

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.3855 OF 2019

Shri.Dhananjay Rambhav Aundhekar
an adult, Indian Inhabitant,
Aged about 48 years, working as
Chief Engineer (Billing & Revenue) at
MSEDCL, Prakashgud, Corporate Office,
Bandra, Mumbai.

... **Petitioner**

Versus

- 1, The State of Maharashtra,
(At the instance of Sr.Insepctor
Mohol Police Station, Mohol,
Dist. Solapur.)
2. Smt.Anita Vikas Panasare,
Age – 38 years, Occupation – Service,
Residing at – Forest County,
Flat No.P/43, Near Eion, A.T.Park,
Khardi, Pune – 411 014.

... **Respondents**

.....

Mr.Mahadeo A. Choudhari with Mr.Prakash Deshmukh, Advocate
for the Petitioner.

Mr.R.M.Pethe, the Additional Public Prosecutor for the Respondent
No.1/State.

Mr.Tushar Sonawane i/b. Mr.Prashant S. Hagare, Advocate for the
Respondent No.2.

....

CORAM : A.M.BADAR J.

DATED : 20th FEBRUARY 2020.

ORAL JUDGMENT :

1 Heard.

2 Rule. Rule is made returnable forthwith. Heard finally
by consent of parties.

3 This is a petition by original accused No.2 Dhananjay
Rambhav Aundhekar challenging the Order dated 20/06/2019
passed by the learned Additional Sessions Judge, Solapur below
an Application at Exhibit 16 in Sessions Case No.66 of 2018
thereby rejecting the claim of the petitioner/accused No.2 for
discharge in that Sessions Case pertaining to the offence
punishable under Section 306 read with Section 34 of the Indian
Penal Code.

4 Fact in brief leading to the institution of the present
petition can be summarized thus :

(a) The Petitioner/original accused No.2, at the relevant

time, was working as the Superintendent Engineer with the Maharashtra State Electricity Distribution Company Private Limited (hereinafter referred to as “the MSEDCL” for the sake of brevity), at Solapur. Co-accused Balaji Dumne/original accused No.1 was working as the Executive Engineer with the MSEDCL, Solapur. Vikas Pandharinath Pansare (since deceased) was working as the Deputy Executive Engineer at Mohol in District Solapur. Both accused persons were his superior Officers.

- (b) According to the case of prosecution, Vikas Pansare (since deceased) joined Mohol office of the MSEDCL on 19/08/2016 and started working there as the Deputy Executive Engineer. He had kept his family at Pune and he used to make frequent visits to his family during the course of his employment. Vikas Pansare (since deceased) was on leave for the period from 17/12/2016 to 27/12/2016 and during this period, he stayed at Pune with his wife and other family members. During this

period, Vikas Pansare (since deceased) disclosed happenings in his office to his wife Anita Pansare (First Informant). She was informed by her husband that both accused persons are harassing him at workplace. He expressed his desire that he is not willing to go to Mohol for joining the duty due to constant harassment by accused. However, after convincing him by First Informant Anita Pansare, he left Pune for joining duty at Mohol on 27/12/2016.

- (c) According to the prosecution case, at about 9.00 p.m. of 27/12/2016, Vikas Panasare (since deceased) telephonically told his wife Anita Panasare (First Informant) that instead of getting him joined, both accused persons are giving him humiliating and insulting treatment. Similar disclosure was made by him to First Informant Anita Panasare at about 10.00 p.m. of 28/12/2016. She was told by Vikas Panasare (since deceased) telephonically that both accused persons asked

him to be outside the office and subsequently, they made him to remain present before Chief Engineer Nagnath Ervadkar. She was further informed that despite directions of the Chief Engineer, both accused persons did not allow him to join the duty. Petitioner/original accused No.2 Dhananjay Aundhekar threatened Vikas Pansare (since deceased) that he will cause dismissal of Vikas Pansare (since deceased) and shall bring him on road. Vikas Pansare (since deceased) further disclosed his wife Anita Panasare (First Informant) that he wants to commit suicide being left with no alternative by accused persons.

- (d) Ultimately, being fed up with constant attacks to his dignity made by accused persons, Vikas Panasare (since deceased) indulged in self-effacement at about 2.30 p.m. of 29/12/2016 in his residential house at Mohol which he used to share with Laxmikant Jondhale – co-employee.

(e) After suicidal death of Vikas Pansare, Accidental Death Case came to be registered as per provisions of Section 174 of the Code of Criminal Procedure at Police Station Mohol. The dead body was then sent for autopsy. Spot came to be inspected and panchanama of scene of occurrence came to be prepared.

(f) During the course of inquiry of the Accidental Death Case and precisely on 03/01/2017, Anita Vikas Panasare – widow lodged report with the Police Station, Mohol which resulted in registration of Crime No.144 of 2016 for the offence punishable under Section 306 read with Section 34 of the Indian Penal Code against accused persons namely Accused No.1 Balaji Dumne, Executive Engineer, MSEDCL, Mohol and Accused No.2 Dhananjay Aundhekar – Superintendent Engineer, MSEDCL, Mohol. Investigating Officer then recorded statements of witnesses and after completion of necessary investigation, submitted the charge-sheet for the offence punishable

under Section 306 read with Section 34 of the Indian Penal Code against both accused persons.

(g) At the time of commencement of trial, the petitioner/original accused No.2 along with accused No.1 Balaji Dumne preferred an application (Exhibit 16) for discharge from the Sessions Case bearing No.66 of 2018 for the offence punishable under Section 306 read with Section 34 of the Indian Penal Code. The learned Additional Sessions Judge, Solapur by the impugned Order dated 20/06/2019 was pleased to reject the said application. The learned trial Court has held that the petitioner/original accused No.2 had role in commission of suicide by deceased Vikas Panasare and, therefore, he is not entitled for discharge.

5 I have heard the learned Counsel appearing for the petitioner/original accused No.2 at sufficient length of time. He argued that the petitioner/original accused No.2 was granted

anticipatory bail by this Court (Coram : Mrs.Mridula Bhatkar, J.) vide Order dated 2nd February 2017 in Anticipatory Bail Application No.150 of 2017. By taking me through the said Order passed by this Court (Coram : Mrs.Mridula Bhatkar, J.), the learned Counsel for the petitioner/original accused No.2 argued that no case for the offence punishable under Section 306 read with Section 34 of the Indian Penal Code is made out against the petitioner/original accused No.2. Paragraph 7 of the said Order is pressed in service wherein this Court had given *prima facie* opinion that the treatment which was received from the petitioner herein/original accused No.2 may not constitute the offence of abetment as it does not fulfilling the ingredients of Section 107 of the Indian Penal Code. With this, it is urged that the the trial Court erred in rejecting the prayer for discharge.

6 The learned Counsel for the petitioner herein/original accused No.2 further argued that the petitioner/original accused No.2 was not the immediate superior of deceased Vikas Panasare. The petitioner/original accused No.2 is the Superintendent

Engineer for supervising five Division and 25 Sub-divisions. By relying on the documents outside the charge-sheet, it is argued that in the Departmental Enquiry, the deceased was punished and his Appeal was also dismissed. Intimation of dismissal of his Appeal in respect of punishment imposed in the Departmental Enquiry had reached the office of the MSEDCL, Mohol on 22/12/2016 and that, according to the learned Counsel for the petitioner/original accused No.2, can be the reason for commission of suicide by the deceased Vikas Pansare. It is further argued that insensitive behaviour of the petitioner/original accused No.2 cannot constitute instigation to a person to commit suicide. The learned Counsel for the petitioner/original accused No.2 further drew my attention to correspondence made by the MSEDCL and submitted that the petitioner/original accused No.2 directed the employees to comply “Janmitra Kamgar Pustak” Scheme. Because of this effort to bring transparency in administration, the Subordinate Engineers’ Association was not happy with the petitioner/original accused No.2 and this, according to the learned Counsel for the petitioner/original

accused No.2, had triggered in lodging the FIR. My attention is also drawn to the representation made by the Subordinate Engineers' Association to the Chief Engineer for suspending the petitioner/original accused No.2 and the co-accused/Balaji Dumne/original accused No.1. It is argued in the light of this communication that the FIR against the petitioner/original accused No.2 is motivated. The learned Counsel further argued that the petitioner/original accused No.2 had issued show-cause notice on 15/11/2016 to one Nagnath Mallikarjun and this can be the cause for prosecuting the petitioner/original accused No.2.

7 The learned Counsel for the petitioner/original accused No.2 further argued that there is no requirement for submitting the joining report in the MSEDCL. The employee can get himself joined by filling up the requisite forms. Therefore, prosecution case that the deceased commit suicide because of act of the petitioner/original accused No.2 in not getting him joined is wholly un-meritorious. The learned Counsel for the petitioner/original accused No.2 argued that the deceased was

under tremendous pressure of work. He had committed several irregularities in his service career. The deceased was irresponsible Officer. Several warnings were given to him and he had defaulted in collecting dues of the customer. He had not effected recoveries and, therefore, the petitioner/original accused No.2 is entitled for discharge.

8 The learned Counsel for the petitioner/original accused No.2 drew my attention to the statements of witnesses recorded in Departmental Enquiry. By pointing out statement of Sameer Jadhav – Driver recorded in the Departmental Enquiry, it is argued that this version of Sameer Jadhav is inconsistent with his statement under Section 161 of the Code of Criminal Procedure. With this, it is argued that the petitioner/original accused No.2 is entitled for discharge.

9 The learned Counsel for the petitioner/original accused No.2 relied on the Judgment of the Honourable Apex Court in the matter of *Praveen Pradhan Versus State of*

Uttaranchal & Anr.¹ and by drawing my attention to Paragraphs 17 and 19 of that Judgment it is argued that offence of abetment by instigation depends upon the intention of the person who abets and not upon the act which is done by the person who has abetted. He further relied on the Judgment of the Honourable Apex Court in the matter of ***Ramesh Kumar Versus State of Chhattisgarh***² and argued that the term “instigation” implies provocation, incitement or encouragement to do an act. *Mens rea* is, as such, the requisite element of the offence of abetting and as there is no evidence regarding *mens rea*, the petitioner is entitled for the discharge. Reliance is also placed on the Judgment of the Honourable Apex Court in the matter of ***Gangula Mohan Reddy Versus State of Andhra Pradesh***³ to canvass that the abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Reliance is also placed on Judgment of the Honourable Apex Court in the matter of ***Chitresh Kumar Chopra Versus State (Govt. of NCT of Delhi)***⁴ and Judgment of the Division Bench of this Court in the matter of

1 (2012) 9 Supreme Court Cases 734.

2 (2001) 9 Supreme Court Cases 618.

3 (2010) 1 Supreme Court Cases 750.

4 AIR 2010 SC 1146.

Dr.Shivanand s/o. Shivraj Biradar Versus The State of Maharashtra & Anr.⁵.

10 As against this, according to the learned Additional Public Prosecutor, at the stage of framing of the charge, the Court is required to examine whether there is sufficient material to proceed ahead for framing of charge. If sufficient grounds are reflected from the charge-sheet for presuming commission of alleged offences, then accused is not entitled for discharge. With this, the learned Additional Public Prosecutor drew my attention to the FIR lodged by widow Anita Panasare as well as statements of witnesses, who happen to be co-workers of the deceased Vikas Panasare and argued that act of accused persons as reflected from these statements demonstrates sufficient grounds for proceeding against the petitioner/original accused No.2.

11 I have considered the submissions so advanced and also perused the charge-sheet as well as the material placed on record by the petitioner/original accused No.2.

⁵ 2017 All MR (Cri.) 1401.

12 At this juncture, it is apposite to note the law laid down by the Honourable Apex Court in the matter of ***State of Tamil Nadu Versus N. Suresh Rajan & Ors.***⁶, in respect of the consideration of the application for discharge. It is held by the Honourable Apex Court thus :

“We have bestowed our consideration to the rival submissions and the submissions made by Mr.Ranjit Kumar commend us. True it is that at the time of consideration of the applications for discharge, the court cannot act as a mouth piece of the prosecution or act as a post-office and may sift evidence in order to find out whether or not the allegations made are groundless so as to pass an order of discharge. It is trite that at the stage of consideration of an application for discharge, the court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate the said materials and documents with a view to find out whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it

6 (2014) 11 Supreme Court Cases 709.

differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage. Reference in this connection can be made to a recent decision of this Court in the case of Sheoraj Singh Ahlawat and Ors. v. State of Uttar Pradesh and Anr., AIR 2013 SC 52 : (2012 AIR SCW 6171), in which, after analyzing various decisions on the point, this Court endorsed the following view taken in Onkar Nath Mishra v. State (NCT of Delhi) (2008) 2 SCC 561 : (AIR 2008 SC (Supp) 204 : 2008 AIR SCW 96):

“11. It is trite that at the stage of framing of charge the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclosed the existence of all the ingredients constituting the alleged offence. At that stage, the court is not expected to go deep into the probative value of the material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out. At that stage, even strong suspicion founded on material which leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would

justify the framing of charge against the accused in respect of the commission of that offence.” ” .

13 It is thus clear that at the stage of discharge, the Court is required to consider whether there is ground for presuming that the offence has been committed. Strong suspicion coupled with some *prima facie* material is sufficient to put the accused for trial. It is not required to be seen as to whether the material is sufficient for recording conviction against the accused and there is no need to go into the probative value of the material on record. Apart from this, material outside the charge-sheet cannot be considered for granting discharge to the accused. Keeping in mind this position of law, let us examine the case in hand in order to ascertain whether material collected by the prosecution is sufficient to put the petitioner/accused No.2 for trial for the offence punishable under Section 306 read with Section 34 of the Indian Penal Code.

14 The term 'abetment' is defined in Section 107 of the IPC. It 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 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.

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.

Perusal of the definition of the term 'abetment' as such makes it clear that abetment does not involve actual commission of crime but it is crime apart. Abetment involves actual active complicity on the part of abettor at point of time prior to or at the time of commission of offence. Abetment is complete when other is instigated to commit an act of offence. Thus, for making out the

offence punishable under Section 306 of IPC, the prosecution is enjoined to establish that there was instigation, provocation, incitement or encouragement by accused persons to the deceased to commit suicide. Some active suggestions or some stimulations by accused persons are required to be indicated in order to frame the charge for the offence punishable under Section 306 of IPC. Similarly, it is well settled that for making out the offence punishable under Section 306 of IPC, *mens rea* which is an essential ingredient of the offence defined in Section 107 of IPC is required to be shown as without knowledge and intention there cannot be abetment. Keeping in mind this aspect, one will have to examine prima facie whether suicide of Vikas Pansare is a common course of events and natural result of normal human conduct so as to constitute sufficient ground for framing charge under this head.

15 *Prima facie*, it is seen from the report of autopsy that the deceased Vikas Pansare died due to asphyxia due to hanging indicating commission of suicide by him as report of his medical examination does not show any external injury on the dead body. Suicide is an act of offence punishable under Section 309 of IPC

and, therefore, question is whether there are prima facie grounds for proceeding against present revision petitioners for the offence punishable under Section 306 of IPC which makes a person abetting of suicide by another liable for imprisonment which may extend to 10 years apart from imposition of fine.

16 Now, let us examine ratio of the Rulings cited by the learned Counsel for the petitioner/original accused No.2. In the matter of ***Gangula Mohan Reddy (supra)***, in Paragraph 17 it is held thus :

“17 Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. The intention of the Legislature and the ratio of the cases decided by this court is clear that in order to convict a person under section 306 IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and this act must have been intended to push the deceased into such a position that he committed suicide.”

17 In the matter of ***Ramesh Kumar (supra)***, it is held by the Honourable Apex Court in Paragraphs 20 and 21 of the said Judgment 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.

21 In *State of West Bengal v. Orilal Jaiswal and Anr.*, [1994] 1 SCC 73, this Court has cautioned that the Court should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end the life by committing suicide. If it transpires to the Court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord

and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the Court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty.”

18 In the matter of *Praveen Pradhan (supra)*, following are the observations of the Honourable Apex Court in Paragraphs 17 and 19 :

17 The offence of abetment by instigation depends upon the intention of the person who abets and not upon the act which is done by the person who has abetted. The abetment may be by instigation, conspiracy or intentional aid as provided under Section 107 IPC. However, the words uttered in a fit of anger or omission without any intention cannot be termed as instigation. (Vide: State of Punjab v. Iqbal Singh, AIR 1991 SC 1532; Surender v. State of Haryana, (2006) 12 SCC 375; Kishori Lal v. State of M.P., AIR 2007 SC 2457; and Sonti Rama Krishna v. Sonti Shanti Sree, AIR 2009 SC 923.)

19 16. Thus, the case is required to be considered in the light of aforesaid settled legal propositions. In the instant case, alleged harassment had not been a casual feature, rather remained a matter of persistent harassment. It is not a case of a driver; or a man having an illicit relationship with a married woman, knowing that she also had another paramour; and

therefore, cannot be compared to the situation of the deceased in the instant case, who was a qualified graduate engineer and still suffered persistent harassment and humiliation and additionally, also had to endure continuous illegal demands made by the appellant, upon non-fulfillment of which, he would be mercilessly harassed by the appellant for a prolonged period of time. He had also been forced to work continuously for a long durations in the factory, vis-à-vis other employees which often even entered to 16-17 hours at a stretch. Such harassment, coupled with the utterance of words to the effect, that, “had there been any other person in his place, he would have certainly committed suicide” is what makes the present case distinct from the aforementioned cases considering the facts and circumstances of the present case, we do not think it is a case which requires any interference by this court as regards the impugned judgment and order of the High Court. The appeal is, therefore, dismissed accordingly.”

19 In the matter of *Chitresh Kumar Chopra (supra)*, in Paragraph 16, following are the observations of the Honourable Apex Court :

“16 In the background of this legal position, we may advert to the case at hand. The question as to what is the cause of a suicide has no easy answers because suicidal ideation and behaviours in human beings are complex and multifaceted. Different individuals in the same situation react and behave differently because of

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

20 As noted in forgoing paragraphs, intention and *mens rea* are prerequisites of offence of abetment. There should be reasonable nexus between the act of the offence and abetment by accused persons. Intention harboured by an accused is mental state of mind and no tangible evidence can be produced by the prosecution to establish intention. Therefore, intention of accused persons is required to be gathered from all surrounding circumstances by applying test of a prudent person.

21 Now, let us examine material collected by the Investigating Officer in the case in hand in order to infer whether the same constitutes "abetment to the deceased to commit suicide". In her FIR lodged on 03/01/2017, First Informant/widow Anita Panasare has categorically stated that

after joining Mohol Sub-Division of MSEDCL on 19/08/2016, the deceased used to tell her about harassment and torture at his workplace by accused persons injuring his dignity and pride. First Informant Anita Panasare reported to police that during his stay at Pune from 17/12/2016 to 27/12/2016, the deceased used to disclose her as to how accused persons used to disgrace him by harassing him at the workplace. The First Informant reported that the deceased had expressed his desire not to go to Mohol for joining work because of act of accused persons in injuring his dignity and pride. The First Informant reported that due to her efforts, deceased Vikas Panasare went to join his duty at at Mohol on 27/12/2016. Her FIR further reveals that in the night hours of 27/12/2016, her deceased husband telephonically contacted her to report that the petitioner/original accused No.2 along with co-accused had given him insulting and humiliating treatment instead of getting him joined. She further disclosed to police that at about 10.00 p.m. of 28/12/2016, she telephonically asked her deceased husband whether he has joined the work and upon that her deceased husband told her that the petitioner/original accused

No.2 along with co-accused asked him to be outside the office after giving insulting treatment. The First Informant further reported that the deceased thereafter told her that he was made to appear before Naganath Ervadkar – Chief Engineer, who directed to get him joined. However, accused persons did not allow him to join. As per version of the First Informant, the deceased informed her that the petitioner/original accused No.2 told him that he will cause dismissal of the deceased and shall bring the deceased on road. The FIR further shows that there is no other way out but to commit suicide in such situation. This material in the FIR constitutes dying declaration of deceased Vikas Panasare, it being his statements as to cause of his death and as such is relevant under Section 32(1) of the Evidence Act.

22 During the course of investigation, the Investigating Officer has collected whatsapp texts exchanged by the First Informant and the deceased. The text messages exchanged between deceased and his wife corroborate the case of prosecution. The text messages reflect conversation of the widow in respect of the fact that her husband was not allowed to join by

his Superior Officers. She advised him to inform Superior Officers about his uncomfortable condition.

23 Laxmikant Jondhale was the housemate of deceased Vikas Panasare. He used to work as Assistant Engineer with the MSEDCL at Mohol. Statement of Laxmikant Jondhale shows that deceased Vikas Panasare, on 28/12/2016, had informed him that despite visiting the office at Solapur on 28/12/2016, petitioner/original accused No.2 Dhananjay Aundhekar and the co-accused had not allowed him to join the work. This witness heard conversation between deceased and Sectional Engineer Prashant Kumbhar which took place on 29/12/2016 i.e. the day of commission of suicide by deceased Vikas Panasare. During that conversation, the deceased had disclosed Prashant Kumbhar that he is not allowed to join duty. Statement of Laxmikant Jondhale further shows that the deceased as well as other employee used to effect maximum recovery, but the petitioner/original accused No.2 and the co-accused were not happy with them.

24 Nilesh Waghmare was working as Junior Engineer with

the office of MSEDCL at Mohol. His version shows that on 21/12/2016, co-accused Balaji Dumne – original accused No.1 in a meeting, made a statement that the deceased has no capacity to work and he is not worthy to the office and he shall be transferred by informing the Superior. Statement of Nilesh Waghmare further shows that at about 8.30 p.m. of 21/12/2016, the petitioner/original accused No.2 also came and joined that office meeting. Thereafter, the petitioner/original accused No.2 questioned as to where is Vikas Panasare (since deceased). The petitioner/original accused No.2 then in that meeting in presence of all in sundry directed and declared that they should not allow Vikas Panasare to come and join the duty. He advised the officers that the deceased should be asked to go to Baramati at the office of the Chief Engineer and he should get himself transferred elsewhere. Nilesh Waghmare further disclosed to police that the petitioner/original accused No.2 further directed everybody present in that meeting that if Vikas Panasare (since deceased) comes for joining the duty, then his office Cabin should be locked.

25 Statement of Nagnath Ervadkar, Chief Engineer of the MSEDCL shows that on 21/12/2016 there was meeting of Officers of Solapur. After that meeting, Vikas Panasare (since deceased) along with co-accused Balaji Dumne/original accused No.1 came in his chamber. As per version of Nagnath Ervadkar, the Chief Engineer, then he told the petitioner/original accused No.2 as well as the co-accused to get Vikas Panasare (since deceased) joined. The charge-sheet also contains communication by Nagnath Ervadkar, Chief Engineer informing police that he had given oral instructions to the petitioner/original accused No.2 and the co-accused to get Vikas Panasare (since deceased) joined and these instructions were imparted on 28/12/2016.

26 Sominath Rathod is the Senior Clerk working in the office of MSEDCL at Solapur. Statement of this witness as well as that of Ram Ladappa Gaikwad, Senior Clerk reflect post-event conduct of accused persons. As per version of Sominath Rathod, on 30/12/2016, co-accused Balaji Dumne called him in the office of MSEDCL, but he found that Balaji Dumne/original accused No.1

himself had not attended the office. Sominath Rathod further disclosed to the police that at about 11.30 p.m. of 30/12/2016, he was called at Hotel Ambassador Hotel at Pune Naka area of Solapur. When he went there, he saw the petitioner/original accused No.2 sitting along with co-accused Balaji Dumne/original accused No.1 in a Scorpio vehicle. In the midnight hours, co-accused Balaji Dumne/original accused No.1 gave him joining report and leave application of Vikas Panasare and told him to get those documents entered in the Inward Register of 28/12/2016.

27 Statement of Ram Ladappa Gaikwad, Senior Clerk reveals that on 28/12/2016, deceased Vikas Panasare along with accused persons met Nagnath Ervadkar and thereafter deceased Vikas Panasare came to his table. Ram Gaikwad further stated that deceased Vikas Panasare then told him that despite directions of Nagnath Ervadkar, Chief Engineer, the petitioner/original accused No.2 and the co-accused Balaji Dumne/original accused No.1 are not allowing him to join. Statement of Ram Gaikwad reveals that the deceased waited for a long time at his table for further Orders of accused persons for getting him joined and

during that waiting period, he disclosed Ram Gaikwad that accused persons are threatening to remove him from service. Statement of Ram Gaikwad further shows that the deceased had disclosed that his leave application and joining report is kept in his diary by co-accused Balaji Dumne/original accused No.1 without giving any endorsement on those documents. Ram Gaikwad further disclosed that on 30/12/2016, co-accused Balaji Dumne/original accused No.1 telephonically contacted him and asked him to come in the office early for making entry of joining report of the deceased in the Inward Register. As per his version, subsequently, witness Sominath Rathod came to him and told that in the midnight of 30/12/2016 accused persons had given him leave application and joining report with necessary endorsement and those should be entered in the Inward Register. Ram Gaikwad then forwarded those documents to witness Avinash Mendgudale. Statement of Avinash Mendgudale shows that subsequently, he had entered leave application and joining report of the deceased in the Inward Register. This material coming on record unerringly points out that the deceased was cornered by accused persons by

their calculated efforts to keep him away from employment apart from publicly humiliating him in presence of his subordinates.

28 This is the evidence collected by the prosecution for putting the accused persons for trial. Conjoint reading of statements of all these witnesses recorded by the prosecution makes it clear that the deceased went to Mohol for joining duty on 27/12/2016. His leave application and joining report was received by accused persons. But they had not made any endorsement on the said report. Rather co-accused Balaji Dumne/ original accused No.1 had kept the said documents with him rather than directing entries of those documents in the Inward Register of the MSEDCL. Despite directions to him from the Chief Engineer, the petitioner deliberately did not allow the deceased to join the duty but indulged in his public humiliation and torture. This fact makes it clear that though the deceased was trying to join the duty after availing the leave, the accused persons were not allowing him to join duty by keeping his joining report with them. The deceased who was holding the post of the Deputy Executive

Engineer was made to run from pillar to post for getting himself joined in employment.

29 In the meeting dated 21/12/2016, in presence of staff members the petitioner/original accused No.2 gave a direction to the staff members that if deceased Vikas Panasare comes for joining duty, he should not be allowed to resume duty and his office cabin should be locked in such eventuality. The petitioner/original accused No.2 further informed the staff member that if deceased Vikas Panasare arrived for joining duty, then he should be directed to go to office of the Chief Engineer at Baramati for getting himself transferred to some other place. Despite directions of the Chief Engineer to get the deceased joined, the petitioner/original accused No.2 and the co-accused Balaji Dumne/original accused No.1 did not allow the deceased to join the work. It is seen from statements of witnesses that despite repeated efforts by the deceased to resume his work, he was not never allowed to do so by accused persons including the petitioner/original accused No.2. Ultimately, the deceased

committed suicide on 29/12/2016 and thereafter the petitioner/ original accused No.2 and the co-accused Balaji Dumne/original accused No.1 called Sominath Rathod, the Senior Clerk in night hours of 30/12/2016 for handing over joining report and leave application of the deceased with an instruction to get them entered in the Inward Register of the office.

30 In the case in hand, deceased Vikas Pansare was family man having family at Pune. The FIR lodged by widow and her whatsapp conversation with the deceased reflects the trauma which the deceased was suffering. The way in which the deceased was being treated as disclosed from statements of Laxmikant Jondhale, Nilesh Waghmare, Sominath, Rathod and Ladappa Gaikwad unerringly points out that the petitioner had harboured the requisite intention to aid, instigate or abet Vikas Pansare to commit suicide. The truthfulness of these allegations spoken out by witnesses cannot be gone into at this stage but these allegations are considered for determining whether they are constituting sufficient grounds for proceeding against petitioner/accused for

the offence punishable under Section 306 of IPC. In my considered view, a prudent family man if suffers by such treatment day in and the day out at the hands of his superior officers would certainly think of commission of suicide by believing that the life is now not worth living and he should die. Statement of witnesses and the FIR lodged by the widow shows unbearable, continuous and repeated harassment to the deceased by revision petitioner/accused. Conduct of petitioners/accused in harassing and humiliating the deceased in presence of the staff members and not allowing him to join duty appears to be wilful and its gravity seems to propel or compel a person of ordinary prudence to commit suicide. Prima facie, statement of witnesses shows that by torturing, humiliating and by prohibiting the deceased from resuming duty, the petitioner/accused prompted and incited or instigated the deceased to indulge in the self-effacement. Cornered to a wall by such behaviour of the petitioner/accused, deceased Vikas Pansare was bound to think that it is better to die rather than suffering such humiliations in front of his superiors and subordinates from the office. Matter is required to be viewed

from the angel whether accused persons could reasonably foresee result of their act and whether they can apprehend that with such acts, they are likely to propel or compel the deceased to commit suicide. Continuously harassing and humiliating an officer holding the post of the Deputy Executive Engineer in presence of his subordinates and office staff at the work place and not allowing him to resume work, in my considered view certainly amounts to instigation and provocation to him to commit an act of offence i.e. suicide. Explanation (ii) of Section 107 of IPC demonstrates that doing anything in order to facilitate commission of act of offence also amounts to abetment. Act of revision petitioner/accused spoken by witnesses prima facie reflects their mens rea. Suicide committed by deceased Vikas is seen to be the common course of event and natural result of normal conduct of a man of ordinary prudence. Observations of the Honourable Supreme Court in Paragraph 19 of the Judgment in the matter of ***Praveen Pradhan (supra)*** applies with full force to the case in hand. The deceased was holding high ranking post of the Deputy Executive Engineer in the MSEDCL and still suffered persistent injury to his dignity and

pride at the hands of the petitioner/original accused No.2 for a prolonged period as seen from the FIR and statements of his colleagues. The case in hand is fulfilling the test 'had there been any other person in his place, he would have certainly committed suicide'.

31 In this view of the matter, if material gathered in the charge-sheet is appreciated in proper perspective then it cannot be said that ingredients of the offence of abetment to commit suicide are not reflected from the material gathered by the prosecution. Therefore, no case for interference in extraordinary writ jurisdiction is made out. The petition is, therefore, dismissed. Needless to mention that all these observations are prima facie in nature which shall not have bearing on the trial of the case.

(A.M.BADAR, J.)

Raju D.
Gaikwad

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