

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL MISC.APPLICATION NO. 19305 of 2020****With
CRIMINAL MISC.APPLICATION (FOR STAY) NO. 2 of 2022****In
R/CRIMINAL MISC.APPLICATION NO. 19305 of 2020****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE NIRZAR S. DESAI**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	NO
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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SANJAY KANAKMAL AGARWAL

Versus

THE STATE OF GUJARAT

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Appearance:

MR ND NANAVATI SR ADVOCATE WITH
MR. BHADRISH S RAJU(6676) WITH
MR NIMIT Y SHUKLA(8338) for the Applicants

MS MAITHILI MEHTA APP for the Respondent(s) No. 1
MR. MAULIK M SONI(7249) for the Respondent No. 2

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CORAM: HONOURABLE MR. JUSTICE NIRZAR S. DESAI**Date : 27/06/2022****ORAL JUDGMENT**

1. By way of this application under Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.', for short), the applicants have prayed for following reliefs:

- “(a) to allow this application;
(b) to quash and set aside the impugned FIR being Part A No.11210008200909 of 2020 (at Annexure-A) registered with Sarthana Police Station, District Surat;
(c) Pending admission, hearing and final disposal of this application, to stay further investigation of the impugned FIR being Part A No.11210008200908 of 2020 (at Annexure-A) registered with Sarthana Police Station, District Surat;
(d) To pass any other and further orders as may be deemed fit and proper to this Hon’ble Court.”*

2. Heard learned senior advocate Mr.N.D.Nanavati with learned advocate Mr.Bhadrish Raju for learned advocate Mr.Nimit Shukla for the applicants, learned Additional Public Prosecutor Ms.Maithili Mehta for Respondent No.1 – State and learned advocate Mr.Maulik Soni for Respondent No.2 – original complainant.

3. With consent of all the parties, the matter is taken up for final hearing. Hence, **Rule** returnable **forthwith**. Learned Additional Public Prosecutor Ms.Mehta waives service of notice of Rule on behalf of respondent – State and learned advocate Mr.Soni waives service of notice of Rule on behalf of respondent no.2 – original complainant.

4. The Respondent No.2, who is the original complainant, registered an First Information Report (‘FIR’ , for short) being I – C.R.No. 11210008200908 registered with Sarthana Police Station, Surat City for offences under Sections 306 and 114 of the Indian Penal

Code stating that the daughter of the complainant viz. Panchhila, aged about 26 years, used to work as Chartered Accountant at Agarwal and Dhandhania, Chartered Accountant Firms since last two and half years. The applicants are the partners of the said firm. In the FIR, it is alleged that on 30.06.2020, daughter of the complainant committed suicide by hanging herself due to harassment being meted out to her by the present applicants. In the complaint, it is stated that on 23.06.2020, the deceased had gone to attend religious function arranged by Rajeshbhai Jivanbhai Sudani who is one of the clients of the applicants i.e. Shreeji Yarn where the applicants were also invited. The applicants had seen the deceased there attending function. Since applicant no.1 found the deceased was attending function during office hours, he scolded her and humiliated her by stating that she might serve the firm Shreeji Yarn and threatened that he would take legal action against the deceased and see to it that her license as Chartered Accountant is cancelled. On account of the aforesaid incident and threat administered by the applicants, the deceased went into depression and resigned from the job by sending her resignation through email. It is alleged in the complaint that because of the said harassment by the applicants, the deceased committed suicide on 30.06.2020.

5.1 Learned senior advocate Mr.N.D.Nanavati for the applicants submitted that the applicants are the partners of Chartered Accountant Firm and deceased used to work

in the said firm. During the office hours, upon invitation when the applicants went to attend religious function hosted by Shreeji Yarn, they found the deceased there and, therefore, they scolded the deceased stating that legal action would be taken against her. Learned senior advocate Mr.Nanavati submitted that if during the office hours, an employee is found at place of some other office and it is also found that she was working for other firm as well, it is matter of office discipline if the employee is scolded by the employer and can not be termed as an offence under Section 306 of the Indian Penal Code. He submitted that bare reading of the FIR does not disclose any offence and it can nowhere be found that it was present applicants who abated deceased to commit suicide.

5.2 Learned senior advocate Mr.Nanavati relied upon the judgment of Honourable the Supreme Court of India in the case of *Vaijnath Knodiba Khandke vs. State of Maharashtra and another* reported in **(2018) 7 SCC 781** and by relying upon the said judgment he submitted that even on bare reading of the complaint, the ingredients of section 306 of Indian Penal Code ('IPC', for short) are not made out and, therefore, relying upon aforesaid judgment as well as the FIR and by pointing out the statement of one Rajeshbhai Jivanbhai Sudani,- the proprietor of Shreeji Yarn, wherein he has stated that during the period of lock-down, he employed the deceased for some period for some work relating to accountancy and,

therefore, deceased was invited in religious function on 23.06.2020, submitted that even as per statement of Rajesh Jivan Sudani, the applicants more particularly applicant no.1 scolded the deceased person and asked the deceased to leave the place.

5.3 Learned senior advocate Mr.Nanavati submitted that while maintaining the office discipline, if an employee scolds an employee, it cannot be said that employer has acted in such a manner that it would amount to instigate the employee or abetting her in committing the suicide.

5.4 Learned senior advocate Mr.Nanavati also submitted that, in the instant case, ingredients of Section 306 of Indian Penal Code are missing though the complaint is registered Sections 306 and 114 of the Indian Penal Code and, therefore, the impugned FIR is required to be quashed.

6. Learned Additional Public Prosecutor Mr.Mehta opposed the application vehemently, however, she could not point out anything from the charge-sheet papers to indicate that the present applicants have acted in such manner that they have instigated either the deceased to commit suicide or that they abated in the crime.

7. Learned advocate Mr.Maulik Soni appearing for the original complainant – Respondent No.2 also though have vehemently opposed the application, could not point anything from the record which may indicate that the

deceased committed suicide because of the present applicants or that the present applicants have instigated or abetted the deceased person to commit suicide.

8. Having heard learned advocates for the respective parties, this Court has considered the following aspects.

8.1 though it is alleged that deceased had gone into depression after the incident occurred on 23.06.2020, after almost a week she committed suicide and thereafter after more than a week i.e. on 09.07.2020, complaint was registered;

8.2 Further, what is stated in the complaint itself for root cause of suicide was when deceased was found during office hours in another firm i.e. Shreeji Yarn Firm, who was one of the clients of the firm of the present applicants, on 23.06.2020 where the deceased as well as present applicants were invited, present applicants scolded the deceased and told her that she will be served with legal notice and legal action will be initiated against her;

8.3 Applicants also stated that they will see to it that her license as Chartered Accountant would get cancelled and pursuant to that ultimately deceased resigned from the office of the applicants;

8.4 it is after a week that on 30.06.2020 deceased committed suicide and complaint was registered after

nine days thereafter.

9. The aforesaid incidents, as stated in the FIR and bare reading of the FIR as well as statement of owners of the firm viz. Ramesh Sudani, if are considered together, it would make it clear that what had happened on 23.06.2020 was that the deceased person was scolded by the employer since she was found at some other office during the office hours and just with a view to maintain office discipline, if the applicants scolded the deceased, it cannot be said to be instigation to commit suicide. Further, even after the incident, the deceased resigned online and thereafter she committed suicide after a week and complaint was filed after more than a week thereafter. Had the applicants been instrumental in suicide of the deceased person, in that case, the deceased would have taken that drastic action immediately. Further, there is no suicide note from the deceased person as it was stated by learned Additional Public Prosecutor Ms. Mehta upon the inquiry from this Court. Not only that, had the incident dtd.23.06.2020 have any bearing with the suicide of the deceased with the applicants, the deceased either could have written a suicide note or at least she could have intimated about the same to her parents. In the instant case, the deceased committed suicide on 30.06.2020 whereas the father of the deceased lodged the complaint on 09.07.2020. Further, this Court has also considered the judgment cited by learned senior advocate Mr.Nanavati in the case

of *Vajnath Knodiba Khandke vs. State of Maharashtra and another* reported in **(2018) 7 SCC 781** wherein in paras:4 to 8, Honourable the Supreme Court has observed as under:

“4. In this appeal, we heard Mr. Shankar Chillarge, learned Advocate for the appellant and Ms. Deepa M. Kulkarni, learned Advocate for the State.

5. In [Madan Mohan Singh v. State of Gujarat and another](#)¹ the deceased was a driver who had undergone a bypass surgery and was advised against performing any stressful duties. The accused was a superior officer (2010) 8 SCC 628 who had rebuked the deceased harshly and threatened to suspend him when the deceased had failed to comply with his directions. The deceased thereafter committed suicide and left behind a suicide note stating that the accused was solely responsible for his death. In these facts, this Court held that there must be allegations to the effect that the accused had either instigated the deceased in some way to commit suicide or had engaged with some other person in conspiracy to do so or that the accused had in some way aided any act or illegal omission to bring about the suicide. The prayer for quashing preferred by the accused was accepted by this Court and the proceedings were quashed.

6. At the same time the facts in [Praveen Pradhan v. State of Uttaranchal and another](#)² show that a junior officer was allegedly compelled by the superior to indulge in several wrongful practices at the work place; the junior officer was not comfortable in complying with such orders, as a result of which the junior officer was harassed and insulted on regular intervals and disgraced in front of the staff of the entire factory and rebuked with comments such as “had there been any

other person in his place he would have died by hanging himself.” The junior officer committed suicide leaving behind a note detailing all the incidents and (2012) 9 SCC 734 asserting against his superior. In these circumstances prayer for quashing was rejected by this Court.

7. In the backdrop of these two lines of cases, we have gone through the material on record. There is no suicide note left behind by the deceased and the only material on record is in the form of assertions made by his wife in her reporting to the police. It is true that if a situation is created deliberately so as to drive a person to commit suicide, there would be room for attracting [Section 306](#) IPC. However, the facts on record in the present case are completely inadequate and insufficient. As a superior officer, if some work was assigned by the applicant to the deceased, merely on that count it cannot be said that there was any guilty mind or criminal intent. The exigencies of work and the situation may call for certain action on part of a superior including stopping of salary of a junior officer for a month. That action simplicitor cannot be considered to be a pointer against such superior officer. The allegations in the FIR are completely inadequate and do not satisfy the requirements under [Section 306](#) IPC. In our view, the facts in the present case stand on a footing better than that in Madan Mohan Singh (supra) and there is absolutely no room for invoking provisions of [Section 306](#) IPC. We are of the firm view that the interest of justice demands that the proceedings initiated against the appellant are required to be quashed.

8. We, therefore, allow this appeal and quash criminal case lodged in pursuance of FIR No.268 of 2017 registered with Police Station MIDC, CIDCO, Aurangabad.”

10. In view of the aforesaid observations made by Honourable the Supreme Court, more particularly, when Honourable the Supreme Court has categorically observed that if some work is assigned by the employer to employee, merely on that count it cannot be said that there was any guilty mind or criminal intent. In the instant case also, what is alleged in the FIR itself is that the present applicants have threatened the deceased to take legal action against her and to see that her license of Chartered Accountant is cancelled. If an employer on finding the employee breaching the discipline of office, asks the employee that legal action would be taken against concerned employee and if after few days, the concerned employee commits suicide, it cannot be said that the threat to take legal action was given with a criminal intent to instigate the employee to commit suicide. When an employee is scolded just with a view to maintain office discipline and out of fear or being hyper-sensitive, if an employee commits suicide, that would not constitute an offence attracting provisions of Section 306 of Indian Penal Code as the action taken by the employer was in good faith to maintain office discipline. If such *bona fide* action is registered as an offence under Section 306 of Indian Penal Code and employer is prosecuted then it would pose threat to most of the employers and office discipline will not be maintained in the offices as the employers would remain under threat that if any drastic action is taken by an employee, in that case, for

no reason, an employer would be prosecuted under criminal law. Further, in absence of any suicide note which would indicate that the petitioners had played any role in the suicide of the deceased, merely on the basis of suspicion, the petitioners cannot be prosecuted under Section 306 of the Indian Penal Code as such there is no material against the petitioner to implicate them under Section 306 of the Indian Penal Code.

11. In view of the aforesaid discussion, when there is no material against the present applicants to indicate that they have either instigated deceased or abetted the deceased to commit suicide, present FIR is required to be quashed and set aside with all consequential proceedings arising out of the same.

12. Resultantly, the impugned FIR I - C.R.No. 11210008200908 registered with Sarthana Police Station, Surat City is hereby quashed. Consequentially, the Criminal Case No.929 of 2021 arising out of the said FIR pending before the learned 3rd Additional District Judge, Surat is hereby quashed.

13. Rule is made absolute to the aforesaid extent. No order as to costs. Direct service is permitted.

14. Since the main matter i.e. Criminal Miscellaneous Application No.19305 of 2020 is disposed of today, the connected application for stay i.e. Criminal Miscellaneous Application No.2 of 2020 in Criminal Miscellaneous

Application No.19305 of 2020 would not survive. It is disposed of accordingly.

(NIRZAR S. DESAI,J)

MISHRA AMIT V.

