

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL MISC.APPLICATION NO. 9538 of 2020**

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JORUBHAI AMRUBHAI VARU
Versus
STATE OF GUJARAT

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Appearance:

MR RATHIN P RAVAL(5013) for the Applicant(s) No. 1

MS NIRALI GAJJAR for for the Respondent(s) No. 2

MR PRANAV TRIVEDI, APP for the Respondent(s) No. 1

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CORAM: **HONOURABLE MS. JUSTICE GITA GOPI**

Date : 19/08/2020

ORAL ORDER

1. Learned advocate, Ms. Nirali Gajjar, appeared on behalf of the original-complainant. Registry to accept the Vakalatnama. She has placed on record affidavit filed by respondent No.2 – Dayaben w/o Bipinbhai Naranbhai Suthar.

2. **Rule.** Mr. Pranav Trivedi, learned Additional Public Prosecutor, waives service of notice of rule on behalf of respondent No.1.

3. This petition has been filed under section 482 of the Code of Criminal Procedure for quashing and setting aside the first information report bearing **C.R. No.I-11193050200848 of 2020** registered with **Rajula Police Station, District : Amreli** under sections 306, 384, 385, 387 of the Indian Penal Code and section 40 of the Gujarat Money Lenders Act and the proceedings initiated in pursuance thereof.

4. It is alleged in the FIR, that the deceased had borrowed

money from the present applicant and the applicant was often demanding repayment alongwith interest and the husband of the complainant could not make arrangement of the money and thus, remained under tension. It is also alleged that the applicant used to often threaten him on phone for the money and thus, had instigated the complainant husband to commit suicide.

5. Mr. Rathin P. Raval, relying on the judgment of the Coordinate Bench of this Court in Criminal Misc. Application (Quashing and Set Aside FIR/Order) No.13751 of 2015, submitted that under the similar facts, the FIR under section 306 with section 114 of the Indian Penal Code as well as section 3(1)(10) of the Atrocities Act was quashed. In the referred case, he submitted that over and above the fact of failure of repayment of the borrowed money the deceased had also given dying declaration. Mr. Raval, submitted that in the present case there are no proof of direct or indirect acts of incitement to the commission of suicide merely on allegation of harassment without there being any positive action, proximate to the time of occurrence on the part of the accused which led or compel the person to commit suicide, conviction in terms of section 306 of IPC is not sustainable. Mr. Rathin Raval, further stated that demanding the money lended to the deceased with interest would not amount to any instigation and further stated that the deceased had borrowed money from several people on interest and was unable to repay the same. Relying on the case of *Bhajanlal vs. State of Haryana* prayed for quashing of the FIR.

6. Mr. Rathin P. Raval, learned advocate for the applicant, further submitted that the parties have amicably settled the

dispute outside the Court. The applicant has preferred the present application seeking quashment of the impugned first information report. The complainant has preferred to compromise and therefore, a settlement affidavit has been executed by and between the applicant and the complainant. Therefore, there remains no dispute or grievance between the parties. Learned advocate, therefore, submitted that the Court may even verify the said aspect from the complainant himself through video conferencing.

7. Considering the facts of the case, under instructions, a link was sent to learned advocate Ms. Nirali Gajjar, at whose Office the complainant was reported to be present. The virtual Court verified the contents of the compromise with complainant -Dayaben w/o Bipinbhai Naranbhai Suthar and she affirmed about the execution of said settlement affidavit before the Notary. She also admitted that she has no grievance against the applicant and has consented to the quashment of the first information report filed by her. Since the parties have settled the dispute and the complainant has also affirmed about its execution on verification, the settlement agreement is taken on record.

8. Mr. Pranav Trivedi, learned Additional Public Prosecutor, submitted that any first information report should be quashed in accordance with the guidelines of the Apex Court and the parameters laid down therein.

9. This Court has heard the learned advocates on both the sides and has perused the material on record.

10. In the Judgment of the Hon'ble Apex Court reported in

AIR 2011 SC 1238 in case of **M. Mohan v. State Represented by the Deputy Superintendent of Police**, the Hon'ble Apex Court having referred to the earlier judgment, has made the observations regarding the ingredients of Section 306 IPC, referring to the word 'suicide', which can be read as follow.

“If the provisions for the offence under Section 306 are considered, it is evident that the basic ingredient regarding the intentional instigation are required to be proved or established. The word ‘suicide’ has not been defined. The word ‘suicide’ would mean the intentional killing of oneself. As per Concise Oxford Dictionary, 9th Edition, p.686, “A finding of suicide must be on evidence of intention. Every act of self destruction is, in common language described by the word ‘suicide’ provided it is an intentional act of a party knowing the probable consequence of what he is about. Suicide is never to be presumed. Intention is the essential legal ingredient.” [emphasis supplied]

Therefore, while considering this aspect, the provisions of Section 306 read with Section 107 regarding the abetment and the suicide has to be considered. In other words, there has to be necessary evidence by which it could be said that the respondent accused had instigated the deceased in such a manner or by creating the circumstances, which has led the deceased to commit suicide.

In the reported Case (2010) 1 SCC 750 -Gangula Mohan Reddy v. State of Andhra Pradesh, The Hon'ble Apex Court has observed that “This Court in Chitresh Kumar Chopra V. State (Govt. of NCT of Delhi) had an occasion to deal with this aspect of abetment. The Court dealt with the dictionary meaning of the words ‘instigation’ and ‘goading’. The Court opined that there should be intention to provoke, incite or encourage the doing of an act by the latter. Each person’s

suicidability pattern is different from the other. Each person has his own idea of selfesteem and self respect. Therefore, it is impossible to lay down nay straitjacket formula in dealing with such cases. Each case has to be decided on the basis of its own facts and circumstances.”

11. Admittedly, the allegation in the FIR is of deceased having borrowed money from the present applicant. The deceased failed to repay the amount with interest. The applicant was constantly demanding the money and alleged to have threatened the deceased. Such act of demanding the repayment of money would not bring case within the meaning of section 306 of the Indian Penal Code. There would not be any *mens rea* of the applicant as he would not benefitted from the act of suicide of the deceased and thus, prima facie the allegation in the FIR, taken at its face value do not prima facie constitute any offence or make out a case against the accused.

12. Hence, the Court is of the opinion that this is a fit case where the inherent powers of the Court under section 482 of the Cr.P.C. Could be exercised for securing the ends of justice.

13. In the result, the petition is allowed. The first information report bearing **C.R. No.I-11193050200848 of 2020** registered with **Rajula Police Station, District : Amreli** and the proceedings initiated in pursuance thereof are quashed and set aside. Rule is made absolute.

14. Copy of this order be communicated to the concerned Police Authority by Email/Fax.

(GITA GOPI,J)