

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH: AURANGABAD

CRIMINAL WRIT PETITION NO. 390 OF 2005

Petitioners : 1. Dr. Prakash Kanhaiyalal Kankaria,
 aged about 43 years, Medical Practitioner,
 2. Dr. Sudha Prakash Kankakria,
 aged about 43 years, Medical Practitioner.
 Both residents of "Vardhman",
 Manik Chowk, Ahmednagar.

-Versus-

Respondents : 1. Smt. Alka Bapu Gund,
 aged about 33 years, Labourer,
 r/o Sawedi, Ahmednagar,
 2. State of Maharashtra, through
 Superintendent of Police, Ahmednagar,
 3. Union of India.

Shri S.S. Bora, Advocate for petitioner,
Shri N.B. Suryawanshi, Advocate h/f Mr. A.D. Choudhari, Advocate for respondent no.1.
Shri K.M. Suryawanshi, APP for respondent no.2.

Coram : S.S. Shinde and P.R. Bora, JJ,
 Reserved on : 10th July, 2014
 Pronounced on : 24th December, 2014.

JUDGMENT (Per P.R. Bora, J)

1. The order passed by 7th Joint Judicial Magistrate, First Class, Ahmednagar on 4.8.2005 in RTC No. 9 of 2004 whereby process has been issued against petitioners for the offence punishable under Section 306 read with Section 34 of the Indian Penal Code is questioned in the present

writ petition. Petitioners are Medical Practitioners and are running a hospital in the city of Ahmednagar known as 'Saisurya Netra Seva Hospital'. Petitioners have also claimed that they are engaged in social and educational activities.

2. Facts which are relevant for deciding the present writ petition are thus:

On 11.5.2002 one Bapu Nivrutti Gund committed suicide. His dead body was found on the railway track near village Arangaon. At the relevant time, deceased Bapu was serving as a Librarian in Mankanhaiya College of Arts and Commerce, Ahmednagar. His dead body was identified by the Principal of the said college. AD No. 20/2002 was registered at City of Police Station, Ahmednagar and the investigation was set in motion.

While such investigation was going on, the present petitioners were contacted by one Prashant Mahajan, who, at the relevant time was Treasurer in the management of Mankanhaiya College. Said Prashant Mahajan informed the petitioners that he was in possession of a confidential letter written to him by deceased Bapu Gund prior to committing suicide wherein said Bapu had made serious allegations against the petitioners holding them responsible for commission of his suicide. Said Prashant Mahajan also informed the petitioners that the

hand-writing of the letter so received has been examined by Advocate Prafulla Kulkarni, who is also the hand-writing expert and he has confirmed that the said letter is in the hand-writing of deceased Bapu. Advocate Prafulla Kulkarni was also an office bearer at the relevant time in the management of said Mankanhaiya College.

Said Prashant Mahajan demanded Rs.3 crores from the petitioners for suppressing letter of deceased Bapu received to him or else threatened petitioners to make the said letter public. Prashant Mahajan and Prafulla Kulkarni were joined by Advocate Sagar Gunjal in giving threats to the petitioners and in blackmailing them on account of alleged suicide note. Advocate Sagar Gunjal was the President of the managing committee of said Mankanhaiya College at the relevant time. All the aforesaid three i.e. Advocate Sagar Gunjal, Advocate Prafulla Kulkarni and Prashant Mahajan thereafter were persistently harassing the petitioners and were seeking ransom from them to suppress the alleged suicide note of Bapu Gund. Being fed up with the harassment being caused by Prashant Mahajan, Prafulla Kulkarni and Sagar Gunjal, petitioners approached the Superintendent of Police Ahmednagar and disclosed the entire facts to him. The information so given by petitioners to the police was accepted as their complaint and was registered as Crime No. 124/02. Thereafter a trap was led and the aforesaid three persons were caught red-handed while accepting the amount of ransom from the petitioners.

The conversations which had taken place at the relevant time between the petitioners and aforesaid three were also tape-recorded.

After arrest of aforesaid three persons, in the house search of Advocate Prafulla Kulkarni the suicide note alleged to be in the hand-writing of deceased Bapu was recovered from his house from behind one photo-frame. The same was seized by police. Since in the suicide note so received some allegations were made against the petitioners by Bapu Gund in relation to his suicide, LCB, Ahmednagar registered a crime against the petitioners bearing no. 39/03 for the offence punishable under Section 306 read with Section 34 of the Indian Penal Code.

On getting knowledge of registration of crime against them, petitioners sought anticipatory bail from the High Court. Petitioner also filed Criminal Writ Petition No.203 of 2003 on 24.4.2003 praying for quashing of FIR in the criminal proceedings against them for the offence punishable under Section 306 read with Section 34 of the Indian Penal Code. In the said writ petition, petitioners had also prayed for transferring investigation in regard to the death of Bapu Gund to CBI or some other agency. It was alleged by the petitioners that though a scene was created that deceased Bapu Gund had committed suicide, the facts which were revealed in the course of investigation and more particularly the contents of the post-mortem report were suggesting the possibility of murder of said Bapu Gund.

On 18.7.2003, the Investigating Officer who was conducting investigation in Crime No. 39/2003 filed an affidavit before the High Court to the effect that the evidence collected in the investigation conducted by him is not sufficient to send a charge sheet against the petitioners for the offence under Section 306 r/w 34 of Indian Penal Code and, therefore, 'A' summary report was to be filed in the said case before the Magistrate. In view of the affidavit filed on record by the Investigating Officer in Crime No. 39/2003, the High Court disposed of Criminal Writ Petition filed by the petitioners giving them liberty to independently prosecute the prayer for investigation in the matter by the CBI if required.

Wife of deceased Bapu viz. Alka had filed an intervention application before the High Court in Criminal Writ :Petition No. 203 of 2003. While disposing of the said writ petition on 18.7.2003 the High Court rejected the intervention application so filed by said Alka after hearing her counsel. Thereafter on 11.2.2004 said Alka who is respondent no.1 in the present writ petition filed private complaint against the petitioners bearing RTC No. 9 of 2004 before the Chief Judicial Magistrate for the offence punishable under Section 306 read with Section 34 of the Indian Penal Code. Respondent no.1 examined seven witnesses to substantiate her allegations against the petitioners whereupon the learned Magistrate issued process against the petitioners for the offence punishable under Section 306 read with Section 34 of the Indian Penal

Code vide order passed on 4.8.2005.

Being aggrieved by order so passed, the petitioners filed criminal Revision Application before the Sessions Court at Ahmednagar. However, a preliminary objection was raised at the very inception as regards the maintainability of said revision application. Though the petitioners asserted that the revision application so filed by them was maintainable, learned Additional Sessions Judge passed order on 11.8.2005 and thereby returned the papers of revision to the petitioners for presenting the same before the appropriate forum in accordance with law. Learned Additional Sessions Judge observed that the only remedy available for the petitioners was to file application under Section 482 of the Criminal Procedure Code or to file a writ petition. In the circumstances, petitioners have filed present criminal writ petition.

3. By order dated 9th September, 2005 while issuing rule in the matter, all further proceedings in RTC No.9 of 2004 have been stayed by this Court.

4. Shri Satyajeet Bora, the learned counsel for the petitioners submitted that without proper appreciation of the evidence adduced by respondent no.1 and without taking into account the previous events occurred in the matter which in fact are having material bearing on the

subject matter the learned Magistrate has mechanically issued the process against the petitioners. Shri Bora further submitted that the trial court has also failed in appreciating the inherent improbabilities in the evidence adduced in support of the allegations levelled against the present petitioners. The learned counsel submitted that all previous statements of respondent no.1 as well as 'A' summary report submitted in Crime No. 39/2003 were before the trial court, however, the same have not been looked into. The learned counsel further submitted that even if the evidence adduced by respondent no. 1 i.e. the complainant is taken as it is even then no offence under Section 306 read with Section 34 of Indian Penal Code can be said to have been made out against the petitioners. The learned counsel relied upon the following judgments to substantiate the contentions raised in the petition.

- (1) Madan Mohan SsinghVs. State of Gujurat and another 2010 (4) Crimes 34(SC)
- (2) Sanju @ Sanjay Singh Sengar Vs. State of MP 2002 AIR (SCW) 2035
- (3) Swamy Prahalddas Vs. Statre of MP and another. 1995 Supp (3) SCC 438.
- (4) Mahendra Ssingh and another Vs. Gayatribai V. State of MP. 1996 Cri. L.J. 894
- (5) Shriram Vishwanathji V. State of Maharashtra f2008(1) Bom C.R. (Cri) 46
- (6) Netai Dutta Vs. State of West Bengal 2005 AIR (SCW) 1326.

5. Learned Additional Public Prosecutor Shri K.M. Suryawanshi strongly opposed the submissions made on behalf of petitioners. He submitted that the trial Court has rightly issued the process against the petitioners for the offence punishable under Section 306 read with Section 34 of the Indian Penal Code. Learned APP further submitted that the learned Magistrate has properly appreciated the evidence adduced before him and only thereafter has reached to the conclusion that a case has been made out to proceed against the petitioners for the offence punishable under Section 306 read with Section 34 of the Indian Penal Code. Learned APP further submitted that no case is made out by the petitioners to interfere in the order passed by the learned Magistrate.

6. When the arguments were heard by us, nobody was present on behalf of respondent no.1. However, after the matter was closed for judgment, Advocate N.B. Suryawanshi appeared on behalf of respondent no.1. In the interest of justice, we permitted Advocate Suryawanshi to place on record written notes of argument on behalf of respondent no.1. Accordingly, on 11.7.2014, learned counsel filed on record written notes of arguments on behalf of respondent no.1. It has been contended on behalf of Respondent no.1 that the petitioners by their acts and omissions created such circumstances that deceased Bapu Gund was left with no alternative but to commit suicide and therefore the instigation on their

part will have to be inferred. To substantiate the contention so raised reliance is placed on the decision of the Hon'ble Apex Court in the matter of **Amit Kapoor Vs. Ramesh Chander and Anr. (2012) 9 SCC 460**. It has also been contended that at the stage of 'issuance of process' this court should not go into the merits of the complaint and the alleged suicide note.

7. We have carefully heard the arguments of the learned Counsel appearing for the parties and perused the material placed on record by them. First we would prefer to deal with the contentions raised by the petitioners as regards to the order passed by the Additional Sessions Judge, whereby he declined to entertain the Criminal Revision Application preferred by the present petitioners under Section 397 of the Criminal Procedure Code, against the order passed by the Magistrate, issuing process against the petitioners for an offence punishable under Section 306 read with Section 34 of the Indian Penal Code.

8. On perusal of the order passed by the Additional Sessions Judge, it is quite clear that the learned Judge has relied upon two judgments of the Hon'ble Apex Court; first in the case of **Adalat Prasad Vs. Roopal Jindal and others 2004 (4) Mah. L.J. 274** and the other in the case of **Subramanium Sethuraman Vrs. State of Maharashtra**

2005(1) Mh.L.J. 626, and on his understanding of the import of the said judgments has held that no revision under Section 397 of Criminal Procedure Code was maintainable before the Sessions Court against the order of issuance of process and the remedy was to file a proceeding under Section 482 of Criminal Procedure Code or a writ petition before the High Court.

9. It is true that at the relevant time there was some confusion in this regard. However, now the law stands settled that an order of issuance of process passed by the Magistrate can be very well challenged before the Sessions Court under Section 397 of the Criminal Procedure Code. On the contrary, in some of the judgments of the Hon'ble Supreme Court, as well as of this Court, it has been observed that an aggrieved person cannot directly approach the High Court either under Section 482 of the Criminal Procedure Code or in writ jurisdiction without availing the remedy of filing a Criminal Revision under Section 397 of the Criminal Procedure Code before the Sessions Court.

10. The petitioners have seriously disputed the order dated 11.8.2005 passed by the Additional Sessions Judge, Ahmednagar in Criminal Revision Application No. 727/2005 whereby he has returned the said revision application to the petitioners for being presented at the

appropriate forum, according to law. During the course of his arguments Shri Satyajit Bora, the learned counsel appearing on behalf of the petitioners brought to our notice all those judgments wherein it has been held that the order of issuance of process by the Magistrate can be challenged by an aggrieved party by filing a Criminal Revision Application under Section 397 of the Criminal Procedure Code before the Sessions Court. The learned counsel however submitted that now the challenge to the impugned order be decided in the present petition itself. The learned APP has also made the same request. We are also of the opinion that it would not be now appropriate to relegate the petitioners to the Sessions Court in view of the fact that the present Writ Petition was admitted and rule was issued long back in the year 2005 i.e. about 9 years back. We are therefore inclined to decide the present petition on its merits.

11. It is emphasized in the written submission filed by respondent No.1 that at this stage, this Court shall not evaluate the evidence on the basis of which the trial court has issued the process. It is the further contention that at the stage of issuance of process, it has to be only seen whether the contents of Complaint and the evidence produced in support thereof prima facie makes out any case to proceed against the accused and nothing more.

12. There cannot be a dispute that at the stage of issuance of process, the Magistrate is not required to go deep into the probative value of the material on record and is not supposed to have the meticulous examination of the said material. However, it does not mean that the Magistrate shall merely read the complaint and the evidence adduced just to see whether it satisfies the ingredients of the offence alleged and if yes then to mechanically issue the process.

13. Hon'ble Apex Court and this Court has time and again said that recording of detail reasons though is not necessary, the summoning order must reflect that the Magistrate has applied his mind to the facts of the case and the law applicable thereto. Before issuing process in every matter, the Magistrate has to take into consideration inherent improbabilities appearing on the face of the complaint or in the evidence led by the complainant in support of the allegation. The Magistrate has to apply his judicial mind to find out whether as alleged by the complainant any offence under the Penal Code has been spelt out *prima facie* or not. The Appellate Court or the Writ Court is therefore not precluded from scrutinizing the evidence on the basis of which the trial court has issued the process. When a complaint is sought to be quashed, it is permissible to look into the material to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in

toto. To avoid the abuse of the process of court in adequate cases sometimes a more close scrutiny becomes necessary and the law does not prevent the said course. Present is the case wherein we may be required to have some more deep scrutiny of the evidence on the basis of which process has been issued by the trial court, having regard to the peculiar facts involved in the case.

14. Allegation against the petitioners is that on pretext of giving appointments in Man Kanhaiya College, they did collect money through deceased Bapu from several persons, aspiring for such appointments, but did not give them appointments and also refused to pay back their money because of which the said persons started harassing deceased Bapu and being frustrated with the situation, he ultimately committed suicide and hence the petitioners are responsible for the commission of suicide by him.

15. To abet the commission of suicide is an offence under section 306 of Indian Penal Code. According to Section 107 of Indian Penal Code “abetment” can take place in any of the three forms namely (i) by instigation (ii) by conspiracy and (iii) by intentional action. Thus, to constitute offence under Section 306 of Indian Penal Code the accused must have provoked, instigated or induced deceased to commit suicide or

it must be shown that the acts of the accused left no alternative for the deceased except to commit suicide. There must be mens-rea also.

16. As stated earlier, it is the assertion of respondent No.1 that the petitioners by their conduct created such circumstances that deceased Bapu was left with no alternative but to commit suicide and therefore, the instigation will have to be inferred on part of the petitioners. It has to be therefore, seen whether the evidence brought on record even *prima facie* show that the petitioners had brought in existence the circumstances which as alleged by respondent No.1, led to the extreme step of suicide being taken by deceased Bapu. Evidence tendered before the trial court is in two forms. First is the suicide note allegedly in the hand writing of deceased Bapu and the other is the oral and documentary evidence led.

17. In the instant case the hand-writing expert has opined that the letter cum suicide note recovered and seized from the house of advocate Prafulla Kulkarni is in the hand-writing of deceased Bapu Gund. A suicide note proved to have been written by the deceased is normally held as an important piece of evidence in proof of his suicide. Petitioners have raised serious doubts about the genuineness of the suicide note, however we would not enter into said controversy in the present petition.

18. It is undisputed that the original suicide note is missing but its contents are available and are reproduced in the earlier proceedings. Along with the written submissions filed in the present matter, respondent No.1 has ad- verbatim reproduced the contents of the alleged suicide note which are thus:-

महाजन सर,

मी तुम्हाला हे पत्र या कारणास्तव लिहीत आहे की, मी आत्महत्या करत आहे. मला तुम्हाला हे सांगावेसे वाटते की, मी डॉ.प्रकाश कांकरीया व सुधा कांकरीया यांच्या सांगण्यावरून तुमच्या कॉलेजमध्ये ग्रंथपाल म्हणून नोकरी लागलो. त्यानंतर डॉ.प्रकाश कांकरीया व सुधा कांकरीया यांच्या सांगण्यावरून कॉलेजमध्ये नोकरी लावण्यासाठी लोकांकडून पैसे घेण्यास सुरुवात केली आणि हे पैसे मी डॉ.प्रकाश कांकरीया यांना जाउन दिले त्यानंतर परत लोकांकडून मी पैसे घेतले होते त्या लोकांनी विचारणा करायला सुरुवात केली पण डॉ.प्रकाश कांकरीया काहीही बोलले नाहीत, नंतर मी डॉ.प्रकाश कांकरीया यांची भेट घेउन या प्रकारा बाबत चौकशी केली पण त्यांनी उडवाउडवीची उत्तरे दिली आता ते लोक माझ्याकडे पैशाची विचारणा करत आहे आणि मी त्यांना हे पैसे कसेही परत करू शकत नाही त्याचबरोबर माझी सर्वत्र बदनामी झाली आता मला लोक त्रास देत आहेत. आणि डॉ.प्रकाश कांकरीया पैसे परत करायला तयार नाही त्यामुळे मी कोणालाही तोंड दाखविण्याच्या लायकीचा राहीलेलो नाही म्हणून मी आज आत्महत्या करत आहे. माझी शेवटीची इच्छा हिच आहे की, डॉ.प्रकाश कांकरीया आणि डॉ.सुधा कांकरीया यांना या प्रकारा बद्दल योग्य ती शिक्षा व्हावी तरच माझ्या आत्म्यास शांती मिळले आणि मला पूर्ण खात्री आहे की, तुम्ही माझी ही शेवटी इच्छा निश्चित पूर्ण कराल. माझ्या आत्महत्येला डॉ.प्रकाश कांकरीया आणि डॉ.सुधा कांकरीया हेच सर्वस्वी जबाबदार आहेत. माझा शेवटचा तुम्हाला नमस्कार आणि तुम्ही दिलेल्या प्रेमा बद्दल मी तुमचा शतःश आभारी राहील,

आपला आज्ञाधारक,

गुंड बापु निवृत्ती

19. Since the names of the petitioners figured in the suicide note and have been referred to as the reason which propelled the deceased to take extreme step of suicide, an offence was registered against them under Section 306 r/w 34 of I.P.C. at Nagar Taluka Police Station at Crime No.39 of 2003 and the investigation was set in motion. During the

investigation when the statement of respondent No.1 Alka was recorded, she had disclosed the names of Babasaheb Bhanudas Waghule, Ravindra Premchand Thombre and Dattatraya Jagannath Borude stating that these persons used to come to her husband and used to demand back from him the money given by them to Dr. Prakash and Dr. Sudha through her husband. It is the matter of record that in the statements recorded of the aforesaid persons, none of them gave any such information that they had paid some money to Dr. Prakash or Dr. Sudha. On the contrary, they disclosed the names of some other persons. During the entire investigation conducted, no sufficient evidence did come on record and the investigation officer was ultimately required to file A summary report and the same was accepted by the concerned court.

20. Dissatisfied by the filing of 'A' Summary report in Crime No.39/03, respondent No.1 filed a private complaint against the petitioners for the same offence after the period of about seven months. Since complaint was filed alleging the commission of offence under Section 306 of I.P.C., it was obvious for the complainant (respondent No.1) to again fall back on the alleged suicide note as a *prima facie* proof to show that deceased Bapu committed suicide. In addition to that to corroborate the averments made in the suicide note complainant Alka herself deposed before the trial court and adduced the evidence of more

six witnesses. She also submitted on record the copies of her statements recorded by police first on 12/05/2002 and the supplementary on 21/05/2003 and the copies of the intervention applications filed by her before the High Court in W.P.No.203/2003 and in Cri. Application No.629/2003. Copy of 'A' summary report filed in Cr.No.39/03 is also placed on record.

21. The learned Magistrate on his appreciation of the oral and documentary evidence brought before him issued the process against the petitioners for the offence under Section 306 R/w 34 of I.P.C. We have carefully perused the order so passed and also the evidence on record. The learned Magistrate has passed a detail order and has also attempted to briefly discuss the evidence. He has also stated the ingredients of Section 306 of IPC. However, it is apparently revealed that the learned Magistrate has not at all taken into account the earlier events occurred in the matter and legal proceedings filed in that regard arising out of the very same incident. Though he has noted about the same in the nature of bare facts, has failed in properly appreciating them.

22. The learned Magistrate was fully aware of earlier legal proceedings and more particularly about Crime No.39/03 registered against the present petitioners for the offence under Section 306 of I.P.C.

since all relevant material in that regard was on record. In the circumstances, the evidence adduced in R.T.C.No.9/2004 could not have been evaluated even for the purpose of issuing process by keeping the earlier evidence completely out of consideration.

23. The learned Magistrate may not have considered this aspect, we are bound to look into the same to see that the process of the Court is not abused. The test which is being ordinarily applied as to whether the un-controverted allegations made in the complaint and the evidence adduced in support thereof *prima facie* establish the offence or not, cannot be as it is made applicable in the instant case in view of the fact that earlier also on the basis of the same suicide note, an offence was registered against the present petitioners under Section 306 r/w 34 of I.P.C., but ultimately A summary report was filed in the same.

24. The evidence led in RTC No.9/2004 cannot be evaluated even for the purpose of issuance of process to the exclusion of the facts and circumstances which have come on record in earlier legal proceedings through the statements made therein by the witnesses examined in the later case.

25. In the instant case there is little scope to say that the

evidence brought on record or adduced by complainant-respondent no.1 was for the limited purpose of showing prima-facie case for issuance of process for the reason that when a Magistrate issues process in respect of offences triable by Court of Sessions, he has to ordinarily examine all the witnesses named in the complaint before issuance of process. Accordingly all said witnesses have been examined.

26. Now we would look into the evidence led before the trial court. In her testimony before the learned Magistrate, complainant Alka (respondent No.1) has deposed about the amount of one lac paid by deceased Bapu to the petitioners for securing the appointment on the post of librarian in the college of the petitioner. She has also stated that no salary was being paid to deceased Bapu though he was serving in the college since past 8 months. She also stated that a sum of rupees one lac was brought by her deceased husband by selling his agriculture land. She has further stated about the money paid by Balu Shinde and Bhairu Shelke to the petitioners to secure the employment for their sons . She has stated that Balu Shinde paid rupees forty thousand and Bhairu Shelke paid rupees sixty thousand. She has also stated that when Balu Shinde and Bhairu Shelke paid the amounts as aforesaid to the petitioners, she and deceased Bapu both were present. She also stated that alike Balu Shinde and Bhairu Shelke there were some other persons also who had

paid money to the petitioners to get the job in the college of the petitioners. She has further stated that the petitioners did not keep their promise to give the employment to the persons from whom they had collected money and also did not pay back their money. She has also deposed that all such persons used to come to her husband and used to demand the refund of the money paid by them to the petitioners and used to harass deceased Bapu on that count. She has further deposed that because of the persistent harassment deceased Bapu used to be under stress and the harassment so caused to him ultimately made him to commit suicide.

27. PW.2 Balu Nivrutti Shinde and PW.3 Bhairu Shelke in their respective testimonies before the learned Magistrate stated that they had given rupees forty thousand and rupees sixty thousand respectively to the petitioners for securing employment for their sons and that at the relevant time deceased Bapu as well as his wife Alka were accompanying them. They have also deposed that they had been to the petitioners on two-three occasions to seek refund of the amount paid by them however, neither their sons got the employment nor they received their money back.

28. In the evidence of PW.4 Haribhau Gawhane it has come on record that he had given an amount of rupees forty thousand to the father

in law of deceased Bapu and he was to pay the said amount to his son in law for securing employment. P.W.5 Yogesh Kulkarni was examined so as to bring on record the fact that respondent no.1 Alka had moved an application to Collector, Ahmednagar praying for thorough investigation in regard to commission of suicide by her husband alleging involvement of the petitioners therein. Bhau Mahadeo Sinnarkar was the sixth witness examined by the respondent no.1, however, nothing has come on record through his evidence. The last witness i.e. P.W.7 was Police Inspector Babajan Tamboli who had carried out the investigation in C.R. No. 39/2003 and had submitted the 'A' summary report in it. P.W.7 has admitted in his evidence that on 21.5.2003 in the statement recorded by him of complainant Alka, she has made allegations against the accused that they were only responsible for the death of her husband.

29. In so far as the fact deposed by complainant Alka about the amount of rupees one lac paid by deceased Bapu to the petitioners and the further facts stated by her as to how the deceased had collected the said amount etc. are concerned, do not have nexus with the act of suicide committed by deceased Bapu. As per the averments in the complaint also that does not seem to be the reason for commission of suicide by deceased Bapu and the facts stated in that regard are background facts. Moreover, in the alleged suicide note there is absolutely no mention of the aforesaid

fact.

30. According to respondent no. 1-complainant, the harassment caused to deceased Bapu on account of non-refund of money by the petitioners to the persons from whom they have received it through deceased Bapu was the reason behind commission of suicide by deceased Bapu. However, in the entire evidence before the trial court only two instances have come on record of the harassment to deceased Bapu. We have, therefore carefully scrutinized the aforesaid evidence. The evidence of complainant Alka, P.W. 2 Balu Shinde and P.W.3. Bhairu Shelke reveals that P.W. 2 Balu Shinde and P.W.3 Bhairu Shelke have directly transacted with the petitioners. As stated by P.W.2 and P.W.3 both, they themselves had been to the petitioners and had directly paid the amount to the petitioners. It has also come on record through the evidence of all the aforesaid three witnesses that even for seeking refund of the amount, P.W. 2 and P.W.3 had been to the petitioners but the petitioners flatly refused to pay back the money. Thus, P.W. 2 and P.W.3 had directly transacted with the petitioners. No doubt, it has also come on record that when these witnesses paid money to the petitioners, complainant Alka and deceased Bapu were accompanying them. However, it is nowhere stated by these witnesses and it is not their case that there was any conspiracy between the petitioners and deceased Bapu in the said

transaction. In the circumstances, it not at all appears that it could be the reason for taking stress by deceased Bapu and to commit suicide on that count. Thus, even if the evidence of aforesaid three witnesses is accepted as it is, no case is made out against the petitioners to issue process against them for the offence under section 306 read with Section 34 of the Indian Penal Code.

31. We have perused the contents of the alleged suicide note. Though, it seems to be the main and only grievance of the deceased against the petitioners that on their instructions, he collected money from some persons and paid it to them but the doctor couple neither provided employment nor refunded the money because of which the people who gave money were tormenting him, the deceased has not provided the name of a single person, who had paid such money to the petitioners through him. It is also not disclosed as to how much was the total amount paid to the petitioners in this manner and when was it paid. Deceased has also not mentioned the names of the persons who were demanding the refund of money from him and on that count persecuting him. Further, the alleged suicide note does not bear any date on it. There is absolutely no evidence as to when deceased Bapu has written the said note, more particularly prior to how many hours or days before his committing the suicide so that proximity between the cause and the effect could have

been seen. Moreover, it appears unconscionable that the deceased has addressed the alleged letter cum suicide note to Shri Mahajan Sir and had sent it to him instead of keeping the same in his pocket or at his house or sending it to the police or to any of the higher officer in the Government when he has sought punishment to Dr. Prakash and Dr. Sudha therein. This has brought the origin of alleged suicide note under the cloud of suspicion.

32. Further we find it necessary to note down certain facts which would demonstrate the inherent improbabilities in the evidence adduced in the matter.

In her testimony before the learned Magistrate, complainant Alka has deposed that an amount of Rs. 1 lakh was paid to petitioner no. 2 by deceased Bapu for securing the employment in Man Kahnaiya College. However, if the recitals in the suicide note are perused, no such fact is stated in it. It appears improbable that deceased Bapu whose main grievance against the petitioners was that the petitioners were amassing wealth by collecting money from the persons seeking employment in their college would not bring into open his own case that from him also the petitioners had extracted Rs. One lac while appointing him as 'Librarian'. On the contrary, the very opening statement in the alleged suicide note that - "मला तुम्हाला हे सांगावेसे वाटते की, मी डॉ.प्रकाश कांकरीया व सुधा कांकरीया यांच्या सांगण्यावरून

तुमच्या कॉलेजमध्ये ग्रंथपाल म्हणून नोकरी लागलो.” (I want to convey you that because Dr. Prakash Kakariya and Sudha Kakariya asked me, I joined the services of Librarian in your college) suggests that deceased was requested by the petitioners to join the services. Contents of suicide note do not in any manner suggest that deceased Bapu had paid Rs.1 lac to petitioner No.2 as has been stated by respondent No.1.

It is significant to note that neither in the body of complaint (RTC No.9/2004) nor in her testimony before the trial Court, Respondent No.1 has stated the names of Babasaheb Waghule, Ravindra Thombre and Dattatraya Borude which she had stated in her statement given to the police on 21/05/2003 stating that amongst several others she knows the aforesaid three persons since they used to come to her deceased husband and used to demand the refund of the amount paid by them to Dr. Kakariya through her deceased husband. As against it, the names of Balu Shinde and Bhairu Shelke were never disclosed by Respondent No.1. For the first time, their names appeared in Complaint No.9/2004 filed by her and thereafter, in her testimony before the trial Court. It has come on record that C.W.-2 Balu Shinde is the brother-in-law of Respondent No.1 whereas C.W.-3 Bhairu Shelke is her father. It appears improbable that respondent No.1 would forget to disclose the names of her father and brother-in-law while giving statement to the police on 21/05/2003, when she at that time has perfectly stated the names of Balasaheb Waghule etc.

Record shows that even in the intervention application, filed by her before the High Court, Respondent No.1 has not even whispered that her father and brother-in-law have also paid huge amounts to the doctor couple to secure the employment.

We found substance in the argument advanced by the learned counsel for the petitioners that after having noticed that the persons named i.e. Babasaheb Waghule etc., did not support, respondent No.1 introduced the new names that too of her close relatives and examined only them as her witnesses before the trial Court. No reliance can be placed on the evidence of such got up witnesses.

Nextly, had it been the fact that the harassment was caused to deceased Bapu on account of refusal by the petitioners to refund the amounts collected by them through deceased Bapu and that was the ultimate and real cause for commission of suicide by her husband, respondent no. 1 would not have kept quiet about the said fact when her statement was recorded by the police on 12/05/2002. On the contrary she would have burst with the allegations on the petitioners in that regard. Record shows that in the said statement, she did not make any complaint or raise any grievance or level any allegation against the petitioners.

Till the fact was undisclosed that deceased Bapu Gund has left behind any suicide note, no one, including respondent No.1, the wife

of deceased, did make any allegation against the petitioners that they collected money through deceased Bapu from several persons aspiring for employment but neither gave them employment nor returned their money. Till then respondent No.1 Alka had not also made any such allegation that the petitioners were responsible for commission of suicide by her husband. All such allegations came to be made only after the seizure of alleged suicide note. This leaves a scope for an inference that all allegations are afterthought and had the suicide note not recovered perhaps no such allegations would have been made.

33. Materials on record do not show that respondent no.1 has raised any grievance against Prashant Mahajan to whom the alleged suicide note is addressed by deceased Bapu as to why he did not immediately submit the said suicide note to the Police and why he did not disclose the said fact to her.

34. Similarly, it cannot be believed that P.W.2 Balu Shinde and P.W.3 Bhairu Shelke who in their evidence before the learned Magistrate in RTC No. 9/2004 have levelled serious allegations against the petitioners would not independently raise any grievance or file any complaint against the petitioners. It is further surprising that P.W.2 and P.W.3 had not even approached the police for giving their statement and

their statements came to be recorded after the period of about one year of the alleged incident. The conduct of P.W.2 and P.W.3 does not inspire any confidence. No reliance can be placed on such evidence.

35. The learned counsel for respondent no.1 has relied upon the judgment of the Hon'ble Apex Court in the case of **Amitkumar Vs. Ramesh Chandar and another 2012(9) SCC 460**. We have carefully perused the entire text of the said judgment. In the said case, there was a series of overt-acts attributed on part of the accused therein having direct nexus with the commission of suicide by the deceased therein. For want of such evidence in the present matter, section 306 of I.P.C. cannot be applied against the present petitioners.

36. Thus, we have no hesitation in arriving at to the conclusion that from the averments made in the complaint and the evidence adduced in support thereof, no case is made out for issuance of process against the petitioners. Continuation of the proceedings against the petitioners would amount to abuse of the process of the court. The very basic ingredients are not satisfied in the present matter to attract section 306 of the Indian Penal Code against the petitioners. Merely because the petitioners are named in the suicide note and have been referred to as the reason which propelled the deceased to take extreme step of suicide, it

would still not fall within the realm of section 306 of I.P.C. The allegations made in the complaint are patently absurd and inherently improbable and no prudent person can ever reach such a conclusion as has been drawn by the learned Magistrate. We are, therefore, inclined to set aside the order dated 4.8.2005 impugned in the present petition.

37. The petitioners have also prayed for further investigation by CBI or any other independent agency into the death of deceased Bapu Gund. The petitioners have contended that from the circumstances which have come on record and more particularly the facts which are revealed from the post mortem examination report, serious doubts are created whether the death of deceased Bapu Gund is suicidal or otherwise. Petitioners have also contended that from the injuries as are noted down in the post mortem examination report there is reason to believe that deceased Bapu Gund might have suffered homicidal death. In the circumstances, the petitioners have prayed for further investigation in the matter by police agency or through CBI. We are, however, not inclined to go into the said aspect. Hence, the following order.

ORDER.

Criminal Writ Petition No. 390 of 2005 is partly allowed.

The order of issuance of process dated 4.8.2005 passed by the learned 7th Joint Judicial Magistrate, First Class, Ahmednagar in RTC

No. 9 of 2004 is quashed and set aside. Consequently the Complaint R.T.C. No. 9 of 2004 stands dismissed.

No order as to costs.

Sd/-

(PR. BORA, J)

sga/-

Sd/-

(S.S. SHINDE, J)