

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPCR No. 1075 of 2019****Judgment Reserved on 13/12/2019****Judgment Delivered on 03/02/2020**

Sandeep Mishra, S/o Late Shri B.L. Mishra, Aged about 48 years, Occupation Businessman, R/o 627/4, Awadhpuri, Risali, Bhilai, Police Station Newai, Tahsil Durg, District Durg, Chhattisgarh.

---Accused/Petitioner**Versus**

- 1.State of Chhattisgarh, Through the Secretary, Department of Home Affairs, Mahanadi Bhawan, Atal Nagar, Raipur, District Raipur, Chhattisgarh.
- 2.Director General of Police (D.G.P.), Police Head Quarter (P.H.Q.) Near Mantralaya, Atal Nagar, Raipur, District Raipur, Chhattisgarh.
- 3.Inspector General of Police (I.G.) Durg Range, I.G. Office, Durg, District Durg, Chhattisgarh.
- 4.Superintendent of Police (S.P.), Durg, S.P. Office, District Durg, Chhattisgarh.
- 5.Station House Officer, Police Station Newai, District Durg, Chhattisgarh. .

--- Respondents

For Petitioner : Mr. Dhiraj Wankhede and
Ms. Sameeksha Gupta, Advocates
For Respondents/State : Mr. Mateen Siddiqui, Dy. A.G.

Hon'ble Shri Justice Sanjay K. Agrawal
C.A.V. Order

1. Invoking jurisdiction of this Court under Article 226 of the Constitution of India, petitioner herein has filed this writ petition seeking quashment of F.I.R. No. 225/2019 dated 19/09/2019 registered at Police Station Newai, Durg for offence punishable under Section 306 of the IPC which states *inter alia* that petitioner had a love affair with one Sonam Sharma for the last 6-7 years and since, the petitioner instead of marrying Sonam Sharma, married with someone else, she committed suicide on 18/09/2019 by hanging herself from the ceiling fan using her own scarf, leaving behind a suicidal note alleging that she has committed suicide on account of the fact that petitioner promised to marry her but didn't and he has already married someone else. Pursuant to the F.I.R., the petitioner has filed this writ petition on the ground that taking the contents of the F.I.R. as it is, no offence is made out against him under Section 306 of the IPC, as such, the F.I.R. deserves to be quashed.

2. State of Chhattisgarh has filed separate return stating *inter alia* that on account of the fact that petitioner has been in a relationship with the deceased for the last 7 years and he promised

her that he would marry her but did not do so, persuaded her to commit suicide and as per the suicidal note left behind by her, only and only the petitioner is responsible for her suicide. It was further submitted that the matter is still under investigation and the petition is absolutely premature.

3. Mr. Dhiraj Wankhede, learned counsel for the petitioner would submit that taking the ingredients of the F.I.R. as it is, it cannot be held that the act of suicide was the last resort available to the deceased and there is no material available on record to frame charges against the petitioner for offence punishable under Section 306 of the IPC as there is no proximity and nexus between the conduct and behaviour of the petitioner with that of suicide committed by deceased Sonam Sharma and merely, because petitioner had some relation with the deceased, it cannot be the reason for committing suicide in terms of various decisions rendered by the Supreme Court including **M.Mohan v. State represented by Deputy Superintendent of Police**¹.

As such, in view of the fact that *prima facie* no case for continuing the prosecution is made out,

¹ (2011) 3 SCC 626

the F.I.R. registered against the petitioner deserves to be quashed.

4. Mr. Mateen Siddiqui, learned Deputy Advocate General for the State would submit that in view of the material available on record, the petition is premature and it is not a fit case for quashing the F.I.R. in light of the decision rendered by the Supreme Court in **Munshiram v. State of Rajasthan and Anr.**².

5. I have heard learned counsel for the parties, considered their rival submissions made herein-above and went through the records with utmost circumspection.

6. The question in the present case is as to whether, considering and accepting the entire material available on record as absolutely correct and true, a prima facie case for alleged commission of offence punishable under Section 306 of the IPC is made out against the petitioner ?

7. To resolve the controversy, it appears necessary first of all to have a look on the provisions contained under Section 306 of the IPC, which reads as under :-

² (2018) 5 SCC 678

"S. 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."

Abatement has been defined in Section 107 which reads as under :-

"S. 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 – 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."

Punishment of abetment is provided under Section 109 of the IPC which reads as under :-

"S. 109. Punishment of abetment if the act abetted is committed in consequence and where no express provision is made for its punishment – Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence."

8.As per the definition given in Section 107 of the IPC, abatement is constituted by -

- Instigating a person to commit an offence; or
- Engaging in a conspiracy to commit it; or
- Intentionally aiding a person to commit it.

9.A person is said to 'instigate' another to an Act, when he actively suggests or stimulates him to the act by any means of language, direct or indirect, whether it takes the form of express solicitation, or of hints, insinuation or encouragement. The word 'instigate' means to goad or urge forward or to provoke, incite, urge or encourage to do an act.

10.As Section 306 of the IPC makes abatement of commission of suicide punishable, therefore, making liable for an offence punishable under Section 306 of the IPC, it is a duty of the

prosecution to establish that such person has abetted the commission of suicide and for the purpose of determining the act of the accused, it is necessary to see that his act must fall in any of the three categories as enumerated under Section 107 of the IPC, and therefore, it is necessary to prove that the said accused has instigated the person to commit suicide or must have engaged with one or more other person in any conspiracy for seeking that the deceased commits suicide or he must intentionally aid by any act or illegal omission, of the commission of suicide by the deceased.

11. The Supreme Court has considered the scope of Sections 107 and 306 of the IPC in the matter of **Sanju @ Sanjay Singh Sengar v. State of M.P.**³ and held as under :-

"9. In Swamy Prahaladdas v. State of M.P. & Anr.⁴, the appellant was charged for an offence under Section 306 I.P.C. on the ground that the appellant during the quarrel is said to have remarked the deceased 'to go and die'. This Court was of the view that mere words uttered by the accused to the deceased 'to go and die' were not even prima

3 (2002) 5 SCC 371

4 1995 Supp. (3) SCC 438

facie enough to instigate the deceased to commit suicide. "

12. In **Mahendra Singh v. State of M.P.**⁵, the applicant was charged with an offence under Section 306 of the IPC basically based upon the dying declaration of the accused, which reads as under -

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

Their Lordships of the Supreme Court, considering the definition of 'abetment' under Section 107 of the IPC, found that the charge and conviction of the applicants for an offence under Section 306 of the IPC is not sustainable merely on the allegation of harassment to the deceased. It is further held that neither the ingredients of abetment are attracted on the statement of the deceased.

13. In the matter of **Ramesh Kumar v. State of Chhattisgarh**⁶, the Supreme Court, while considering the conviction for an offence under

⁵ 1995 (3) Supp. SCC 731

⁶ 2001 (9) SCC 618

Section 306 of the IPC on the basis of the dying declaration recorded by an Executive Magistrate where she had stated that previously there had been quarrel between the deceased and her husband and on the day of occurrence she had a quarrel with her husband who had said that she could go wherever she wanted to go and that thereafter, she had poured kerosene on herself and had set fire. Acquitting the accused, the Supreme Court held as under :-

"A word uttered in the 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 of abetting the offence of suicide should be found guilty."

14. In the case of M. Mohan (supra), the Supreme Court has clearly held that in order to convict a

person under Section 306 of the IPC, there has to be a clear mens rea to commit the offence, by observing as under :-

"45. The intention of the Legislature and the ratio of the cases decided by this court are 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/she committed suicide."

15. In **Gurcharan Singh v. State of Punjab**⁷, the Supreme Court has pointed out the basic ingredients of Section 306 of the IPC i.e. suicidal death and abetment and held that to constitute abetment, intention and involvement of accused to aid or instigate commission of suicide is imperative. Paras 21, 28 and 29, being relevant, are extracted below :-

"21. It is thus manifest that the offence punishable is one of abetment of the commission of suicide by any person, predicated existence of a live link or nexus between the two, abetment being the propelling causative factor. The basic ingredients of this provision are

⁷ (2017) 1 SCC 433

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 this constituents would militate against this indictment. Remoteness of the culpable acts or omissions rooted in the intention of the accused to actualize 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.

28. Significantly, this Court underlined by referring to its earlier pronouncement in *Orilal Jaiswal*⁸ that courts have to be extremely careful in assessing the facts and circumstances of each case to ascertain as to whether cruelty had been meted out to the victim and that the same had induced the person to end his/her life by committing suicide, with the caveat that if the victim committing suicide appears to be hypersensitive to ordinary petulance, discord and differences in domestic life, quite common to the society to which he or she belonged and such factors were not

8 (1994) 1 SCC 73

expected to induce a similarly circumstanced individual to resort to such step, the accused charged with abetment could not be held guilty. The above view was reiterated in *Amalendu Pal v. State of W.B.*⁹

29. That the intention of the legislature is that in order to convict a person under [Section 306](#) IPC, there has to be a clear mens rea to commit an offence and that there ought to be an active or direct act leading the deceased to commit suicide, being left with no option, had been propounded by this Court in *S.S. Chheena v. Vijay Kumar Mahajan*¹⁰."

16. The Supreme Court, in the matter of **Rajesh v. State of Haryana**¹¹, held that conviction under Section 306 of the IPC is not sustainable on the allegation of harassment without there 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. In order to bring a case within the purview of Section 306 IPC, there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigation or by doing certain act to

⁹ (2010) 1 SCC 707

¹⁰ (2010) 12 SCC 190

¹¹ 2019 Cr.L.J 2432

facilitate the commission of suicide. Therefore, the act of abetment by the person charged with the said offence must be proved and established by the prosecution before he could be convicted under Section 306 IPC.

17. Very recently, in the case of **State of West Bengal v. Indrajit Kundu**¹² the accused therein was charged for offence under Section 306 of the IPC on the allegation that the accused and his parents abused deceased and stigmatized her as call girl. The Supreme Court quashed the charges under Section 306 of the IPC holding that no goading or solicitation or insinuation by any of the accused persons to deceased to commit suicide and observed in para 11 as under :-

"11. From the material placed on record, it is clear that respondents are sought to be proceeded for charge under Section 306/34 mainly relying on the suicide letters written by the deceased girl and the statements recorded during the investigation. Even according to the case of de facto complainant, respondent Nos. 2 and 3 who are parents of first respondent shouted at the deceased girl calling her a call-girl. This happened on

05.03.2004 and the deceased girl committed suicide on 06.03.2004. By considering the material placed on record, we are also of the view that the present case does not present any picture of abetment allegedly committed by respondents. The suicide committed by the victim cannot be said to be the result of any action on part of respondents nor can it be said that commission of suicide by the victim was the only course open to her due to action of the respondents. There was no goading or solicitation or insinuation by any of the respondents to the victim to commit suicide. In the case of *Swamy Prahaladdas v. State of M.P.*¹³ this Court while considering utterances like "to go and die" during the quarrel between husband and wife, uttered by husband held that utterances of such words are not direct cause for committing suicide. In such circumstances, in the aforesaid judgment this Court held that Sessions Judge erred in summoning the appellant to face the trial and quashed the proceedings."

18. The Bombay High court (Nagpur Bench) in the matter of **Anil Methaji Gedam v. State of Maharashtra**¹⁴ while considering and dealing with the ingredients of offence under Section 306 read with Section 107 of the IPC in the case where the

¹³ 1995 Supp. (3) SCC 438

¹⁴ 2019 (3) ABR (CRI) (NOC) 62

accused was having love affair with the deceased but refused to marry her which led the deceased (girl) to commit suicide has held that it is a choice of every person to marry with a particular person or not and nobody can compel any person to perform marriage with a particular person and hypersensitive nature of the deceased could be the reason for committing suicide and thereby, discharged the accused for offence under Section 306 read with Section 107 of the IPC.

19. This Court also in the matter of **Amit Gandhi v. State of Chhattisgarh**¹⁵ has held that there must be reasonable nexus and proximity with the conduct and behaviour of the accused with that of the suicide committed by the deceased in order to constitute offence under Section 306 of the IPC.
20. Reverting to the facts of the present case in light of the principles of law laid down by their Lordships of the Supreme Court in the aforesaid judgments (supra), it is quite vivid that deceased Sonam Sharma committed suicide leaving behind the following suicidal note :-

"I am committing suicide because of Sandeep Mishar, had relation from past 7 years, married also and not keeping me

with him that is why – I love you Sandeep.”

21. It is the case of the prosecution that deceased Sonam Sharma was having an affair with the petitioner for the last 7 years and despite of his promise to marry her, he did not marry with her and instead married someone else and thereby, she committed suicide.
22. The statements of deceased Sonam Sharma's sister namely Anju Sharma, her brother Pinku Sharma and one other witness namely Jasmeet Singh have been recorded wherein they have corroborated the fact that petitioner was in love affair with the deceased Sonam Sharma for the last few years. A careful perusal of their statements would show that Sonam Sharma was living with her mother, her elder sister Anju Sharma and her brother Pinku Sharma, as such, she was blessed with a beautiful family and friends with whom she used to share her feelings in and out. Therefore, it cannot be held that suicide was the only option left with the deceased, she could have opted for other legal measures by filing complaint against the petitioner or could have adopted legal remedies that petitioner did not keep his promise to marry her despite having promised her to do so after

being in a relationship with her for a fairly long time. Likewise, the suicide note left behind by the deceased clearly reveals that since petitioner married with someone else and did not marry with the deceased led the petitioner to take the extreme step of committing suicide.

23. Every person has a right to choose their better half according to their wish and nobody can compel him/her to do things contradictorily. It is nothing but the hypersensitivity of the deceased by which she took such an extreme step to commit suicide and the mere reason that the petitioner refused to marry with the deceased Sonam Sharma cannot be said as a good reason for her to commit suicide. It is also quite vivid that the deceased was a young lady of 26 years who was running her own business. It cannot be expected of her to resort to such an extreme measure of committing suicide. She could have instead filed a complaint against the petitioner and could have shared her feelings with her mother/sister/brother and it is the hypersensitivity of the deceased that she committed suicide as there is also no evidence on record that shows that petitioner forced her or

harassed her in any way and there was no active act or instigation done by the petitioner as a consequence of which, the deceased was compelled to commit suicide. Nothing was mentioned in the suicide note or even in the statement of the witnesses which could reflect even a bleak that petitioner's actions could be responsible for deceased Sonam Sharma's suicide and the judgment relied upon by learned State counsel is clearly distinguishable in light of the conclusion reached herein-above.

24. In the considered opinion of this Court, considering and accepting the entire material available on record as absolutely correct and true on their face value in light of the decision rendered in **State of Haryana v. Bhajan Lal**¹⁶ no prima facie case for registering offence punishable under Section 306 of the IPC is made out against the present petitioner as there is no nexus and proximity with the conduct and behaviour of the petitioner (accused) with that of the suicide committed by the deceased Sonam Sharma.

25. Consequently, this writ petition is allowed. FIR No. 225/2019 registered at Police Station Nevai,

¹⁶ 1992 Supp. (1) SCC 335

District Durg against the petitioner for offence punishable under Section 306 of the IPC (Annexure P-1) deserves to be and is hereby quashed. No cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet