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

CRIMINAL APPLICATION (APL) NO.63 OF 2016

Santoshkumar s/o Raj Kishor Prasad Singh,
Aged about 38 years, occupation : service,
R/o c/o Bank of Maharashtra, Byron Bazar,
Katora Talav Netaji Chowk Raipur, Taluka and
District Raipur. **Applicant.**

:: VERSUS ::

1. The State of Maharashtra, through the
Police Station Officer, Morshi, Taluka Morshi,
District Amravati.

2. Prashant Wamanrao Gawande,
Aged about 41 years, occupation agriculturist,
R/o Nashirpur, Taluka Morshi,
District Amravati. **Non-applicants.**

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Shri Anand Deshpande, Counsel for the Applicant.
Shri M.J.Khan, Addl.P.P. for NA No.1/State.
None for NA No.2.
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CORAM : **V.M.DESHPANDE, &
ANIL S.KILOR, JJ.**

DATE : **SEPTEMBER 9, 2020.**

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ORAL JUDGMENT (Per : V.M.Deshpande, J.)

1. This is an application under Section 482 of the Code of Criminal Procedure.

2. Heard learned counsel Shri Anand Deshpande for the applicant and learned Additional Public Prosecutor Shri M.J.Khan for non-applicant No.1/State. None appears for non-applicant No.2.

3. By presenting this application, the applicant prayed for quashing of First Information Report (Annexure-C), registered with Morshi Police Station, District Amravati, vide Crime No.147/2015, for offence punishable under Section 306 of the Indian Penal Code. The applicant also prayed to stay further investigation.

4. On 1.2.2016, Notices were issued and *Interim* Stay was granted as prayed by the applicant. Non-applicant No.2 Prashant Wamanrao Gawande was duly served, however he chose

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not to appear before the Court. Consequently, on 1.9.2016, these proceedings were admitted for final hearing and the *Interim* order was continued.

Office note shows that non-applicant No.2 was also served with Notice on merits, however on this occasion also he chose not to appear either personally or through his counsel. The State also filed a detailed reply on record.

5. The applicant, at the relevant time, was discharging his duties as Branch Manager, Bank of Maharashtra, Morshi Branch, District Amravati.

6. Non-applicant No.2 Prashant Wamanrao Gawande, (hereinafter referred to as “**the complainant**” for the sake of brevity), was having a Loan Account with the Bank of Maharashtra at Morshi. His father Wamanrao was also having a Loan Account in the said Bank. The applicant placed on record an extract of Statement of Account of the complainant. Authenticity of the said

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document is not at all disputed by investigating agency.

7. In this case, deceased is Sudhir Gawande, the real brother of the complainant. He committed suicide on 12.6.2015 by hanging himself in a bedroom of his house.

On 13.6.2015, the complainant approached to Morshi Police Station, District Amravati and lodged his report against the present applicant. Since the report was disclosing commission of cognizable offence, Morshi Police Station Officer registered an offence, vide Crime No.147/2015, punishable under Section 306 of the Indian Penal Code.

8. After registration of the offence, since the applicant was apprehending his arrest, he moved an application, vide Misc. Criminal Bail Application No.529/2015, for grant of pre-arrest bail and learned Sessions Judge at Amravati on 26.6.2015 was pleased to grant the pre-arrest bail, in the event of his arrest. Thereafter, on 25.1.2016, the applicant filed present proceedings for quashing

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of the First Information Report.

9. Learned counsel Shri Anand Deshpande for the applicant, submitted that First Information Report cannot stand to scrutiny of law inasmuch as there is nothing to show that the applicant had an intention to aid or instigate or abet Sudhir to commit suicide. He submitted that as per Loan Account, on 31.3.2015 there was an outstanding in the name of the complainant to the extent of Rs.2,32,689/-. In this view of the matter, it is submitted that even if it is accepted, as stated in the First Information Report, that on 12.6.2015 Sudhir approached for fresh loan by restructuring Loan Account and if that request was refused, it cannot be held as abetment to Sudhir to commit suicide. He, therefore, prayed for quashing of the First Information Report since if proceedings are allowed to continue on the basis of such First Information Report, it will be nothing to compel the applicant to face trial even if there is no *prima facie* case against him.

10. *Per contra*, learned Additional Public Prosecutor Shri

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M.J.Khan for the State, submitted that at this stage averments made in the First Information Report have to be taken as it is. He proceeds in his submission on this premise that the First Information Report shows that on 7-8 occasions Sudhir, the deceased, visited Bank of Maharashtra, Morshi Branch, District Amravati wherein the applicant was Branch Manager and there he requested for restructuring of loan and grant of fresh loan, however the applicant refused the said request and, therefore, due to such refusal Sudhir was not keeping good mood. He submitted that on 12.6.2015 also he along with Sachin, the cousin, again went to the Bank and came to house at about 2:30 p.m.. At that time, he brought ten bags of cement, however he did not bring seeds. Thereafter, since he was not keeping good mood, the complainant's mother Smt.Kusum enquired for the same. Upon that, as per the First Information Report, Sudhir quipped that since the Branch Manager refused to grant the loan, he will not take food and ultimately he committed suicide and, therefore, the said act on the part of the applicant not to grant the loan resulted into

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the suicide by hanging by Sudhir. He, therefore, submitted for dismissal of proceedings.

11. Section 306 of the Indian Penal Code, reads as under:

“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.”

Abetment is defined in Chapter V of the Indian Penal Code. Section 107 of the Indian Penal Code deals with abetment of a thing and the said provision is quoted herein below:

As per First clause, “if a person instigates any person to do a particular thing, it can be said that he has abetted”.

12. Law is well crystallized by various pronouncements of the Honourable Apex Court and of this Court. It would be useful to have a reference of few cases of the Honourable Apex Court without detailing facts in those cases:

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(1) Sanju alias Sanjay Singh Sengar vs. State of Madhya Pradesh, reported at 2002(3) Cri.L.J. 2796,

(2) Madan Mohan Singh vs. State of Gujarat and anr, reported at 2010 ALL MR (Cri) 3245 (SC).

13. One of leading case on this issue is, Dilip s/o Ramrao Shirasao and ors vs. State of Maharashtra and anr 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.

14. 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

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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.

15. In view of the above, we are of view that this Court must intervene at this stage only and proceedings against the applicant, who is a Branch Manager, Bank of Maharashtra, Morshi Branch, District Amravati, will require to be terminated. Consequently, we pass following order:

ORDER

(1) The criminal application is allowed.

(2) First Information Report (Annexure-C), registered with Morshi

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Police Station, District Amravati, vide Crime No.147/2015, for offence punishable under Section 306 of the Indian Penal Code, is hereby quashed and set aside.

(3) Needless to mention that any consequent proceeding registered on such First Information Report also stands quashed.

Rule is made absolute in aforesaid terms.

JUDGE

JUDGE

!! BRW !!

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