

Tushar Vs. State of Maharashtra and Another

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Court : Mumbai Aurangabad

Decided On : Nov-26-2012

Judge : A.H. Joshi & Sunil P. Deshmukh

Appeal No. : Criminal Application No.3683 of 2012

Appellant : Tushar

Respondent : State of Maharashtra and Another

Judgement :

Oral Judgment: (A.H. Joshi, J.)

Rule. Rule is made returnable forthwith and taken up for final disposal with the consent of learned Advocates for the parties.

2. Heard learned Advocate for the applicant, learned APP for the respondent no.1 and learned Advocate for the respondent no.2. Perused the FIR.

3. Substance of the FIR is summarized as follows:-

(a) Husband of the informant Sangita namely Janardhan Shinde used to run the institution called Hari Mauli Balak Ashram.

(b) He had incurred heavy debt while doing so.

(c) The said debt was in the shape of loans from various persons, who are 15 in number and named in the FIR, including present applicant.

(d) The debt carried interest.

(e) The money lenders had pestered and insulted Janardhan Shinde towards his failure to repay.

(f) Janardhan Shinde had to make arrangement of money for payment of fees of his daughter's education, which he was not able to arrange.

(g) On account of frustration due to insult, because of failure to arrange for funds, Janardhan Shinde had committed suicide by consuming poisonous substance.

(h) The responsibility towards the death of her husband Janardhan Shinde is of the money lenders.

4. The challenge in present application is based on foundation as follows:-

Even if each and every word contained in the FIR is considered without any addition or subtraction and be treated as a fact proved, even then the offences alleged are not barely described or made out.

5. The learned Advocate Shri R.G. Hange who appears for the original informant and the learned APP for the State have vehemently argued and placed reliance on the text of the FIR as adequate foundation of the description of offence which is adequate to proceed with registration of offence and to proceed for investigation.

It is not denied that the mental stress is, according to the complainant, the cause of suicide, and the accused persons being instrumental to the said insult could be considered to be a fact even without any further investigation.

6. We have given peaceful consideration to the points which are raised by respective parties and the text of the FIR. We are of considered view that the act or acts of accused to insult do not by themselves constitute abetment. It has to be shown from a statement in the complaint that these accused have actually instigated and aided in the victim's act of committing suicide. In absence of any

such description, the FIR is liable to be viewed as a text which does not contain the ingredients of offence.

7. We hold that the act of abetment is not duly described, no offence is made out for registration of an offence.

8. We are satisfied that present is a fit case where no fruitful purpose of law and justice would be served if the FIR is continued.

9. We, therefore, allow this application by making the Rule absolute in terms of prayer clause (C). The FIR bearing No.79/2012 dated 8.7.2012 registered at Neknoor Police Station u/s 306 r/w 34 of the Indian Penal Code and u/s 32-B of the Bombay Money Lenders Act against the applicant is quashed and set aside.

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