

**NAFR****HIGH COURT OF CHHATTISGARH, BILASPUR****CRR No. 711 of 2017**

Amit Jain @ Sheru, S/o. Pawan Jain, Aged About 37 Years, R/o. Sardar Patel Ward, Mungeli, Police Station- City Kotwali, District- Mungeli, Chhattisgarh.

**---- Applicant****Versus**

State Of Chhattisgarh, Through Station House Officer, Police Station- City Kotwali, District Mungeli, Chhattisgarh

**---- Respondent**

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For Applicant : Mr. Akhil Mishra, Advocate

For Respondent : Mr. S.R.J.Jaiswal, Panel Lawyer  
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**Hon'ble Shri Justice Goutam Bhaduri****Order On Board****10.08.2017**

Heard

1. The present petition is against framing of charge under Section 306 of Indian Penal Code and Section 4 of Riniyo Ka Sanrakshan Adhiniyam, 1937.
2. The brief facts of this case are that one Jasvinder Singh was committed suicide by hanging on 03.02.2017. It is alleged that the deceased has taken a loan from the present applicant to a sum of Rs. 50,000/- for which he was pressurized and threat was extended. Consequently, for the different reasons and circumstances, the deceased committed suicide. After investigation, the charge sheet was filed under Section 306 of Indian Penal Code and Section 4 of Riniyo Ka Sanrakshan Adhiniyam, 1937.

3. Learned counsel for the applicant would submit that statement of the witnesses may be seen, which would not take the case under Section 106 and 107 of Indian Penal Code to cause the abetment. It is further stated that admittedly the deceased has taken a loan from the applicant and since he was not able to return, the deceased himself was disturbed. It would be evident from the statement of the brother of the deceased that as per the brother of the deceased it was decided to even return the amount. Consequently, the abetment is not made out. Further, he relies on the judgment dated 11.09.2014 passed by the coordinate Bench of this Court in Criminal Revision No. 136 of 2014 and would submit that under the circumstances, the charges framed is required to be quashed.
4. Perused the documents as also the statement along with the charge sheet. The charge sheet contains the statement of Hameet Singh Saluja, Narendra Singh Saluja & Chatarpal Singh, brothers of the deceased and Harshit Kaur, wife of the deceased. They have stated that the deceased has taken an amount of Rs. 50,000/- two and half years back and thereafter for last three months before the incidents, the deceased was not able to return and he was disturbed. Consequently, he was pressurized by the applicant. The witnesses have stated that in the event the amount is not return, threat was extended to kill, assault and also to send him to jail and because of that he was disturbed. The statement of wife would also show that in order to secure repayment some cheque was also obtained from the brother Chatarpal Singh and threat was extended that by getting the said cheque bounced, he will send him to jail and because of that her husband was disturbed.

5. Such statement if are examined in the light of law laid down in case of **(2012) 9 SCC 734** in between **Praveen Pradhan Vs. State of Uttaranchal & Anr.**, wherein it has been held that the offence of abetment by instigation depends upon the intention of the person who abets and not upon the act which is done by the person who has abetted. The abetment may be by instigation, conspiracy or intentional aid as provided under Section 107 IPC. It is further been held that the instigation has to be gathered from the circumstances of a particular case and no straitjacket formula can be laid down to find out as to whether in a particular case there has been instigation which forced the person to commit suicide. In a particular case, there may not be direct evidence in regard to instigation which may have direct nexus to suicide. Therefore, in a given set of circumstances, an inference has to be drawn from the circumstances and it is to be determined whether circumstances had been such which in fact had created the situation that a person felt totally frustrated and committed suicide. Therefore, case is required to be considered in the light of the said preposition.
6. Further in the case of **Praveen Pradhan Vs. State of Uttaranchal & Anr.** (supra) instigation and abetment has been defined which reads as under:-

“15. In **Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi) (2009) 16 SCC 605** this Court while dealing with the term “instigation” held: (SCC p.611, paras 16-17)

“16.....instigation is to goad, urge forward, provoke, incite or encourage to do 'an act.' To satisfy the requirement of 'instigation', though it is not necessary that actual words must be used to that effect or what constitutes 'instigation' must necessarily and specifically be suggestive of the

consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. Where the accused had, by his acts or omission or by a continued course of conduct, created such circumstances that the deceased was left with no other option except to commit suicide, in which case, an 'instigation' may have to be inferred. A word uttered in a fit of anger or emotion without intending the consequences to actually follow, cannot be said to be instigation.

17. Thus, to constitute 'instigation', a person who instigates another has to provoke, incite, urge or encourage the doing of an act by the other by 'goad' or 'urging forward'. The dictionary meaning of the word 'goad' is a thing that stimulates someone into action; provoke to action or reaction;..... to keep irritating or annoying somebody until he reacts.....”

7. The Supreme Court in a case law reported in ***AIR 2013 SC 52 – Shoraj Singh Ahlawat Vs. State of U.P*** has observed that the Court trying the case can direct discharge only for the reasons to be recorded by it and only if it considers that the charges against the accused to be groundless. Section 240 of Cr.P.C. provides for framing of a charge which reads as under:

**“240. Framing of charge.-** (1) If, upon such consideration, examination, if any, and hearing, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.”

8. Reading of Section 240 shows that if, upon consideration of the police report and the documents sent therewith and making such examination, if any, of the accused as the Magistrate thinks necessary or the Magistrate is of the opinion that there is ground

for presuming that the accused has committed an offence triable under Chapter XIX, which such Magistrate is competent to try and which can be adequately punished by him. The ambit of section 239 Cr.P.C., and the approach to be adopted by the Court while exercising the powers vested in it under the said provision fell for consideration of this Court in ***Onkar Nath Mishra Vs. state (NCT of Delhi) (2008) 2 SCC 561 : (AIR 2008 SC (Supp) 204 : 2008 AIR SCW 96)***.

9. The Supreme Court has further observed that it is well settled that at the stage of framing of charge, the defence of accused could not be put forth. The acceptance of the contention of the learned counsel for the accused would mean permitting the accused to adduce his defence at the stage of framing of charge and for examination thereof at that stage which is against the criminal jurisprudence. Therefore, taking into account the above position of law, the argument which has been advanced by the learned counsel for the applicant, cannot be accepted as prima facie the Court has to only see whether there is ground to presume that the accused had committed the offence or not ?
10. The scope of interference and exercise of jurisdiction under Section 397 of Cr.P.C. was again reiterated by their Lordship in case of ***State of Rajasthan Vs. Fatehkaran Mehdu*** reported in ***AIR 2017 SC 796***. It is stated that framing of charge, the Court is concerned not with the proof of the allegation rather it has to focus on the material and form an opinion whether there is strong suspicion that the accused has committed an offence, which if put to trial, could prove his guilt. The framing of charge is not a stage, at which stage final test of guilt is to be applied.

11. In view of such principles, I am of the opinion that no case is made out for interference in the order of framing of charge. Accordingly, the revision petition is dismissed. It is however clarified that this court has not expressed any opinion on merits of this case and the learned trial court shall not be influenced by any observation made by this court at this stage.

Sd/-  
**(Goutam Bhaduri)**  
Judge