

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL APPLICATION (APL) NO.173/2019

1. Shafi s/o Mehboob Sheikh,
Aged about 53 years, Occ. Business,
2. Tausif s/o Shafi Sheikh,
aged about 24 years, Occ. Business,

Both r/o Juni Basti, Butibori,
Tq. Dist. Nagpur.

.....APPLICANTS

...V E R S U S...

1. State of Maharashtra through
Police Station Officer, Police Station,
M.I.D.C. Butibori, Nagpur.
2. Matsygandha Prashant Nibrad,
aged about 36 years, Occ. Household,
r/o Sukli Beldar, Taluka Hingna,
M.I.D.C, Dist. Nagpur.

...NON APPLICANTS

Mr. R. S. Akbani, Advocate for applicants.
Mr. T. A. Mirza, A.P.P. for non applicant no.1 .
Mr. R. S. Kurekar, Advocate for non applicant no.2.

CORAM:- ROHIT B. DEO & ANIL L. PANSARE, JJ.
DATED :- 29.09.2022

JUDGMENT (Per: Anil L. Pansare, J.)

Heard. **Admit.** Heard finally by consent of learned
counsel for the parties.

2. The applicants have put forth following prayers:

“(i) Quash First Information Report registered by Police Station M.I.D.C. Butibori, Nagpur vide FIR No. 467 of 2018 for the offence punishable under Section 306 read with Section 34 of the Indian Penal Code.

i(a) Quash the charge sheet No.467/2018 submitted by Non Applicant on 03.04.2019 in Crime No. 467 of 2018 for the offence punishable under Section 305 read with Section 34 of the Indian Penal Code.”

3. Non applicant no.2 lodged FIR against the applicants vide Crime No.467/2018 for an offence punishable under Section 306 read with Section 34 of the Indian Penal Code (For short, ‘IPC’). According to the non applicant no.2, her husband was an electrician and was running an electric shop. He used to do electric fitting works. He had executed one such work in the house of applicant no.1. Applicant no.1 was insisting for getting another work done one week prior to the committing suicide. He was doing such electric work for last three days. He had informed non applicant no.2 that though he is doing electric works at the house of the

applicant no.1, he is being abused. On 03.10.2018, husband of non applicant no.2 committed suicide by hanging himself in the house. Non applicant no.2 found a suicide note wherein it was mentioned that applicant no.1 has given life threats to the deceased and that because of his mental harassment he is committing suicide. Suicide note also reveals that though her husband has executed electric works, he was asked to do it again and was thereafter threatened as mentioned above. The name of applicant no.2 is not mentioned in the suicide note. However, non applicant no.2 while concluding her oral report, has stated that both the applicants have harassed her husband mentally and have given life threats and therefore he has committed suicide.

4. Section 306 of the IPC reads thus:

“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.”

Thus, Section 306 IPC makes abetment of suicide a criminal offence. Abetment is defined under Section 107 of the IPC, which reads thus:

“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 wilful misrepresentation, or by wilful 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.

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 facilitate the commission thereof, is said to aid the doing of that act.”

5. The Hon'ble Supreme Court, in the case of **Gio Varghese Vs. State of Rajasthan and anr.**¹, while dealing with quashment of FIR under Section 306 of the IPC, has observed thus:

“17. The scope and ambit of Section 107 IPC and its co-relation with Section 306 IPC has been discussed repeatedly by this Court. In the case of S.S. Cheena v. Vijay Kumar Mahajan , it was observed as under:—

“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 the Supreme 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.”

18. In a recent pronouncement, a two-Judge Bench of this Court in the case of Arnab Manoranjan

Goswami v. State of Maharashtra , while considering the co-relation of Section 107 IPC with Section 306 IPC has observed as under:— “47. The above decision thus arose in a situation where the High Court had declined to entertain a petition for quashing an FIR under Section 482 of the 14 (2014) 4 SCC 453 PART I 33 CrPC. However, it nonetheless directed the investigating agency not to arrest the accused during the pendency of the investigation. This was held to be impermissible by this Court. On the other hand, this Court clarified that the High Court if it thinks fit, having regard to the parameters for quashing and the self restraint imposed by law, has the jurisdiction to quash the investigation “and may pass appropriate interim orders as thought apposite in law. Clearly therefore, the High Court in the present case has misdirected itself in declining to enquire prima facie on a petition for quashing whether the parameters in the exercise of that jurisdiction have been duly established and if so whether a case for the grant of interim bail has been made out. The settled principles which have been consistently reiterated since the judgment of this Court in *State of Haryana v. Bhajan Lal* (*Bhajan Lal*) include a situation where the allegations made in the FIR 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. This legal position was recently reiterated in a decision by a two-judge Bench of this Court in Kamal Shivaji Pokarnekar v. State of Maharashtra. 48. The striking aspect of the impugned judgment of the High Court spanning over fifty-six pages is the absence of any evaluation even prima facie of the most basic issue. The High Court, in other words, failed to apply its mind to a 15 1992 Supp (1) SCC 335 16 (2019) 14 SCC 350 PART I 34 fundamental issue which needed to be considered while dealing with a petition for quashing under Article 226 of the Constitution or Section 482 of the CrPC. The High Court, by its judgment dated 9 November 2020, has instead allowed the petition for quashing to stand over for hearing a month later, and therefore declined to allow the appellant's prayer for interim bail and relegated him to the remedy under Section 439 of the CrPC. In the meantime, liberty has been the casualty. The High Court having failed to evaluate prima facie whether the allegations in the FIR, taken as they stand, bring the case within the fold of Section 306 read with Section 34 of the IPC, this Court is now called upon to perform the task.”

19. In the case of *M. Arjunan v. State, Represented by its Inspector of Police*, a two-Judge

Bench of this Court has expounded the ingredients of Section 306 IPC in the following words:—

“The essential ingredients of the offence under Section 306 I.P.C. 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, accused cannot be convicted under Section 306 I.P.C.”

20. At this stage, we may also refer to another recent judgment of a two-Judge Bench of this Court in the case of Ude Singh v. State of Haryana , which elucidated on the essential ingredients of the offence under Section 306 IPC in the following words: —

“16. 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.

16.1. 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 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. We may also refer to a two-Judge Bench judgment of this Court in the case of Narayan Malhari

Thorat v. Vinayak Deorao Bhagat, wherein the judgment rendered by the High Court quashing the FIR under Section 482 was set aside. In the said case, an FIR was registered under Section 306 IPC stating that the son and daughter-in-law were teachers in a Zila Parishad School where the accused was also a teacher used to make frequent calls on the mobile of the daughter-in-law, and used to harass her. Despite the efforts of the son of the informant in trying to make the accused see reason and stop calling, the accused continued with his activity. On 09.02.2015, there was a verbal altercation between the son of the informant and the accused and on 12.02.2015, he committed suicide leaving a note stating that his family life has been ruined by the accused who should not be pardoned and should be hanged. Under Section 482 Cr.PC, a petition was filed by the accused challenging the FIR, which was allowed by the High Court and thereafter, was challenged before this Court. The appeal was allowed by this Court and made the following observations:—

“We now consider the facts of the present case. There are definite allegations that the first respondent would keep on calling the wife of the victim on her mobile and keep harassing her which allegations are supported by the statements of the

mother and the wife of the victim recorded during investigation. The record shows that 3-4 days prior to the suicide there was an altercation between the victim and the first respondent. In the light of these facts, coupled with the fact that the suicide note made definite allegation against first respondent, the High Court was not justified in entering into question whether the first respondent had the requisite intention to aid or instigate or abate the commission of suicide. At this juncture when the investigation was yet to be completed and charge-sheet, if any, was yet to be filed, the High Court ought not to have gone into the aspect whether there was requisite mental element or intention on part of the respondent.”

22. *In the above quoted observations of this Court, there is a clear indication that there was a specific averment in the FIR that the respondent had continuously harassed the spouse of the victim and did not rectify his conduct despite being objected by the victim. Thus, as a matter of fact he had actively facilitated in the commission of suicide.*

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.”

6. In the backdrop of the law laid down by the Hon'ble Supreme Court as mentioned above, if allegation made against the applicants are examined, we do not find that there is either direct or indirect act or instigation to the commission of offence of suicide. The allegations do not indicate that the alleged harassment by the applicants has compelled the husband of non applicant no.2 to commit

suicide. What appears is that the husband of non applicant no.2 was aggrieved for he was required to execute the work again at the house of the applicant no.1. The allegations do not suggest that the applicants have intentionally committed the acts of harassment which led the deceased to commit suicide. Thus, even if the allegations made in the FIR are taken at its face value, it only suggest that for certain reasons, deceased suffered harassment at the hands of applicant no.1 and not applicant no.2. The alleged harassment cannot be said to be in the nature of aiding or instigating or abetting the deceased to commit suicide.

7. In the circumstances, though precious life of a person is lost but the applicants cannot be blamed for the said loss. Hence, continuation of the proceedings would only amount to the abuse of process of law. Thus, this is a fit case where jurisdiction under Section 482 of the Code of Criminal Procedure should be invoked.

8. Accordingly, the application is allowed in terms of prayer clauses (i) and (i)(a).

The First Information Report no. 467/2018, registered with Police Station, MIDC (Bori), Nagpur for an offence punishable under Section 306 read with Section 34 of the Indian Penal Code and resultant Charge Sheet No.22/2019 dated 03.04.2019 are quashed and set aside.

The application is disposed of.

(Anil L. Pansare, J.)

(Rohit B. Deo, J.)

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