

Uday S. Jagtap

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 4086 OF 2021

Jairaj Rakesh Shrivastav

.. Petitioner

Vs.

The State of Maharashtra

.. Respondent

.....

Mr. Ashutosh Srivastava for the petitioner

Mr. J.P. Yagnik, APP for the respondent - State

.....

**CORAM : REVATI MOHITE DERE &
PRITHVIRAJ K. CHAVAN, JJ.**

DATED : 15th DECEMBER, 2022.

ORDER :- (Per Prithivraj K. Chavan)

1. Heard learned Counsel for the petitioner and learned APP appearing for the respondent no.1 – State.
2. Rule. Rule is made returnable forthwith, with the consent of the parties and the petition is taken up for final disposal. Learned APP waives notice on behalf of the respondent no.1 – State.
3. The petitioner herein has invoked inherent powers of this

Court under Section 482 of the Code of Criminal Procedure, 1973 (for short “Cr.P.C.”) along with Article 226 of the Constitution of India, *inter alia*, praying for quashing the proceeding bearing Charge-sheet No. 59 of 2019 in C.R. No. 145 of 2019 registered with Jejuri Police Station on 11.04.2019 for the alleged offences punishable under Section 306 of the Indian Penal Code.

4. A few facts germane for disposal of this petition can be summarized thus :-

5. Mohini Amol Lokhande, a girl, aged about 18 years, committed suicide by hanging herself at her natal house on 20.03.2019 just after her marriage, which was solemnized on 23.12.2018 with one Amol Prakash Lokhande against her wish. The petitioner herein is also a young boy, aged about 21 years, was a student of Wagheri College, Saswad in the first year where the deceased was prosecuting her studies in 12th standard. They met each other while participating in a cultural event of the college, which culminated into a good friendship and, obviously, they fell in love with each other.

6. The prosecution case reveals that the deceased had left her matrimonial house on 07.01.2019 without informing anyone in the family. A missing report came to be lodged at Alandi Police Station. She was, thereafter, sent to State Home for Women, Mundhwa, Pune. It is alleged that the petitioner and his aunt threatened the deceased that since she is married to Amol Lokhande, the petitioner cannot marry her and, therefore, she was under tremendous mental stress. Despite repeated calls by the deceased to the petitioner on his cell phone to take her with him, the petitioner did not pay any heed to her requests and, therefore, she had committed suicide.

7. Meanwhile, during the pendency of the investigation, the petitioner was arrested in this crime and was released on bail by the Additional Sessions Judge, Pune on 20.07.2019.

8. We heard the learned Counsel for the petitioner at a considerable length as well as learned APP. We have also meticulously gone through the copy of the charge-sheet.

9. At the outset, the learned Counsel for the petitioner submits that before her marriage, the deceased and the petitioner occasionally

used to meet each other when he was informed by the deceased that her father was going to marry her with Amol Lokhande against her wish and consent. Whenever she used to protest against the wish of her father, he used to abuse, assault and threaten her to kill. Learned Counsel would submit that deceased was ultimately married to Amol Lokhande, forcefully, by her father without her consent and against her wish. According to the learned Counsel, there is absolutely no reason or rather there is no iota of evidence on record indicating that the petitioner was responsible for abetting the suicide by the deceased, as according to him, the ingredients of Section 107 and 108 of the Indian Penal Code or even for that matter, ingredients of Section 306 are not at all attracted.

10. Learned Counsel has invited our attention to a statement of the deceased recorded by the Police Inspector of Alandi Police station on 21.01.2019 in the presence of the Officer of State Home for Women at Mundhwa, Pune. The statement of the deceased appears to have been recorded at the State Home for Women, Mundhwa, Pune. The sum and substance of the said statement is that her marriage with Amol Lokhande was solemnized on

23.12.2018 at Shivkush Mangal Karyalaya at Morgaon against her wish. After her marriage she had been to her matrimonial house. She left the matrimonial house on 27.12.2018 and came to her parents house. She was again brought to her matrimonial house by her father on 04.01.2019. However, she again left the matrimonial house on 07.01.2019 at 9.30 a.m., for the reason that she did not like her husband and she did not want to co-habit with him as his wife. She, therefore, voluntarily left her matrimonial house and went to Saswad. She rented a room at Saswad for some time. However, when she had spent all her money, she approached the Swargate Police Station on 18.01.2019. She informed the police that she did not wish to co-habit with her husband as her marriage was solemnized against her wish. She had categorically stated in her statement that she neither wished to return to her matrimonial house nor to her natal house. She had no grudge against any one nor she was taken by anyone against her wish.

11. Learned APP however, submits that the deceased was under tremendous mental stress for which, the petitioner is responsible. Admittedly, there is no suicide note. Upon being asked, learned APP

could not invite our attention to any material in the charge-sheet indicating as to how, even remotely, the petitioner could be prosecuted for abetment of suicide by the deceased under Section 306 of the Indian Penal Code. Merely because the deceased and the petitioner were close friends and even if it is presumed that they had a love affair, that itself would not be sufficient to construe that the petitioner had intentionally either instigated, aided or committed an act or illegal omission pursuant to which, the deceased had committed suicide. The law on the aspect of abetment is no more *res integra*. The offence of abetment by instigation depends upon intention of the person who abets and not upon the act which is done by the person who has been abetted. The petitioner herein cannot be said to be an abettor as contemplated under Section 108 of the Indian Penal Code.

12. Learned Counsel for the petitioner has, therefore, rightly placed useful reliance on a judgment of the Supreme Court in case of *Gurucharan Singh Vs. State of Punjab, AIR 2017 SC 74*. The relevant portion of the judgment is extracted below :-

“The basic ingredients of provision of Section 306 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 this constituents would militate against this indictment. Remoteness of the culpable acts or omissions rooted in the intention of the accused to actualize 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. In the present case, the suicide note reveals that apart from an omnibus grievance against her in-laws to be responsible for their death, for which according to her, they ought to be punished, there is no reference or disclosure of any specific incident in support thereof. The suicide note divulges her ownership of lands and house which per se belies the charge that she had been denied the share of her husband in the family property. Noticeably, no attempt was made by the prosecution to prove the author of the text through an expert and both the courts below solely based their conclusion, in this regard on the evidence of the brothers of deceased who identified the contents to be that of hers again on eye estimation. The assessment of the evidence on record does not demonstrate with unqualified clarity and conviction, any role of the appellant or the other implicated in-laws of the deceased as contemplated by the above provisions so as to return an unassailable finding of their culpability under Section 306 IPC. The materials on record, to reiterate, do not suggest even remotely any act of cruelty, oppression, harassment or inducement so as to persistently provoke or compel the deceased to resort to self-extinction being left with no other alternative. No such continuous and proximate conduct of the appellant or his family members with the required provocative culpability or lethal instigative content is discernible to even infer that the deceased and her daughters had been

pushed to such a distressed state, physical or mental that they elected to liquidate themselves as if to seek a practical alleviation from their unbearable earthly miseries. It could be said that the ingredients of the offence of Section 306, IPC have remained unproved and thus, the appellant deserves to be acquitted.”

13. Having considered the entire material on record including charge-sheet and after hearing the learned Counsel for the petitioner, learned APP as well as the *ratio decidendi* in **Gurucharan Singh (supra)**, we are convinced that the powers under Section 482 of the Code of Criminal Procedure along with Article 226 of the Constitution of India needs to be invoked as it would be a futile exercise to allow the trial to proceed further as the Investigating Agency has already filed its final report under Section 173 of the Cr.P.C. We may add that the investigation has been carried out in a most perfunctory and casual manner. There seems to be absolutely no *mens rea* to commit an offence nor there is anything to indicate that the petitioner had an active or direct role, leading the deceased to commit suicide.

14. Having regard to the decision of the Supreme Court in the case of *State of Haryana & Ors. Vs. Bhajan Lal & Ors. 1992 Supp (1) Supreme Court Cases 335*, the petitioner's case is squarely covered

by clauses 1 and 3 of para 102 of the said case. The relevant clauses 1 and 3 read thus :-

“102.

(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)

(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.”*

15. The petition is accordingly allowed. In the wake of the aforesaid observations, we are, thus, of the unhesitant view that the ingredients of the offences of Section 306 of the Indian Penal Code are not at all attracted and, therefore, the entire proceeding needs to be quashed as set aside.

16. As such, the Charge-sheet bearing no. 59 of 2019 in C.R. No. 145 of 2019 registered with Jejuri Police Station on 11.04.2019 for the alleged offences punishable under Section 306 of the Indian Penal Code is quashed and set aside.

17. Rule is made absolute in the aforesaid terms and the petition is disposed of accordingly.

18. All the parties to act upon the authenticated copy of this order.

[PRITHVIRAJ K. CHAVAN, J.]

[REVATI MOHITE DERE, J.]