request in the alternative, at least, in these peculiar facts. However, as we have not heard the respective Counsel at length on desirability of adopting such a course, we refrain from recording any binding observations.

33. We therefore allow the Criminal Appeal preferred by the convicts.

(i) Accused No. 1 - Shivaji, Accused No. 5 - Anand, Accused No. 17 - Haribhau, Accused No. 18 - Vasanta and Accused No. 19 - Prakash i.e. appellants before this Court in Criminal Appeal No. 448 of 2002 are acquitted of all the offences for which they were held guilty and their conviction by the Additional Sessions Judge, Akola in S.T. Case No. 54 of 1996 vide its judgment and order dated 23.07.2002 is quashed and set aside.

(ii) Consequently Criminal Appeal No. 619 of 2002 filed by the State Government for enhancing their punishment is dismissed.

(iii) Bail bonds furnished by them are cancelled.

(iv) Muddemal property be dealt with as directed by the Trial Court after expiry of the appeal period.

***Result*:-** Appeal allowed.

ABC 2017 (I) 47 BOM
ACQUITTAL & BAIL CASES

HIGH COURT OF BOMBAY

(N.W. Sambre, J.)
Criminal Writ Petition No.431 of 2005
Decided on 4 January, 2017
Aurangabad Bench

RAMANNA HANAMAPA CHOUDAKI & ORS. ***- Petitioner(s).***

Versus

STATE OF MAHARASHTRA & ANR. ***- Respondent(s).***

Law Covered*:-** ***(A) Code of Criminal Procedure, 1973 — Section 204 — Issue of Process — Indian Penal Code, 1860 — Section 306 — Abetment to suicide — Criminal Complaint — Ld. Magistrate

called report from the police officer — does not disclose any cognizable offence against the accused — Held, there is hardly any material to infer that there was any motive— hardly any material to infer that the petitioners were having knowledge that respondent No. 2 is likely to take steps for consumption of poison so as to commit suicide— order of issuance of process does not speak or reflect any application of mind —Relief granted — Petition allowed. (Para 11 & 13)

(B) Code of Criminal Procedure, 1973 — Section 204 — Issue of Process — Criminal Complaint — Duty of the Court — Held, The Courts have to be extremely careful as the main person is not available for cross-examination by the appellant/accused — Unless there is specific allegation and material of definite nature (not imaginary or inferential one), it would be hazardous to ask the appellant/accused to face the trial — Madan Mohan Singh and Netai Dutt — relied. (Para 12)

(C) Indian Penal Code, 1860 — Section 306 — Abetment to suicide — Grudge against superior — Held, merely because a person had a grudge against his superior officer & committed suicide on account of that grudge — even honestly feeling that he was wronged — it would still not be a proper allegation for basing the charge under Section 306 IPC — Madan Mohan Singh and Netai Dutt — relied. (Para 12)

Facts:- *It was claimed by respondent No. 2 that the accused persons connived with each other and tried to harass him and was made him to work for more than hours than prescribed, resulting into in filing of complaint by respondent No. 2, which was allowed by the Labour Courtwith directions to the employer to reinstate respondent No. 2 along with 50% back wages. The said order came to be stayed by the honourable High Court, subject to condition that respondent No.2 be reinstated and part of back wages to be paid. After his reinstatement he filed complaint before the Labour Commissioner alleging that the petitioners are harassing him. Thereafter he consumed poison in the factory premises, resulting into his hospitalization and thereafter was discharged after proper treatment. A complaint was filed with the police. As the cognizance was not taken for registration of crime, a complaint came to be filed before learned JMFC for the offence punishable u/ ss 116, 306, 504, 506 r/w Section 34 of the IPC alleging that he was forced to consume poison by the petitioners - accused persons and sought prosecution. Learned Magistrate ordered issuance of process against the petitioners. Present writ petition questioning the order and initiation of the proceedings was filed. The petition was allowed.*

Law of relief:- ***In prosecution u/s 306 the Courts have to be extremely careful as the main person is not available for cross-examination by the appellant/accused.***

Held:- What is required to be noted from the contents of the complaint is that there is hardly any material to infer that there was any motive, much less criminal motive on the part of the petitioners so as to drive respondent No. 2 employer to take recourse to the consumption of poison so as to commit suicide to resist harassment meted out him by the petitioners. Even from the record, there is hardly any material to infer that the petitioners were having knowledge that respondent No. 2 is likely to take steps for consumption of poison so as to commit suicide. (Para 11)

Mr. Bedre, learned Counsel for the petitioners, in my opinion, has rightly relied upon the judgment of the Apex Court in the matter of Madan Mohan Singh and Netai Dutt, cited supra. Paragraph Nos. 9, 10 and 11 of the judgment in the case of Madan Mohan Singh (supra) read thus :

> "9. It is absurd to even think that a superior officer like the appellant would intend to bring about suicide of his driver and, therefore, abet the offence. In fact, there is no nexus between the so called suicide (if at all it is one for which also there is no material on record) and any of the alleged acts on the part of the appellant. There is no proximity either. In the prosecution under Section 306, IPC, much more material is required. The Courts have to be extremely careful as the main person is not available for cross- examination by the appellant/accused. Unless, therefore, there is specific allegation and material of definite nature (not imaginary or inferential one), it would be hazardous to ask the appellant/ accused to face the trial. A criminal trial is not exactly a pleasant experience. The person like the appellant in present case who is serving in a responsible post would certainly suffer great prejudice, were he to face prosecution on absurd allegations of irrelevant nature. In the similar circumstances, as reported in Netai Dutta Vs. State of W.B. [2005 (2) SCC 659], this Court had quashed the proceedings initiated against the accused. (Para 12)

Apart from above, it is required to be noted that pursuant to the complaint filed by respondent No. 2, learned Magistrate was

pleased to call report from the police officer and said report also does not disclose any cognizable offence against the present petitioners. (Para 13)

Counsel:- ***For Petitioner(s):*** *Mr V.S. Bedre, Advocate.*

For Respondent(s): *Mr S.M. Ganachari, Addl. Public Prosecutor.*

Cases Referred:-

1. *Madan Mohan Singh vs State of Gujarat and another; MANU/SC/0611/2010. (Para 6)*
2. *Netai Dutta vs State of West Bengal; 2005(2) SCC 659. (Para 6)*
3. *State of Haryana & Ors. Vs. Bhajan Lal & Ors.; [1992 Suppl. 1 SCC 335]. (Para 12)*
4. *Maharashtra vs. Shashikant Eknath Shinde; 2013 ALL MR (Cri) 3060. (Para 14)*
5. *M/S. Pepsi Foods Ltd. vs. Special Judicial Magistrate; 1998 5 SCC 749. (Para 14)*

JUDGMENT

N.W. SAMBRE, J.: - Heard.

2. Respondent No. 2 was appointed as Material Mover pursuant to the appointment order on 2nd June, 1986 with Kinetic Engineering Limited, Ahmednagar. It is claimed by respondent No. 2 that the accused persons connived with each other and tried to harass him and was made him to work for more than hours than prescribed, resulting into in filing of complaint bearing Complaint (ULP) No. 55 of 1986 by respondent No. 2, which was allowed on 30th April, 1991 by the Labour Court, Ahmednagar, with directions to the employer to reinstate respondent No. 2 along with 50% back wages. The said order came to be stayed in Writ Petition No. 1544 of 1992 by this Court, subject to condition that respondent No.2 be reinstated and part of back wages to be paid.

3. Respondent No. 2 thereafter filed complaint before the Labour Commissioner, Nashik on 25th September, 2004 after his reinstatement on 25th July, 1992 alleging that the petitioners are harassing him. Respondent No.2, as such, on 16th November, 2004 consumed poison in the factory premises, resulting into his hospitalization and thereafter was discharged after proper treatment. In the backdrop of above referred act of respondent No. 2, a complaint was filed with the District Superintendent of Police, Ahmednagar on 8th January, 2005. As the cognizance was not taken

for registration of crime, a complaint bearing RTC No. 33 of 2005 came to be filed before learned Judicial Magistrate, First Class, Ahmednagar on 29th January, 2005 for the offence punishable under Sections 116, 306, 504, 506 read with Section 34 of the Indian Penal Code alleging that he was forced to consume poison by the petitioners - accused persons and sought prosecution.

4. Learned Magistrate after recording verification on 20th August, 2005 ordered issuance of process against the petitioners. As such, present writ petition questioning the order and initiation of the proceedings.

5. Petitioner Nos. 1 and 2 are the Senior Manager (Works), Senior Assistant Manager (Personnel) respectively. Petitioner No. 3 is the Head of the Department of Vehicle Assembly and the petitioner Nos. 4 to 13 are the persons who are employees of Kinetic Engineering Limited and office bearers of registered and recognized employees' union.

6. While questioning very maintainability of the complaint against the present petitioners, Mr. Bedre, learned Counsel for the petitioners would urge that the relationship between the Kinetic Engineering Limited and that of respondent No. 2 was through the employer Kinetic Engineering Limited and there was no personal enmity as such. He would then invite my attention to the contentions in the complaint so as to submit that the ingredients of an offence punishable under Sections 116, 306, 504, 506 read with Section 34 of the Indian Penal Code are not made out and would rely upon the judgment of the Apex Court in the matter of ***Madan Mohan Singh vs State of Gujarat and another, reported in MANU/SC/0611/2010*** and also in the case of ***Netai Dutta vs State of West Bengal, reported in 2005(2) SCC 659.*** According to him, after the present proceedings were initiated, this Court by an order dated 1 st February, 2006 has granted Rule and the petitioners are protected, which protection is continued for last ten years. According to him, the perusal of complaint since does not disclose any cognizable offence, the present petition needs to be allowed. In addition to above, my attention is also invited to the report submitted by the police officer pursuant to the order passed by learned Magistrate on a complaint case calling upon the police officer to submit his report. According to him, the said report also does not disclose any cognizable offence as against the petitioners to pass an order without application of mind.

7. Learned Additional Public Prosecutor supports the order passed by learned Magistrate and has tried to justify the initiation of proceedings against the petitioners. The contesting respondent i.e. respondent No. 2 though served, none appears.

8. What is required to be gathered from the record is, respondent No. 2 came to be appointed by virtue of an order dated 2nd June, 1986 for the period of six months and it is pursuant to the order of this Court passed in Writ Petition No. 1544 of 1992, he was reinstated and continued in service. Same speaks of employer and employee relationship between Kinetic Engineering Limited and respondent No. 2.

9. The cause for initiation of the complaint case being RTC No. 33 of 2005 is the alleged incident of consumption of poison by respondent No.2 in the factory premises, that too on 16 th November, 2004 when in fact he was reinstated way back on 25th July, 1992.

10. The consumption of poison by respondent No.2 in the factory premises is sought to be connected with the conduct of present petitioners being his employer, co-employees who are office bearers of union with an intention to cause harassment to them.

11. What is required to be noted from the contents of the complaint is that there is hardly any material to infer that there was any motive, much less criminal motive on the part of the petitioners so as to drive respondent No. 2 employer to take recourse to the consumption of poison so as to commit suicide to resist harassment meted out him by the petitioners. Even from the record, there is hardly any material to infer that the petitioners were having knowledge that respondent No. 2 is likely to take steps for consumption of poison so as to commit suicide.

12. Mr. Bedre, learned Counsel for the petitioners, in my opinion, has rightly relied upon the judgment of the Apex Court in the matter of Madan Mohan Singh and Netai Dutt, cited supra. Paragraph Nos. 9, 10 and 11 of the judgment in the case of Madan Mohan Singh (supra) read thus :

> "9. It is absurd to even think that a superior officer like the appellant would intend to bring about suicide of his driver and, therefore, abet the offence. In fact, there is no nexus between the so called suicide (if at all it is one for which also there is no material on record) and any of the alleged acts on

the part of the appellant. There is no proximity either. In the prosecution under Section 306, IPC, much more material is required. The Courts have to be extremely careful as the main person is not available for cross- examination by the appellant/accused. Unless, therefore, there is specific allegation and material of definite nature (not imaginary or inferential one), it would be hazardous to ask the appellant/ accused to face the trial. A criminal trial is not exactly a pleasant experience. The person like the appellant in present case who is serving in a responsible post would certainly suffer great prejudice, were he to face prosecution on absurd allegations of irrelevant nature. In the similar circumstances, as reported in Netai Dutta Vs. State of W.B. [2005 (2) SCC 659], this Court had quashed the proceedings initiated against the accused.

10. As regards the suicide note, which is a document of about 15 pages, all that we can say is that it is an anguish expressed by the driver who felt that his boss (the accused) had wronged him. The suicide note and the FIR do not impress us at all. They cannot be depicted as expressing anything intentional on the part of the accused that the deceased might commit suicide. If the prosecutions are allowed to continue on such basis, it will be difficult for every superior officer even to work.

11. It was tried to be contended by the learned counsel appearing on behalf of the complainant that at this stage, we should not go into the merits of the FIR or the said suicide note. It is trite law now that where there is some material alleged in the FIR, then such FIR and the ensuing proceedings should not be quashed under Section 482 Cr.P.C. It is for this reason that we very closely examined the FIR to see whether it amounts to a proper complaint for the offence under Sections 306 and 294(b) IPC. Insofar as Section 294(b) IPC is concerned, we could not find a single word in the FIR or even in the so-called suicide note. Insofar as Section 306 IPC is concerned, even at the cost of repetition, we may say that merely because a person had a grudge against his superior officer and committed suicide on account of that grudge, even honestly feeling that he was wronged, it would still not be a proper allegation for basing the charge under Section 306 IPC.

(12)It will still fall short of a proper allegation. It would have to be objectively seen whether the allegations made could reasonably be viewed as proper allegations against the appellant/accused to the effect that he had intended or engineered the suicide of the concerned person by his acts, words etc. When we put the present FIR on this test, it falls short. We have already explained that the baseless and irrelevant allegations could not be used as a basis for prosecution for a serious offence under Section 306 IPC. Similarly, we have already considered Section 294 (b) IPC also. We have not been able to find anything. Under such circumstances, where the FIR itself does not have any material or is not capable of being viewed as having material for offence under Sections 306 and 294(b) IPC, as per the law laid down by this Court in ***State of Haryana & Ors. Vs. Bhajan Lal & Ors. [1992 Suppl. 1 SCC 335]***, it would be only proper to quash the FIR and the further proceedings."

13. Apart from above, it is required to be noted that pursuant to the complaint filed by respondent No. 2, learned Magistrate was pleased to call report from the police officer and said report also does not disclose any cognizable offence against the present petitioners.

14. The order of the learned Magistrate ordering issuance of process passed on 20 th August, 2005 speaks of alleged incident of hospitalization of respondent No.2 after the incident in question. However, it does not speak or reflect any application of mind as provided by the Division Bench of this Court in the matter of State of ***Maharashtra vs. Shashikant Eknath Shinde reported in 2013 ALL MR (Cri) 3060*** and the judgment of Apex Court in the matter of ***M/S. Pepsi Foods Ltd. vs. Special Judicial Magistrate, reported in 1998 5 SCC 749***.

15. In the light of above, in my opinion, a case for grant of relief is made out. As such, criminal writ petition stands allowed. Rule made absolute in terms of prayer clause (B).

Result:- Criminal Writ Petition allowed.