loan of Rs.6,21,000/- to the deceased and it was agreed that the deceased will re-pay the loan amount in four years by giving monthly installment of Rs.17,800/-.

4. The Investigating Officer after conducting the brief enquiry found that deceased has taken loan from the applicant Finance Company. The deceased paid an amount of Rs.15,800/- on 22<sup>nd</sup> March, 2018 and assured that he will pay remaining amount later on. However, the applicant did not listen the request of the deceased and started harassing the deceased.

5. It is the further case of the prosecution that on mobile phone also deceased was harassed. The suicide note written by the

deceased was seized which indicates the involvement of the applicant in the crime. In the suicide note, the deceased has stated about the harassment given by the applicant. As such the offence was registered under Section 306 of Indian Penal Code against the applicant, the same is sought to be quashed and set aside by way of present application.

6. We have heard Shri N.B.Kalwage, learned counsel for the applicant and Shri M.J.Khan, learned Additional Public Prosecutor for the non-applicant no.1. None for the applicant and non-applicant no.2, though the non-applicant no.2 was served in the month of November, 2019.

7. Shri Kalwage, learned counsel for the applicant submits that after reading the contents of First Information Report no offence constitutes for the offence punishable under Section 306 of the Indian Penal Code against the applicant. He further submits that this Court in the case of *Amit S/o Ashok Naharkar Vrs. State of Maharashtra, through its Police Station Officer, Wadi Police Station, Nagpur and another* reported in *2018 SCC Online Bom 1399*, it is held that the prosecution should at least prima facie establish that accused had an intention to aid or instigate or abet the deceased to

commit suicide. Abetment involves mental process of instigating a person or intentionally aiding a person in doing of a thing and without a positive act on the part of the accused in aiding or instigating or abetting the deceased to commit suicide, the said persons cannot be compelled to face the trial. Thus, he submits that in the present matter the allegations are only in respect of demand of outstanding loan amount does not amount to any intention of applicant to abet the deceased to commit suicide. By arguing so, he prays for quashment of the First Information Report in question.

8. Shri M.J. Khan, learned Additional Public Prosecutor strongly opposed the present application and submits that during the investigation it has revealed that because of demand of outstanding loan amount, the deceased was under tremendous mental pressure, which was the cause for commission of suicide by the deceased.

9. It is thus submitted that the offence under Section 306 of Indian Penal Code attracts in the present matter and therefore this Court may not exercise its inherent power under Section 482 of the Code of Criminal Procedure in the present matter to quash the

First Information Report in question. By arguing so, he prays for dismissal of the present application.

10. We have perused the record and relevant documents and also the judgment relied by the learned counsel for the applicant.

11. This Court in the case of *Amit S/o Ashok Naharkar Vrs. State of Maharashtra, through its Police Station Officer, Wadi Police Station, Nagpur and another (supra)* has held thus:

*“14. The legal position with regard to essential ingredients necessary to attract the provisions of Section 306 of the Penal Code, 1860 are now well settled. The Division Bench of this Court in the case of Seema Bhoosreddy V. State of Mah., reported in 2012 (2) Mh. L.J. (Cri.) 459, relying upon the decisions of the Hon’ble Supreme Court in Madan Mohan Singh v. State of Gujarat reported in (2010) 8 SCC 628 and in S.S. Chheema v. Vijay Kumar Mahajan reported in 2010 ALL MR (Cri) 3298 in para 18 thereof has held thus-*

*18. It can thus, be clearly seen that for proceeding further with the trial against the accused for an offence punishable under Section 306, it is necessary for the prosecution to at least, prima facie, establish that the accused had an intention to aid or instigate or abet the deceased to commit suicide. In the absence of availability of such material, the accused cannot be compelled to face trial for the offence punishable under Section 306. As held by the Apex Court, an abetment involves mental process of instigating the person or intentionally aiding the person for doing of a thing. Without a positive act on the part of the*

*accused in aiding or instigating or abetting the deceased to commit suicide, the said person cannot be compelled to face a trial. Unless there is clear mens rea to commit the offence or an active act or direct act which led the deceased to commit suicide seeing no option or the act intending to push the deceased into such a position, the trial against the accused under Section 306 cannot be permitted.*

15. *In the light of aforesaid legal position when the material on record is considered on its face value, it can be seen that non-applicant no.2 who is brother of deceased and the first informant, has lodged report on the basis of contents of suicide note which was shown to him by police that, prior to the death, deceased had obtained loan and the loan instalments were outstanding for which the executive of the Finance Company had visited him requesting for making payment of outstanding loan amounts. According to non-applicant no.2/complainant, he was also aware of said fact and stated that for this reason deceased used to be under mental stress. In view of above stated fact thus, there appears no reason to continue prosecution for the offence under Section 306 of Penal Code, 1860 as it is necessary for the prosecution to at least prima facie establish that accused had an intention to aid or instigate or abet the deceased to commit suicide. Abetment involves mental process of instigating a person or intentionally aiding a person in doing of a thing and without a positive act on the part of the accused in aiding or instigating or abetting the deceased to commit suicide, the said persons cannot be compelled to face the trial.”*

12. This Court in the case of ***Santoshkumar vs. State of Maharashtra*** reported in ***2020 SCC online Bom 914***, by relying on a case of Dilip s/o Ramrao Shirasao vs. State of Maharashtra, has observed thus:

*“16. One of leading case on this issue is, Dilip s/o Ramrao Shirasao vs. State of Maharashtra reported at 2016 ALL MR (Cri.) 4328, this*

*Court discussed in detail various pronouncements of the Honourable Apex Court. The ratio of the said is that it is incumbent upon prosecution to at least show prima facie case that accused had an intention to aid or instigate or abet deceased to commit suicide. In the absence of availability of such material, the accused cannot be compelled to face trial for the offence punishable under Section 306 of the Indian Penal Code.*

*17. Admittedly, in this case, the Loan Account of the complainant was showing outstanding to the tune of Rs.2,32,689/-. The said aspect is not denied by the prosecution. Sudhir Gawande, the deceased, was not having any loan outstanding in his name. Even, according to the prosecution, Sudhir Gawande, the deceased, went to the Bank of Maharashtra, Morshi Branch, District Amravati for loan. If previous loan amount is outstanding and if the applicant, who is Branch Manager of the said Bank, is refusing to grant any further loan, can be said as act of a vigilant and prudent banker and if he is not granting any further loan, it cannot be termed that by such act he instigated and/or abetted the person to commit suicide”*

13. On the aforesaid touchstone, if we consider the facts of the present case, admittedly, the allegations are only to the effect that the applicant demanded outstanding loan amount from the deceased which was the part of his duty being employee of the Finance Company. In view of that, the demand of outstanding loan amount from the person who was in default in payment of loan amount, during the course of employment as a duty, at any stretch of imagination cannot be said to be any intention to aid or to instigate or to abet the deceased to commit the suicide.

14. In that view of the matter, we have arrived at a conclusion that in the present matter none of the requirement of Section 306 of Indian Penal Code is being satisfied and therefore, we are of the considered view that in the present matter Section 306 of Indian Penal Code does not attract against the applicant.

15. In the circumstance, it would not be proper to compel or force the applicant to face the trial before the Criminal Court as the same would be a futile exercise. Accordingly, we pass the following order.

**ORDER**

- i. The Criminal Application No. 1052 of 2018 is allowed.
- ii. The First Information Report No. 143 of 2018 dated 8<sup>th</sup> August, 2018 registered with Police Station, Shripur, Dist. Washim, for the offence punishable under Section 306 of Indian Penal Code qua the applicant, is hereby quashed and set aside.
- iii. The Criminal Application No. 1052 of 2018 is disposed of. No order as to costs.

**JUDGE**

**JUDGE**

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