

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 577 of 2020

Rahul S/o Rajaram Maske,
Age : 47 years, Occ: Business,
R/o : Ambika Chowk, Palwan Road,
Beed, Taluka District Beed.

... Applicant

versus

1. The State of Maharashtra,
Through Police Station Officer,
Police Station Neknoor,
Beed.
2. Sarika w/o Mahadev Salpe,
Age : 29 years, Occ. Household,
R/o Kholwat, Ambika Chowk,
Palwan Road, Beed.

... Respondents

.....

Mr. Mahendra P. Gandle, Advocate for the Applicant
Mr. S. J. Salgare, APP for Respondent No.1-State.
Mr. Sachin S. Deshmukh, Advocate for Respondent No.2

. . .

**CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

RESERVED ON : 21.11.2022

PRONOUNCED ON : 09.12.2022

JUDGMENT (PER ABHAY S. WAGHWASE, J.) :

1. Instant criminal application is with prayers for quashing crime and consequential chargesheet arising out of FIR at the instance of R.2 Sarika Salpe which was registered for offences punishable under Sections 306, 323, 504, 506 r/w 34 of the Indian Penal Code (for short, 'IPC').

FACTUAL MATRIX

2. Respondent no.2 set law in motion informing Neknoor police that she is resident of Bhandarwadi and she and her husband run a flour mill for their livelihood. According to her, eight days back, wife of her neighbour Chandrakant Sawant had taken 20 kg. wheat on credit and assured to pay later on. When money was demanded, she assured to pay when she would come to the flour mill.

On 06.04.2018, daughter of said Chandrakant went to the flour mill. At that time complainant's husband asked the girl to bring money of the wheat and the girl went away. Shortly thereafter, it is alleged that wife of Chandrakant and his sister came to the flour mill and abused the husband of complainant in filthy words and they beat him with footwear. Complainant claims to have intervened to save her husband upon which, wife of Chandrakant beat her also. Thereafter, they went away threatening that they would come back again in the evening. According to complainant, because of the said incident, her husband was frightened. Around 7.00 p.m. to 8.00 p.m. again Chandrakant, his wife and sister along with Rahul Maske (present applicant) came in front of their house and further asked her to send him out and threatened that if her husband does not turn up, she and her children would be picked up and taken away. Because of such event, her husband was too much terrified.

On same night, crime was registered against her husband for molesting daughter of Chandrakant. Informant claims that, shocked by the false complaint, her husband left the house i.e. to go to his native, fearing that he would be defamed and beaten by *gunda* elements. Again on 08.04.2018, above persons visited the house of complainant in search of her husband Mahadev. At such time also they threatened that if her husband does not turn out, she would see his dead body.

On 09.04.2018 at 9.00 a.m., phone call was received to come to the native urgently. When the complainant reached there, she learnt that her husband had hanged himself to a neem tree. Therefore she lodged the complainant holding applicant responsible for the suicide.

3. On the strength of above complaint, Neknoor police registered crime bearing no. 83 of 2018 for the offence punishable under above Sections. Investigation was carried out and completed and charge-sheet was filed.

It is the above FIR and the charge-sheet which is now sought to be quashed and nullified by the applicant by exercise of inherent power under Section 482 of the Code of Criminal Procedure (for short, "Cr.P.C.").

SUBMISSIONS

4. Learned counsel for applicant would submit that FIR and allegations therein are false and afterthought. Taking us through the contents of the FIR, it is his submission that present applicant is an advocate. Deceased himself had indulged in committing offence of molestation and therefore crime was registered and police were on a look out for him. Deceased had absconded. There was no incident of taking wheat on credit or demanding its money. According to learned counsel, applicant has no nexus with the suicidal hanging and is in no manner concerned with the alleged episode that took place between complainant and deceased on the one hand and the co-accused on the other. He pointed out that no specific role is attributed to the present applicant in the entire FIR. It is also his submission that there is no material indicating abetment to commit suicide and therefore, according to him, charge under Section 306 of IPC is misplaced. It is pointed out that there is no material whatsoever to show that there was any continuous harassment, instigation or abetment with intention that deceased should suicide, nor there was creation of such circumstances due to which deceased was left with no other alternative but to commit suicide. While concluding his submission, he contended that deceased might have committed suicide out of fear and shame of act of molestation and registration of crime against him. Hence, he prays for relief sought.

5. In answer to above, learned APP would strenuously submit that applicant and others are solely responsible for the hanging by husband of complainant. Instances of visit by persons named in the complaint to the flour mill and repeatedly visiting complainant's house to threaten deceased are narrated in the FIR. Investigation has also revealed involvement of all persons named in the FIR. Therefore it is his submission that in the light of availability of such material, prosecution deserves opportunity to make accused persons face trial. Consequently, he prays for dismissal of the application.

6. Learned counsel for respondent no. 2 also strongly opposed the application by taking us through the allegations raised in the FIR. He pointed out that accused are not only specifically named, but role played by them is also clearly stated in the FIR. Repeated visits and repeated threats was the sole reason to commit suicide. Investigation has clearly brought involvement of accused persons on record and as such, they have to face trial. Therefore, he too prayed for dismissal of application.

7. Here, applicant has invoked inherent powers of this Court under Section 482 of Cr.P.C.

The Hon'ble Apex Court in series of judgments has held and observed on the scope, object and circumstances under which High Court should exercise its inherent powers under Section 482 of Cr.P.C.

In ***State of Orissa v. Saroj Kumar Sahoo*** ; (2005) 13 SCC 540, the Hon'ble Apex Court, in para 8, made the following observations :

“8. ... While exercising the powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone the courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers the court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the report, the court may examine the question of fact. When a report is sought to be quashed, it is permissible to look into the materials to assess what the report has alleged and whether any offence is made out even if the allegations are accepted in toto.”

In ***State of M.P. v. Surendra Kori*** ; (2012) 10 SCC 155, in para 14, the Hon'ble Apex Court observed thus :

“14. The High Court in exercise of its powers under Section 482 CrPC does not function as a court of appeal or revision. This Court has, in several judgments, held that the inherent jurisdiction under Section 482 CrPC, though wide, has to be used sparingly, carefully and with caution. The High Court, under Section 482 CrPC, should normally refrain from giving a prima facie decision in a case where the entire

facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of wide magnitude and cannot be seen in their true perspective without sufficient material.”

In ***State of Haryana and Ors. Vs. Ch. Bhajan Lal*** ; 1992 Supp (1) SCC 335 : 1992 SCC (Cri.) 426, this Court laid down the principles for the exercise of the jurisdiction by the High Court in exercise of its powers under Section 482 of the Cr.P.C. to quash an FIR. Justice Ratnavel Pandian, J. laid down the limits on the exercise of the power under Section 482 Cr.P.C. for quashing the FIR and observed : (SCC pp. 378-79, para 102)

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the CrPC which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) CrPC except under an order of a Magistrate within the purview of Section 155(2) CrPC.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) CrPC.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

Based on above **precedent**, the Hon’ble Apex Court **very recently** in the case of ***Mahendra K.C. v. State of Karnataka and another*** ; (2022) 2 SCC 129 observed that “while exercising powers under Section 482 Cr.P.C., for quashing

proceedings, following tests are required to be applied, *firstly*, whether the allegations made in the complaint, *prima facie* constitute an offence; and *secondly*, whether the allegations are so improbable that a prudent man would not arrive at the conclusion that there is sufficient ground to proceed with the complaint.

This is the settled legal position on scope and object of Section 482 of Cr.P.C. that can be culled out from various rulings discussed above.

8. Here applicant and others are booked for commission of offence under Section 306 of IPC. Consequently, it would also be desirable to discuss the legal position as regards to the above penal provision.

9. Law is fairly settled on the point of applicability of penal Section 306 of IPC. In various judgments it has been succinctly held that for attracting offence under Section 306 of IPC, abetment to commit suicide has to be essentially shown. It would be apt to reproduce the requirements of Section 306 of IPC.

10. Section 306 of IPC deals with punishment for abetment of suicide. Section 107 of IPC deals with as to what amounts to abetment. By umpteen judgments, time and again Hon'ble Apex Court and High Courts have dealt with and discussed as to when charge of Section 306 of IPC can be said to be

brought home. A few landmark judgments on this point which could be referred are as under.

The Hon'ble Apex Court in ***Mahendra K.C.*** (supra) in para 23 to 25, has made the following observations :

“23. Section 306 IPC provides for punishment of the abetment of suicide:

“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.” Section 107 IPC defines the expression “abetment”:

Section 107 IPC defines the expression “abetment”:

“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.”

24. The essence of abetment lies in instigating a person to do a thing or the intentional doing of that thing by an act or illegal omission. In Ramesh Kumar v. State of Chhattisgarh ; (2001) 9 SCC 618 : 2002 SCC (Cri) 1088, a three-Judge Bench of this Court, speaking through R.C.

Lahoti, J. (as the learned Chief Justice then was), observed: (SCC p. 629, para 20)

“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.”

25. *A two-Judge Bench of this Court in Chitresh Kumar Chopra v. State (NCT of Delhi); (2009) 16 SCC 605 : (2010) 3 SCC (Cri) 367, speaking through D.K. Jain, J., observed: (SCC pp. 611-12, paras 19-20)*

“19. As observed in Ramesh Kumar [(2001) 9 SCC 618 : 2002 SCC (Cri) 1088], where the accused by his acts or by a continued course of conduct creates such circumstances that the deceased was left with no other option except to commit suicide, an “instigation” may be inferred. In other words, in order to prove that the accused abetted commission of suicide by a person, it has to be established that:

(i) the accused kept on irritating or annoying the deceased by words, deeds or wilful omission or conduct which may even be a wilful silence until the deceased reacted or pushed or forced the deceased by his deeds, words or wilful omission or conduct to make the deceased move forward more quickly in a forward direction; and

(ii) that the accused had the intention to provoke, urge or encourage the deceased to commit suicide while acting in the manner noted above. Undoubtedly, presence of mens rea is the necessary concomitant of instigation.

20. 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 suicidality 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."

In the case of ***State of Kerala and Ors. Vs. Unnikrishnan Nair and Ors.;***

(2015) 9 SCC 639, the Hon'ble Apex Court has observed as under :

"10. The aforesaid provision was interpreted in *Kishori Lal Vs. State of M.P.*; (2007) 10 SCC 797, by a two-Judge Bench and the discussion therein is to the following effect :

"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."

11. In *Amalendu Pal Vs. State of W.B.*; (2010) 1 SCC 707, dealing with expression of abetment the Court observed : (SCC pp.712-713 para 14)

“14. The expression “abetment” has been defined under Section 107 IPC which we have already extracted above. A person is said to abet the commission of suicide when a person instigates any person to do that thing as stated in clause Firstly or to do anything as stated in clauses Secondly or Thirdly of Section 107 IPC. Section 109 IPC provides that if the act abetted is committed pursuant to and in consequence of abetment then the offender is to be punished with the punishment provided for the original offence. Learned counsel for the respondent State, however, clearly stated before us that it would be a case where clause Thirdly of Section 107 IPC only would be attracted. According to him, a case of abetment of suicide is made out as provided for under Section 107 IPC.”

The other landmark rulings on above point are *Praviee Pradhan v. State of Uttaranchal* ; (2012) 9 SCC 734, *Vajnath Kondiba Khandke v. State of Maharashtra* ; (2018) 7 SCC 781, *Ude Singh v. State of Haryana* ; (2019) 17 SCC 301, *Gurcharan Singh v. State of Punjab* ; (2020) 10 SCC 200 and *Rajesh v. State of Haryana* ; 2020 15 SCC 359.

11. On the touchstone of above legal requirements on the point of exercise of inherent power under Section 482 of Cr.PC. and legal requirements for attracting offence under Section 306 of IPC, we proceed to examine the FIR and the charge-sheet herein to ascertain whether applicant is entitled for the relief as sought.

ANALYSIS

12. On carefully going through the FIR, it is emerging that according to informant (wife of deceased), wife of Chandrakant Sawant had borrowed 20 kg. wheat on credit. When daughter of Chandrakant visited the flour mill run by deceased and informant, it is alleged that price towards wheat was demanded. It is alleged that on such count, wife of Chandrakant and his sister visited the flour mill and thrashed deceased with footwear and abused him and informant in filthy language and issued life threats. In the complaint it is stated that because of said event deceased was terrified. Informant has stated that Chandrakant, his wife and sister again visited the house of informant and threatened that they would not spare the deceased. At such time, the applicant allegedly issued threats to pick her up and her children if her husband does not turn out. It is stated in the FIR that on the same night, crime was registered against her husband for molesting daughter of Chandrakant during her visit to the flour mill. It is stated that said complaint was false. Hearing about lodgement of said FIR, her husband was shocked and fearing defamation and fearing that *gunda* elements would be sent, he left the house to go to his native. Again on 08.04.2018 in the evening, the applicant along with Chandrakant, his wife and sister came to her house looking for her deceased husband and the applicant threatened that if he does not turn up, she would see his dead body. At such time, because of said threat, deceased got more frightened. On 09.04.2018 she learnt about her husband hanging

himself to a tree.

13. Investigating machinery appears to have recorded statements of brother of deceased, namely, Gorakh, his sister Ramkavar, his parents, namely, Bapurao and Kisnabai, all r/o Bhandarwadi, the person namely Bankat who gave *khobar*, r/o Imampur and some other villagers. They all speak about events that took place between deceased and complainant on one hand and accused persons on the other.

SUMMATION

14. On critical examination of material on record, it is clear that whatever events took place are of the evening of 06.04.2018. FIR shows that wife of accused Chandrakant owed price of 20 kg. wheat and it was assured to be paid later on. When daughter of Chandrakant went to the flour mill, at that time, it is alleged that informant's husband asked the girl to bring money from her mother and so the girl left. It seems from the FIR that shortly thereafter, wife of Chandrakant and his sister came, they abused in filthy language and beat deceased as well as informant and they left. It is emerging that they again came in the evening in search of deceased. In the night, informant and deceased learnt about crime being registered against him for molesting daughter of Chandrakant and therefore deceased was upset and frightened. He was also terrified by visits of Chandrakant, his wife and sister to their

house and therefore, for above reason, he left to his native and in the morning of 09.04.2018 deceased was seen in hanging condition.

15. Admittedly, suicide has taken place after 2 to 3 days of alleged occurrence at the flour mill. Though statements of witnesses are recorded by the Investigating Officer, there is virtually no material as to what transpired since deceased left his house till the entire night of 08.04.2018. It is pertinent to note that during the first visit to the flour mill at around 6.00 p.m. on 06.04.2018 only wife of Chandrakant and his sister had come together. Applicant is not named to be present during such visit. Name of applicant is coming in the FIR during alleged visit of Chandrakant, his wife and sister at 7.00 p.m. to 8.00 p.m. It is stated in the FIR that present applicant questioned complainant about the whereabouts of her husband and he allegedly asked complainant to send her husband out and that he would not be spared. Again there are allegations about applicant saying to complainant that she and her children would be picked up and because of said threats, her husband was afraid and he left to his native.

16. From the above material, inference that can be drawn is that for alleged act of molestation at the hands of deceased, crime was registered at police station. Informant herself states that out of fear of defamation and out of fear of being beaten by *gundas*, deceased left his house to go to his native.

According to informant, her husband left the house on the night of 06.04.2018 itself. Suicide is committed somewhere in the intervening night of 08.04.2018. Since the night of 06.04.2018 till the night of 08.04.2018 there is nothing to show that present applicant had either approached or come in contact with the deceased. As stated above, there is no material whatsoever as to what developments took place since deceased left the house to go to his native till he was found in hanging condition. Except issuing threats on the evening of 06.04.2018, no positive role is attributed to the applicant for abetting alleged suicide. Deceased kept hiding himself and so he was on lookout.

17. Deriving support from the above landmark rulings on the point of Section 306 of IPC and its essential requirements and comparing it with the facts in the case in hand, we are more than convinced that essential ingredients for attracting offence under Section 306 of IPC are patently missing. There is no material to show that applicant intended that deceased should end up his life and with said sole intention there was abetment at his hands to commit suicide. Instances of a single day cannot be sufficient to impute abetment. What law requires is continuous harassment with sole intention to see that deceased ends up his/her life. Such requirement is missing in the case in hand. What is role of the applicant/other accused is also not getting clear. Two/three visits to the house of deceased itself is not sufficient to impose *mens rea*. It seems that when the accused (deceased) had

not turned up in the evening, FIR is lodged and so, again visit is paid.

18. Under such circumstances there is no hesitation to hold that FIR in the case in hand does amount to abuse of process of law. Suicide is committed by deceased after 2 to 3 days of the events that occurred on 06.04.2018. There is no material against applicant which is proximate to suicidal hanging.

19. Therefore, making applicant face prosecution with such quality of material would inflict injustice and hardship to the applicant. For ends of justice to meet, intervention at our hands is necessary. Consequently, applicant succeeds and we proceed to pass the following order.

ORDER

- I. The application is allowed.
- II. The FIR No. 83 of 2018 registered with Neknoor Police Station, District Beed for the offences punishable under Sections 306, 323, 504, 506 r/w 34 of IPC and the consequent proceeding stands quashed and set aside to the extent of the present applicant.
- II. The application is accordingly disposed off.

[ABHAY S. WAGHWASE, J.]

[SMT. VIBHA KANKANWADI, J.]