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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 07th September, 2018
Pronounced on: 01st October, 2018

\+ CRL.M.C. 4905/2016 & Crl.M.A.20305/2016

ASHOK KUMAR GUPTA & ORS ..... Petitioners

Through: Mr.Mukul Gupta, Sr. Adv. with Mr.Vibhor Garg, Mr.Tushar Gupta, Mr.Deepanshu Panwar and Mr.Nishank Tyagi, Advs.

Versus

STATE (GOVT OF NCT OF DELHI) & ANR ..... Respondents

Through: Mr.Ashish Dutta, APP for State.
Mr.Sanjeev Manchanda and Mr.Harish Chawla, Advs. for R-2.

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

O R D E R

1. On 18.07.2015, sometime before 10.30 a.m., one Chander Shekhar son of Dharampal Singh, aged about 31 years, resident of Mohan Garden, New Delhi was run over by a railway train at a place between railway stations of Shahbad Mohammadpur and Bijwasan, the death statedly being found to be suicidal. First information report (FIR) no.215/15 was registered on 23.08.2015 by police station Sarai

Rohilla Railway Station for offence under Section 306 read with Section 34 of the Indian Penal Code, 1860 (IPC) at the instance of Rajnath Singh, brother of the deceased. The police, having concluded the investigation, submitted report under Section 173 of the Code of Criminal Procedure, 1973 (Cr. PC) dated 12.04.2016, followed by supplementary report dated 10.11.2016, with the conclusion that sufficient evidence had not come up against the persons whose complicity in the crime had been alleged.

2. The Metropolitan Magistrate, by his order dated 03.12.2016, did not agree with the abovesaid conclusion and was of the view that *prima facie* the deceased person had been "*deliberately harassed*" and "*driven to suicide*", the petitioners herein having "*deliberately created a situation which left no other option for the deceased but to take his own life*" and, on the basis of such impression, took cognizance of the offence under Section 306/34 of the IPC and summoned the petitioners as accused.

3. Feeling aggrieved by the abovesaid order, the petitioners have come up to this court by the petition at hand invoking the inherent power and jurisdiction under Section 482 Cr.PC contending that the order of the Magistrate is perverse, not taking into consideration the facts and circumstances that had been brought to light during investigation, having adopted an approach which was against the settled law vis-à-vis the offence of abetment of suicide and consequently being in the nature of abuse of the process of law.

4. The petition has been resisted by the second respondent (first informant), the State through the Additional Public Prosecutor having

taken a neutral stand, leaving the matter to the wisdom, judicial discretion and judgment of the court.

5. The background facts which are substantially not in dispute or which are supported by substantive evidence gathered during investigation and, therefore, irrefutable may be taken note of at this stage.

6. The first to third petitioners are brothers to each other, each of them in their mid-sixties, the fourth petitioner being the son of the first petitioner, all of them being residents of a house in West Punjabi Bagh, New Delhi. They together are engaged in business run in the name and style of Laxmi Float Glass Ltd. with office at A-2/10, WHS, DDA Marble Market, Kirti Nagar, New Delhi. The petitioners being the proprietors of the said business would also visit the said office at Kirti Nagar. Chander Shekhar (the deceased) was working as an employee in the said business, under the petitioners, for more than a decade, statedly in the capacity of a salesman, his responsibilities relating to sales made by the company in various cities or towns of Haryana. Rajnath Singh (the first informant / complainant), the elder brother of the deceased, had also been similarly engaged as a salesman by the said company of the petitioners with office at Kirti Nagar. It appears the company deals in trading of glass and the salesmen were also responsible to ensure the recovery of dues against the sales to other dealers, it being inherent in the said arrangement that the salesman would account for the monies realized from the purchasing dealers.

7. It is alleged by the complainant himself in the FIR that a dispute had arisen between the deceased (employee), on one hand, and the petitioners (employers), on the other, about accounting of certain amount(s) of money which statedly had been collected by the former (deceased) from various dealers. It is also stated by the complainant himself, and his word is echoed (in his statement) by similarly placed employee (Anjani Kumar Singh) that the petitioners had called upon the deceased sometime in the last week of 2015 and had insisted that he rendered the accounts. It is also an admitted case of the complainant in the FIR, and this again finds support from the statement of Anjani Kumar Singh, that the petitioners had also roped in the two of them (complainant and Anjani Kumar Singh), besides certain others, on their persistence for the deceased to account for monies, and towards this end, on 15.07.2015 (investigation showing the tour to have been undertaken on 16th and 17th July, 2015, had taken the deceased along with them to various towns of Haryana (Karnal, Kurushetra, Yamuna Nagar and Ambala) to check the accounts with various dealers which statedly were the ones with whom the deceased had been interacting or from whom he had been realizing the dues relating to sales made through him. It is clear from the averments in the FIR, read in its entirety, that the employers (i.e. the petitioners) suspected that the deceased had committed defalcation of money realized from such dealers by dishonestly mis-appropriating the same for his own use in criminal breach of trust reposed in him by them.

8. According to the report under Section 173 Cr.P.C, on 18.07.2015, at 10:30:48 hrs, telephonic information was received by

police control room (PCR) of Delhi Police about a person having been run over by a train in the general area of Sector-23, Dwarka. The information was conveyed by the PCR to police station Sarai Rohilla Railway Station where daily diary (DD) entry no.10A came to be recorded at 10.35 a.m. In the meantime, Mr. Hari Mohan Meena, Station Master had also conveyed report to the police about the incident having occurred near Shahbad Mohammadpur Railway Station. ASI Azad Singh accompanied by Constable Paramjeet set out for the place in question for inquiry. When they reached the place in question near K.M. Pole No.21 /4-5, Up Railway Line, they found the dead body which was eventually identified as that of Chander Shekhar (the deceased). The personal search of the dead body led to recovery of *Aadhar* Card, Voter-ID card and a hand-written note (described in the case as a "suicide note"). It appears the mobile phone instrument (with SIM no.9250547197) of the deceased was also found at the scene and it also appears that on the basis of the identity established by the documents that were found, contact was established by the police official with Rajnath Singh (the first informant).

9. The first informant, statedly accompanied by his other brother Mukteshwar Singh, reached the place in question and identified the dead body. The inquest proceedings were initiated and the preliminary steps in that regard were taken including by removal of the dead body to mortuary for post-mortem examination. ASI Azad Singh, having undertaken such proceedings, pursuant to DD no.10A, logged the action taken by him vide DD no.14 recorded at 04:00 hours on 18.07.2015 in police post Kishan Ganj.

10. There is no dispute raised as to the cause of death. The allegations in the FIR, as indeed the autopsy report, the evidence gathered (including the photographs of the dead body at the scene) and the statements of the witnesses leave no room for doubt that Chander Shakhar had suffered injuries on account of he being run over by a train and, in absence of any other theory being propounded by anyone, it must be assumed or inferred that the death was suicidal.

11. The hand written note (described as "suicide note"), which statedly was found amongst the personal effects of the deceased at the time of initial police proceedings, and which was recovered and was duly noted in the DD no.14, was sent to Forensic Science Laboratory (FSL), the report of FSL whereupon formed the basis of the supplementary report of the police, the opinion of the hand writing expert, based on comparison with some "*admitted writings*" made available, being that it was in the hand writing of the deceased. The said note (in *vernacular*) appears to have been written on a sheet of paper, taken off an exercise book and purports to convey that the author had been working with Laxmi Float Glass Ltd. which company had closed his account even where-after he was being harassed and further that the author was taking such step on account of such harassment.

12. The police proceedings unmistakably show, and the complainant has no different version to offer, that after the initial input (DD no.10A), the first police record was in the form of DD no.14, which is based on a report prepared by ASI Azad Singh respecting the action taken and statement of the complainant recorded for purposes

of identification of the dead body. The record also contains similar statement of Mukteshwar Singh, the other brother of the deceased and first informant, such statements appearing in the trial court record (at pages 395-397), alongside the report for inquest proceedings prepared by ASI Azad Singh (being at page 385) and copy of DD entry no.14 (at page 411). It is noted that, read together, the first informant and his brother Mukteshwar Singh in their statements had clearly expressed that they had "*no suspicion*" against anyone for the death of Chander Shekhar who, according to them, seemed to have taken such extreme step on account of "*harassment by the company*", this apparently being with reference to the suicide note, they being privy to its recovery.

13. The report of the police also contains another statement of the first informant recorded on 20.07.2015 by ASI Azad Singh in which he leveled allegations against the four petitioners, his version being that the deceased had been looking after the work of salesman with the petitioners since 2006, dealing with dealers of Haryana but his services had been terminated by the petitioners in June 2015 on the false allegation of discrepancies in the accounts. He also alleged that the deceased had given all the accounts inspite of which he was being harassed by the petitioners by repeated phone calls to him extending threats to involve him in a police case or to get him lifted by *gunda* elements. He alleged that, feeling pressurized on account of such harassment, the deceased had resumed work with the company (of the petitioners) with effect from 13.07.2015 and had gone and reconciled the accounts by meeting the parties (dealers). While acknowledging

receipt of the copy of the suicide note, the first informant, in his statement dated 20.07.2015, further stated that he would give a detailed complaint in writing in due course.

14. On 27.07.2015, the first informant submitted a hand written complaint running into eleven leaves, addressed to the Station House Officer (SHO) of the police station Sarai Rohilla Railway Station. This complaint, received vide diary no.61 dated 27.07.2015, forms the basis of the FIR, registered on 23.08.2015, pursuant to endorsement dated 22.08.2015 by the SHO of the police station.

15. According to the FIR, based on the complaint dated 27.07.2015, the deceased being dissatisfied over there being no increase in the salary by the petitioners had decided in April 2015 to leave their employment. The first informant alleged that since the deceased knew all the secrets of the employers including as to how they would deal in black market, he also being acquainted with their dealers in Haryana, the employers did not want him to leave the job so as to join some other employer. He alleged that the deceased had handed over the entire accounts to the employers on 25.05.2015 and though his dues had been settled by the employers on 30.06.2015, the provident fund and gratuity benefits were withheld. He further alleged that the employers had then started exerting pressure on the deceased, directly or through him (complainant), not to give up the job with threats that he would not be allowed to work for gain in Delhi.

16. Against the above backdrop, on 12.07.2015, the second petitioner allegedly had a talk with the deceased by making a call from the mobile phone (9818146319) of fourth petitioner to the mobile

phone (9818693948) of the first informant asking about the accounts and calling him again to the office on 14.07.2015 for certain clarifications. It is alleged that when the deceased came to the office of the company in the morning of 14.07.2015, he was accused of fabrication of accounts, threatened, abused and assaulted. It is also alleged that the deceased offering to explain the accounts again had protested and had told the employers that they could not make him a bonded labourer.

17. The complainant further alleged that, on 15.07.2015, the deceased was again called to the office and, once again, accused and harassed on basis of false accusations of defalcation of money. He alleged that thereafter the (petitioners), the deceased, the first informant and others had set out in two vehicles to the four aforementioned cities of Haryana, where the dealers in question were contacted. According to the complainant, all accounts were fully rendered and no discrepancy could be found in the said exercise. It is alleged that during this effort the second petitioner had also come to be engaged in a physical fight with the witness Anjani Kumar Singh and the deceased was also physically assaulted, the group having eventually returned to Delhi after mid-night intervening 17th and 18th July, 2015.

18. It is also alleged that the deceased was feeling threatened at the possibility of being implicated in a case and being consequentially defamed. The complainant stated that in the morning, at about 8.30 a.m., on 18.07.2015, on being asked. the deceased had told him that he would follow him to the office later. He alleged that, at 9.49 a.m., he

had received a telephonic call from the deceased, who was sounding harassed and when the first informant had told him that the employers (petitioners) were asking about him, the deceased had dis-connected the phone. Sometime thereafter, he received a call from the police informing him about the suicide.

19. The report under Section 173 Cr.P.C. which was submitted on 26.04.2016 before the Metropolitan Magistrate would show that during the investigation, amongst others, the statement under Section 161 Cr.P.C. of Juhi (wife of the deceased) was also recorded. Her statement would show that the deceased hailed from district Jaunpur (Uttar Pradesh) and that he had left the job with the company of the petitioners having shifted to native village but, upon insistence of the first and second petitioners, through telephonic communication, the couple had returned to Delhi on 07.07.2015 as the employers wanted the accounts to be rendered. She narrated the events that happened after the deceased had resumed duty with effect from 08.07.2015 till the date of suicidal death, more or less on the lines set out in the FIR, this including visits to various towns of Haryana on 16.07.2015 and 17.07.2015.

20. The investigating officer also examined V.K. Singh, resident of Uttam Nagar, landlord of the deceased and his brother (the first informant). A copy of the statement of the former has been submitted by the complainant at the hearing and it is noticed that it was actually in the form of letter addressed to investigating officer submitted under signatures of the said person. Be that as it may, most of what this witness would say was what he had been told to him either by the

deceased or by the first informant, clearly he having no personal knowledge of any of the acts of commission or omission of the events which are subject matter of the case at hand.

21. The witnesses examined during the investigation would also include Anjani Kumar, another employee of the petitioners, he being a co-worker of the deceased. His statement reiterated what is the version of the first informant to the effect that the employers had been insisting on accounts to be rendered and, for this purpose, they had taken the deceased to various dealers in Haryana. It is the version of the said witness that the employers did not want the deceased to leave the employment since he was privy to their "*black and white*" dealings in the business. Anjani Kumar would also disclose that he himself had a grouse against the employers since against the backdrop of the deceased leaving the job, all the responsibilities of the latter had been placed on his shoulders without he being given any monetary raise in wages, it being "*practically*" not possible for him to take care of the entire market of Haryana on his own. He has also indicated that the employers were in the habit of being abusive which added to the reason of he being disgruntled.

22. According to Anjani Kumar Singh, he with the assistance of the deceased had made sales to the extent of 60 truck loads, on which account incentive to the extent of Rs.7,20,000/- would have become due but the same was not paid. He further stated that against this backdrop, he was also thinking of leaving the job but he was also being pressurised not to do so. He stated that the deceased had given in writing that he had taken Rs.1,40,000/- from the accounts of the

company which, according to him, was written at his instance, under duress from the employers, who were levelling false allegations. According to him, the visits to the offices of various dealers in Haryana had not brought out any discrepancy in the accounts and further that during the said visit he and second petitioner had come to be involved in fisticuffs.

23. The investigation had also revealed that besides the deceased, the first informant and the witness Anjani Kumar, there was another employee named Azad Veer, the work of four of them (engaged as salesmen) being under the supervision of witness Ved Prakash who was engaged as sales manager. According to the version of Ved Prakash, the deceased had suddenly stopped coming to the office in the last week of May, 2015, without giving any intimation and that when the accounts were checked based on the inputs from the customers of the area (Haryana) certain discrepancies had come to light. It was against this backdrop that, per sales manager Ved Prakash, the first informant (brother of the deceased) had himself volunteered to him that the deceased be called and the accounts tallied, after talking with the parties in question. As per him, the first informant being an old employee, the second and fourth petitioners (employers) had agreed to the proposal. The witness informed that the tour to the four places in Haryana was undertaken on 16.07.2015 and 17.07.2015 on the suggestion of the first informant and that, during the said visit, the two said employers (second and fourth petitioners) had stayed in Hotel Best Westland while the others (employees) had stayed at another property i.e. Hotel Grace, in Ambala. As per his

version, Azad Veer, the other salesman had returned on the first evening itself while the rest had returned to Delhi after visiting Yamunanagar and Hissar on the next day, all having accompanied on the tour voluntarily of their own free will, there having been no occasion for any hot exchange between anyone, the deceased, the first informant and the salesman Anjani Kumar having parted ways (on return journey) in the area of Peeragarhi to go to their respective houses. This part of the version of sales manager Ved Prakash has been confirmed by the other salesman Azad Veer who was also part of the group that had travelled to different parts of Haryana.

24. As per the final report of the investigation, discrepancies in the accounts relating to dealings through the deceased came to light during the inquiries made with the dealers during the afore-mentioned tour. To be specific, the witness Ved Prakash would mention the fact of the deceased having collected Rs.60,000/- and Rs.11,000/- respectively from dealers named Sidhi Vinayak Glass House and Karan Glass House, Ambala Cantt. and having deposited the said amount of money in his personal savings account no. 31611462666 with State Bank of India, Jaunpur, U.P. He also mentioned four cheques bearing nos. 206238 dated 12.09.2012, 427791 dated 07.09.2013, 427854 dated 31.12.2013 and 660304 dated 07.05.2013 for Rs.1 lakh, Rs.75,000/-, Rs.60,000/- and Rs.1 lakh respectively which had been issued by a dealer Shiv Enterprises Ambala which cheques were passed on by the deceased to three other dealers of Hissar, Ambala Cantt and Kurukshetra and he having collected cash thereagainst. The discrepancies in the accounts, as shown by the

investigation report, have been confirmed by corresponding entries in the bank account of the deceased and by the statements of dealers named Manjeet, Proprietor of Super Traders, Karnal; Rattan Lal, proprietor of Vishavkarma Glass, Kurukshetra; Ajay Ravi, proprietor of Shri Krishan Kirpa Glass House of Yamunanagar; Jitender Kapoor @ Shiv Kapoor, owner of a shop at Yamunanagar; and Narender Singh Rawat, proprietor of Shiv Enterprises, Ambala.

25. As per the evidence gathered during investigation, the deceased had collected various amounts from these dealers which had not been accounted for by him to the employers (the petitioners), this including the amounts of Rs.45,000/- realised from Super Traders, Rs.15,000/- collected from Vishavkarma Glass, Rs.56,000/- gathered from Shri Krishan Kirpa Glass House, Rs.24,000/- taken from Jitender Kapoor @ Shiv Kapoor and Rs.2,15,000/- from Shiv Enterprises. The petitioners point out that the investigating agency had made independent inquiries from the concerned dealers and the banker to confirm the collection of money by the deceased and contemporaneous deposits of certain amounts in his bank account, reference particularly being made to the reports of Sidhi Vinayak Glass House, Karan Glass House, Shiv Enterprises, Super Traders, Vishvkarma Glass, Sri Krishan Kripa Glass House and Kapoor Glass Palace. Attention was also drawn illustratively to the evidence reflecting deposit of cash amounts of Rs.20,000/-, Rs.4000/-, Rs.20,000/-, Rs.10,000/-, Rs.10,000/- and Rs.7,000/- close on the heels of equivalent amounts realised from Sidhi Vinayak Glass House and Karan Glass House on 05.01.2013, 08.02.2013, 25.04.2013,

30.07.2013, 27.09.2013 and 25.04.2015 in the bank account of the deceased as was confirmed upon scrutiny of the bank statement separately collected.

26. The investigation had also covered the accusations pertaining to pressure allegedly exerted by the petitioners against the deceased through telephonic calls. Upon analysis of the call detail records (CDRs) of the petitioners, on one hand, and of the deceased, on the other, no record of any telephonic contact between them has come to light. The CDRs do reflect contact on several occasions between the fourth petitioner and the first informant during 30.05.2015 to 18.07.2015, calls having been made or received by either of them from each other. The scrutiny of the CDRs of the phone of the deceased would show that the last call received by him, during his life time, was from one Praveen son of Subhash resident of Uttam Nagar who, upon being examined, disclosed that the deceased had taken a loan of Rs.10,000/- which he (Praveen) wanted to be repaid on account of his mother's illness. The last call made using the said phone was at 09.51 am to the first informant by ASI Azad Singh about the suicidal death.

27. On the basis, *inter alia*, of the evidence to the above effect, the investigating agency concluded that no proof of the deceased having been subjected to harassment, ill-treatment, misbehavior or torture by the employers had come to light. It found instead that there is evidence to show criminal breach of trust by the deceased in respect of the monies realized by him for and on behalf of the employers from various dealers by its transfer (deposit) into his personal account.

28. Since the investigating agency in its report under Section 173 Cr.P.C., which was followed by submission of the FSL result under the cover of supplementary report presented on 10.11.2016, had indicated that it had not found any prosecutable evidence against anyone for the offence under Section 306 of the IPC, notice was issued to the complainant by the Metropolitan Magistrate, by order dated 26.04.2016. The complainant, in response, filed a protest petition which is essentially reiteration of the allegations made by him in the FIR.

29. The final report of investigation by the police and the protest petition were considered leading to the impugned order being passed by the Magistrate on 03.02.2016. In the initial part of the said order, copious references have been made to the allegations in the FIR and particularly to the visit "*for verification of accounts*" to the offices of various dealers in Haryana. The reasons why the Magistrate found it a case sufficient to proceed against the petitioners are summarized in (the following paras of) the impugned order :-

> "*The complainant who is the brother of the deceased and also working in the same company has clearly and categorically stated in his complaint that his brother resigned from job in May, 2015. However, he was neither given his dues nor he was being permitted to work somewhere else. He was repeatedly being harassed and humiliated by the accused persons. The statement of complainant is also endorsed by Chander Shekhar, landlord of the complainant as well as Anjani Kumar, another employee of the same company. Moreover, if the deceased was not being tortured by the accused persons, he had no*

reason to commit suicide and implicate his employers via suicide note.
When the entire facts and circumstances of the case are taken into consideration, it becomes clear that after deceased decided to leave the job of the company, he was continuously being humiliated and tortured by the accused persons. His gratuity and other dues were not paid. He was also not permitted to work at some other place. He was being repeatedly threatened that he will be implicated in some false case. He was cornered from all angles. Record reveals that the accused persons deliberately created a situation which left no other option for the deceased but to take his own life. Prima facie it appears that the deceased was deliberately harassed and was driven to suicide. Hence, the protest petition is allowed."

30. It is clear from the above that the Magistrate found the allegations made by the complainant, as supported by the statements of co-worker (Anjani Kumar) and the landlord (wrongly described as Chander Shekhar – this, in fact, being the name of the deceased) to be credible to infer that the deceased had been "*cornered*" and left with "*no other option*" so as to be "*driven to suicide*".

31. It is trite that it is the duty of the officer in charge of the police station, upon receiving information relating to the commission of a cognizable offence to have it "*reduced to writing*" – by registering a first information report (FIR) under Section 154 Cr.P.C. and, thereafter, to proceed to carry out an investigation thereinto. The investigation into the case, by exercising the powers vested in the police, eventually leads to, on completion, submission of a report "*of*

investigation" in terms of Section 173 Cr.P.C. Such report, may indicate that the evidence that came to be gathered during the investigation was "*deficient*" for the matter to be taken forward for any criminal action or, conversely, to submit a request, "*when evidence is sufficient*" to seek cognizance to be taken of the offence that stands made out and for the person responsible for such offence (the accused) to be called "*for trial*".

32. This Court in *Sunil Kumar Rajput vs. State (Govt. of NCT of Delhi) & Anr., Crl.M.C. 2142/2015, dated 13.09.2018* has observed as under:-

> *"Undoubtedly when the investigating police submits a report under Section 173 Cr. PC, the prerogative to take an appropriate view in accordance with law rests with the court of cognizance i.e. Metropolitan Magistrate. Again undoubtedly, at such stage, the Metropolitan Magistrate is not bound by the view expressed in the report of investigation submitted by the police. For clarity, it may be added that the Magistrate has a judicial discretion, power and jurisdiction to take a view contrary to the one reached by the investigating police – that is to say even in a case where the investigating police has submitted a report for cancellation or closure (not sending any person for prosecution), the Magistrate can reject the said view and on the basis of available material proceed to take cognizance under Section 190 Cr. PC and to issue process under Section 204 Cr. PC. It is also true that the order taking cognizance, or issuing process, need not be a very detailed or elaborate one. But, it is always desirable that such an order must pass the muster of a judicial order which means the order must show application of*

mind and, for such tests to be passed, the order must take note atleast of the background facts, albeit briefly, and the reasons why the Magistrate is taking a particular view, specially when it is contrary to what has been recommended to him by the investigating agency."

33. Albeit in the context of process being issued (under Section 204 Cr.P.C.) on the basis of pre-summoning inquiry on a criminal complaint by the Magistrate, the Supreme Court in the case of *Pepsi Foods Ltd. and Another v. Special Judicial Magistrate and Others [(1998) 5 SCC 749]* observed as under:-

> *"28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused.*
> *"xxxx xxxx xxxx xxxx xxxx"*

34. It is the grievance of the petitioners that the Metropolitan Magistrate, while passing the impugned order of summoning has failed to bear in mind the guidance in the above ruling of *Pepsi Foods Ltd.* (supra). It is also their grievance that the Magistrate has adopted a mechanical approach by selectively going by one-sided version of

the FIR and the statements of three persons who were inimically placed, ignoring the voluminous evidence showing such version to be not credible thereby rendering the investigative process meaningless. In the submissions of the petitioners, the impugned order is perverse and not founded on reliable evidence.

35. It is the argument of the petitioners that the chronology of events, as have been summarized above, show that, besides a vague reference to "*harassment*" by the employer company, the complainant had expressed that there was "*no suspicion*" regarding complicity of any person in the suicidal death of his brother (Chander Shekhar) in the first instance, he being supported by his other brother (Mukteshwar Singh) who had also reached the scene of incident at the initial stages. It is submitted that even in the statement recorded on 18.07.2015 and again on 20.07.2015, no allegations in the nature mentioned above were levelled, particularly about physical assaults, torture or threats of false implication in a police case, the position taken being that the deceased had left the employment in April, 2015, his accounts having been settled, though some dues withheld.

36. It is argued that the case of abetment of suicide by instigation, or intentional aid, by acts of commission or illegal omission, set up by the complaint in writing dated 21.07.2015, is motivated and a materially improved version, it being such as cannot be given any credence, particularly against the backdrop of fact that the complainant and two witnesses in his support stand belied in the claim that no discrepancy could be detected, upon verification of accounts of

the dealers, the evidence gathered during the probe instead showing a series of defalcation by the deceased.

37. Reliance is placed on rulings of the Supreme Court reported as *State of AP vs. Punati Ramulu & Ors. 1994 Supp (1) SCC 590; Amar Nath Jha vs. Nand Kishore Singh Criminal Appeal Nos. 94-97/2013; and* ruling of a division bench of this Court in *Budhan Singh & Ors. vs. State (Through N.C.T. of Delhi) 2008 (2) JCC 1017* and a division bench of the High Court of Bombay reported as *Dhondiram vs. State of Maharashtra & Ors. 2016 SCC Online Bom 3078*, to argue that there is no case of abetment of suicide made out on which the petitioners could be summoned.

38. As noted earlier, the suicide occurred on 18.07.2015. The statement of the first informant had been recorded during the inquiry on the same day at the scene of occurrence. The informant was thereafter again examined by the police official on 20.07.2015. If the offence of abetment of suicide had been committed, the criminal law stood set in motion either by the statement of the first informant on 18.07.2015 or at least by the statement recorded on 20.07.2015. Those were the initial inputs, they being in the nature of "*information*" of a cognizable offence within the meaning of Section 154 Cr.P.C.

39. If it were so, the complaint in writing submitted under his signatures by the first informant on 27.07.2015 would be a statement presented in the wake of the said first information and consequently hit by the provision contained in Section 162 Cr.P.C.[*Punati Ramulu & Ors.* (supra). Conversely, if the statements made on 18.07.2015 and 20.07.2015 are treated as incomplete, or deficient, or cryptic, and

consequently not actionable, the complaint submitted on 27.07.2015 which formed the basis of the FIR, turns out to be a materially improved version. As observed by the Supreme Court in *Amar Nath Jha* (supra), "*the non-reporting of essential facts which were known to the informant*" requires to be borne in mind and though the FIR "*need not be encyclopedia of the crime*", it is well-settled that the "*absence of certain essential facts, which were conspicuously missing in the FIR, point towards suspicion that the crime itself may be staged*".

40. Recording disapproval of belated complaint submitted after "*deliberations*" in *Punati Ramulu & Ors.* (supra), the Supreme Court ruled as under:-

> *"5. According to the evidence of PW 22, Circle Inspector, he had received information of the incident from police constable No. 1278, who was on 'bandobast' duty. On receiving the information of the occurrence, PW 22 left for the village of occurrence and started the investigation in the case. Before proceeding to the village to take up the investigation, it is conceded by PW 2 in his evidence, that he made no entry in the daily diary or record in the general diary about the information that had been given to him by constable 1278, who was the first person to give information to him on the basis of which he had proceeded to the spot and taken up the investigation in hand. It was only when PW 1 returned from the police station along with the written complaint to the village that the same was registered by the Circle Inspector, PW 22, during the investigation of the case at about 12.30 noon, as the FIR, Ex. P-1. In our opinion, the complaint, Ex. P-1, could not be treated as the FIR in the case as it certainly would be a statement made during*

the investigation of a case and hit by Section 162 CrPC. As a matter of fact the High Court recorded a categorical finding to the effect that Ex. P-1 had not been prepared at Narasaraopet and that it had "been brought into existence at Pamaidipadu itself, after due deliberation". Once we find that the investigating officer has deliberately failed to record the first information report on receipt of the information of a cognizable offence of the nature, as in this case, and had prepared the first information report after reaching the spot after due deliberations, consultations and discussion, the conclusion becomes inescapable that the investigation is tainted and it would, therefore, be unsafe to rely upon such a tainted investigation, as one would not know where the police officer would have stopped to fabricate evidence and create false clues. Though we agree that mere relationship of the witnesses PW 3 and PW 4, the children of the deceased or of PW 1 and PW 2 who are also related to the deceased, by itself is not enough to discard their testimony and that the relationship or the partisan nature of the evidence only puts the Court on its guard to scrutinise the evidence more carefully, we find that in this case when the bona fides of the investigation has been successfully assailed, it would not be safe to rely upon the testimony of these witnesses either in the absence of strong corroborative evidence of a clinching nature, which is found wanting in this case".

41. Be that as it may, the offence of *"abetment of suicide"* is made punishable by Section 306 IPC which reads thus:-

"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".

42. As held in *Sangarabonia Sreenu vs. State of Andhra Pradesh (1997) 4 SCC 214,* the basic constituents of the offence under Section 306 IPC are "*suicidal death and abetment thereof*". As explained in *M. Mohan vs. State AIR 2011 SCC 238,* the word "*suicide*" is coined by two expressions they including "*sui*" which means "*self*" and "*cide*" which means "*killing*", thus implying an "*act of self-killing*". To put it simply, the person committing suicide must commit it by himself irrespective of the means employed by him in achieving his object of killing himself.

43. As noted earlier, there is not the least any doubt that Chander Shekhar committed suicide by coming under the wheels of a running railway train in the morning of 18.07.2015. This satisfies one of the ingredients of the offence made punishable under Section 306 IPC. But, the moot question to be addressed is as to whether there is any person responsible for "*abetment of the said suicide*".

44. The expression "*abetment*" is defined by Section 107 IPC which reads thus:-

> *"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 willful misrepresentation, or by willful 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.
Explanation 2 – Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitate the commission thereof, is said to aid the doing of that act."

45. In the context of offence of abetment of suicide, the intention of the person accused "*to aid*" or " *to instigate*" the deceased to commit suicide has been always treated to be an essential or a pre-requisite. The case of *Mahendra Singh & Anr. vs. State of M.P. 1995 Supp (3) SCC 731* involved suicidal death of a married woman against the backdrop of allegations constituting the offence of cruelty punishable under Section 498A IPC. The dying declaration relied upon by the prosecution seemed to indicate that the deceased had been subjected to "*harassment*". Rejecting the charge of abetment of suicide "*merely on the allegation of harassment to the deceased*", the Supreme Court observed thus:-

"2. ... Abetment has been defined in Section 107 IPC to mean that a person abets the doing of a thing who firstly instigates any person to do a 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 ingredients of abetment are attracted on the statement of the deceased".*

46. In *Ramesh Kumar vs. State of Chhattisgarh (2001) 9 SCC 618* in support of the charge for the offence under Section 306 IPC, reliance had been placed on the dying declaration of the deceased woman about quarrel between her and the husband (accused) preceding the incident wherein she had set herself afire. The court examined different shades of meaning of "*instigation*" and observed:-

> *"20. 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. The present one is not a case 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 been inferred. A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation."*

47. Holding in the factual background of that case the accusations to be unsustainable, the Supreme Court ruled thus:-

> *"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."

48. The case reported as *Chitresh Kumar Chopra vs. State (Govt. of NCT of Delhi) (2009) 16 SCC 605* also involved the offence of abetment of suicide. The Court examined the aspect of "abetment", having regard to the dictionary meaning of the words "*instigation*" and "*goading*" thus:-

> *"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 "goading" or "urging forward". The dictionary meaning of the word "goad" is "a thing that stimulates someone into action; provoke to action or reaction" (see Concise Oxford English Dictionary); "to keep irritating or annoying somebody until he reacts" (see Oxford Advanced Learner's Dictionary, 7th Edn.)."*

49. The court then ruled thus :

> *"20. In the background of this legal position, we may advert to the case at hand. The question as to what is the cause of a suicide has no easy answers because suicidal ideation and behaviours in human beings are complex and multifaceted. Different individuals in the same situation react and behave differently because of the personal meaning they add to each event, thus accounting for individual*

vulnerability to suicide. Each individual's suicidability pattern depends on his inner subjective experience of mental pain, fear and loss of self-respect. Each of these factors are crucial and exacerbating contributor to an individual's vulnerability to end his own life, which may either be an attempt for self-protection or an escapism from intolerable self."

50. In *Sanju @ Sanjay Singh Sengar vs. State of M.P. (2002) 5 SCC 371,* the deceased was the husband of the sister of the appellant. The relations between the deceased and his wife had been strained, the appellant having allegedly threatened and abused the deceased by using filthy words, during a quarrel that had taken place two days prior to the commission of suicide. Expounding on the width and scope of Section 107 IPC, it was observed:-

> *"6. Section 107 IPC defines abetment to mean that a person abets the doing of a thing if he firstly, 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".*

51. It was further observed:-

> *"12. ... The word "instigate" denotes incitement or urging to do some drastic or inadvisable 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 on the spur of the moment*

cannot be taken to be uttered with mens rea. It is in a fit of anger and emotion…"

52. In the case of *Sanju @ Sanjay Singh Sengar* (supra) also, the prosecution had, *inter alia,* relied on a suicide note left behind by the deceased. Referring to the factual matrix of the said case, in general, and construing the suicide note, in particular, the Supreme Court held thus:-

> *"14. A plain reading of the suicide note would clearly show that the deceased was in great stress and depressed. One plausible reason could be that the deceased was without any work or avocation and at the same time indulged in drinking as revealed from the statement of the wife Smt Neelam Sengar. He was a frustrated man. Reading of the suicide note will clearly suggest that such a note is not the handiwork of a man with a sound mind and sense. Smt Neelam Sengar, wife of the deceased, made a statement under Section 161 CrPC before the investigation officer. She stated that the deceased always indulged in drinking wine and was not doing any work. She also stated that on 26-7-1998 her husband came to them in an inebriated condition and was abusing her and other members of the family. The prosecution story, if believed, shows that the quarrel between the deceased and the appellant had taken place on 25-7-1998 and if the deceased came back to the house again on 26-7-1998, it cannot be said that the suicide by the deceased was the direct result of the quarrel that had taken place on 25-7-1998. Viewed from the aforesaid circumstances independently, we are clearly of the view that the ingredients of "abetment" are totally absent in the instant case for an offence under Section 306 IPC. It is in the statement of the wife that the deceased*

always remained in a drunken condition. It is common knowledge that excessive drinking leads one to debauchery. It clearly appeared, therefore, that the deceased was a victim of his own conduct unconnected with the quarrel that had ensued on 25-7-1998 where the appellant is stated to have used abusive language. Taking the totality of materials on record and facts and circumstances of the case into consideration, it will lead to the irresistible conclusion that it is the deceased and he alone, and none else, is responsible for his death".

53. Ruling that in such cases as involved allegations of abetment of suicide, there should be "*intention to provoke, insight or encourage the doing of an act by (the deceased)",* it was held:

> *"16. This Court in Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi) 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".*

54. Taking a similar view, as above, in its decision in the case of *Gangula Mohan Reddy vs. State of Andhra Pradesh (2010) 1 SCC 750,* the Supreme Court further held:

> *"17. 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 this act must have been intended to push the deceased into such a position that he committed suicide."

55. The law to above effect was reiterated in *S.S. Cheena vs. Vijay Kumar Mahajan & Anr. (2010) 12 SCC 190,* wherein the Supreme Court, while tracing the law as declared in *Ramesh Kumar* (supra) and *Chitresh Kumar Chopra* (supra), also took note of the caution administered in an earlier case reported as *State of West Bengal vs. Orilal Jaiswal (1994) 1 SCC 73* to the following observations:-

"17. ... The Court should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end the life by committing suicide. 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 of abetting the offence of suicide should be found guilty."

56. In *S.S. Cheena* (supra), the Supreme Court ruled thus:-

> *"25. 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.*
>
> *26. 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".*

57. In *Madan Mohan Singh* vs. *State of Gujarat & Anr.* (2010) 8 SCC 628, the person who had committed suicide, was employed as a driver, under the person who was accused of abetment of such suicide on the basis of allegations that the latter would harass him by calling him upon to run his private errand, rebuking him for no fault and threatening him with suspicion. The deceased had left behind a suicide note wherein he had expressed anguish with his superior (the accused) accusing him of having "*wronged*" the former (the deceased). Based, *inter alia,* on the contents of the said suicide note, the widow had lodged the FIR accusing the petitioner before the Supreme Court of "*bias*" and having intentionally insulted her husband in front of the

staff, this having led to the husband having got "*depressed*" and committing suicide. The superior against whom allegations had been made (i.e. the accused) had approached the High Court to pray for quashing of the FIR, invoking its inherent power and jurisdiction under Section 482 Cr.P.C. on the ground that the proceedings arising out of such complaint, translated into FIR, were in the nature of abuse of process of law. The prayer was rejected by the High court and the matter was taken to the Supreme Court. Argument was raised that the court "*should not go into the merits of FIR*" or the "*suicide note*". The Supreme Court rejected the contentions observing that FIR and suicide note required to be "*closely examined*" to ascertain if there was "*some material*" rendering it a proper complaint. Holding that "*the baseless and irrelevant allegations*" could not be used as a basis for prosecution for a serious offence under Section 306 IPC and observing that there was "*no nexus*" between the suicide and the so-called suicide note – its contents not depicting or " *expressing anything intentional on the part of the accused"*, it being a rhetoric document, the proceedings arising out of the FIR were quashed on the following reasoning:-

> *"13. ... 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 the 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. , this Court had quashed the proceedings initiated against the accused".

58. In reaching the above result, the Supreme Court also observed thus:-

> *"10. We are convinced that there is absolutely nothing in this suicide note or the FIR which would even distantly be viewed as an offence much less under Section 306 IPC. We could not find anything in the FIR or in the so-called suicide note which could be suggested as abetment to commit suicide. In such matters there must be an allegation that the accused had instigated the deceased to commit suicide or secondly, had engaged with some other person in a conspiracy and lastly, that the accused had in any way aided any act or illegal omission to bring about the suicide".*

59. In *Gurcharan Singh Vs. State of Punjab (2017) 1 SCC 433*, it was observed thus :-

> *"21. It is thus manifest that the offence punishable is one of abetment of the commission of suicide by any person, predicating existence of a live link or nexus between the two, abetment being the propelling causative factor. The basic ingredients of this provision are suicidal death and the abetment thereof. To constitute abetment, the intention and involvement of the accused to aid or instigate the commission of suicide is imperative. Any severance or absence of any of these constituents would militate against this indictment. Remoteness of the culpable acts or omissions rooted in the intention of the accused to actualise the suicide would fall short as well of the offence of abetment essential to attract the punitive mandate*

of Section 306 IPC. Contiguity, continuity, culpability and complicity of the indictable acts or omission are the concomitant indices of abetment. Section 306 IPC, thus criminalises the sustained incitement for suicide."

60. Studies have shown that suicide or suicidal behaviours may occur for a variety of reasons, each mostly concerning the mental state of mind of the person taking such extreme step, the causes including depression, fear of social problems or challenges, bipolar disorder, stress related economic, social or other aspects of life etc. [see *2014 Report of National Crime Records Bureau*]. In *Mohd. Hoshan, A.P. and Anr. vs. State of Andhra Pradesh, (2002) 7 SCC 414*, the court analyzed the reason for commission of suicide by a married woman against the backdrop of she having been subjected to mental cruelty in the matrimonial home taking into account various factors like sensitivity of the individual victim, social background, environment, education, level of endurance, etc. Similarly in *Sharad Birdhichand vs. State of Maharashtra, (1984) 4 SCC 116*, the court took note of the celebrated work titled "*Death, Society and Human Experience*" authored by eminent psychiatrist, Robert, J. Kastenbaum to observe, *inter alia,* that the circumstances, moods or emotions may drive a person to become psychotic or severely disturbed so as to commit suicide, sense of dis-satisfaction or frustration or, at times, even the objective of revenge goading a person in such direction.

61. In cases where the element of revenge is palpable from the facts and circumstances attendant upon the commission of suicide, particularly where such motive is declared by a suicide note, the

victim leaves no room for doubt that he proceeded in such direction impelled by deep sense of bitterness, grudge, hostility or animus, this requiring the possibility of his wisdom being clouded and consequently the credibility of his suicide note necessitating close scrutiny.

62. It is well settled that in order to prosecute a person on the charge of abetment of suicide of another, there must be evidence presented to show the requisite *mens rea* and this requires proof of commission of certain act(s) with the "*intention*" to push the deceased into a position that he commits suicide. The act(s) may take the shape of providing intentional aid to the doing of certain acts that lead to the suicide or by instigation. The "*instigation*" may be by offering provocation, incitement, urging, encouraging, goading or stimulating into action. To put in simply, commission of suicide must be the intended objective to be achieved by the person accused of abetment. While examining the culpability, the court would undoubtedly discount hyper-sensitivity to ordinary petulance, discord or differences as happen in day-to-day human interaction. In case of suicide of a married women in certain circumstances there may be raised presumption of "abetment" (in terms of Section 113-A of Evidence Act, 1872). But, in other cases involving allegations of abetment of suicide, the court must search for evidence of aiding or instigation etc. Further, the court must bear in mind the evidence as to mental state of the deceased while construing the other material, particularly the suicide note, if any. The live link or nexus is to be generally judged by contiguity, continuity, culpability and complicity.

63. The widow (Juhi) of the deceased, in her statement, has not been specific as to the period around which the deceased had "left the job" in the company of the petitioners so as to shift to his native village. In his second statement to the police, recorded on 20.07.2015, the first informant had indicated that the services of the deceased had been "terminated" by the employers. However, in the complaint dated 27.07.2015, which formed the basis of the FIR, he changed the version by claiming that the deceased had "decided" in April, 2015 "to leave" the employment of the petitioners. Be that as it may, from the statements of all the witnesses, it is clear that the employment had continued till date of the suicide, the deceased having remained absent for sometime and then reported back in June, 2015 for rendition of accounts. Pertinent to note here that the first informant, brother of the deceased, and the other witness Anjani Kumar Singh (co-worker) had also continued to be in the employment of the petitioners at least till 18.07.2015, on the morning of which Chander Shekhar opted to die by coming under the wheels of a railway train. This is a conduct not jelling with grievances which were raised nine days after the death. Though these witnesses do speak about ill treatment meted out to the deceased by the employers in the preceding weeks, it is clear that they had made no protest nor lodged any complaint with any authority in such regard, their endeavour throughout being to assist the deceased in demonstrating that he had not indulged in any mis-appropriation. On the contrary, they continued in their jobs till the very last. The allegations made after the event seem to be product of afterthought. There is a very high probability that the allegations of physical

assaults or threats to lodge police case against this backdrop, leveled for the first time on 27.07.2015, through the complaint in writing were "staged". [see *Amar Nath Jha* (supra)].

64. There is not a whisper of allegation in any part of the evidence presented before the Metropolitan Magistrate to the effect that the petitioners had at any stage instigated, provoked, incited, urged, encouraged or stimulated the deceased to kill himself. They were interacting with him, even as per the version of the first informant and other witnesses of the preceding events, not directly, but through his brother (first informant) and invariably, and always, in the presence of others. It is also vivid from the material gathered that the sole objective of the petitioners was to compel the deceased to render the accounts for the monies that he had collected on their behalf from various dealers in the different towns of the State of Haryana. The statement of sales manager Ved Prakash clearly shows that the petitioners had agreed to go and visit the offices of various dealers for such purpose, alongwith the deceased and other employees, for the reason that they were inclined to adopt a soft approach towards "*an old employee*", whose brother had also served them for more than a decade. As noted earlier, evidence has come forth to show that certain cash deposits were made in the personal savings accounts of the deceased which were contemporaneous to the collections made by him from various dealers of Haryana for and on behalf of his employers, this rendering such credits to be *ex facie* suspect, he having no other known source of income. No explanation worth the name with regard to such serious incriminating material against the conduct of the

deceased has been offered by his brother (first informant), co-worker (Anjani Kumar Singh) or his widow (Juhi). This circumstance, in fact, renders their version that no discrepancy came to light during the tour of various towns in Haryana, a few days prior to the suicide, in very poor light.

65. In the document described as suicide note, the deceased very cryptically accused the company which had employed him to be responsible for the extreme step that he was (about) to take, he having been "harassed". The note is conspicuously silent with regard to the cause for harassment or result of the tour that had been undertaken to the offices of various dealers and the revelations that had been made during such visits. The document reflects at best the perception of the author and his decision to kill himself. The mental state, possibly stemming from frustration at not being able to account for money to the employers, seems to have brought the deceased to the precipice. Bitterness towards employers is discernible from the document. The omnibus expression used, intended to rope in the proprietors of the "company" collectively, even though there is no evidence of participation in his interrogation by some of them, gives away the objective of the author to wreck vengeance.

66. Against the backdrop of the fact that there is substantive evidence collected by the police to support the allegation of the petitioners about defalcation of money, the suspicion of the petitioners (employers) in this regard consequently being not unfounded, there was nothing improper on their part to exert pressure on the employee (deceased) to come clean by explaining the accounts and the

discrepancies that had come to their notice. In such fact situation, they (the employers) would have been within their legitimate right to approach the authorities (the police) even for criminal action. It is clear from the evidence that the petitioners were trying to avoid approaching the investigative agency of the State as they had been persuaded to go soft and instead hold in-house inquiry with the aid and assistance of the brother of the suspect employee and other co-workers. The allegations of they having hurled abuses or given slaps to the deceased at the time of his interrogation in the office, in the presence of his brother or other members of the staff, even if believed to be true, howsoever unjust or improper the same may be, cannot become the basis of inference that the intention of the employer(s) was to create a situation where the deceased was left with no other option but to take his own life. The threat to lodge a police case against such backdrop as above can definitely not be treated as illegitimate, not the least a reason to assume that the intention was to drive the person suspected of criminal breach of trust to commit suicide.

67. In *State of Haryana Vs. Bhajan lal, 1992 Supp (1) SCC 335*, while summarizing the principles of law governing the exercise of the inherent power under Section 482 Cr. PC, to prevent abuse of the process of court or otherwise to secure the ends of justice, the Supreme Court included amongst illustrations where such power could be invoked to bring an end to the criminal prosecution, cases where "*the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused*."

[also see *R.P. Kapur vs. State of Punjab, (1960) 3 SCR 388* and *State of West Bengal Vs. Swapan Kumar Guha, (1982) 1 SCC 561*].

68. On the afore-stated facts, and in the circumstances, there is no live link or nexus between the acts of commission or omission attributed to the petitioners vis-à-vis the deceased and the act of the latter resulting in his suicidal death. The Metropolitan Magistrate while examining the final report of police negativing the case of the complainant, alongside the protest petition, seems to have formed an impression on selective reading of one-sided version in the FIR. The order issuing process not having taken into account the voluminous evidence to the contrary is perverse and, therefore, cannot be upheld. There being nothing in the evidence presented to support the impression of the Magistrate that the deceased had been left by the petitioners with no other choice but to kill himself, it would be unjust to call upon them to face the prosecution on accusations which are imaginary rather than real.

69. In the result, the impugned order dated 03.12.2016 of the Metropolitan Magistrate is set aside. The proceedings initiated against the petitioners in the matter arising out of the FIR no.215/2015 of police station Sarai Rohilla Railway Station are hereby quashed.

70. The petition and the application filed therewith are disposed of in above terms.

(R.K. GAUBA)
JUDGE

OCTOBER 01, 2018

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