

CRR No.3355 of 2016
CRR No.3550 of 2016
CRR No.3843 of 2016 and
CRR No.3845 of 2016

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Decided on: 13.11.2018

1. CRR No.3355 of 2016

Gaurav Singla		Petitioner
	Versus	
State of Haryana		Respondent

2. CRR No.3550 of 2016

Devender Kumar		Petitioner
	Versus	
State of Haryana and another		Respondents

3. CRR No.3843 of 2016

Pawan Kumar		Petitioner
	Versus	
State of Haryana		Respondent

4. CRR No.3845 of 2016

Sushil Kumar		Petitioner
	Versus	
State of Haryana		Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Atul Lakhanpal, Sr. Advocate
with Ms. Neha Lakhanpal, Advocate
for the petitioner (in CRR No.3355 of 2016)

Mr. Jagjit Gill, Advocate
for the petitioner(s) (in CRR Nos.3843 and 3845 of 2016)

Mr. N.S. Shekhawat, Advocate
for the petitioner (in CRR No.3550 of 2016)

Mr. Naveen Sheoran, DAG, Haryana (in all the petitions)

Mr. A.P.S. Deol, Sr. Advocate
with Mr. H.S. Deol, Advocate
for the complainant/respondent No.2.
(in CRR No.3550 of 2016)

ARVIND SINGH SANGWAN, J.

By way of this order, I shall dispose of aforesaid revision petitions as common question of law and facts are involved for adjudication as challenge is to the common impugned order dated 19.08.2016.

These petitions are pending since 2016 and proceedings before the trial Court were stayed on 27.02.2017 and, therefore, these cases are taken up together. However, no counter-affidavit is filed on behalf of the State or the complainant.

Challenge in all the aforesaid revision petitions is to the order dated 19.08.2016 vide which the Additional Sessions Judge, Sirsa has framed charges against the petitioners namely Pawan Kumar (in CRR No.3843 of 2016), Sushil Kumar (in CRR No.3845 of 2016), Gaurav Singla (in CRR No.3355 of 2016) and Devender Kumar (in CRR No.3550 of 2016) under Section 306 read with Section 34 of the Indian Penal Code (in short 'IPC').

Before referring to the arguments made by learned counsel for the parties, it would be relevant to refer to the contents of the FIR, which reads as under:-

*“To, SHO, Railway Police Sirsa. Subject:
application for taking legal action against 1. Sushil son of
Shri Pawan, 2. Pawan son of Shri Norang Rai and some*

other persons, residents of Mandi Adampur, District Hisar. Sir, applicant submits as under:- 1. That applicant was married with Anil Kumar son of Shri Kedarnath, resident of Mandi Adampur, District Hisar. 2. That abovesaid accused used to do work of VAYADA KAROBAR (promise business) on internet and forged bills and my husband was working with them from about 3-4 months and they kept my husband for maintaining their abovesaid business on computer. My husband was not having any concern about any loss or profit in the business of abovesaid persons. 3. That abovesaid persons suffered a great loss in the said business, due to which, abovesaid accused persons started harassing my husband by saying that the whole loss suffered in the business had occurred because of him and he had to bear all the losses, whether he sells his land or house. 4. That on 05.03.2014 at about 8 p.m, abovesaid accused persons alongwith some other persons stopped my husband near Raj Cinema Ghar Adampur and gave beatings to him and said to fulfil the losses otherwise they will kill him. My husband came to home while running. At that time, my brother-in-law (Jeth) Raj Kumar was came at our home. Abovesaid accused persons and other persons also came at our house by following my husband and they also gave beatings to my husband in our presence and threatened him to fulfil the losses but on coming other persons at the spot, abovesaid accused went away from there. 5. That due to this incident, my husband was disturbed whole night and said to me that accused persons are harassing me for few days and I am having fear that accused persons will kill me or compel me to suicide. 6. That on 06.03.2014, at about 9 a.m., after getting fed up with the abovesaid accused persons, my husband committed suicide by jumping before the Kissan

Express running train and before committing suicide, my husband was wrote a suicide note, the contents of which are, "I Anil Kumar son of Shri Kedarnath Mittal in my consciousness state that I did nothing and I am being defamed without any reason. All has been done by Sushil Kumar son of Shri Pawan Kumar. Sd/- Anil Kumar. It is therefore requested that after registration of case against abovesaid accused persons, a strict legal action may kindly be taken and justice be done with the applicant. I shall be thankful to you. Applicant Sd/- Shashi Bala, Shashi Bala widow of Shri Anil Kumar resident of Mandi Adampur, District Hisar through Sajjan Kumar son of Kedarnath, resident of Shiv Colony, House No.858, Mandi Adampur, Police Station Adampur, District Hisar brother of deceased came present in the police station and gave abovesaid application for compelling deceased Anil Kumar abovesaid on 06.03.14, to commit suicide near Railway Station Adampur, by jumping before Kissan Express train against Sushil Kumar son of Shri Pawan Kumar. 2. Pawan son of Shri Naurang Rai and other persons residents of Mandi Adampur, District Hisar, regarding which, proceedings under Section 174 Cr.P.C. vide DDR No.17 dated 06.03.2014 was initiated by Rammurti ASI 770, from the contents of abovesaid application, offence under Section 306 IPC is found to be made out and after registering case and preparing copies of FIR, copy of FIR as special report is being sent to Superintendent of Police (H) Ambala Cantt and Deputy Superintendent of Railway (H) Hisar and are being sent to Superintendent of Police, Sirsa and Ilaqa Magistrate through Kuldeep Singh EASI 398. After perorating case file, the same is being handed over to Rammurti ASI 770 and Jaibir Singh EASI 75 for initial investigation at the

spot. Original application is attached with the file. Officers have been informed through telephone regarding situation of the case.”

Thereafter, the police has submitted the report under Section 173 Cr.P.C. on 07.04.2015.

Thereafter, vide impugned order dated 19.08.2016, the trial Court framed charges under Section 306 read with Section 34 against the accused persons and the accused persons i.e. the petitioners by way of filing the separate four petitions, have challenged the said order. The operative part of the impugned order reads as under:-

“Having heard learned Public Prosecutor for the State assisted by learned counsel for the complainant and learned defence counsels for the accused persons and perusing the case file minutely, this court is of the view that at the stage of framing of charge, the court is not required to see that there is sufficient evidence to convict the accused or not, rather the charge can be framed on the basis of strong suspicions. It is to be mentioned here that the complainant in her complaint dated 18.03.2014 specifically mentioned the name of accused, namely Suchil and Pawan alongwith some unknown persons, who illegally restrained her husband in the night of 5.3.2014 at about 8.00 am. near Raj Cinema, Adampur and asked him to compensate their loss failing which he will not be spared. Thereafter, in her statement dated 19.3.2014 under Section 161 Cr.P.C., also the complainant levelled the allegations against the accused persons mentioning therein that all the accused pressurized her deceased husband to pay Rs.37 lacs i.e. the loss caused to them in the business. Also, the accused got recorded their

respective disclosure statements dated 20.06.2014, 28.06.2015 and 9.7.2015 regarding their involvement in the commission of crime of the present case.

Keeping in view of all these facts and circumstances, this court is of the considered view that a prima facie case u/s 306 read with Section 34 of IPC is made out against all of the accused. Let they be charge-sheeted accordingly.”

CRR No.3355 of 2016

Learned Senior Counsel for the petitioner – Gaurav Singla has argued that from the bare perusal of the FIR, it is apparent that the complaint was made by Shashi Bala, widow of deceased – Anil Kumar to police on 19.03.2018 against Sushil Kumar son of Pawan Kumar and Pawan Kumar son of Norang Lal and the petitioners – Gaurav Singla son of Govind Ram and Devender Kumar son of Mahabir Parshad, were not named in the first complaint given to the police on 19.03.2014 i.e. after 13 days of the incident dated 06.03.2014. It is further submitted that even in the suicide note, the deceased – Anil Kumar has named one person i.e. Sushil Kumar and no overt-act is attributed towards the petitioners – Gaurav Singla and Devender Kumar.

Learned Senior counsel for the petitioner has further submitted that the police, thereafter, recorded the statement of Shashi Bala on 14.06.2015 i.e. after a period of about 01 year and 03 months, in which she named both the petitioners namely Gaurav Singla and Devender Kumar first time levelling allegations that they along with Pawan Kumar and Sushil Kumar were having some joint business and suffered financial loss, therefore, they were persuading Anil Kumar,

who was working as an Accountant with Sushil Kumar and Pawan Kumar to transfer his house in the name of Gaurav Singla. It is further argued that even the perusal of the statement of Shashi Bala, show that there are no direct allegations against Gaurav Singla as it is stated that Gaurav Singla was asking Pawan Kumar and Sushil Kumar for his money and they in turn were asking that he (i.e. Gaurav Singla) should recover the same from deceased – Anil Kumar and therefore, there is no direct allegations of abetment against the petitioners that they acted in a manner immediately before the death of Anil Kumar, to abet him to commit suicide.

Learned Senior Counsel for the petitioner has also submitted that the petitioner – Gaurav Singla as well as Devender Kumar were not having any direct business dealings with Anil Kumar and the police during the investigation has not collected any evidence that they had any direct dealing with him as is clear from the report under Section 173 Cr.P.C.

CRR No.3550 of 2016

Counsel for the petitioner – Devender Kumar has additionally argued that as per the FIR, the first incident occurred on 05.03.2014 at 08:30 pm, when deceased – Anil Kumar was allegedly given beatings by Pawan Kumar and Sushil Kumar along with 4-5 other persons. It is further submitted that the petitioner – Devender Kumar was the nephew of deceased – Anil Kumar and therefore, there cannot be any dispute about his identity, if he was present at the time of said incident of giving beatings to the deceased. It is further submitted that

there is no medical evidence in the shape of any MLR available on record that the deceased was given any beatings as he committed suicide after about 13 hours, in the morning of 06.03.2014. It is also argued that in the first complaint given to the police on 19.03.2014 i.e. after 13 days of the incident, in which the brother of deceased, Sajjan Kumar, who accompanied Shashi Bala, widow of the deceased – Anil Kumar to police station has not even raised any doubt towards the petitioners. It is further argued that on 25.03.2014, the police recorded statements of Shashi Bala and one Sajjan Kumar, nephew of deceased under Section 161 Cr.P.C., and on that occasion, they never named the petitioner – Gaurav Singla or Devender Kumar.

Counsel for the petitioner(s) has also submitted that in the suicide note, Anil Kumar has pointed a finger only against Sushil Kumar. It is further submitted that in the statement of Shashi Bala recorded under Section 161 Cr.P.C. (Annexure P5), she has not named the petitioner – Devender Kumar. Counsel for the petitioner(s) has also argued that it is only in the supplementary statement of Shashi Bala recorded on 14.06.2015, both the petitioners i.e. Gaurav Singla and Devender Kumar were named that they were partners in the commodity business with Sushil Bansal and Pawan Bansal and had given beatings to her husband in order to force him to compensate the loss caused to them in the commodity business.

CRR Nos.3843 and 3845 of 2016

Counsel appearing for the petitioner(s) – Pawan Kumar and Sushil Kumar has submitted that though they are named in the FIR,

however, there is no direct evidence against them that they abetted the deceased – Anil Kumar to commit suicide.

Learned Senior counsel for the petitioner(s) has relied upon the judgment **“Madan Mohan Singh vs State of Gujarat and another”**, 2010(4) RCR (Criminal) 207, wherein the Hon’ble Supreme Court has held as under:-

“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 & Ors. Vs. Bhajan Lal & Ors., 1991(1) RCR (Criminal) 383 : 1992 Suppl. 1 SCC 335**, it would be only proper to quash the FIR and the further proceedings.*

12. For all these reasons, we are of the clear opinion that the High Court erred in not quashing the proceedings. Allowing this appeal, we set aside the order of the High Court and allowing the petition under Section 482 Cr.P.C. filed by the appellant/accused, the questioned proceedings are quashed.”

Learned Senior counsel for the petitioner(s) has further relied upon the judgment “**Sanju @ Sanjay Singh Sengar vs State of Madhya Pradesh**”, 2002(2) RCR (Criminal) 687, wherein the Hon’ble Supreme Court has observed as under:-

“8. Before we advert further, at this stage we may notice a few decisions of this Court, relevant for the purpose of disposal of this case.

*9. In **Swamy Prahaladdas v. State of M.P. & Anr., 1995 Suppl. (3) SCC 438**, the appellant was charged for an offence under Section 306 I.P.C. on the ground that the appellant during the quarrel is said to have remarked the deceased 'to go and die'. This Court was of the view that mere words uttered by the accused to the deceased 'to go*

and die' were not even prima facie enough to instigate the deceased to commit suicide.

10. In *Mahendra Singh v. State of M.P., 1995 Supp. (3) SCC 731*, the appellant was charged for an offence under Section 306 I.P.C basically based upon the dying declaration of the deceased, which reads as under:

"My mother-in-law and husband and sister-in-law (husband's elder brother's wife) harassed me. They beat me and abused me. My husband Mahendra wants to marry a second time. He has illicit connections with my sister-in-law. Because of these reasons and being harassed I want to die by burning."

11. This Court, considering the definition of 'abetment' under Section 107 I.P.C., found that the charge and conviction of the appellant for an offence under Section 306 is not sustainable merely on the allegation of harassment to the deceased. This Court further held that neither of the ingredients of abetment are attracted on the statement of the deceased.

12. In *Ramesh Kumar V. State of Chhattisgarh (2001) 9 SCC 618*, this Court while considering the charge framed and the conviction for an offence under Section 306 I.P.C. on the basis of dying declaration recorded by an Executive Magistrate, in which she had stated that previously there had been quarrel between the deceased and her husband and on the day of occurrence she had a quarrel with her husband who had said that she could go wherever she wanted to go and that thereafter she had poured kerosene on herself and had set fire. Acquitting the accused this Court said:

"A word uttered in a fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation. If it transpires to the court that a

victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the court should not be satisfied for basing a finding that the accused charged for abetting the offence of suicide should be found guilty."

13. Reverting to the facts of the case, both the courts below have erroneously accepted the prosecution story that the suicide by the deceased is the direct result of the quarrel that had taken place on 25th July, 1998 wherein it is alleged that the appellant had used abusive language and had reportedly told the deceased 'to go and die'. For this, the courts relied on a statement of Shashi Bhushan, brother of the deceased, made under Section 161 Cr.P.C. when reportedly the deceased, after coming back from the house of the appellant, told him that the appellant had humiliated him and abused him with filthy words. The statement of Shashi Bhushan, recorded under Section 161 Cr.P.C. is annexed as annexure P-3 to this appeal and going through the statement, we find that he has not stated that the deceased had told him that the appellant had asked him 'to go and die'. Even if we accept the prosecution story that the appellant did tell the deceased 'to go and die', that itself does not constitute the ingredient of 'instigation'. The word 'instigate' denotes incitement or urging to do some drastic or unadvisable action or to stimulate or incite. Presence of mens rea, therefore, is the 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.

It is in a fit of anger and emotional. Secondly, the alleged abusive words, said to have been told to the deceased were on 25th July, 1998 ensued by quarrel. The deceased was found hanging on 27th July, 1998. Assuming that the deceased had taken the abusive language seriously, he had enough time in between to think over and reflect and, therefore, it cannot be said that the abusive language, which had been used by the appellant on 25th July, 1998 derived the deceased to commit suicide. Suicide by the deceased on 27th July, 1998 is not proximate to the abusive language uttered by the appellant on 25th July, 1998. The fact that the deceased committed suicide on 27th July, 1998 would itself clearly pointed out that it is not the direct result of the quarrel taken place on 25th July, 1998 when it is alleged that the appellant had used the abusive language and also told the deceased to go and die. This fact had escaped notice of the courts below.”

Reliance has also been placed by learned Senior counsel for the petitioner(s) on “**S.S. Chheena vs Vijay Kumar Mahajan and another**”, 2010(4) RCR (Criminal) 66, wherein the Hon’ble Supreme Court has held as under:-

*“27. This Court in **Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi)** 2009(4) RCR (Criminal) 196 : (2009) 16 SCC 605, had an occasion to deal with this aspect of abetment. The Court dealt with the dictionary meaning of the words "instigation" and "goading". The Court opined that there should be intention to provoke, incite or encourage the doing of an act by the latter. Each person's suicidability pattern is different from the other. Each person has his own idea of self-esteem and self-respect. Therefore, it is impossible to lay down any*

straitjacket formula in dealing with such cases. Each case has to be decided on the basis of its own facts and circumstances.

28. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. The intention of the legislature and the ratio of the cases decided by this Court is clear that in order to convict a person under Section 306 IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and that act must have been intended to push the deceased into such a position that he committed suicide.

29. In the instant case, the deceased was undoubtedly hypersensitive to ordinary petulance, discord and differences which happen in our day-to-day life. Human sensitivity of each individual differs from the other. Different people behave differently in the same situation.

30. When we carefully scrutinize and critically examine the facts of this case in the light of the settled legal position the conclusion becomes obvious that no conviction can be legally sustained without any credible evidence or material on record against the appellant. The order of framing a charge under section 306 IPC against the appellant is palpably erroneous and unsustainable. It would be travesty of justice to compel the appellant to face a criminal trial without any credible material whatsoever. Consequently, the order of framing charge under section 306 IPC against the appellant is quashed and all proceedings pending against him are also set aside.

31. As a result, the appeal is allowed and the impugned judgment of the High Court is set aside.

Appeal allowed.”

In reply, counsel for the State assisted by learned Senior Counsel for the complainant has, however, opposed the submissions made by counsel for the petitioners.

Learned Senior counsel for the complainant/respondent No.2 (in CRR No.3550 of 2016) has argued that it has come in the statement of Shashi Bala that all the accused persons were forcing her husband i.e. the deceased – Anil Kumar to pay the amount and a day prior to, they gave beatings to him and, thereafter, he committed suicide. Learned Senior counsel for the complainant has further relied upon the statement of Raj Kumar, the elder brother of deceased – Anil Kumar, recorded under Section 161 Cr.P.C. dated 20.06.2015, in which he has stated that all the 04 accused persons were doing a commodity business and the deceased was working as a *Muneem*/Computer Operator. It is further stated that the accused persons were putting pressure on the deceased for making good loss of Rs.37 lacs and threatened him that he should transfer his house in the name of Gaurav Singla.

Learned Senior Counsel for the complainant has further submitted that this witness i.e. Raj Kumar, has further stated that in the presence of wife of the deceased namely Shashi Bala as well as in his presence, all the 04 accused persons gave beatings to deceased – Anil Kumar and by giving threats to him, they left the place.

Learned Senior Counsel for the complainant has relied upon the statement of another brother of the deceased namely Sajjan Kumar, also dated 20.06.2015 that all the 04 persons were doing business together and were putting pressure on him to make good the loss. It is further argued that even in the disclosure statement of the petitioners, they have admitted that they were putting pressure on the deceased to pay the money and on that account, he was disturbed and committed suicide by jumping in front of the train. Learned Senior Counsel for the complainant has further submitted that the suicide note of deceased – Anil Kumar is admissible in evidence.

Learned Senior counsel for the complainant/respondent No.2 has also relied upon the judgment ***“State of Rajasthan vs Fatehkaran Mehdu”***, 2017(2) RCR (Criminal) 1, to submit that the Hon’ble Supreme Court has held as under:-

“26. The scope of interference and exercise of jurisdiction under Section 397 of Cr.P.C. has been time and again explained by this Court. Further, the scope of interference under Section 397 Cr.P.C. at a stage, when charge had been framed, is also well settled. At the stage of framing of a 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. Thus, to hold that at the stage of framing the charge, the court should form an opinion that the accused is certainly guilty of committing an offence, is to hold

something which is neither permissible nor is in consonance with scheme of Code of Criminal Procedure.

27. Now, reverting to the limit of the scope of jurisdiction under Section 397 Cr. P.C., which vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law or the perversity which has crept in the proceeding.

28. It is useful to refer to judgment of this Court in Amit Kapoor and Ramesh Chander and Another, (2012) 9 SCC 460, where scope of Section 397 Cr. P.C. have been succinctly considered and explained. Para 12 and 13 are as follows:

"12. Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error and it may not be appropriate for the court to scrutinize the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits." "13.

Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex facie. Where the Court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a given case, it may be reluctant to interfere in exercise of its revisional jurisdiction unless the case substantially falls within the categories aforestated. Even framing of charge is a much advanced stage in the proceedings under the CrPC.”

29. The Court in para 27 has recorded its conclusion and laid down principles to be considered for exercise of jurisdiction under Section 397 particularly in context of quashing of charge framed under Section 228 Cr. P. C. Para 27, 27(1), (2), (3), (9), (13) are extracted as follows: "27. Having discussed the scope of jurisdiction under these two provisions, i.e., Section 397 and Section 482 of the Code and the fine line of jurisdictional distinction, now it will be appropriate for us to enlist the principles with reference to which the courts should exercise such jurisdiction. However, it is not only difficult but is inherently impossible to state with precision such principles. At best and upon objective analysis of various judgments of this Court, we are able to cull out some of the principles to be considered for proper exercise of jurisdiction, particularly, with regard to quashing of charge either in exercise of jurisdiction under Section 397 or Section 482 of the Code or together, as the case may be:

27.1) Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

27.2) The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.

27.3) The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

27.9) Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the Court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

27.13) Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its

quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie.”

In reply, counsel for the petitioner(s) has submitted that the supplementary statement of Shashi Bala, Sajjan Kumar and Raj Kumar, was recorded by the police after a gap of about 01 year and 03 months and especially in view of the fact that the incident pertains to 06.03.2014, even the first complaint was lodged on 19.03.2014, naming only 02 persons i.e. Sushil Kumar and Pawan Kumar and therefore, naming the other 02 persons i.e. Gaurav Singla and Devender Kumar is an afterthought and, therefore, the trial Court has failed to appreciate that no *prima facie* evidence worth framing charge was available on record.

Counsel for the petitioner – Devender Kumar has further submitted that a perusal of the *bahi* entries, which is part of the report submitted under Section 173 Cr.P.C., show that Anil Kumar was working only with Pawan Kumar and Sushil Kumar and therefore, there is no evidence against the petitioners namely Gaurav Singla and Devender Kumar to connect them with the incident.

After hearing the learned counsel for the parties, I find merit in the revision petitions filed by Gaurav Singla and Devender Kumar, however, I find no merit in the petitions filed by Pawan Kumar and Sushil Kumar, for the following reasons:-

(a) *In the suicide note, the deceased has named only Sushil Kumar son of Pawan Kumar, a person*

responsible for his death.

(b) *In the first version/complaint given to the police, the widow of deceased i.e. the complainant – Shashi Bala has not named the petitioners – Gaurav Singla and Devender Kumar and looking on the supplementary statement dated 20.06.2015 of Shashi Bala, Raj Kumar and Sajjan Singh, which was recorded after a gap of 01 year and 03 months, they have stated that both these persons i.e. Gaurav Singla and Devender Kumar were present and gave beatings to Anil Kumar on 05.03.2014 and, therefore, there was no occasion for the complainant not to name them at first instance in the complaint given to the police forming basis of the FIR.*

(c) *Even the first complaint has been given after a gap of 13 days, however, the same being based on the suicide note is pointing a finger only on Sushil Kumar son of Pawan Kumar and Pawan Kumar son of Norang Lal, the persons responsible for his death, both the aforesaid petitioners namely Gaurav Singla and Devender Kumar were not named. Even in 161 Cr.P.C. statement of Shashi Bala and another nephew of deceased namely Sajjan Kumar dated 23.03.2014, no such allegations are levelled.*

(d) *The Investigating Officer, in the report submitted under Section 173 Cr.P.C. has not collected any evidence that all the 04 accused persons were working together in their commodity business and rather the statement of Shashi Bala under Section 161 Cr.P.C., show that she has levelled direct allegations against Sushil Kumar and Pawan Kumar whereas the allegations against Gaurav Singla and Devender Kumar are indirect that they were putting pressure on Pawan Kumar and Sushil Kumar to pay their money and in turn Pawan Kumar and Sushil Kumar were asking them to recover the same from Anil*

Kumar, to which they initially refused.

(e) There is no medical evidence to support that on 05.03.2014, the deceased – Anil Kumar was given beatings as alleged in the FIR by the accused persons.

(f) The supplementary statement relied upon by counsel for the State as well as learned Senior counsel for the complainant was recorded after a gap of 01 year and 03 months and both the witnesses i.e. Raj Kumar and Sajjan Kumar being the real brother of deceased – Anil Kumar and uncle of the petitioner – Devender Kumar have come up with the allegations for the first time after such a long gap that he was also present when the incident of beatings happened on 05.03.2014 and they being close relatives, there cannot be any dispute about his identity.

*(g) In view of the judgment of the Hon'ble Supreme Court in **State of Rajasthan'case (supra)**, the prosecution has failed to produce on record the prima facie evidence against the petitioners – Gaurav Singla and Devender Kumar to make out an offence punishable under Section 306 IPC as specific abetment as contemplated under Section 107 IPC on the part of these 02 accused persons with intention to induce deceased – Anil Kumar, has not come on record and in the absence of any material suggesting an offence committed by Gaurav Singla and Devender Kumar under Section 306 IPC, the impugned order framing charge against them is not sustainable.*

*(h) In view of the ratio of law laid down by the Hon'ble Supreme Court in **State of Rajasthan'case (supra)**, considering the allegations in the FIR, the statement recorded under Section 161 Cr.P.C. and the supplementary statement, which is recorded after a gap of 01 year and 03 months and report under Section 173 Cr.P.C., the allegations against the petitioners – Gaurav*

Singla and Devender Kumar are such that the basic ingredients of offence punishable under Section 306 IPC is not made out even remotely.

(i) From the perusal of the FIR, suicide note and the report under Section 173 Cr.P.C., no ingredients of offence punishable under Section 306 IPC are made out. Even, there is nothing on record to suggest that the petitioners – Gaurav Singla and Devender Kumar had abetted the deceased in a manner to instigate him in committing suicide. There is no positive act on the part of these two petitioners to instigate or abet in committing suicide by the deceased – Anil Kumar.

*(j) In view of the judgment of the Hon'ble Supreme Court in **Madan Mohan's case (supra)**, **Sanju @ Sanjay Singh Sengar's case (supra)** and **S.S. Chheena's case (supra)**, the framing of charge against the petitioners – Gaurav Singla and Devender Kumar under Section 306/34 IPC is not sustainable as there is no such evidence to show that they instigated the deceased to commit suicide. There is nothing on record to prove the mens rea on the part of these two petitioners to instigate the deceased person as they had no direct dealing with him.*

(k) However, there are specific allegations against the petitioners – Pawan Kumar and Sushil Kumar as they have been named in the FIR and there is an evidence that the deceased was working with them as an Accountant and therefore, the trial Court has rightly framed the charge against both the petitioners – Pawan Kumar and Sushil Kumar.

Accordingly in view of what has been discussed hereinbefore, the revision petitions i.e. CRR Nos.3355 and 3550 of 2016, filed by the petitioners – Gaurav Singla and Devender Kumar, are

CRR No.3355 of 2016
CRR No.3550 of 2016
CRR No.3843 of 2016 and
CRR No.3845 of 2016

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allowed and impugned order framing charge qua them is set aside, whereas the revision petitions i.e. CRR Nos.3843 and 3845 of 2016, filed by the petitioners – Pawan Kumar and Sushil Kumar, are ordered to be *dismissed*.

(ARVIND SINGH SANGWAN)
JUDGE

13.11.2018
yakub

Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No