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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION***

CRIMINAL APPLICATION NO.610 OF 2019

Saksham Rajeev Kharbanda
Age : 21 years, Occ: Student,
Res. at: House No.308,
New Lajpat Nagar, Model Gram,
Tehsil and Dist:Ludhiyana,
State – Punjab

...Applicant

Versus

State of Maharashtra,
Through P.I. Khargar Police St.,
Taluka Panvel, District Raigad.

...Respondent

Mr. U. P. Warunjikar, for the Applicant.

Ms. P. P. Shinde, A.P.P for the Respondent - State.

PSI – A. R. Kamble, Khargar Police Station, Navi Mumbai, is present.

CORAM : REVATI MOHITE DERE, J.

DATE : 8th NOVEMBER, 2019

ORAL JUDGMENT :

1. Heard learned counsel for the parties.
2. Rule. Rule is made returnable forthwith with the consent of the parties and is taken up for final disposal. Learned APP waives notice on behalf of Respondent-State.

3. By this application preferred under Section 482 of the Code of Criminal Procedure, the applicant has impugned the order dated 11th February, 2019, passed by the learned District Judge – 4 and Asstt. Sessions Judge, Alibag, below Exhibit – 3 in Sessions Case No.69 of 2017, by which the learned Judge was pleased to reject the applicant's application seeking discharge from the said case.

4. A few facts as are relevant to decide the aforesaid application are as under:-

The applicant, a resident of Ludhiana, Punjab, was studying in the National Institute of Fashion Technology ('N.I.F.T') at Kharghar. The applicant at the relevant time was in the first year and the deceased – Rasika was in the second year of the same institute. It appears that the applicant and Rasika were friends and that their friendship developed into a love affair. According to the prosecution, there used to be petty quarrels between the two and that on one occasion in December, 2015, Rasika had attempted to commit suicide by slitting her wrist with a blade. It appears that pursuant thereto, the applicant took Rasika to the hospital for treatment. According to the prosecution, Rasika committed suicide by jumping from the building where she was residing, on 5th March, 2016. No

suicide note was left by Rasika. Rasika's father, a resident of Ghatkopar, Mumbai, informed the police on learning of the same and visited the place where Rasika had committed suicide. Rasika's father on the basis of the information received from Rasika's friends in particular from Kajol Desai, lodged a complaint/FIR, as against the applicant, alleging an offence punishable under Section 306 of the India Penal Code. After investigation, charge-sheet was filed as against the applicant in the Court of the learned Magistrate. Since, the offence was triable by the Court of Sessions, the case was committed to the Sessions Court for trial.

The applicant filed an application (Exhibit – 3) under Section 227 of Code of Criminal Procedure, seeking his discharge from the said case on the ground that no offence as alleged under Section 306 of the Indian Penal Code was disclosed, *qua* the applicant. The said application (Exhibit – 3) was rejected by the learned District Judge – 4 and Asstt. Sessions Judge, Alibag, vide order dated 11th February, 2019 and the applicant was directed to remain present on the next date for framing of charge.

5. Learned Counsel for the applicant submitted that taking the prosecution case as it stands, no offence as alleged under Section 306 of the Indian Penal Code is disclosed, as against the applicant. He submitted

that the complaint/FIR is lodged on the basis of hearsay evidence and that at no point of time Rasika had made any disclosure either to the complainant (father) or her mother, as against the applicant. He submitted that the statements on record show that Rasika had attempted to commit suicide in December 2015 and thereafter, committed suicide on 5th March, 2016. He submitted that there is nothing on record to show that the applicant and deceased – Rasika had met after December 2015 i.e. after Rasika's first attempt to commit suicide. He submitted that the observations made by the learned Judge while rejecting the applicant's discharge application in particular paragraph 14 of the said order are perverse and cannot be sustained.

6. Learned APP opposed the application.

7. Perused the papers. As noted the applicant, aged 21 years was studying in 'N.I.F.T' at Kharghar and so was the deceased – Rasika. The applicant was in the first year and Rasika in the second year, when they met and their friendship developed into a love affair. It appears from the statements of Rasika's friends, that there used to be frequent petty quarrels between the applicant and Rasika and on one occasion, Rasika had attempted to commit suicide by slitting her wrist with a blade. It also

appears from the said statements that the applicant had taken Rasika to the hospital and thereafter had gone to Ludhiana, Punjab. There is nothing to show that after December 2015, the applicant and Rasika had revived their friendship. The statements of Rasika's friends reveal that post December 2015, Rasika was under stress due to the break up and as such could not concentrate on her studies. On 5th March, 2016, Rasika committed suicide by jumping from the building, in which she was residing. The death of Rasika is indeed unfortunate. However, the question that arises here for consideration is whether in the facts, the applicant can be said to have abetted the commission of Rasika's suicide.

8. The relevant provisions read as under:-

Section 306 of the Indian Penal Code 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.*

“Abetment” has been defined under Section 107 of the Code, 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.”*

Explanation 2 which has been inserted along with Section 107 reads as under:-

"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."

9. It is therefore evident that a person abets the doing of a thing, if he instigates any person to do that thing; or engages with one or more other person or persons in any conspiracy for the doing of that thing; or intentionally aids, by any act or illegal omission, the doing of that thing.

10. In ***Ramesh Kumar v. State of Chhattisgarh***¹, the Apex Court had an occasion to deal with a case, where the wife committed suicide, and the husband was prosecuted for an offence under Section 306 of Indian Penal Code. In a dispute between the husband and wife, the appellant

1 (2001) 9 SCC 618

husband uttered "you are free to do whatever you wish and go wherever you like". Thereafter, the wife of the appellant, Ramesh Kumar committed suicide. The Apex Court in para 20 has examined different shades of the meaning of "instigation". Para 20 reads as under: (SCC p. 629)

"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."

In this case, the Court came to the conclusion that there is no evidence and material available on record wherefrom an inference of the appellant-accused having abetted commission of suicide by Seema may necessarily be drawn.

11. In ***State of West Bengal v. Orilal Jaiswal***², the Apex Court has cautioned in para 17 as under;

“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 [appears] 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.”

12. In ***Mahendra Singh v. State of M.P***³, the allegations levelled were as under: (SCC p. 731, para 1)

"1. ... 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-

² (1994) 1 SCC 73

³ 1995 Supp (3) SCC 731

law. Because of these reasons and being harassed I want to die by burning."

The Court on the aforementioned allegations came to a definite conclusion that by no stretch the ingredients of abetment are attracted on the statement of the deceased. According to the appellant, the conviction of the appellant under Section 306 IPC merely on the basis of the aforementioned allegation of harassment of the deceased is unsustainable in law.

13. In ***Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi)***⁴ the Apex 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 and that each case has to be decided on the basis of its own facts and circumstances.

14. Similarly, in ***S.S. Chheena v/s Vijay Kumar Mahajan and Anr***⁵, the Apex Court in paragraphs 25 and 26, observed as under:-

4 (2009) 16 SCC 605

5 (2010) 12 SCC 190

- “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”.*

15. The facts in the present case clearly do not attract any of the necessary ingredients as are required to constitute an offence under Section 306 of the Indian Penal Code, inasmuch as, there is no instigation, criminal conspiracy to commit the act or intentionally aiding the commission of the act.

16. The material on record does not show that the applicant in anyway either instigated or intentionally aided the commission of Rasika’s

suicide. *Mens rea*, is clearly absent on the applicant's part to show his complicity.

17. Having regard to the judicial pronouncements and the facts of the present case, no offence as alleged under Section 306 of the Indian Penal Code is disclosed, as against the applicant. The observations made by the learned Sessions Judge in paragraph 14 of the impugned order dated 11th February, 2019 clearly do not record the correct proposition of law and on the face of it, are perverse and unsustainable. The relevant part of para 14 reads thus:-

“14. The F.I.R., the statements of witnesses on record *prima facie* shows that Rasika committed suicide due to unbearable stress after the breakup. It was the crucial time when she was in the need of emotional as well as mental support. Though the parents failed to discharge their duty who were not staying with Rasika, it was the duty of applicant to take care of Rasika when she was under the stress.....”

18. Accordingly, the application is allowed and the impugned order dated 11th February, 2019, passed by the learned District Judge – 4 and Asstt. Sessions Judge, Alibag, below Exhibit – 3 in Sessions Case No.69 of 2017, is quashed and set aside and the applicant is discharged from the said case i.e. Sessions Case No.69 of 2017.

19. Rule is made absolute in above terms.
20. All concerned to act on the authenticated copy of this judgment.

REVATI MOHITE DERE, J.