

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.731 OF 2017

Poonam Agarwal	.. Applicant
Versus	
State of Maharashtra & Anr	.. Respondents

WITH

CRIMINAL APPLICATION NO.214 OF 2019
IN
CRIMINAL APPLICATION NO.731 of 2017

Brig. P. Ramesh, Station Commander	.. Intervenor
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In the matter between

Poonam Agarwal	.. Applicant
Versus	
State of Maharashtra and anr	.. Respondents

WITH

CRIMINAL APPLICATION NO.736 OF 2017

Deepchand S/o Kashmir Singh	.. Applicant
Versus	
State of Maharashtra and anr	.. Respondents

WITH

CRIMINAL APPLICATION NO.213 OF 2019
IN
CRIMINAL APPLICATION NO.736 of 2017

Brig. P. Ramesh, Station Commander	.. Intervenor
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In the matter between

Deepchand s/o Kashmir Singh

.. Applicant

Versus

State of Maharashtra and anr

.. Respondents

...

Mr. Uday P. Warunjikar for the applicants.

Mr. Deepak Thakare, P.P for the State.

Mr. S.D. Patil for respondent no.3.

**CORAM: RANJIT V. MORE &
SMT. BHARATI H. DANGRE, JJ.**

DATED : 18th APRIL 2019

JUDGMENT (Per Smt. Bharati Dangre, J)

1 Both the aforesaid applications seek a concordant relief of quashing and setting aside of C.R.No.19 of 2017 registered by Deolali Camp Police Station, Nashik on 27th March 2017, thereby arraying the applicants in both these Applications as accused. By the said C.R, offences under Sections 306, 451, 500 read with Section 34 of the Indian Penal Code and Section 3 and 7 of the Officials Secrets Act, 1923, have been invoked and applied against the applicants.

Since the relief sought in both the applications is more or less of the same nature, both the applications are heard together.

2 Criminal Application No.731 of 2017 is filed by the applicant who is a Journalist by profession and has worked in the said capacity for various newspapers and news channels. At the time of registration of FIR, the said applicant was working as an Associate Editor of Web News Portal, 'The Quint'. The applicant claims that she has been credited with various breaking news and has an outstanding career in investigative journalism and has received many accolades and awards for her work in the said field. She has specifically asserted in her application that she has exposed several corruption rackets, fake encounters and was the one responsible for exposing the nexus between the politician and corporate house.

The applicant Deepchand Kashmir Singh, an applicant in Criminal Application No.736 of 2017 is a retired Soldier and a War veteran having participated in operation 'Vijay', 'Rakshak' and 'Parakram'. He served the Indian Army from the year 1994 to 2005, when he lost both his legs and one hand in enemy fire. At the relevant time when the subject offence was registered against him, he was running a canteen business in Deolali campus till the alleged incident took place

and after that, he was evicted from his canteen premises and it is his allegation that it was done as a vindictive action.

3 The subject offence came to be registered against both the applicants in respect of an incident which was reported by Lance Naik No.1517398OW Naresh Kumar Jadhav, resident of Deolali Camp. In his complaint dated 27th March 2017, he alleged that he is working in the capacity as Lance Naik and posted at Deolali camp. In the complaint, he states that he was working on Adam duty with Col. Anup Gajanan Barbare. The complaint further proceeds to state that similarly situated to him, are many other jawans who do Adam duty for various offices and this includes one Roy Mathew. It is stated that on 7th February 2017, while he was having his evening walk in the garden situated at Haig Line at Mahendra Enclave, he spotted retired Army Jawan Deepchand (applicant in Application No.736/2017 who had lost both his legs and one hand, sitting on a bench with an unknown lady who was holding a small purse in her hand and talking with someone on the phone. Upon seeing these two, the complainant walked

towards Deepchand and inquired as to who the lady was and he received the reply from Deepchand that the lady (Applicant in Application No.731/17) was his relative. At the relevant time, he reported that there were other jawans who were trolling in the park and they also gathered and then the woman started inquiring with the complainant and other jawans as to what kind of work is entrusted to them. She posed questions about the nature of their work and they replied that there was no trouble working with their Officers and they were posted on Adam's Duty. At that time, the Army Driver Roy Mathew was also there. The complaint further proceeds to state that on 24th February 2017, there was a video which was uploaded on YouTube and he had an occasion to view the same and this was in relation to an incident which took place on 7th February 2017, but in the video, the faces of the Jawans including his own face was blurred. The video was in Deepchand's voice and it was the same lady who was in the video whom he had met on 7th February 2017. The complainant came to know that her name was Poonam Agarwal and that the video was recorded by her without their knowledge and it reported a distorted version

with an aim to defame the army. On noticing this video, the complainant and other Jawans felt tensed as they would be subjected to Court Martial and it is at that time, the complainant came to know that the lady was not Deepchand's relative but was a journalist. It was reported in the complaint i.e. on 25th February 2017, the complainant was summoned by his superior and enquiries were made about the incident that was videographed and he informed the superiors that Deepchand had brought the said lady. On 2nd March 2017, it was reported that Roy Mathew, the Army driver had committed suicide by hanging by neck and his body was found in decomposed state behind Raquet Battery, Haig Line, Demotional Quarter. It is further alleged that Roy Mathew had committed suicide as he was under stress as the video had gone viral and he thought that it would defame him and the Army and he would be subjected to Court Martial and would not be able to face the world thereafter.

The complaint therefore alleged that Poonam Agarwal, the Reporter of the news channel, 'The Quint', came to the prohibited area at Mahendra Enclave on 7th February 2017

and despite there being restriction on filming and photography, carried out a recording and posted the same on electronic media so as to defame the army and the stress generated by the said video was responsible for driving Roy Mathew to commit suicide. The said complaint dated 27th March 2017 resulted into registration of an FIR under Sections 306, 451, 500, 34 of the IPC and Sections 3 and 7 of the Official Secrets Act against both the applicants before us.

4 We have carefully perused the complaint and we have heard the learned counsel Shri Warunjikar appearing for the applicants. Shri Warunjikar would submit that bare reading of the FIR/complaint, even if it is taken at face value, do not disclose any of the ingredients necessary for charging the applicants with the offences invoked and applied against them. He would submit that in order to attract the provisions of the Official Secrets Act, 1923, the prosecution should exhibit that the act allegedly done by the accused should be prejudicial to the safety or interest of the State. By no stretch of imagination, the complaint disclose that the applicants have acted, in any

manner, which can be said to be prejudicial to the interest of the State. Therefore, according to him, the provisions of the said Act cannot be attracted as none of the ingredients of Section 3 of the Official Secrets Act are *prima facie* made out. As far as Section 7 is concerned, he submits that the said provision is attracted only if a person knowingly obstructs, misleads or interferes or impedes any police officer from conducting his duty in a prohibited place. According to Shri Warunjikar, the video was allegedly shot at Haig Line, Mahendra Enclave, in an open garden area which is a part of residential area, open to the civilians and therefore, it is not a prohibited area. He would also invite our attention to the provisions of Section 451 of the Indian Penal Code and submit that the said provision is attracted only if a person trespasses into the house of another with the intention of committing an offence punishable with Imprisonment and no such case is made out if the complaint is read as it is. Therefore, according to him, neither Section 441 nor Section 451 can be made out on the basis of the said complaint. As far as Section 499 is concerned, he would submit that the complaint by no stretch of

imagination disclose harming of reputation of anyone and it also fails to exhibit as to what harm has been caused by the present applicants. Thus, according to him, Section 500 of the IPC has been wrongly invoked and applied against the applicants. He would hasten to add that the FIR taken at its face value do disclose that the complainant had alleged that the deceased Roy Mathew had committed suicide due to the pressure of being subjected to Court Martial and in any case, the applicants cannot be held responsible for the said Act. Shri Warunjikar would also submit that the incident reported is of 7th February 2017 and the video became viral on 25th February 2017 whereas the body of the deceased Roy Mathew was discovered on 2nd March 2017, meaning thereby that he had committed suicide somewhere before this date. He would thus submit that there is no direct nexus with the video being made viral by the applicant no.1 and the commission of suicide by Roy Mathew.

5 Shri Warunjikar asseverated that the applicant Journalist had only attempted to bring the factual position

about the Jawans in the Army being entrusted with the duty not befitting their rank and this was a matter of concern since the Sahayak system prevalent in the army is condemned by the Parliament Standing Committee in the year 2008. He would invite our attention to the said report of the Standing Committee which had taken cognizance of the fact that there are numerous jawans who are engaged in the residence of some of the senior officers for domestic work and serve their family members. It had further noted that the Jawans are recruited for serving the nation and not to serve the family members in household work which is highly demeaning and humiliating. The Committee, therefore, took serious note of the shameful practice and commented that the practice of utilizing services of Jawan as Sahayak, prevalent in the army in one form or the other, who has no place in independent India and necessary instructions were given to forthwith stop the said practice since it lowers the self-esteem of jawan.

Further, Shri Warunjikar submits that both the applicants jointly had petitioned the Hon'ble Apex Court in the month of April 2017 seeking a direction to investigate the

unnatural death of Roy Mathew in a fair and impartial manner keeping in view the entirety of circumstances and material and on this petition, the Hon'ble Apex Court had already issued a notice on 24th April 2017. Learned counsel has also invited our attention to another Writ Petition instituted by one Chandrasekhara Pillai, President, Welfare Association of Ex-Army Aviation Technicians and one Advocate George P.J, President of the said Association, wherein they have sought a writ in the nature of mandamus for abolition and discontinuation of the Sahayaks/Buddy system as prevalent in Indian army and the petitioners have also sought implementation of the report of the Parliamentary Committee. A relief is also sought to investigate the unnatural death of Gunner Roy Mathew in a fair and impartial manner. In the said writ petition also, the Hon'ble Apex Court was pleased to issue notice and directed it to be heard with Writ Petition (Criminal) No.62 of 2017 filed by the present applicants.

In the backdrop of the peculiar facts, the applicants' case is that the invocation of the provisions of the Indian Penal Code and the Official Secrets Act against the applicants is an

abuse of process of Court and it is also alleged that the registration of FIR is with an oblique intention and motive to stultify and scuttle a fair investigation which the applicants had demanded before the Hon'ble Apex Court in case of death of Roy Mathew and thus, the said FIR is alleged as a gross abuse of criminal process and it is prayed that the same is liable to be quashed and set aside.

6 We have heard Shri S.G. Patil appearing for the Lance Naik Naresh Kumar Amit Jadhav who is the complainant and who is added as a respondent in terms of the amendment allowed by this Court on 19th September 2018. We have also heard Shri Deepak Thakare, learned Public Prosecutor appearing for the State. Both the respective counsel vehemently opposed the prayer in both the applications. The learned Public Prosecutor would place reliance on the affidavit filed by the Police Inspector, Deolali Camp Police Station, Nashik on 28th October 2017. Shri Thakare would submit that the perusal of the complaint discloses that the applicant Poonam Agarwal had willfully gained illegal entry by

misleading the concerned armed personnel who were on duty in the restricted area and in a surreptitious manner without any official permission from the army authority had video-graphed conversation of the jawans of Army in the restricted area. Shri Thakare would submit that in this act, she was assisted by the other applicant, Deepchand and the entire conversation was secretly recorded without the knowledge or consent of the army personnel or any responsible person from the army. He would also take a rigid stand and contend that thereafter she fabricated and edited the video to suit her convenience and uploaded the same by taking assistance of the electronic media and it was released on YouTube and FaceBook. He submits that the further investigation needs to be carried out in order to ascertain the actual details of the video recordings and the learned Public Prosecutor would urge before us that the applicants are charged of serious offences and therefore, the interim stay which is granted by this Court for carrying out further investigation be vacated since the entire episode is an act of maligning and tarnishing the image of Indian Army by fabricating and editing a video and uploading on social

networking sites. He would also submit that the actual motive of the applicants in carrying out such a suspicious activity needs to be ascertained since a possibility of a more serious conspiracy being hatched against the Indian army and the entire nation as such, cannot be ruled out.

Shri Thakare has also invited our attention to the order passed by the learned single Judge of this Court (Smt.Revati Mohite Dere, J) on 26th April 2017 while considering the Anticipatory Bail Applications and Shri Thakare would submit that the laptop, raw footage of the video clips of the sting operation is already seized by the Deputy Commissioner of Police and it is directed by the learned Single Judge that the material pertaining to raw footage and edited video clipping was directed to be downloaded by the said Forensic expert and the applicant was also directed to hand over her mobile phone on which the audio recording was done as well as the camera along with the memory card so as to be forwarded for scientific analysis. On similar lines, learned counsel Shri Patil has placed reliance on an affidavit of respondent no.3 filed on 20th February 2019 and he would

invite our attention to the subsequent order passed by the learned Single Judge on 14th June 2017 whereby it was ordered that the devices which were put to use for carrying out the recording by applicant Poonam were directed to be kept in a sealed condition. According to Shri Patil, the applicants are charged for brazen violation affecting the safety and security of the nation and the incident has created ripples and it has demoralized the entire army and its officers. We have also considered Criminal Application No. 214 of 2019 which is an application for Intervention filed by Station Commander, P. Ramesh, seeking intervention in the matter since the reputation of the army is at stake and it is the Army which is likely to be affected by any order which would be passed in the captioned matter. We have heard Shri S.D. Patil appearing for the intervenor – applicant and we have permitted the learned counsel to advance his submissions as an intervenor.

7 We have considered the rival submissions of the parties and also perused the necessary material produced on record. In terms of the order passed by the learned Single

Judge of this Court, the laptop, mobile phone as well as the camera along with the memory card was deposited with the Registrar (Judicial – I), in terms of the order dated 5th May 2017. The said devices were kept in a sealed condition. By an order dated 25th March 2019, we had directed the Registrar Judicial to produce the laptop, mobile phone, camera and memory card for our perusal in chamber on 3rd April 2019. On 3rd April 2019, with the assistance of the Registrar (Judicial), we viewed all the videos contained in the memory chip relating to the incident and we directed the Registry to re-seal the same and to be retained by the Registrar (Judicial) in terms of the earlier order of this Court. We also granted liberty to the Public Prosecutor to view the contents of the memory chip and issued necessary instructions to the Registrar Judicial to enable him to do so. We are informed that the learned Public Prosecutor avail of the said opportunity.

8 We have perused the necessary video clippings which were available in the camera in which the recording was carried out by the applicant Poonam Agarwal. Since we have

ourselves viewed the alleged objectionable video clips, we are in a position to express our reaction to the contents of the said video clippings. We have viewed that the applicant Poonam had an interaction with two Jawans and she had enquired with them about the nature of work being entrusted to them and the said video disclose that the Jawans narrating the nature of duty carried out by them and one of them also expressed that they were not subjected to any physical training and not engaged in any combating operation. We have also noticed that the said recording was done with the assistance of a small camera and we had an opportunity to look at the said camera which is a small one and the memory chip contained in the said camera came to be removed and we had placed it in the laptop with the assistance of the Registrar (Judicial), and an expert person with the Registry conversant with the devices and that is how we had an opportunity to view the contents of all the video clippings. There were some small clippings of a few seconds and there were two clippings of 12 and 14 minutes duration. The conversation is contained in the clips of longer duration and we took note of the said conversation. The said

conversation only pertains to the nature of work which the jawans were entrusted and it extended to they being engaged in household chores, bringing the children from school, accompanying the wives of the army personnel for shopping etc. We do not find any material objectionable in the said clippings which would be touching the security of the nation as is sought to be claimed.

9 Perusal of the Official Secrets Act, 1923, would divulge that the said Act relate to Official Secrets and it contains a definition of “prohibited place” in Section 2(8). We are concerned with Section 3 and Section 7 of the Official Secret Act. Sections 3 and 7 read thus :

“3 Penalties for spying -

(1) If any person for any purpose prejudicial to the safety or interests of the State

(a) approaches, inspects, passes over or is in the vicinity of, or enters, any prohibited place; or

(b) makes any sketch, plan, model, or note which is calculated to be or might be or is intended to be, directly or indirectly, useful to an enemy; or

(c) *obtains, collects, records or publishes or communicates to any other person any secret official code or password, or any sketch, plan, model, article or note or other document or information which is calculated to be or might be or is intended to be, directly or indirectly, useful to an enemy (or which relates to a matter the disclosure of which is likely to affect the sovereignty and integrity of India, the security of the State or friendly relations with foreign States), he shall be punishable with imprisonment for a term which may extend, where the offence is committed in relation to any work or defence, arsenal, naval, military or air force establishment or station, minefield, factory, dockyard, camp, ship or aircraft or otherwise in relation to the naval, military or airforce affairs of Government or in relation to any secret official code, to fourteen years and in other cases to three years.*

(2) *On a prosecution for an offence punishable under this section it shall not be necessary to show that the accused person was guilty of any particular act tending to show a purpose prejudicial to the safety or interests of the State, and, notwithstanding that no such act is proved against him, he may be convicted if, from the circumstances of the case or his conduct or his known character as proved, it appears that his purpose was a purpose prejudicial to the safety or interests of the State; and if any sketch plan, model, article, note, document, or information relating to or used in any prohibited place, or relating to anything in such a place, or any secret official code or password is made, obtained, collected, recorded, published or communicated by any person other than a person acting under unlawful authority, and from the circumstances of the case or his conduct or his known*

character as proved it appears that his purpose was a purpose prejudicial to the safety or interests of the State, such sketch, plan, model, article, note, document, (information, code or password shall be presumed to have been made), obtained, collected, recorded published or communicated for a purpose prejudicial to the safety or interests of the State.

7 *Interfering with officers of the police of members of the Armed Forces of the Union -*

(1) No person in the vicinity of any prohibited place shall obstruct, knowingly mislead or otherwise interfere with or impede, any police officer, or any member of the Armed Forces of the Union engaged on guard, sentry patrol or other similar duty in relation to the prohibited place.

(2) If any person acts in contravention of the provisions of this section, he shall be punishable with imprisonment which may extend to thirty three years, or with fine, or with both.

From a bare perusal of the Section 3, it is clear that it imposes a penalty if any person for any purpose prejudicial to the safety or interest of the State indulges into an act contemplated under clause (a), (b) or (c). The necessary ingredient of the said section is that the act of the person must be prejudicial to the safety or interest of the State. Sub-clause (c) of Sub-section (1) of Section 3 contemplates any information which is calculated to be or might be or is intended to be directly or indirectly

useful to an enemy or which relates to a matter, the disclosure of which is likely to affect the sovereignty and integrity of India, the security of the State or friendly relations with foreign states. We fail to understand how the video clippings which contains a conversation about the Sahayak or Buddy system affects the security of the Nation. At the most, it can be said to be a footage exposing the manner of working of the Army which is contrary to the suggestions of the report of the Parliamentary Committee which had suggested to prohibit the use of army Jawans in the capacity of Sahayak and being entrusted with duties which would act as an insult to the jawans. On viewing the clippings recorded by applicant Poonam and its uploading on social media, we do not find that the clippings contain any information affecting the security of the State or the sovereignty and integrity of the country.

As far as Section 7 is concerned, it is a provision which prohibits any person in the vicinity of a prohibited area who would interfere with the Officers of the police or members of the armed forces of union and any person who obstructs or mislead or otherwise interferes with or impedes any officer

engaged on guard, sentry patrol or similar duty in relation to prohibited place, he is liable for an imprisonment under the said section. It is not the case as disclosed in the complaint that either of the applicants indulge themselves into such an act of obstruction or interfered with any of the member of the armed forces engaged on duty in the prohibited place. We do not want to enter into the wider question as to whether the said place where the recording was done would fall within the meaning of prohibited place since the ingredients of Sections 3 and 7 itself are not made out, the said question may not detain us, concluding that the case alleged against the applicants is without any foundation.

10 Now, we turn ourselves to the offences under the Indian Penal Code which are sought to be invoked and applied against the applicants. The main question that arise in both the applications for adjudication is whether it would be just and fair to compel the applicant to face the rigmarole of a criminal trial in absence of any credible material justifying the allegation under Section 306 of the IPC. It is the specific case of the applicants that they cannot be even remotely connected with

the suicide of the deceased and therefore, the ingredients of Section 306 are not satisfied to invoke the said provision against them and when they are, in any manner, connected and there is no credible material to connect them , it is a futile exercise to compel them to undergo the formality of trial.

For proper understanding of the said contention of the applicants, we would gainfully refer to Section 306 and Section 107 of IPC so as to comprehend the scope and ambit of the said provisions.

306 *Abetment of suicide – If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment or either description for a term which may extent to 10 years, and shall also be liable to fine.*

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 1.—A person who, by wilful misrepresentation, or by wilful*

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.

Illustration A, a public officer, is authorized by a warrant from a Court of Justice to apprehend Z. B, knowing that fact and also that C is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C. 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.

11 The word 'suicide' is nowhere defined in the Indian Penal Code. However, it means act of self-killing. It contemplates a person committing suicide by means irrespective of the means employed by him in achieving his object of killing himself. Suicide itself is not an offence under the Indian Penal Code. However, attempt to suicide is an offence under Section 309 of the IPC. Further, abetment of suicide is also an offence under Section 306 of the IPC.

On reading of the two sections together i.e. Section 306 and 309 of the IPC, two things necessarily follow :

- (a) there must be abetment of the act of the commission of suicide, either by instigation, conspiracy or by giving an intentional aid and

(b) Secondly, that the act which amounts to abetment must have reasonable proximity and nexus with the actual commission of suicide.

The Three Judges Bench of the Apex Court in case of **Ramesh Kumar Vs. State of Chhatisgarh**, dealt with different shades of the meaning of 'instigation' in paragraph no.20 which reads thus :

“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*”

12 It is by this time settled by a catena of decisions that there should be intention to provoke, incite or aid the doing of the act by the latter. It has been succinctly held that each persons suicidibility pattern is different from the others and

every person has his own idea of self esteem and self-respect and it is impossible to lay down any straight jacket formula in dealing with such cases and each case has to be decided on the basis of its own facts and circumstances. 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. Undisputedly, the intention of the legislature and the position of law laid down by the catena of judgments is to the effect that in order to convict a person under Section 306 of the IPC, there must exist a clear mens rea to commit the offence and an active act or direct act which led the deceased to commit suicide, and the act must be of such a nature which was intended to push the deceased into commission of suicide. A hyper sensitive individual would not be the testing factor since human sensitivity of each individual differs from the other and different people would face a situation differently.

13 In **Randhir Singh vs. State of Punjab**,¹ the Apex Court held :

“Abetment involves a mental process of instigating a person or . intentionally aiding that person in doing of a thing. In cases of conspiracy also it would involve that mental process of entering into conspiracy for the doing of that thing. More active role which can be described as instigating or aiding the doing of a thing it required before a person can be said to be abetting the commission of offence under [Section 306](#) of IPC”

Further, in **Praveen Pradhan Vs. State of Uttaranchal**², it was held to the following effect :

“18. In fact, from the above discussion it is apparent that instigation has to be gathered from the circumstances of a particular case. No straight-jacket formula can be laid down to find out as to whether in a particular case there has been instigation which force the person to commit suicide. In a particular case, there may not be direct evidence in regard to instigation which may have direct nexus to suicide. Therefore, in such a case, an inference has to be drawn from the circumstances and it is to be determined whether circumstances had been such which in fact had created the situation that a person felt totally frustrated and committed suicide”.

14 In **Amalendu Pal Vs. State of West Bengal**,³ the Hon'ble Apex Court held as follows :

“12. Thus, this Court has consistently taken the view that before holding an accused guilty of an offence under [Section 306](#) IPC, the Court must scrupulously

1 2004(13) SCC 129

2 2012(9) SCC 734

3 2010(1) SCC 707

examine the facts and circumstances of the case and also assess the evidence adduced before it in order to find out whether the cruelty and harassment meted out to the victim had left the victim with no other alternative but to put an end to her life. It is also to be borne in mind that in cases of alleged abetment of suicide there must be proof of direct or indirect acts of incitement to the commission of suicide. Merely on the allegation of harassment without their being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide, conviction in terms of [Section 306](#) IPC is not sustainable.

15 In **Pawan Kumar Vs. State of Himachal Pradesh**,⁴ the Hon'ble Apex Court after referring to the earlier catena of judgments of the issue would amount to abetment to suicide observed thus :

43 At this juncture, we think it appropriate to reproduce two paragraphs from Chitresh Kumar Chopra (supra). They are:-

“16. Speaking for the three-Judge Bench in Ramesh Kumar case (supra), R.C. Lahoti, J. (as His Lordship then was) said that 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. Where the accused had, by his acts or omission or by a continued course of conduct, created such

⁴ 2017(7) SCC 718

circumstances that the deceased was left with no other option except to commit suicide, in which case, an “instigation” may have to be inferred. A word uttered in a fit of anger or emotion without intending the consequences to actually follow, cannot be said to be instigation.

x x x x x

19. As observed in Ramesh Kumar (supra), where the accused by his acts or by a continued course of conduct creates such circumstances that the deceased was left with no other option except to commit suicide, an “instigation” may be inferred. In other words, in order to prove that the accused abetted commission of suicide by a person, it has to be established that:

(i) the accused kept on irritating or annoying the deceased by words, deeds or wilful omission or conduct which may even be a wilful silence until the deceased reacted or pushed or forced the deceased by his deeds, words or wilful omission or conduct to make the deceased move forward more quickly in a forward direction; and

(ii) that the accused had the intention to provoke, urge or encourage the deceased to commit suicide while acting in the manner noted above. Undoubtedly, presence of mens rea is the necessary concomitant of instigation.” This Court again observed:-

“20. ... 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.”

41. Keeping in view the aforesaid legal position, we are required to address whether there has been abetment in committing suicide. Be it clearly stated that mere allegation of harassment without any positive action in proximity to the time of occurrence on the part of the accused that led a person to commit suicide, a conviction in terms of [Section 307 IPC](#) is not sustainable. A casual remark that is likely to cause harassment in ordinary course of things will not come within the purview of instigation. A mere reprimand or a word in a fit of anger will not earn the status of abetment. There has to be positive action that creates a situation for the victim to put an end to life.

The abetment contemplated under Section 306 involves mental process of instigating or intentional aiding of a person in doing of a thing. By this time, it is settled position of law that there should be clear *mens rea* to commit an offence punishable under Section 306 of the IPC. The basic constituent of an offence punishable under Section 306 is of suicidal death and abetment thereof. To attract the ingredients of abetment, there must be an intention on the part of the accused to aid or instigate or abet the deceased to commit suicide.

16 With the aforesaid observations and relying upon the judgment in case of the Hon'ble Apex Court in ***Madan Mohan Singh Vs State of Gujarat*** (supra), the Division Bench of this Court quashed the FIR under Section 306 on the ground that the allegations were irrelevant and baseless and it arrived at a conclusion that the appellants are not even remotely connected with the offence under Section 306 of the IPC. In case of ***Dr.Seema Ajay Bhoosreddy Vs. State of Maharashtra***,⁵ it was held that in order to bring out the offence punishable under Section 306 of the IPC, specific abetment as contemplated by Section 107 of the IPC on the part of the accused with an intention to bring about the suicide of the person concerned as a result of the abetment is required. The intention of the accused to aid or instigate or abet the deceased to commit suicide is a must for the particular offence under Section 306 of the IPC. The following observations of the Division Bench needs a reproduction :

“17 In case of S.S. Cheena, there was a dispute between one Saurav Mahajan, who was a final year student of Law Department and Harminder Singh, a fellow student of the same class with regard to the theft of

5 CRA 265/11 dated 4/8/2011

a mobile phone. This came to the notice of M.D.Singh, the then Head of the Law department who asked both the students to submit their versions of the incident in writing. The deceased and Harminder gave their versions and, thereafter, M.D. Singh forwarded their versions to the University authorities for taking necessary action. An inquiry was conducted on 13th October 2003 by the Security Officer of the University Shri S.S. Cheena. During the course of inquiry, on 17th October 2003, Saurav Mahajan committed suicide by jumping in front of the train. A suicide note was seized from the pocket of the deceased. On the complaint of father of the deceased, an offence under section 306 of IPC, was registered against Harminder Singh. During the course of trial, S.S. Cheena was also impleaded as accused. Being aggrieved by framing of charge, S.S.Cheena approached the High Court. The High Court refused to interfere. Being aggrieved thereby, said S.S.Cheena approached the Supreme Court. The Apex Court observed thus :

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." (emphasis supplied)

17 The legal scenario prevailing for invocation and application of offence under Section 306 of the IPC is thus more or less settled to the effect that unless and until the prosecution is able to demonstrate that a situation is created deliberately by the accused person in a manner to drive the deceased to commit suicide, there would be no room for attracting Section 306 of the IPC. The case as set out in the complaint is completely inadequate and insufficient to invoke the provisions of Section 306 and there is no scope or room for invoking the said provision. The allegations made in the FIR by no stretch of

imagination satisfy the requirement under Section 306 of the IPC. The applicant Poonam had collected certain information from the members of the army and she might have secured an entry with the assistance of the other applicants. However, what is more important is what information was collected and relayed by her on the media. It is alleged that the said information created an apprehension in the mind of the army personnel, as the complainant himself has narrated in the complaint of being subjected to Court martial. Roy Mathew, the deceased was also one who interacted and gave some comments about the Sahayak system and he must also have been subjected for interrogation by the superior officers in the same manner as the complainant was summoned by the superiors on the very next day when the video became viral. It is this apprehension of Court Martial which might have led to the suicide of the deceased but by no stretch of imagination, the video containing the information or output given by Roy Mathew itself amounted to any offence or it was any prohibited act. It was only the fear of being subjected to Court Martial and its deleterious consequences, the deceased has committed

suicide. However, we do not find any proximity or nexus between this suicide and the act of the applicant Poonam recording the video where the deceased, the complainant in presence of the other applicants and the applicant in Application No. 736 of 2017 has divulged certain information about the practices of the army. We therefore, find that the ingredients of Section 306 of the IPC are not made out and the proceedings initiated against the applicant in pursuance of the said FIR are totally uncalled for as the offence under Section 306 of the IPC is not at all made out. The offence of abetment contemplates an intentional aiding and active complicity and we find these necessary ingredients absent in the material relied upon by the prosecution.

18 Turning to the other sections with which the applicants are charged, we would make a reference to Section 451 of the IPC. Section 451 deals with house trespass in order to commit offence with Imprisonment and reads thus :

“451. House-trespass in order to commit offence punishable with imprisonment – Whoever commits house-trespass in order to the committing of any offence

punishable with imprisonment, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine; and if the offence intended to be committed is theft, the term of the imprisonment may be extended to seven years.”

House trespass is defined under Section 442 and who ever commits a criminal trespass by entering into or remaining in any building, tent or vessel used as a human dwelling or any building used as a place for worship and or as a place for custody of property, then he is said to commit house-trespass. For understanding the scope of house trespass, we have to go to the definition of criminal trespass under Section 441 which reads thus :

441 Criminal Trespass - *Whoever enters into or upon property in possession of another with intent to commit an offence or to intimate, insult or annoy any person in possession of such property, or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, is said to commit “criminal trespass”*

The ingredient of Section 441 would thus contemplate entry into or upon property in possession of another with an intent to commit an offence or to intimate, insult or annoy any person in

possession of such property. The act of the applicant Poonam cannot fall within the said ingredient as by recording a video, she has not committed any offence and as we have already held that the offences under the Official Secrets Act are also not attracted and mere entry into the premises without an intention to commit an offence, insult or annoyance to any person in possession of the property would not call for invocation of offence of criminal trespass. As far as applicant no.2 Deepchand is concerned, he cannot be charged with the said offence as he cannot be guilty of criminal trespass since he was stationed in the camp and running a canteen. In such circumstances, the invocation and application of Section 451 of the IPC against the present applicants is also unwarranted.

19 In such circumstances, we have taken note of the fact that both the applicants have been wrongly implicated in the said FIR by the complainant and by no stretch of imagination, the applicants can be said to be responsible for the suicide of Roy Mathew nor it can be said that it is the applicants who have abetted the commission of suicide by the deceased.

The microscopic examination of the complaint and the material placed before us would only disclose a sheer absurdity in the allegation and we do not find even a *prima facie* cognizable case being made out on its entire reading and therefore, we are of the considered view that this is a fit case where the power conferred under Section 482 of the Code of Criminal Procedure deserves to be exercised.

20 We are conscious of the fact that the power under Section 482 of the Code is to be exercised sparingly and by applying the parameters laid down by the Hon'ble Apex Court in case of *State of Haryana Vs. Bhajan Lal* 1992(Supp) 1 SCC 335, we are of the clear view that the allegations made in the complaint, even if they are taken at their face value and accepted in their entirety, it do not *prima facie* constitute any offence against the applicants. In such circumstances, the continuation of the proceedings against the applicants would be unnecessary and would be amounting to abuse of the process of this Court. Considering the *prima facie* nature of the case, this Court by its order dated 1st September 2017 has stayed the

investigation in C.R. No.19 of 2017 and at this stage, we are affirming the *prima facie* observations made by us while granting the interim order and specifically when we had an opportunity of viewing the material on the basis of which the complaint is filed which is the very basis of the registration of FIR. The case initiated against the applicants is without any factual foundation and any further investigation would only result in sheer harassment to the applicants without any fruitful result.

19 For the aforesaid reasons, we are inclined to allow both the applications. We quash and set aside the C.R.No.19 of 2017 registered by Sr. Inspector of Police, Deolali Camp Police Station, Nashik against the applicant Poonam Agarwal (Application No. 731/17 and Deepchand in Application No. 736/17 registered for offence punishable Sections 306, 451, 500 read with Section 34 of the Indian Penal Code and Section 3 and 7 of the Officials Secrets Act, 1923.

20 On quashing of the said FIR, we direct the Registrar (Judicial) to return the laptop, mobile phone as well as camera along with memory chip which was tendered in terms of the order passed by the learned Single Judge of this Court on 5th May 2017 to be returned to applicant Poonam Agarwal who is permitted to inspect the same and acknowledge its receipt. Registrar Judicial-I is further instructed to obtain the acknowledgment personally of the applicant no.1 after returning the said devices to her.

(SMT. BHARATI H. DANGRE, J.)

(RANJIT V. MORE J.)