

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 397 of 2016

Reserved on : 06.08.2021

Delivered on : 25.10.2021

Rajeshwari Thakur, D/o Narottam Singh Thakur, Aged About 30 Years, Head Constable No. 89, Police Station- Bodla, R/o Thakurpara, Shitla Chowk, Ward No. 19, Police Station- Kotwali, Kawardha, Civil & Revenue District - Kabirdham (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, through - District Magistrate, Kabirdham, District- Kabirdham (C.G.)
2. Govind Prasad, S/o Late Shiv Sagar Sahu, Aged About 56 Years, R/o Urla, Ward No. 56, Post - Mohan Nagar, Police Station- Pulgaon, District- Durg (C.G.)

---- Respondents

For Petitioner	:	Mr. Dharmesh Shrivastava, Advocate.
For State/ Res. No. 1	:	Mr. Devendra Pratap Singh, Dy. A.G.
For Respondent No. 2	:	Mr. Mahendra Dubey, Advocate.

Hon'ble Shri Justice Narendra Kumar Vyas

C.A.V. ORDER

1. The petitioner has filed the present petition under Section 482 of the Code of Criminal Procedure, 1973 being aggrieved by framing of charge on 10.12.2015 against the petitioner under Section 306 of I.P.C. by the learned Additional Sessions Judge, Kabirdham (Kawardha), District- Kabirdham (C.G.) in Sessions Trial No. 42/2015 arising out of complaint filed by the complainant/ respondent No. 2 under Section 200 of the Cr.P.C. for registration of offence punishable under Section 306 of I.P.C. against the petitioner. Sessions Trial No. 42/2015 has been transferred and is presently pending before the Sessions Judge, Kawardha, District- Kabirdham (C.G.).
2. The brief facts, as projected by the petitioner, are that the

complainant is father of deceased- Hulas Narayan Sahu, who was posted as Constable at Police Station- Kukdur, District- Kabirdham, who succumbed to death on 05.03.2014 on account of torture and conspiracy done by the petitioner- Rajeshwari Thakur. The deceased was posted as Constable at Police Station- Kukdur, District- Kabirdham, who was residing at office residence, committed suicide by Insas Riffle. Head Constable- Sukhlal Dhurve submitted information to In-charge Police Station- Hemchandra Verma, thereafter Merg No. 03/2014 has been registered at Police Station- Kukdur on 05.03.2014 at about 9.30 a.m. As per report, deceased- Hulas Narayan Sahu committed suicide on 05.03.2014 at about 2 to 4 a.m. When information with regard to death of the deceased was submitted to Sub Divisional Magistrate, Pandariya, District- Kabirdham, he registered case under Section 174/175 of the Cr.P.C. and also prepared Panchnama of dead body of the deceased, wherein he found one Bullet of Insas Riffle, which was inside upper part of brain of the deceased. When search of dead body was conducted in presence of family members of the deceased, one mobile hand set Nokia H-2 along with two Sim Cards was found from pocket of the deceased.

3. Dead body of the deceased was sent to Community Health Centre, Pandariya, District- Kabirdham for examination and postmortem was conducted, where death of the deceased was found suicidal. With regard to the death of the deceased in pursuance of Merg Intimation No. 03/2014, enquiry officer has recorded statement of officials posted at Police Station- Kukdur, family members of the deceased and accused- Rajeshwari Thakur. No one has taken name of petitioner- Rajeshwari Thakur.
4. The respondent No. 2/complainant filed a complaint under Section 200 of Cr.P.C. mainly contending that wife of deceased- Khileshwari Sahu with whom marriage of the deceased was solemnized on 25.01.2014 was residing at her matrimonial

house on the date of incident. She has stated that after marriage her husband informed her about his love affair with the petitioner and he also informed that he is not intended to maintain relationship with the petitioner, but the petitioner used to say that if he will not marry with her, she will lodge false report against the deceased calling herself pregnant and she was creating pressure to marry her. She was also stating that she will produce the call details as evidence and she will lodge report against the deceased. The petitioner has also stated that she is not happy with solemnization of marriage with his wife- Khileshwari Sahu. Khileshwari Sahu also stated that the petitioner used to threat the deceased on her mobile No. 9691633848 & 7389090192 and due to threat and pressure created by the petitioner, deceased committed suicide. The petitioner has abetted the deceased to commit suicide.

5. It has been further contended in the complaint that the enquiry officer to protect the petitioner has recorded statement of the relatives of the deceased by manipulating it and they have concealed the actual reason of abetment of suicide committed by the deceased. She has abetted the deceased to commit suicide as provided under Section 107 of the I.P.C., thus, the accused has committed offence punishable under Section 306 of I.P.C. Since no criminal case has been registered against the petitioner, therefore, complainant has filed complaint and requested that the offence under Section 306 of the I.P.C. may be registered against the petitioner.
6. The learned Judicial Magistrate First Class while considering the primary evidence recorded by the complainant namely Govind Sahu, Smt. Shakuntala Sahu, Smt. Khileshwari Sahu, Kamal Narayan Sahu, Dr. Rajesh Kumar Baldev, Sub Divisional Officer (Police), Pandariya, District- Kabirdham and S.R. Pathare, Inspector, Police Station- Kukdur, District- Kabirdham. The learned trial Court registered complaint under Section 306 of I.P.C. vide its order dated 20.07.2015. Since, the matter was

triable by the Sessions Judge, therefore, the same was submitted before Additional Sessions Judge, Kabirdham for further trial and the case was registered as Session Trial No. 42/2015. Learned Additional Sessions Judge, Kabirdham vide its order dated 10.12.2015 framed charge punishable under Section 306 of I.P.C. against the petitioner. This order and subsequent proceedings have been assailed by the petitioner before this Court by filing this petition under Section 482 of the Cr.P.C.

7. This Court vide its order dated 30.03.2016 issued notice to the respondent No. 2 and vide its order dated 08.11.2016 stayed the further proceedings in Session Trial No. 42/2015 which is continued till date.
8. Learned counsel for the petitioner would submit that there is no material present before the trial Court to record finding that the petitioner has abetted the deceased to commit suicide. For establishing the charge under Section 306 of the I.P.C. it is incumbent on the part of the complainant to establish that the petitioner has abetted the deceased to commit suicide as provided under Section 107 of I.P.C. There is no such material present against the petitioner, therefore, the same is liable to be quashed by this Court.
9. On the other hand, learned State counsel submitted their reply, in which it has been stated that learned Judicial Magistrate First Class on the basis of complaint made by respondent No. 2, the material and evidence placed on record by the complainant, has taken cognizance in the matter for committing offence punishable under Section 306 of I.P.C. and accordingly, the same was submitted before Additional Sessions Judge for further trial. Learned Additional Sessions Judge on the basis of material and evidence collected during investigation framed the charge under Section 306 of I.P.C. against the petitioner. Even otherwise, as per the averments, the matter requires detailed thread-bearing examination of evidence that can be done by the

trial Court, therefore, the present writ petition is liable to be dismissed.

10. Respondent No. 2 has also entered appearance before this Court and made submission that there is sufficient material for framing of charge under Section 306 of IPC as she has abetted the deceased to commit suicide, therefore, the charge has rightly been framed, as such, the present petition against framing of charge, is liable to be dismissed by this Court. He would further submit that the petition under Section 482 of the Cr.P.C. is liable to be dismissed as the High Court's power under Section 482 of Cr.P.C. has to be exercised sparingly, which is not the present case.
11. I have heard learned counsel for the parties and perused the documents appended thereto with utmost satisfaction.
12. Learned counsel for the petitioner would submit that there is no ingredient or material on record to establish that the petitioner has abetted the deceased to commit suicide as per Section 107 of I.P.C. As such, it cannot be said that the offence punishable under Section 306 of I.P.C. has been made out against the petitioner. The complainant should *prima facie* establish that the petitioner has abetted the deceased to commit suicide. Unless and until such material is placed on record, no case is made out against the petitioner for committing offence punishable under Section 306 of I.P.C. He placed reliance upon judgment rendered by Hon'ble the Supreme Court in **Madan Mohan Singh Vs. State of Gujarat & another¹**, **Vaijnath Kondiba Khandke Vs. State of Maharashtra & another²**, **Kanchan Sharma Vs. State of Uttar Pradesh & another³**, **Sunita Rathore Vs. State of M.P.⁴** & **Sandeep Mishra Vs. State of Chhattisgarh⁵**.
13. Before this Court evaluates the contents of the complaint, a

¹ (2010) 8 SCC 628

² (2018) 7 SCC 781

³ 2021 SCC OnLine SC 737

⁴ 2021 SCC OnLine MP 1487

⁵ (2020) 3 CGLJ 73

reference to Section 306 of the IPC is necessary. Section 306 stipulates that if a person commits suicide —whoever abets the commission of such suicide shall be punished with imprisonment extending up to 10 years

14. Section 107 is comprised within Chapter V of the IPC, which is titled of abetment. Section 107 provides as under:-

“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 authorised 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 facilitates the commission thereof, is said to aid the doing of that act.

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.”

15. The first segment of Section 107 defines abetment as the instigation of a person to do a particular thing. The second segment defines it with reference to engaging in a conspiracy with one or more other persons for the doing of a thing, and an

act or illegal omission in pursuance of the conspiracy. Under the third segment, abetment is founded on intentionally aiding the doing of a thing either by an act or omission. These provisions have been construed specifically in the context of Section 306 to which a reference is necessary in order to furnish the legal foundation for assessing the contents of the complaint. These provisions have been construed in the earlier judgment passed by Hon'ble the Supreme Court in **Amalendu Pal alias Jhantu Vs. State of West Bengal**⁶, which reads as under:-

"10. The legal position as regards Sections 306 IPC which is long settled was recently reiterated by this Court in the case of Randhir Singh v. State of Punjab (2004) 13 SCC 129 as follows in paras 12 and 13:

"12. 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 is required before a person can be said to be abetting the commission of offence under Section 306 IPC.

13. In State of W.B. v. Orilal Jaiswal [(1994) 1 SCC 73] this Court has observed that the courts 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."

11. Further in the case of Kishori Lal v. State of

⁶ (2010) 1 SCC 707

M.P. (2007) 10 SCC 797, this Court gave a clear exposition of Section 107 IPC when it observed as follows in para 6:

"6. Section 107 IPC defines abetment of a thing. The offence of abetment is a separate and distinct offence provided in IPC. A person, abets the doing of a thing when (1) 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. Section 109 provides that if the act abetted is committed in consequence of abetment and there is no provision for the punishment of such abetment, then the offender is to be punished with the punishment provided for the original offence. "Abetted" in Section 109 means the specific offence abetted. Therefore, the offence for the abetment of which a person is charged with the abetment is normally linked with the proved offence."

[See also Kishangiri Mangalgiri Swami v. State of Gujarat (2009) 4 SCC 52]

12.....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 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, conviction in terms of Section 306 IPC is not sustainable.

16. Hon'ble the Supreme Court in **S. S. Chheena Vs. Vijay Kumar Mahajan**⁷, held as under:-

"25. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. The intention of the legislature and the ratio of the

⁷ (2010) 12 SCC 190

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.

17. Hon'ble the Supreme Court in **Madan Mohan Singh Vs. State of Gujarat**⁸, specifically considered the case which arose in the context of a petition under Section 482 of the Cr.P.C. where the High Court had dismissed the petition for quashing an FIR registered for offences under Sections 306 and 294(B) of the IPC. In that case, the FIR was registered on a complaint of the spouse of the deceased who was working as a driver with the accused. The driver had been rebuked by the employer and was later found to be dead on having committed suicide. A suicide note was relied upon in the FIR, the contents of which indicated that the driver had not been given a fixed vehicle unlike other drivers besides which he had other complaints including the deduction of 15 days' wages from his salary. The suicide note named the accused–appellant. Hon'ble the Supreme Court has held as under:-

“10. We are convinced that there is absolutely nothing in this suicide note or the FIR which would even distantly be viewed as an offence much less under Section 306 IPC. We could not find anything in the FIR or in the so-called suicide note which could be suggested as abetment to commit suicide. In such matters there must be an allegation that the accused had instigated the deceased to commit suicide or secondly, had engaged with some other person in a conspiracy and lastly, that the accused had in any way aided any act or illegal omission to bring about the suicide.

11. In spite of our best efforts and microscopic examination of the suicide note and the FIR, all that we find is that the suicide note is a rhetoric document in the nature of a departmental complaint. It also suggests some mental imbalance on the part of the deceased which he himself describes as depression. In the so-called suicide

⁸ (2010) 8 SCC 628

note, it cannot be said that the accused ever intended that the driver under him should commit suicide or should end his life and did anything in that behalf. Even if it is accepted that the accused changed the duty of the driver or that the accused asked him not to take the keys of the car and to keep the keys of the car in the office itself, it does not mean that the accused intended or knew that the driver should commit suicide because of this.¶ Dealing with the provisions of Section 306 of the IPC and the meaning of abetment within the meaning of Section 107, the Court observed:

12. In order to bring out an offence under Section 306 IPC specific abetment as contemplated by Section 107 IPC on the part of the accused with an intention to bring about the suicide of the person concerned as a result of that abetment is required. The intention of the accused to aid or to instigate or to abet the deceased to commit suicide is a must for this particular offence under Section 306 IPC. We are of the clear opinion that there is no question of there being any material for offence under Section 306 IPC either in the FIR or in the so-called suicide note. The Court noted that the suicide note expressed a state of anguish of the deceased and —cannot be depicted as expressing anything intentional on the part of the accused that the deceased might commit suicide¶. Reversing the judgement of the High Court, the petition under Section 482 was allowed and the FIR was quashed.

18. The Constitutional Bench of Hon'ble the Supreme Court in **Common Cause (A Registered Society) Vs. Union of India & another**⁹, has examined the provisions of Section 107 of IPC and held as under:-

“458. For abetting an offence, the person abetting must have intentionally aided the commission of the crime. Abetment requires an instigation to commit or intentionally aiding the commission of a crime. It presupposes a course of conduct or action which (in the context of the present discussion) facilitates another to end life. Hence abetment of suicide is an offence expressly punishable under Sections 305 and 306 IPC.”

19. Hon'ble the Supreme Court in **M Arjunan Vs. State (Represented by its Inspector of Police)**¹⁰, has held as

⁹ (2018) 5 SCC 1

¹⁰ (2019) 3 SCC 315

under:-

“7. The essential ingredients of the offence under Section 306 IPC are: (i) the abetment; (ii) the intention of the accused to aid or instigate or abet the deceased to commit suicide. The act of the accused, however, insulting the deceased by using abusive language will not, by itself, constitute the abetment of suicide. There should be evidence capable of suggesting that the accused intended by such act to instigate the deceased to commit suicide. Unless the ingredients of instigation/abetment to commit suicide are satisfied the accused cannot be convicted under Section 306 IPC.”

20. Similarly, Hon'ble the Supreme Court in another judgment passed in **Ude Singh and Ors. Vs. State of Haryana**¹¹, expounded on the ingredients of Section 306 of the IPC, and the factors to be considered in determining whether a case falls within the ken of the aforesaid provision, in the following terms:

“38. In cases of alleged abetment of suicide, there must be a proof of direct or indirect act/s of incitement to the commission of suicide. It could hardly be disputed that the question of cause of a suicide, particularly in the context of an offence of abetment of suicide, remains a vexed one, involving multifaceted and complex attributes of human behaviour and responses/reactions. In the case of accusation for abetment of suicide, the Court would be looking for cogent and convincing proof of the act/s of incitement to the commission of suicide. In the case of suicide, mere allegation of harassment of the deceased by another person would not suffice unless there be such action on the part of the accused which compels the person to commit suicide; and such an offending action ought to be proximate to the time of occurrence. Whether a person has abetted in the commission of suicide by another or not, could only be gathered from the facts and circumstances of each case.

39. For the purpose of finding out if a person has abetted commission of suicide by another, the consideration would be if the accused is guilty of the act of instigation of the act of suicide. As explained and reiterated by this Court in the decisions above-referred, instigation means to goad, urge forward, provoke, incite or encourage to do an act. If the

¹¹

Criminal Appeal No. 233 of 2010 (decided on 25.07.2019)

persons who committed suicide had been hypersensitive and the action of accused is otherwise not ordinarily expected to induce a similarly circumstanced person to commit suicide, it may not be safe to hold the accused guilty of abetment of suicide. But, on the other hand, if the accused by his acts and by his continuous course of conduct creates a situation which leads the deceased perceiving no other option except to commit suicide, the case may fall within the four-corners of Section 306 IPC. If the accused plays an active role in tarnishing the self-esteem and self-respect of the victim, which eventually draws the victim to commit suicide, the accused may be held guilty of abetment of suicide. The question of mens rea on the part of the accused in such cases would be examined with reference to the actual acts and deeds of the accused and if the acts and deeds are only of such nature where the accused intended nothing more than harassment or snap show of anger, a particular case may fall short of the offence of abetment of suicide. However, if the accused kept on irritating or annoying the deceased by words or deeds until the deceased reacted or was provoked, a particular case may be that of abetment of suicide. Such being the matter of delicate analysis of human behaviour, each case is required to be examined on its own facts, while taking note of all the surrounding factors having bearing on the actions and psyche of the accused and the deceased.

21. Now in this backdrop, it becomes necessary to advert briefly to the contents of the complaint in the present case. The relevant contents of the complaint reads as under:-

“5. यह कि, मृतक की पत्नी श्रीमती खिलेश्वरी साहू, जिसके साथ मृतक का विवाह 25.01.2014 को हुआ था और मृतक हुलास नारायण साहू की मृत्यु दिनांक को श्रीमती खिलेश्वरी साहू अपने ससुराल में निवास कर रही थी, ने मर्ग जांच के दौरान जांचकर्ता अधिकारी के समक्ष अपना कथन दिया था की उसके पति मृतक हुलास नारायण साहू उसके साथ रहने के दौरान उसे यह बताये थे कि, अभियुक्ता के साथ उसकी जान पहचान थी और अभियुक्ता के साथ पूर्व में उनका प्रेम संबंध रहा है और विवाह उपरांत मैं उसके साथ स्वयं का विवाह हो जाने के कारण उसके साथ कोई संबंध नहीं रखना चाहता हूँ, परंतु अभियुक्ता मुझे कहती है कि मैं तुम्हे बहुत पंसद करती हूँ, तुमसे शादी करना चाहती हूँ और अगर तुम मुझसे शादी नहीं करोगे तो मैं स्वयं को गर्भवती बताकर तुम्हारे

खिलाफ रिपोर्ट कर दूंगी और एस.पी. के पास तुम्हारे खिलाफ शिकायत कर दूंगी । श्रीमती खिलेश्वरी साहू ने अपने कथन में अभियुक्ता द्वारा मृतक को विवाह करने के लिये दबाव डालने, उसके विरुद्ध पुलिस थाने में रिपोर्ट दर्ज कराने और काल डिटेल को सबूत के बतौर पेश कर उसे जेल भेजवा देगी, का कथन किया था ।

7. यह कि, मृतक हुलास नारायण साहू की आत्महत्या के संबंध में मृतक की पत्नी श्रीमती खिलेश्वरी साहू, मृतक के पिता वर्तमान परिवादी, मृतक के ससुर कमल नारायण साहू एवं मृतक की माता श्रीमती शकुन्तला साहू को इस तथ्य का ज्ञान था कि अभियुक्ता द्वारा मृतक पर विवाह किये जाने के लिये दबाव बनाया जाता था और उसका विवाह हो जाने के उपरांत मृतक को उसके साथ विवाह करने और विवाह नहीं करने की स्थिति में उसके खिलाफ केस दर्ज कराने, जेल भिजवाने की धमकी दी जाती थी और मृतक को अभियुक्ता द्वारा यह कहा जाता था कि, मेरे सामने शादीशुदा बन कर घुमते हो जो मुझे बरदास्त नहीं है या तो मुझसे विवाह करो या आत्महत्या करलो या जेल में ज़िंदगी काटने को तैयार रहों । उक्त तथ्यों को ऊपर उल्लेखित साक्षियों द्वारा मर्ग जाच के दौरान विस्तारपूर्वक जांचकर्ता अधिकारी को बताया गया परन्तु उनके द्वारा उक्त साक्षियों के बताये अनुसार उनका बयान लेखबद्ध नहीं किया गया ।

8. यह कि, अभियुक्ता द्वारा मृतक हुलास नारायण साहू को उसकी मृत्यु के पूर्व उसका विवाह हो जाने के बाद प्रत्यक्ष एवं अप्रत्यक्ष रूप से (सीधे संवाद या दुरभाष से) मानसिक रूप से प्रताड़ित किया जाना, मृतक की शादी हो जाने के उपरांत अभियुक्ता द्वारा मृतक पर विवाह के लिये दबाव डालना, विवाह नहीं किये जाने की स्थिति में मृतक के खिलाफ स्वयं को गर्भवती बताकर झुठी रिपोर्ट दर्ज कराने एवं एस.पी. से शिकायत करने की धमकी देना एवं अभियुक्ता द्वारा मृतक हुलास नारायण साहू को शादी नहीं करने स्थिति में मर जाने को बार बार कहना और जिससे दुष्प्रेरित होकर मृतक हुलास नारायण साहू द्वारा आत्महत्या कर लेना, अभियुक्ता के विरुद्ध भारतीय दण्ड संहिता की धारा 306 के तहत अपराध का गठन करता है ।"

22. The complaint recites that spouse of the deceased has given the information as mentioned in the complaint, but the spouse of the deceased has not made any complaint. Even if this Court examines the contents of the complaint, it cannot be said that the petitioner has abetted the deceased to commit suicide. The deceased being police constable was well acquaintance with the

proceedings as if there is a allegation against the deceased that because of him, the petitioner has become pregnant, its genuineness or correctness can very well be examined by the doctor at the time of medical examination of the petitioner, therefore, this story projected by the complainant's daughter-in-law that her husband has informed about the instigation done by the petitioner to commit suicide, cannot be acceptable. The further allegation made in the complaint is that the complainant's daughter-in-law has informed that the petitioner does not like marriage of deceased with Smt. Khileshwari Sahu, that is why she abetted the petitioner to commit suicide, cannot be a ground, *prima facie*, involvement of the petitioner for committing an offence under Section 306 IPC.

23. The contentions made in the complaint that the petitioner was threatening the deceased that he will be falsely roped in the criminal offence and instigated him to commit suicide, also seems to be made afterthought story by the complainant as the deceased being police constable is well aware of the criminal procedure, therefore, no ingredient of Section 107 of IPC for instigation to commit suicide is made out against the petitioner.
24. It is well settled that in order to bring a case within the provisions 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 instigating or by doing a certain act to facilitate the commission of suicide.
25. On above factual and legal matrix, this Court while exercising power under Section 482 Cr.P.C. has to assess the contents of the complaint with reference to the provisions of Section 306 of IPC and it has been well settled legal position that High Court must be circumspect to exercise its power on the basis of the facts of each case. The High Court cannot foreclose itself from the exercise of the power when a citizen has been arbitrarily deprived of their personal liberty in an excess of state power.

26. Hon'ble the Supreme Court in case of **Swamy Prahaladdas Vs. State of M.P. & others**¹², has held as under:-

“3. At the time of framing of charge, the trial court thought it appropriate to associate the appellant herein as an accused because of the words he uttered to the deceased. We think that just on the basis of that utterance the Court of Session was in error in summoning the appellant to fact trial. In the first place it is difficult, in the facts and circumstances, to come to even a prima facie view that what was uttered by the appellant was enough to instigate the deceased to commit suicide. Those words are casual in nature which are often employed in the heat of the moment between quarreling people. Nothing serious is expected to follow thereafter. The said act does not reflect the requisite mens rea on the assumption that these words would be carried out in all events. Besides the deceased had plenty of time to weigh the pros and cons of the act by which he ultimately ended his life. It cannot be said that the suicide by the deceased was the direct result of the words uttered by the appellant. For these reasons, the error is apparent requiring rectification. The appeal is accordingly allowed. The orders of the High Court and that of the Court of Session are thus upset. The appellant need not face the charge. ”

27. Hon'ble the Supreme Court in case of **Madan Mohan Singh Vs. State Gujarat & another**¹³, has held as under:-

“10. We are convinced that there is absolutely nothing in this suicide note or the FIR which would even distantly be viewed as an offence much less under Section 306, IPC. We could not find anything in the FIR or in the so-called suicide note which could be suggested as abetment to commit suicide. In such matters there must be an allegation that the accused had instigated the deceased to commit suicide or secondly, had engaged with some other person in a conspiracy and lastly, that the accused had in any way aided any act or illegal omission to bring about the suicide.

11. In spite of our best efforts and microscopic examination of the suicide note and the FIR, all that we find is that the suicide note is a rhetoric document in the nature of a departmental complaint. It also suggests some mental imbalance

¹² 1995 (Suppl.) (3) SCC 438

¹³ (2010) 8 SCC 628

on the part of the deceased which he himself describes as depression. In the so-called suicide note, it cannot be said that the accused ever intended that the driver under him should commit suicide or should end his life and did anything in that behalf. Even if it is accepted that the accused changed the duty of the driver or that the accused asked him not to take the keys of the car and to keep the keys of the car in the office itself, it does not mean that the accused intended or knew that the driver should commit suicide because of this.

12. In order to bring out an offence under Section 306, IPC specific abetment as contemplated by Section 107, IPC on the part of the accused with an intention to bring out the suicide of the concerned person as a result of that abetment is required. The intention of the accused to aid or to instigate or to abet the deceased to commit suicide is a must for this particular offence under Section 306, IPC. We are of the clear opinion that there is no question of there being any material for offence under Section 306, IPC either in the FIR or in the so-called suicide note. ”

28. The allegations made in the complaint, are baseless and irrelevant as the deceased being police constable is aware of the remedial steps. Even if the allegations levelled against him , are correct, therefore, it cannot be said that the petitioner has abetted the deceased to commit suicide, thus, committed an offence under Section 306 of IPC, as such, the order passed by learned Additional Sessions Judge, Kabirdham dated 10.12.2015 by which, charges have been framed in Sessions Trial No. 42/2015 arising out of the complaint filed by the complainant/ respondent No. 2, is liable to be and is hereby quashed.
29. The petition is allowed. No order as to cost.

Sd/-
(Narendra Kumar Vyas)
Judge