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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 121 OF 2021

Pawan Shravankumar Sharma ...Applicant

Versus

The State of Maharashtra ...Respondents

Mr. Rajas A. Naik for the Applicant.

Ms. S.D.Shinde, A.P.P for the Respondent-State.

**CORAM : REVATI MOHITE DERE &
S. M. MODAK, JJ.**
DATE : 7th OCTOBER, 2022

ORDER (Per Revati Mohite Dere, J.) :

1. Heard learned Counsel for the parties.
2. Rule. Rule is made returnable forthwith, with the consent of the parties and is taken up for final disposal. Learned APP waives notice on behalf of the respondent No.1-State.

3. By this application, preferred under Section 482 of the Criminal Procedure Code, the applicant seeks quashing of the FIR, registered vide C.R.No.I-221 of 2019 with the Rabale Police Station, Navi Mumbai, for the alleged offence punishable under Section 306 r/w 34 of the Indian Penal Code.

4. The facts, as are necessary, to decide this application are as under;

According to the first informant – Suresh Sharma (father of the deceased), his son was studying in the 3rd year and daughter – Priya (deceased aged 18 years 2 months) was taking external tuitions for standard 12th; that his daughter would go for tuitions at 6.00 p.m. and return at 9.30 p.m. The first informant has alleged that on 6th August, 2019, his son and daughter – Priya were at home, when the applicant's father came home and scolded his daughter – Priya; that after some time, his son realised that Priya was not at home, and hence, he started looking out for her in the vicinity; as Priya could not

be traced, his son went back home and checked her books and while going through one of the books, found a note written by Priya. The first informant has alleged that in the said book, Priya had written that she was in a relationship with a boy – Adarsh (co-accused) and that he was bad and that ‘Pawanbhaiya’ (applicant) is also bad. Priya has further written that she was going to commit suicide. According to the first informant, when he returned home and on seeing the note, he informed the police, pursuant to which, a missing complaint was lodged with the police. According to the complainant, whilst searching for Priya, he learnt that Priya’s friend – Adarsh Upadhyay was troubling her and that Pawan Sharma (applicant) was also instigating Adarsh. On 12th August, 2019, Priya’s body was found under the railway bridge between Rabale and Ghansoli station. Pursuant thereto, the aforesaid FIR was lodged as against the Adarsh Upadhyay and the applicant. After investigation, chargesheet was filed as against the applicant and co-accused – Adarsh.

5. Learned Counsel for the applicant submits that taking the

prosecution case as it stands, no offence as alleged under Section 306 is disclosed *qua* the applicant. He submits that even the suicide note, if taken at its face value, does not disclose the ingredients necessary to constitute the alleged offence under Section 306 of the Indian Penal Code.

6. Learned APP opposes the application.

7. Perused the papers with the assistance of the learned Counsel for the parties. The short question that arises for consideration is, whether after taking the prosecution case as it stands, an offence under Section 306 is disclosed *qua* the applicant? The essential / main evidence on which, reliance is placed by the prosecution is a suicide note written by Priya. In the said suicide note, Priya has essentially stated as under;

“.....
that her fault was to love Adarsh, however, Adarsh cheated her and hence Adarsh was not a good boy; that Pawanji (applicant) was also bad; that she loved her father; that Adarsh be told not to do the same with any other girl.....”

8. In order to consider whether section 306 would apply to the facts in case, one would have to consider whether the essential ingredients of Section 107 of the Indian Penal Code are disclosed. Hence, it would be apposite to reproduce Sections 306 and 107 of the Indian Penal Code. The same read as under;

“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.”

*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.”*

9. Having perused the chargesheet and in particular, the suicide note, which is the basis for charging the applicant with the aforesaid offence, we find that none of the ingredients of Section 107 are made out so as to attract Section 306 of the Indian Penal Code. We do not find from the material on record, that the applicant, in any

way, either instigated or intentionally aided or conspired to commit the alleged offence punishable under Section 306 of the Indian Penal Code.

10. In the case of *S.S. Chheena Vs. Vijay Kumar Mahajan and another*,¹, the Supreme Court taking into consideration the facts of the said case and after referring to Sections 107 and 306 of the IPC, found that the High Court had erred in not quashing the criminal proceedings. Reference was made to a series of judgments on the aspect of abetment, particularly in the context of instigation. It was observed in paras 25 and 26 of the said judgment 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 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.

1. (2010) 12 SCC 190

26. In the instant case, the deceased was undoubtedly hypersensitive to ordinary petulance, discord and differences which happen in our day-to-day life. Human sensitivity of each individual differs from the other. Different people behave differently in the same situation.”

11. In the case of ***Madan Mohan Singh Vs. State of Gujarat and another***², the accused therein, was alleged to have instigated his driver to commit suicide. There was a suicide note of 15 pages left behind by the deceased therein, and the accused had approached the High Court for quashing of the FIR and consequently, the criminal proceedings, however, his prayer was rejected, as consequence of which, the accused approached the Apex Court, for quashing of the case. The Apex Court whilst considering whether Section 306 applied to the facts therein, observed that there has to be some proximity between the alleged acts of the accused and the extreme step taken by the deceased of committing suicide. It was held that the allegations made and the material ought to be of a definite nature and not imaginary or inferential. The Apex Court considered the suicide note

2. (2010) 8 SCC 628

which was about 15 pages and found that the contents thereof, reflected the anguish of the deceased, who felt that his boss (the accused) had wronged him, however, found that the contents fell short of depicting an intentional act on the part of the accused for driving the deceased to commit suicide. Accordingly, the Apex Court allowed the petition of the accused, and quashed and set aside the FIR / criminal proceedings.

12. In the case of *Vajinath Kondiba Khandke Vs. State of Maharashtra and another*,³ the Apex Court noted that there were indeed two types of cases, in the context of quashing of criminal proceedings, where the accused is facing a charge under Section 306 of the IPC. After taking note thereof, the Apex Court held, that the accused may face trial if the material on record prima facie shows that a situation was deliberately created by the accused, so as to drive the victim to suicide. However, in the facts of the said case, the Apex Court found that the FIR and the criminal proceedings *qua* the accused therein, deserved to be quashed.

3. (2018) 7 SCC 781

13. Similarly, in the case of *M.Mohan Vs. State Represented by the Deputy Superintendent of Police*⁴, the Supreme Court held in the context of abetment as under: -

“44. 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.

45. The intention of the legislature and the ratio of the cases decided by this court are clear that in order to convict a person under section 306 IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and this act must have been intended to push the deceased into such a position that he/she committed suicide.”

14. In the case of *Shabbir Hussain Vs. The State of Madhya Pradesh and Ors.*⁵ the Supreme Court relying upon an earlier judgment in the case of *Amalendu Pal Vs. State of West Bengal*⁶, held, that mere harassment without any positive action on the part of the

4. (2011) 3 SCC 626

5. order dated 26/07/2021 passed in SLP (Cri.)No.7284/2017)

6. (2010) 1 SCC 707

accused proximate to the time of occurrence, which led to the suicide, would not amount to an offence under Section 306 of the IPC.

15. In the case of *Geo Varghese Vs. State of Rajasthan and another*⁷, the Supreme Court held as under: -

“23. What is required to constitute an alleged abetment of suicide under Section 306 IPC is there must be an allegation of either direct or indirect act of incitement to the commission of offence of suicide and mere allegations of harassment of the deceased by another person would not be sufficient in itself, unless, there are allegations of such actions on the part of the accused which compelled the commission of suicide. Further, if the person committing suicide is hypersensitive and the allegations attributed to the accused is otherwise not ordinarily expected to induce a similarly situated person to take the extreme step of committing suicide, it would be unsafe to hold the accused guilty of abetment of suicide. Thus, what is required is an examination of every case on its own facts and circumstances and keeping in consideration the surrounding circumstances as well, which may have bearing on the alleged action of the accused and the psyche of the deceased.”

16. In the case of *Ramesh Kumar V/s. State of Chhattisgarh*⁸, the Apex Court has observed as under;

⁷ 2021 SCC Online SC 873

⁸ (2001) 9 SCC 618

“Instigation is to goad, urge forward, provoke, incite or or encourage to do “an act”. To satisfy the requirement of instigation through 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.”

17. The said position of law was followed by the Division Bench of this Court, in the case of ***Dilip S/o Ramrao Shirasao and Ors. Vs. State of Maharashtra and anr.*** (Criminal Application (APL) No.332/2016) and accordingly, the FIR and the criminal proceedings were quashed. It was held in the said judgment as follows: -

“20. As has been held by Their Lordships of the Apex Court that for permitting a trial to proceed against the accused for the offence punishable under Section 306 of the Indian Penal Code, it is necessary for the prosecution to at least prima facie establish that the accused had an intention to aid or instigate or abet the deceased to commit suicide. In the absence of availability of such material, the accused cannot be compelled to face trial for the offence punishable under Section 306 of the Indian Penal Code. As

has been held by Their Lordships of the Apex Court that abetment involves mental process of instigating a person or intentionally aiding a person in doing of a thing and without a positive act on the part of the accused in aiding or instigating or abetting the deceased to commit suicide, the said persons cannot be compelled to face the trial. Unless there is clear mens rea to commit an offence or active act or direct act, led the deceased to commit suicide seeing no option or the act intending to push the deceased into such a position, the trial against the accused under Section 306 of the Indian Penal Code, in our considered view, would be an abuse of process of law.”

18. Similarly, the Apex Court in the cases of *Didigam Bikshpathi and another Vs. State of A.P.*⁹, *Munshiram Vs. State of Rajasthan*¹⁰, and *Narayan Malhari Thorat Vs. Vinayak Deorao Bhagat*¹¹, found on facts and on perusing suicide notes in the said cases, that prima facie ingredients of offence under Section 306 read with 107 of the IPC were made out and accordingly held against the accused persons.

19. Considering the judicial pronouncement as stated aforesaid and keeping the facts of the present case, in mind, and having regard

9 AIR 2008 SC 527

10 AIR 2018 SC 1923

11 AIR 2019 SC 224

to the parameters laid down by the Apex Court in the case of *State of Haryana and Ors V/s Bhajan Lal*¹², we do not find any impediment in quashing the proceedings in hand *qua* the applicant. We may note, that there is nothing in the suicide note to indicate that the applicant had met the deceased – Priya at any point of time, immediately before the incident or the reason why she thought or perceived that the applicant was not a good person. Nor does the suicide note spell out the acts (much less a positive act) done by the applicant, more particularly when the applicant was not even in a relationship with Priya (deceased) and was only a friend of co-accused – Adarsh. There is nothing in the suicide note nor anything in the statements showing that the applicant in anyway instigated or conspired or intentionally aided Priya to commit suicide. The requisite ‘mens rea’ necessary to constitute the offence, is amiss. Apart from the suicide note, none of the statements of witnesses point to the complicity of the applicant or are in anyway incriminating as against the applicant.

20. Considering what is stated aforesaid and taking into

12 1992 supp (1) SCC 335

consideration the prosecution case as it stands, we do not find that the applicant has committed the alleged offence and as such, he cannot be compelled to face trial. Infact, in these circumstances, continuation of the proceedings, would clearly be an abuse to the process of the process of law.

20. Hence, in order to secure the ends of justice, we allow the petition and accordingly quash and set aside the FIR bearing C.R.No. I-221 of 2019 registered with the Rabale Police Station, Navi Mumbai, and the chargesheet filed pursuant thereto, as against the applicant.

21. Rule is made absolute in the aforesaid terms. Petition is disposed of accordingly.

22. All concerned to act on the authenticated copy of this order.

S. M. MODAK, J.

REVATI MOHITE DERE, J.