

No.178/2006, under Section 306 of the Indian Penal Code (IPC), registered at Police Station Patel Nagar, New Delhi and also the proceedings arising out of the said FIR against the present Petitioner.

2. The impugned FIR was registered on the basis of suicide note allegedly written and signed by Kashish @ Sapna before she committed suicide. In the suicide note she alleged that she was maintaining physical relationship with the Petitioner for about four years as his wife because the Petitioner had married her in a temple and had put sindoor in her hair-parting. However, after some time she was told by the Petitioner that he was already married and after some time he expressed his desire to leave her and join his wife. Petitioner had mislead her by projecting himself to be widower and committed fraud upon her when he put all the blames and allegations on her in a criminal case and got himself scot free by bribing the concerned officers. Now Petitioner had started contacting her for a period of about 4/5 months because of which she was mentally disturbed and in this state of mind she was committing suicide and she made petitioner responsible for her

committing suicide.

3. After completion of the investigation the charge sheet has already been filed in the court. Charges have been framed against the Petitioner and prosecution has also recorded some of its witnesses in the trial court.

4. Mr. Javed Alvi, learned counsel for the Petitioner has argued that perusal of the suicide note clearly indicates that ingredients of abetment as contained in Section 107 of the Indian Penal Code (IPC) are missing and therefore prima facie there is no evidence to indicate that he had abetted Kashish @ Sapna to commit suicide. These submissions are refuted by Mr. Lovkesh Sawhney, learned APP for the State.

5. Learned counsel for the Petitioner has referred to

(a) ***'Sanju @ Sajnay Singh Sengar Vs. State of Madhya Pradesh, 2002 (2) JCC 847;***

(b) ***Netai Dutta Vs. State of West Bengal, 2005 (1) JCC 522;***

(c) ***Smt. Mamta Sahu Vs. The State (NCT of Delhi), 2005 (3) JCC 1749;***

(d) ***Roop Kishore Madan Vs. State, 2001 (1) JCC (Delhi) 75; and***

(e) Hira Lal Jain Vs. State, 2000 (2) JCC 478 (Delhi).

6. Section 306 of the IPC reads as follows:-

“Section 306 - Abetment of suicide

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.”

7. Section 107 of the IPC which defines abetment reads as follows:-

“Section 107. Abetment of a thing

A person abets the doing of a thing, who-

First: -Instigates any person to do that thing; or

Secondly: -Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly: -Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation1:- A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing."

8. Thus it is clear that for constituting an abetment, accused should either instigate any person to do the thing or engage with one or more other persons in any conspiracy for the doing of that thing or intentionally aid by any act or illegal omission, the doing of that thing. As per explanation contained in Section 107 IPC a person can be said to have instigated if he willfully makes misrepresentation, or by wilful concealment of material facts of the doing of an act or a thing which is done on account of such concealment or misrepresentation. The abetment can also be done either prior or at the time of commission of that act. Reference is made to '**Smt. Mamta Sahu vs. The State (NCT of Delhi)**'s case (supra- c).

9. In '**Hira Lal Jain vs. State; (supra e)**', it was held in para 4 as under:-

“4. From a reading of the Clause ‘Firstly’ of Section 107 of the Indian Penal Code, it is clear that a person who instigate another to do a thing, abets him to do that thing. A person is said to instigate another when he goads, provokes, incites, urges forward or encourage another to commit a crime.....’

10. Provisions of Section 306 IPC are attracted when a person abets commission of suicide by doing an overt act or some such act which instigates the victim to commit suicide. The act so performed should be the immediate cause of suicide.

11. Learned trial court did consider the submissions made by the learned counsel for the Petitioner while arguing on charge and after considering the prima facie case of the prosecution rightly proceeded to frame charge against the Petitioner under Section 306 IPC. The petitioner did not challenge the legality of this order on charge and the charge framed therein in revision under Section 397 Cr.P.C. before the court. Instead has came with the present petition for quashing of the FIR. It is well settled law that inherent powers under Section 482 Cr.P.C. can be exercised by this court only when no

other remedy is available to the accused and not where a specific remedy is provided by the statute. This is so because the powers under Section 482 Cr.P.C. being extraordinary are to be exercised sparingly.

12. The extraordinary powers under Section 482 Cr.P.C. are to be exercised by this court sparingly and this court cannot resort of this provision as a remedy of appeal or revision.

13. In this case the Petitioner had the remedy to challenge the order on charge dated 14.08.2007 under Section 397 Cr.P.C. by way of revision. However, Petitioner did not avail of this remedy and preferred to file the present petition under Section 482 Cr.P.C. This is nothing but an abuse of process of law.

14. Since the order on charge has not been challenged in revision it has attained finality and the forum adopted by the Petitioner seeking quashing of the FIR and the proceedings conducted therein is not available to him and the present petition deserves dismissal when the order on charge dated 14.08.2007 has become final.

15. Hence, it is dismissed accordingly.

**ARUNA SURESH
(JUDGE)**

**May, 23rd 2008
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