

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****Criminal Misc. Petition No.664 of 2018**

- The State Of Chhattisgarh Through- Police Chowki Manipur, P.S. Ambikapur, District- Surguja, Chhattisgarh.

---- **Petitioner****Versus**

- Gharbharan Das S/o Bhukhal Das Panika, aged about 38 years, Occupation- Agriculturist, R/o- Village Bardhodhi, Police Chowki Manipur, P.S. Ambikapur, District- Surguja, Chhattisgarh.,

---- **Respondent**

For the Petitioner/State : Shri Sanjeev Pandey, Govt. Advocate  
 For the respondent : Shri Suryakant Mishra, Advocate

**Hon'ble Shri Justice Ram Prasanna Sharma**  
**Order On Board**

**24.8.2018.**

1. Heard on IA No.01/18 for condonation of delay in filing the petition.
2. For the reasons mentioned in the application and the law laid down by Hon'ble Supreme Court in the matter of **State of Haryana Vs. Chandra Mani & Ors.** reported in **(1996) 3 SCC 132**, the delay of 140 days in filing the petition is hereby condoned.
3. Also heard on application for grant of leave to appeal under Section 378(3) of CrPC.
4. The respondent was charged for commission of offence under Section 306 IPC for abetment of suicide of his wife namely Moti Bai, who committed suicide on 07.5.2016 at about 11.00 am at village Bardhodhi. The trial Court acquitted the respondent of the said charge.

5. To substantiate the charge the prosecution has examined as many as 22 witnesses. Smt. Siya Bai (PW-1) is resident of Village Kotaya and she was not able to state as to what really happened on the date of incident or prior to the date of incident. Shivam Das (PW-2) is also not able to state the reason behind the commission of suicide. Vakil Sai (PW-4) is a witness who assisted the prosecution during investigation. Sarpanch Smt. Budheshwari (PW-5) also assisted prosecution during investigation. Dr. KR Tekam (PW-6) conducted autopsy of the deceased and as per the opinion of this witness cause of death of the deceased appears to be suicidal. Ramesh Kumar Mishra (PW-7) is Patwari who prepared the spot map. Asst. Sub Inspector (PW-8) is the person who assisted during investigation. Asst. Sub Inspector Banshidhar Yadav (PW-9) also assisted during investigation. Bhukhal Das (PW-10), Dr. KP Vishwakarma (PW-11) and Head Constable Chandra Pratap Singh (PW-12) are the witnesses of assistance during investigation.

6. Sampat Das (PW-13) deposed that on the date of incident, the deceased was demanding soap for washing clothes from the respondent and the respondent asked her to sell the rice and bring the soap. This witness is the son of the deceased and the respondent. He did not depose anything regarding any instigation on the part of the respondent. Babulal (PW-14) is the resident of village Jaiupr and he made general statement regarding quarrel between the deceased and the respondent, but this witness is also not able to state as to what really happened on the date of

incident or prior to the date of incident. Mahjid Das (PW-15) is also a resident of village Jaipur and not a resident of place of incident. He also made general statement. Jhandi Das (PW-16) is a hearsay witness. His statement is based on what is earlier informed to him by the deceased, but he is also not a witness of the incident. Sanjay Das (PW-17) is also a resident of Village Jaipur, who also made general statement. He was also not the witness of the incident. Smt. Kunti Bai (PW-18) deposed that on demand of soap by the deceased for washing clothes the respondent asked the deceased to sell the rice kept in the house and bring the soap. This witness has not deposed anything more. Chandrika Das (PW-19) is brother of the deceased and resident of village Jaipur. He also made general statement but did not depose regarding anything happened in the house of the deceased on the date of incident. As this witness is not the resident of Village Bardodhi, it is but natural that he had no occasion to see as to what is happening at village Bardodhi in the house of the respondent. Shivram Unjan (PW-20) is the Revenue Inspector who made statement regarding what he had seen on the site on the date of incident. Ramesh Rajwade (PW-21) is also a witness of the incident. ASI Dhanajay Pathak (PW-22) is the investigating officer who performed investigation after registration of the FIR and he is also not a witness of the incident.

**7.** In order to hold a person guilty under Section 306 of the IPC, it is necessary that the case should fall within the ambit of Section 107 of the IPC, which should comprise :

- (i) instigating a person to commit an offence.
- (ii) engaging in a conspiracy to commit an offence
- (iii) intentionally aiding a person to commit an offence.

Therefore, a person said to have abetted, doing of a thing when he or she instigate any person to do so with any other means of abetment besides instigating are conspiracy and intentionally aid the commission and it is sometime more than co-operation.

8. As has been held by **Hon'ble the Supreme Court in 2010 (1) SCC 750 – Gangula Mohan Reddy Vs. State of Andhra Pradesh** the abetment involves a mental process of instigating a person or intentionally aiding a person in doing a thing. Without a positive act on the part of accused to instigate or aid in committing suicide, conviction can not be sustained. The Hon'ble Supreme Court has further held that in order to convict a person U/s.306, there has to be a clear mens-rea to commit offence. It also requires an active act or direct act which leads deceased to commit suicide seeing no option and this act must have been intended to push deceased into such a position that he commits suicide.

9. In the present case there is no iota of evidence regarding instigation by the respondent on the date of incident or prior to the date of incident. There is no evidence regarding conspiracy or intentionally aiding which is *sine qua non* for establishing the offence.

**10.** On overall assessment it would not be proper for this Court to call the respondent again who has already suffered the trial which is terminated in his favour by the trial Court giving cogent reason as per the settled law.

**11.** Accordingly, the application for grant of leave is rejected and consequently, the instant CrMP also stands dismissed.

**Sd/-  
(Ram Prasanna Sharma)  
JUDGE**