

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL WRIT PETITION NO. 343/2021

M. Srinivasa Reddy S/o M.Rama Subba Reddy,
Aged about 52 years, Occupation – Service (now
suspended), Resident of A-1/608, Forest
Employees Co-operative Society, Seminary Hills,
Civil Lines, Nagpur.

PETITIONER

.....VERSUS.....

1. The State of Maharashtra,
Through Police Station Officer,
Police Station Dharni, Tahsil
District Amravati Rural, Amravati.
2. Rajesh Bhaidas Mohite,
Aged Major, Resident of Harisal, Dharni,
Amravati Rural, District Amravati, Maharashtra.

RESPONDENTS

Shri S.V. Manohar, Senior Advocate with Shri A.S. Manohar, counsel for the
petitioner.

Ms S.S. Jachak, Additional Public Prosecutor for the respondent no.1.
Shri Abhay Sambre, counsel for the respondent no.2.

CORAM : A. S. CHANDURKAR AND G.A. SANAP, JJ.

DATE ON WHICH ARGUMENTS WERE HEARD : 04TH AUGUST, 2021.

DATE ON WHICH JUDGMENT IS PRONOUNCED : 13TH AUGUST, 2021.

JUDGMENT (PER : A.S. CHANDURKAR, J.)

RULE. Rule made returnable forthwith. By this criminal writ petition filed under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure (for short, 'the Code'), the petitioner seeks quashing of First Information Report dated 26.03.2020 bearing Crime No.211 of 2021 registered at Police Station Dharni for the offence punishable under Section 306 of the Indian Penal Code (for short, 'the Penal Code').

2. It is the case of the prosecution that on 25.03.2021 one Smt.Deepali Rajesh Mohite/Deepali Janardan Chavan who was working as Range Forest Officer with the Forest Department committed suicide. The First Information Report was lodged by respondent no.2-her husband on 26.03.2021 at about 03.59 hours. As per the said report, the wife of the respondent no.2 was residing with him at Harisal alongwith her mother. On 25.03.2021 the respondent no.2 after finishing his duties at the Treasury Office started to return home in the evening. At about 7.00 p.m. he made a phone call to his wife. His wife told him that she wanted to see him for the last time and that she had no interest in living further. The respondent no.2 therefore immediately made a phone call to his servants to enquire as to what was transpiring at home. After some time he received a phone call from a Forest Guard informing him that his wife had committed suicide by shooting herself. On reaching home the respondent no.2 noticed that his wife was lying in an injured condition. In the bedroom he found a handwritten chit that was left by his wife. The same was addressed to the petitioner in which a grievance was made that Vinod Shivkumar, Deputy Conservator of Forest was not permitting her to discharge duties in a proper manner and was blaming her for one reason or other. He was harassing her with a view to cause financial loss and mental disturbance. In the said chit it was stated that said Vinod Shivkumar was responsible for the said suicide. The respondent no.2

thereafter found two more chits addressed to him and his mother-in-law in which similar facts were narrated. On this basis First Information Report was lodged naming Vinod Shivkumar as accused no.1. Subsequently the name of the petitioner came to be added as accused no.2.

3. Based on the aforesaid First Information Report the investigation commenced and material in the form of three chits written by the deceased was collected by the prosecution. Statements of various persons were also recorded. In the process of investigation the petitioner was arrested and subsequently by an order passed under Section 439 of the Code he was enlarged on bail. Thereafter on 03.05.2021 the present proceedings were filed seeking quashing of the First Information Report.

4. Shri Sunil Manohar, learned Senior Advocate for the petitioner submitted that on a plain reading of the First Information Report and after perusal of the material collected by the Investigating Officer it was clear that there was no legal basis whatsoever to implicate the petitioner in the aforesaid crime under Section 306 of the Penal Code. The case of the prosecution was principally based on the three chits which could be called as suicide notes and on perusal of the said notes it was clear that the deceased had specifically referred to the accused no.1 as the only person who was responsible for her committing suicide.

Though there was some reference to the petitioner in those chits, it could be seen that the deceased had reposed confidence in the petitioner and had written that whenever the petitioner was around she felt assured. Though at some places it was imputed that the petitioner did not take any action against accused no.1 so as to restrain him from committing various illegal acts it was submitted that the statement to that effect in the said chits could hardly be a reason to proceed against the petitioner under Section 306 of the Penal Code. Referring to the provisions of Section 33, 43, 107, 108 and 306 of the Penal Code the learned Senior Advocate submitted that for abetting of a thing it was necessary firstly to instigate any person to do that thing or secondly to engage with one or more persons in any conspiracy for doing that thing, if an act or illegal omission takes place in pursuance of that conspiracy in order to the doing of that thing or thirdly intentionally aids, by any act or illegal omission, the doing of that thing. On a plain reading of the aforesaid provision it was submitted that none of the ingredients were satisfied against the petitioner. Even on taking the statements made by the deceased in the three chits at their face value it could be seen that there was neither any illegal omission or act attributed to the petitioner nor was any *mens rea* evident therefrom. As per the statement of the respondent no.2 on 25.01.2021 when the respondent no.2 and the deceased had met him the petitioner had cautioned the deceased from making any complaint. This

according to the learned Senior Advocate has been attributed to be an illegal omission amounting to abetment. He submitted that the statement attributed to the petitioner was of January-2021 having no proximity whatsoever with the act of committing suicide by the deceased on 25.03.2021. He also referred to a Short Message Service (SMS) sent by the deceased in October 2020 which the petitioner had replied with the word 'Noted'. This being the only material against the petitioner it was submitted that on reading the First Information Report as a whole and perusing the material on record no case for prosecuting the petitioner under Section 306 of the Penal Code was made out. In support of his submissions, the learned Senior Advocate referred to the following decisions:-

- a. [(2021) 2 SCC 427] *Arnab Manoranjan Goswami Versus State of Maharashtra & Others.*
- b. [(2020) 10 SCC 200] *Gurcharan Singh Versus State of Punjab.*
- c. [(2019) 10 SCC 373] *M. Srikanth Versus State of Telangana & Another.*
- d. [(2019) 15 SCC 357] *Rashmi Chopra Versus State of Uttar Pradesh & Another.*
- e. [2016 ALL MR (Cri) 4328] *Dilip Ramrao Shirasao & Others Versus State of Maharashtra & Another.*
- f. [2021 (3) Scale 680] *Krishna Lal Chawla & Others Versus State of U.P. & Another.*

He thus submitted that though it was unfortunate that the deceased committed suicide the petitioner who was working as Additional Principal Conservator of Forest and Field Director, Melghat was not the immediate superior of the deceased. He was stationed at Amravati and on occasions was required to conduct field visits. In the light of the principles laid down in the decisions referred to above it was submitted that the First Information Report *qua* the petitioner was liable to be quashed.

5. Ms S.S. Jachak, learned Additional Public Prosecutor for the respondent no.1 opposed the aforesaid submissions. According to her the deceased on various occasions had made a grievance with the petitioner as to the behavior of the accused no.1. The petitioner however had failed to take any action whatsoever against the accused no.1. This inaction on the part of the petitioner amounted to an illegal omission which had driven the deceased to commit suicide. The learned Additional Public Prosecutor produced the investigation papers for referring to the statements of the respondent no.2 as well as to those of other persons collected during the course of investigation. Considering the gravity of the offence and the fact that the deceased had in the chit addressed to the petitioner referred to his conduct, offence under Section 306 of the Penal Code was made out against the petitioner and there was no legal basis to quash the First Information Report.

Shri Abhay Sambre, learned counsel appearing for the respondent no.2 supported the aforesaid submissions and in addition referred to the statement of the petitioner on 25.01.2021 wherein the petitioner had indirectly dissuaded the deceased from submitting a written complaint against the accused no.1. Despite the fact that on various occasions the deceased had made complaints against the conduct of accused no.1 the petitioner had failed to take any action against accused no.1 which amounted to an illegal omission. The petitioner had been rightly implicated as accused no.2 and in the light of the material on record no relief could be granted to the petitioner. Placing reliance on the decisions in *Didigam Bikshapathi & Another Versus State of Andhra Pradesh* [(2008) 2 SCC 403] and *Munshiram Versus State of Rajasthan & Another* [(2018) 5 SCC 678] it was submitted that the criminal writ petition was liable to be dismissed.

6. We have heard the learned counsel for the parties at length and we have also gone through the material placed on record. We have also perused the investigation papers that were produced by the learned Additional Public Prosecutor. In our considered opinion the statements made in the First Information Report and the material collected by the prosecution including the three chits written by the deceased fall short of making out an offence under Section 306 of the Penal Code against the

petitioner. Perusal of the First Information Report indicates that there is a reference to three handwritten chits left by the deceased that were addressed to the petitioner, the respondent no.2-her husband and her mother. It would therefore be necessary to peruse each of the chits minutely.

In the chit addressed to the petitioner, it is seen that the deceased had stated that she was happy to learn that she had been assigned work at the Division headed by the petitioner. With passage of time despite doing good work she noticed that the accused no.1 who was her superior officer and Deputy Conservator of Forest started harassing her for no reason. He used to threaten her with suspension and filing of charge-sheet for holding departmental proceedings. One such incident referred in the chit pertains to March-2020 during the course of removal of encroachment. According to the deceased there was opposition to the removal of encroachment and the villagers had threatened to initiate cases against the deceased. When this was informed to the accused no.1, he had stated that he would see to it that a case under the Atrocities Act would be filed against the deceased. She could not obtain bail in those proceedings and hence was required to go on leave. Accused No.1 refused to have her joined on duty thereafter and had also not sanctioned her leave. The petitioner had not sanctioned that leave too and she was not paid for that period. There is reference to an incident of October-

2020 when for about three days she was assigned field duty by the accused no.1 and the Assistant Conservator of Forest which resulted in her undergoing abortion. Though a grievance in that regard was raised with the petitioner it was stated that the deceased was aware that the petitioner would take the side of his co-officers. Various grievances as to the behavior of the accused no.1 have been narrated and the deceased proceeded to request the petitioner to be careful while dealing with the accused no.1. At the end it was stated that it was the accused no.1 who alone was responsible for her committing suicide. She proceeded to state that the petitioner had supported her a lot till date and that whenever the petitioner was around she had no fear. It was stated that action be taken against the accused no.1 which was her last wish.

7. In the chit addressed to her husband it has been stated that on account of various acts of accused no.1 she was compelled to commit suicide. Though grievances as to the behavior of the accused no.1 were made with the petitioner her troubles were not reduced. It was stated that the accused no.1 was solely responsible for her committing suicide.

In the chit addressed to her mother similar statements have been made. The accused no.1 was not permitting the deceased to discharge the duties in a proper manner and the same was causing her mental distress. In October-2020 a grievance in this regard was made to

the petitioner but no action was taken by the petitioner. It was only on account of mental harassment meted out by the accused no.1 that the deceased was taking the extreme step.

Thereafter there is a statement attributed to the petitioner. On 25.01.2021 when the deceased had made a complaint as to the conduct of the accused no.1 the petitioner had stated as follows:-

“Apko uske khilaf lekhi complaint dene hai to do, lekin dhyanse”

There is an earlier SMS of October-2020 making a complaint as to the conduct of accused no.1 and the reply of the petitioner as “Noted”.

8. The aforesaid is basically the material on the basis of which the petitioner is being prosecuted for the offence punishable under Section 306 of the Penal Code. It would be necessary to consider whether the same is sufficient to warrant continuation of the aforesaid proceedings on the basis of the legal position laid down by the Hon'ble Supreme Court. In a recent decision in *Arnab Manoranjan Goswami* (supra) while considering the provisions of Section 107 of the Penal Code in the context of Section 306 of the Penal Code reference was made to the decision in *Amlendu Pal Versus State of W.B.* [(2010) 1 SCC 707] wherein it was observed that in cases of alleged abetment of suicide there must be proof of direct and indirect acts of incitement to 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 would not be enough. Reference was also made to the decision in *S.S. Chheena Versus Vijay Kumar Mahajan* [(2010) 12 SCC 190] wherein it was held that a positive act on the part of the accused to instigate or aid in committing suicide conviction cannot be sustained. There has to be a clear *mens rea* to commit the offence. An active or direct act is necessary which has led the deceased to commit suicide seeing no option and that act must have been intended to push the deceased into such a position. Thereafter reference was made to the decision in *Madan Mohan Singh Versus State of Gujarat* [(2010) 8 SCC 628] wherein it was observed that 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 the accused had in any way committed any act or illegal omission to bring about the suicide. Paragraphs 11 to 14 of the decision in *Madan Mohan Singh* (supra) are relevant and the same are as under:

“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 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 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.*

13. *It is absurd to even think that a superior officer like the appellant would intend to bring about suicide of his driver and, therefore, abet the offence. In fact, there is no nexus between the so-called suicide (if at all it is one for which also there is no material on record) and any of the alleged acts on the part of the appellant. There is no proximity either. In the prosecution under Section 306 IPC, much more material is required. The Courts have to be extremely careful as the main person is not available for cross-examination by the appellant-accused. Unless, therefore, there is specific allegation and*

material of definite nature (not imaginary or inferential one), it would be hazardous to ask the appellant-accused to face the trial. A criminal trial is not exactly a pleasant experience. The person like the appellant in the present case who is serving in a responsible post would certainly suffer great prejudice, were he to face prosecution on absurd allegations of irrelevant nature. In the similar circumstances, as reported in Natai Dutta v. State of W.B., this Court had quashed the proceedings initiated against the accused.

14. *As regards the suicide note, which is a document of about 15 pages, all that we can say is that it is an anguish expressed by the driver who felt that his boss (the accused) had wronged him. The suicide note and the FIR do not impress us at all. They cannot be depicted as expressing anything intentional on the part of the accused that the deceased might commit suicide. If the prosecutions are allowed to continue on such basis, it will be difficult for every superior officer even to work.”*

It is also necessary to refer to paragraph 21 of the decision in *Gurcharan Singh Versus State of Punjab [(2017) 1 SCC 433]* which read thus:

“21. *It is thus manifest that the offence punishable is one of abetment of the commission of suicide by any person, predicating existence of a live link or nexus between the two, abetment being the propelling causative*

factor. The basic ingredients of this provision are 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 these constituents would militate against this indictment. Remoteness of the culpable acts or omissions rooted in the intention of the accused to actualise 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.”

From the aforesaid it becomes clear that mere allegation of harassment of the deceased by another person would not be sufficient unless there is such action on the part of the accused which compels the person to commit suicide. A positive act proximate to the point of time of occurrence of the suicide is also necessary. The accused should have guilty mind and in furtherance of the state of mind ought to have abetted the suicide of the deceased.

9. We may refer to the decision in *Vaijnath Kondiba Khandke Versus State of Maharashtra* [(2018) 7 SCC 781]. An employee serving in the office of the Deputy Director of Education committed suicide. His

widow had made a complaint that as her husband's higher officers were getting heavy work done from her husband he was suffering from mental torture. The salary of the deceased had been stopped for a period of one month and it was threatened that even his increments would be stopped. In that context it was observed by the Hon'ble Supreme Court that as a superior officer if some work was assigned to the deceased then merely on that count it could not be said that there was any guilty mind or criminal intent. The exigencies of work and the situation may call for certain action on the part of superior officer including stopping of salary of junior officer. Such action simplicitor cannot be considered to be a pointer against such superior officer. Finding the allegations in the First Information Report to be completely inadequate and not satisfying the requirements under Section 306 of the Penal Code, the First Information Report was quashed.

10. From the material referred to hereinabove in the form of three chits written by the deceased it becomes clear that according to the deceased herself it was only the accused no.1 who was responsible and was the cause for her committing suicide. Statements to that effect are consistently found in all the three chits and the same is reiterated in those chits. In the chit addressed to the petitioner the deceased herself has stated in the last paragraph that the petitioner had supported her a lot

and that whenever the petitioner was around the deceased had no fear. Infact the deceased has proceeded to thereafter thank the petitioner to a great extent. It is thereafter stated that it was her last wish that action be taken against the accused no.1. The complete reading of all the three chits gives a clear indication of the feelings of the deceased *qua* the petitioner. She has not sought to blame the petitioner for taking the ultimate step of committing suicide. There is no doubt reference to the fact that in the past complaints were made to the petitioner as to the behavior of accused no.1 but no action was taken. There is also reference to her leave not being sanctioned and she not being paid salary for that period. As noted above these events occurred during the course of removal of encroachment in March-2020. The SMS referred to is of October-2020. The statement attributed to the petitioner when the deceased had made a complaint in January-2021 is not at all proximate in time with the act of suicide. A plain reading of the said statement which when translated means, “if you want to submit a written complaint against accused no.1 you could do so but be careful” can hardly amount to any abetment as contemplated by Section 107 of the Penal Code. All in all it is found that the statements made in the First Information Report coupled with the three chits written by the deceased and other material collected by the prosecution are all woefully short to hold the petitioner liable for being prosecuted under Section 306 of the Penal

Code. There is hardly any material to indicate abetment and for that matter any illegal omission by the petitioner. This is not indicated even in the statements of the witnesses recorded during the course of investigation. It was sought to be urged by the respondents that failure to take any action against the accused no.1 pursuant to the complaints of the deceased amounted to an illegal omission. In the context of the provisions of Section 107 of the Penal Code the same could hardly be treated to be illegal. An “illegal omission’ in the context of Section 107 of the Penal Code has to be with an intention that the deceased is led to commit suicide. As noted above the complaint referred to is of October-2020 which is more than five months prior to the deceased committing suicide.

Thus seen from any angle we find that there is no material whatsoever to attract the provisions of Sections 306 of the Penal Code *qua* the petitioner. The ratio of the decisions in *Didigam Bikashapathi* and *Munshiram* (supra) do not apply to the facts of the present case. In the light of the principles laid down in *State of Haryana Versus Bhajanlal* [1992 Supp (1) SCC 335] and especially illustration nos.1 and 3 thereof, continuation of the present proceedings against the petitioner would thus amount to an exercise in futility thus resulting in abuse of the process of law. We find the present case a fit one to exercise inherent powers under Section 482 of the Code to quash the First Information Report.

11. Accordingly in the light of aforesaid discussion the First Information Report bearing Crime No.211 of 2021 dated 26.03.2021 registered at Police Station Dharni for the offence punishable under Section 306 of the Penal Code against the petitioner is quashed.

It is clarified that observations made in this judgment are only in the context of considering the prayers made by the petitioner. We have not examined the contents of the First Information Report insofar as it relates to the accused no.1.

12. The Criminal Writ Petition is allowed in aforesaid terms. Rule is made absolute accordingly. The parties shall bear their own costs.

(G.A. SANAP, J.)

(A.S. CHANDURKAR, J.)