

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,

NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION (APL) NO.491 OF 2018

Sau.Savita w/o. Vinod Mohurle,
Aged 30 years, Occ. Household,
r/o. Nandgaon, Tq.Sindewahi,
Dist.Chandrapur.

..... APPLICANT

// VERSUS //

1.The State of Maharashtra,
Through P.S.O., Police Station,
Sindewahi, Distt.Chandrapur.

2.Ramesh M. Padhal,
Aged 52 years, Occ. P.S.I.,
Police Station, Sindewahi,
Tq.Sindewahi, Distt. Chandrapur.

RESPONDENTS

Mr.T.G.Bansod, Advocate for the Applicant.
Mr.S.D.Sirpurkar, A.P.P. for respondent/State.

CORAM : P.N.DESHMUKH
AND
PUSHPA V. GANEDIWALA, JJ.

DATE : 23.7.2019.

ORAL JUDGMENT (Per P.N.Deshmukh, J) :

1. Rule returnable forthwith. Heard finally by consent of Mr.T.G.Bansod, learned Counsel for the applicant and Mr.S.D.Sirpurkar, learned Additional Public Prosecutor for respondent no.1/State. None for respondent no2, though served.

2. Prayer in this application is to quash and set aside F.I.R. No.205 of 2018, dt.22.4.2018 registered by Sindewahi Police Station, District Chandrapur for the offence under Section 306 of the Indian Penal Code. By an interim order dt.9.10.2018, this Court had restrained prosecution from filing of charge-sheet. Learned Additional Public Prosecutor has produced case diary.

3. It is the case of applicant that she is a married woman having no criminal antecedents; however, she is falsely involved in the case on the basis of report lodged by respondent no.2, on holding

inquiry of Marg No.19 of 2018, under Section 174 of the Code of Criminal Procedure, which was registered after death of deceased Pravin s/o. Devidas Gahane, who died of hanging in his house on 21.4.2018 at about 5.30 p.m. Mr.T.G.Bansod, learned Counsel for applicant, by referring to report, submitted that the only allegation against the applicant involving her in the present crime is of her slapping deceased on the day of incident at around 3.30 p.m. when she was proceeding by road when deceased was present at the pan shop talking on his mobile phone with somebody else. The applicant, thinking that the conversation was meant for her, though the deceased told her that he was talking on mobile phone with somebody else, by abusing deceased, gave one slap on his face and left from the spot. It is submitted that, only because of this incident, it is the case of prosecution that the deceased committed suicide. It is further submitted that since no ingredients necessary to constitute offence under Section 306 of the Indian Penal Code can be said to be attracted against the applicant nor she can be said to have any object or intention to abet suicide and since her involvement is only by way of her slapping deceased at around 3.00 p.m., she cannot be directly be linked with death of deceased. The learned Counsel, therefore, prayed that the application be allowed.

4. Mr.S.D.Sirpurkar, learned Additional Public Prosecutor for respondent no.1/State opposed the application on the lines of affidavit-in-reply filed on record by prosecution, wherein, in para 7 thereof, it is specifically submitted that there is no direct instigation and abetment by the applicant to the deceased to commit suicide, but it is only illegal act of applicant of her slapping and abusing deceased in filthy language which led deceased to commit suicide. Thus, according to learned Additional Public Prosecutor, deceased committed suicide because of said incident which had occurred two hours prior to his committing suicide.

5. In the background of facts as aforesaid and on perusal of case diary as well as report submitted by respondent no.2 on inquiry of Marg No.19 of 2018, the only allegation against the applicant involving her in the crime is of her slapping deceased on the day of incident mistakenly thinking that whatever conversation the deceased was having on mobile phone was referring to her. Without going into these niceties of what was spoken by deceased on phone, which conversation is also not available anywhere on record except for deceased saying “darucha paisa hoy”, we find that the only case as attributed against the applicant is of her slapping deceased and

nothing more. It is found that it is only because of deceased committing suicide on the same day, the applicant is involved. In the first remand, it is contended that deceased committed suicide since he could not bear his insult. However, there is nothing to establish that, due to act of slapping by applicant, the deceased was insulted in any manner. The contents of first remand dt.22.4.2018, as such, are not convincing. In fact, the Remand Court also found no substance in the remand note and hence, granted M.C.R. to applicant on the first day. Applicant is even otherwise granted bail by this Court observing that there is nothing to hold that the applicant had mens rea or an intention to drive the deceased to commit suicide.

6. In the case of **Chitresh Kumar Chopra .vs. State (Govt. of NCT of Delhi)**, (2009) 16 SCC 605, Hon'ble Apex Court 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 selfesteem and selfrespect. 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.

7. By now, in a catena of judgments, the Apex Court has considered the scope and meaning of “abetment” under Sections 107 and 306 of the Indian Penal Code to find out whether the charge and conviction for an offence under Section 306 of the Indian Penal Code can be sustained merely on the allegations of harassment of the deceased and whether the ingredients of abetment are attracted on the basis of the statement of the deceased.

8. In order to properly comprehend the scope and ambit of Section 306 of the Indian Penal Code, it is important to carefully examine the basic ingredients of Section 306. The said Section, is reproduced, 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 Indian Penal Code. The said Section, is reproduced, 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 1 - *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.*

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, willfully 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."*

9. Thus, the offence of abetment is a separate and distinct offence provided in the Act as an offence. A person, abets the doing of a thing when he instigates any person to do that thing; or (2) engages with one or more other persons in any conspiracy for the doing of that thing; or (3) intentionally aids, by act or illegal omission, the doing of that thing. These things are essential to complete abetment as a crime. The word "instigate" literally means to provoke, incite, urge on or bring about by persuasion to do any thing. The abetment may be by instigation, conspiracy or intentional aid, as provided in the three clauses of Section 107. As such, in case of abetment of suicide there must be proof of direct or indirect acts of incitement to the commission of suicide.

10. In addition to above, the applicant has also relied upon the case of **Shikha Gupta .vs. State (GNCT of Delhi)** reported in **2019 SCC Online Del 6394**, wherein, in the similar case where the petitioner therein was alleged of slapping deceased three days prior to incident of his committing suicide, the Apex Court discharged the petitioner of the offence under Section 306 of the Indian Penal Code holding that there is nothing to suggest that the petitioner instigated, conspired or aided in commission of suicide by the deceased and that mere act of slapping in presence of others would not under normal circumstances instigate the deceased to commit suicide.

11. In the application in hand, the facts and allegations do not show that the applicant at any point of time instigated or abetted deceased to commit suicide. In view of above, the application is allowed. Hence, F.I.R. No.205 of 2018, dt.22.4.2018 registered by Police Station, Sindewahi, District Chandrapur for the offence punishable under Section 306 of the Indian Penal Code is quashed and set aside.

JUDGE

JUDGE

[jaiswal]

