

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 326 OF 2017**

Priyanka Prakash Moholkar,
Age-24 Years, Occu. - Service,
R/o. - C/o. - Raju Pawar,
S. No. 125/3, Jadhav Wasti,
Kalas Alandi Road,
Vishrantwadi, Pune – 411 013
Permanent Add. - Main Bazar Peth,
Masoor, Satara

...Applicant

Versus

1) The State of Maharashtra
[Through Umbraj Police Station,
Satara, Vide C.R. No. 296/2016]

2) Sagar Bhanudas Chouthi,
Age-29 Years, Occu. - Business,
R/o. - Gardi, Tal. - Khanapur – Vita,
Dist. - Sangli

...Respondents

(Respondent No. 2- First Informant)

Mr. Priyal Sarda for the Applicant

Mr. K. V. Saste, A.P.P for the Respondent No. 1-State

Mr. Prithviraj S. Gole for the Respondent No. 2

**CORAM : R. M. SAVANT &
REVATI MOHITE DERE, JJ.
WEDNESDAY, 25th JULY, 2018**

ORDER (Per Revati Mohite Dere, J.) :

1 Heard learned counsel for the Applicant, the learned A.P.P for the Respondent No.1-State and the learned counsel for the Respondent No.2.

2 Rule. With the consent of the learned counsel for the parties, Rule is made returnable forthwith and is taken up for hearing.

3 By this Application preferred under Section 482 of the Code of Criminal Procedure, the Applicant seeks quashing of the FIR registered vide C.R. No. 296 of 2016 with the Umbraj Police Station, Satara, for the offence punishable under Section 306 of the Indian Penal Code ('IPC' for short) and further proceedings arising out of the said FIR.

4 Learned counsel for the Applicant submits that taking the prosecution case as it stands, no offence as alleged under Section 306 of the IPC is disclosed *qua* the Applicant. He submits that the Applicant cannot be held responsible for the suicide of Suraj Chouthe, nor can be said to have in any way abetted the suicide of Suraj. According to the learned

counsel for the Applicant, the essential ingredients necessary to constitute the offence under Section 306 of the Indian Penal Code are wanting and hence, the FIR and proceedings pursuant thereto, be quashed.

5 Learned A.P.P opposed the Application. Learned counsel for the Respondent No. 2 supported the learned A.P.P and submitted that a perusal of the suicide note as well as the statement of Suraj's mother would show the complicity of the Applicant.

6 Perused the papers including the charge-sheet filed against the Applicant in the Court of the learned Judicial Magistrate First Class, Satara and numbered as R.C.C. No. 113 of 2018. A few facts which are necessary to decide the Application are as under :

 According to the complainant-Sagar Chouthe (cousin of the deceased-Suraj Chouthe), Suraj was in love with the Applicant; that both of them were studying together and that after completion of the Applicant's education, Suraj helped the Applicant get employment in a Company; that Suraj realised that the Applicant was gradually getting involved with another boy, which he disliked and tried to convince her from staying away

from the said boy; that the Applicant did not listen to Suraj and refused to marry Suraj and asked him to go and die and stated that it would not make any difference to her, if he died. According to the complainant, Suraj consumed pesticide on 1st November 2006 and put an end to his life outside the Applicant's house. The Complainant- Sagar Chouthi lodged an FIR with the Umbraj Police Station, Satara, ten days after the incident, alleging the aforesaid.

7 Before considering the prayer of the Applicant for quashing of the FIR and further proceedings thereto, it would be necessary to advert to the law in this regard. In the case of ***Sanju @ Sanjay Singh Sengar vs. State of Madhya Pradesh***¹, the Apex Court was called upon to consider in the facts of that case, whether an offence under Section 306 of the IPC was disclosed. It was the prosecution case that there were regular quarrels between the accused and the deceased and that the accused was telling the deceased to go and die. The Apex Court having regard to the facts, held that the words “to go and die” by itself would not constitute an offence of abetment and that the presence of *mens rea* was a necessary concomitant of

1 2002 Cri. L. J. 2796

instigation. It was further observed that the fact that the deceased committed suicide after two days of quarrel during which the said words were uttered by the accused, would show that the suicide was not the direct result of the quarrel and that the suicide note left by the deceased showed that he was under great stress and depression and accordingly quashed the case *qua* the accused therein. In ***Swamy Prahaladdas vs. State of Madhya Pradesh & Anr.***², the accused was charged for an offence under Section 306 of the IPC on the ground that the accused during the quarrel is said to have remarked to the deceased 'to go and die'. The Apex Court was of the view that mere words uttered by the accused to the deceased 'to go and die' were not *prima facie* enough to instigate the deceased to commit suicide.

8 In ***Madan Mohan Singh vs. State of Gujarat & Anr.***³, the Petitioner therein was working as a D.E.T. in Bharat Sanchar Nigam Ltd. As the deceased-Deepakbhai Joshi committed suicide, his wife had lodged a complaint/FIR. In the suicide note left by the deceased, it was stated that the Petitioner was responsible for his death. Having regard to the facts, the Apex Court in Paras 10 to 14 observed as under :

² 1995 Supp (3) SCC 438

³ 2010 All MR (Cri.) 3245 (S.C.)

“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 v. State of W.B. [2005 ALL M (Cri) 1288 (S.C.)]**, 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. 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 and Ors. v. Bhajan Lal and Ors. [1992 Suppl. 1 SCC 335]**, it would be only proper to quash the FIR and the further proceedings.”*

9 Having regard to the aforesaid, we proceed to examine the facts in the present case. The material on record reflects that the Applicant had stopped her relations with Suraj and was friendly with some other boy, which was not accepted by Suraj. The statement of the complainant (cousin

of deceased Suraj) reflects that Suraj had disclosed to him about his relationship with the Applicant; that though they (Suraj and the Applicant) had decided to get married, subsequently i.e. about 15 days prior to Diwali, the Applicant had disclosed to Suraj that she was in a relationship with another boy and that he should forget her. According to the complainant, Suraj could not take the said rejection and was affected by the said fact. He has further stated that the Applicant had told Suraj that he could go and die and that if he died, she would not be affected; that when Suraj disclosed to him the aforesaid fact, he told Suraj that he should not worry and that they would look out for some other girl for him, pursuant to which, Suraj told him that he had spent money on the Applicant and that he was under tension. It also appears from the complainant's statement, that on 31st October 2016, Suraj went to the complainant's shop as usual to sleep at about 9:00 p.m. On 1st November 2016, when Suraj's mother went to the shop to wake him up, she did not find him and when she tried calling Suraj, his number was coming switched off. On 1st November 2016, Suraj consumed poison outside the Applicant's house, where he was found dead. A suicide note was also found.

10 It is the prosecution case, that Suraj died due to consumption of poison and that the Applicant was responsible for Suraj consuming the same, and that the reason for committing suicide has been penned down by Suraj, in his suicide note. A perusal of the said suicide note discloses that Suraj and the Applicant were in love with each other; that although one boy was interested in her and that the said boy had proposed to her, for about two years, Suraj and the Applicant were together; that both could not do without each other; that Suraj was madly in love with her; that he had got her employment in a Company; that when the Applicant was in Pune, Suraj could not give the Applicant much attention as his father was unwell; that though he had trusted her, the Applicant became friendly with another boy and stopped talking to Suraj; and that Suraj could not live without the Applicant even for a minute. The note written by Suraj also mentions that the Applicant had played with his emotions and that he could not live without her. It appears from the suicide note, that Suraj was an extremely sensitive person and was madly in love with the Applicant and as such could not take her rejection.

11 As far as the statement of Suraj's mother – Mangala Chouthi is concerned, she has stated that Suraj had disclosed to her that the Applicant had told him that she was in a relationship with some other boy and therefore did not want to continue her relations with Suraj and had asked him to forget her. The Applicant is also stated to have told Suraj that she did not intend to marry him and asked him to go and die. It is pertinent to note, that Suraj in his suicide note has not mentioned the said fact i.e. the Applicant had asked him to go and die.

12 From a perusal of the suicide note and the charge-sheet, we do not find any material, pointing to the complicity of the Applicant. Nor is there any material to show that the Applicant, in any way, instigated Suraj to commit suicide or aided the commission of suicide. Even if, the allegation, that the Applicant asked Suraj to go and die and that it did not matter to her if he dies, is taken as it stands, the same was made several days prior to Suraj committing suicide. Thus, Suraj's suicide on 1st November 2016 cannot be said to be proximate to the words allegedly uttered by the Applicant several days prior thereto, and cannot be said to be a direct result of the same. Infact, as noted earlier, Suraj in his suicide

note, has not mentioned/disclosed that the Applicant had asked him to go and die and that it did not matter to her if he died.

13 In order to attract Section 306 of the IPC, the ingredients of Section 107 of the IPC are required to be disclosed. Section 107 of the IPC defines abetment as under; 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. Neither of the aforesaid ingredients are disclosed in the facts of this case.

14 Even if we accept the prosecution case as it stands, that the Applicant asked Suraj to go and die, however, the said words by itself, would not constitute instigation, as contemplated under Section 107 of the IPC. The word 'instigate' denotes incitement or urging to do some drastic

or unadvisable action or to stimulate or incite. It requires the presence of *mens rea*, which is a necessary concomitant of instigation. It is common knowledge that the words uttered in a quarrel or in a spur of the moment, cannot be taken to be uttered with *mens rea*, as it could be in a fit of anger or emotion. The incident though unfortunate, cannot constitute an offence in law as against the Applicant, as the ingredients necessary to constitute the offence are wanting. There is absolutely no proximity between the words allegedly uttered and the actual act of suicide. Unless there is clear *mens rea* to commit an offence or an active or direct act, which led the deceased to commit suicide or an act intending to push the deceased into such a position, no offence under Section 306 can be said to be disclosed. A plain reading of the suicide note shows that Suraj was depressed, anguished and upset, as the Applicant was in a relationship with another boy and could not take the rejection. The tenor of the suicide note does not reveal that the Applicant, in any way, instigated the deceased to commit suicide. There is nothing in the entire charge-sheet to show that the Applicant instigated or in any way aided or abetted the deceased to commit suicide and in the absence of availability of such material, the Applicant-accused cannot be compelled to face trial for the offence punishable under

Section 306 of the IPC, as continuance of proceedings would amount to abuse of the process of law.

15 Accordingly, the Application is allowed and Rule is made absolute in terms of prayer clause (a) and is disposed of.

16 All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.

R. M. SAVANT, J.