

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

CRIMINAL APPLICATION (APL) NO.722 OF 2020

Dr. Pawan Eknath Raut
Aged about 40 years, Occ. – Service,
R/o. Ambeshioni,
Tq. and Dist. Gadchiroli

...APPLICANT

VERSUS

1. State of Maharashtra,
through P.S.O.
P.S. Etapalli, Tah. Etappli,
District Gadchiroli

2. Tulshiram Devdu Veladi
Aged about 38 years, Occ. – Service,
R/o. Shipai, Panchayat Samiti,
Tah. Etappli, District Gadchiroli

...NON-APPLICANTS

Shri Y.B. Mandpe, Advocate for the applicant.
Shri M.J. Khan, Additional Public Prosecutor for
non-applicant No.1/State.

CORAM : ROHIT B. DEO & URMILA JOSHI-PHALKE, JJ.
DATE : OCTOBER 17, 2022.

JUDGMENT (Per Urmila Joshi-Phalke, J.)

ADMIT. Heard finally with the consent of learned Counsel
for the parties.

2. The present applicant is an accused, in Crime No.40/2020 registered at police station Etapalli, District Gadchiroli for the offence punishable under Section 306 of the Indian Penal Code (hereinafter referred to as 'the Code' for short), approached to this Court by filing this application under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Cr.P.C.' for short) for quashing of the aforesaid First Information Report (hereinafter referred to as 'the FIR' for short).

3. One Tulshiram Devdu Veladi had lodged report against the present applicant alleging that the deceased Ranjana is his daughter and serving as a Nurse in the Health Department of Zilla Parishad, Gadchiroli. She had committed suicide on 04/02/2018 by consuming pills. It is further alleged that his daughter had committed suicide due to the abetment at the hands of the present applicant who was serving as a Medical Officer in the said Health Center of Zilla Parishad. He developed love relationship with his daughter and subsequently his daughter was depressed due to the behaviour of the applicant and she committed suicide. It is further alleged that his daughter disclosed to him that said applicant developed relationship with her on the promise of marriage and she is defamed in the society. On the basis of said report, police have registered the offence punishable under Section 306 of the Code against the present applicant.

4. It is the contention of the applicant that he is a respected person of the society and serving as a Medical Officer. He is employed in the Zilla Parishad, Gadchiroli as a Medical Officer. His wife is also serving with the Zilla Parishad, Health Department, Gadchiroli as a Medical Officer. The unfortunate incident that daughter of the informant had committed suicide on 04/02/2018 by consuming pills. She was serving as a Staff Nurse since 2015. The reason behind the said suicide was unknown. Initially, after her death the police have registered a Merg Summery bearing No.02/2018 under Section 174 of the Cr.P.C. During enquiry of Merg Summary no evidence was collected. Said Merg Summary was submitted before the Sub-Divisional Magistrate for approval. The Sub-Divisional Magistrate had directed to investigate the matter. The Sub-Divisional Magistrate had also recorded the statement of the present applicant. Subsequently, merely on suspicion, the offence was registered against the present applicant. In fact, he is not concerned with the alleged offence. Initially, non-applicant No.2 had not raised any suspicion against anybody and subsequently after thought he lodged report. Earlier he had lodged the report against one press reporter on 08/02/2018. In that report non-applicant No.2 had not raised any suspicious against anyone and subsequently he had lodged the report against the present applicant. In fact, the report lodged by the non-applicant No.2 does not disclose any instigation or abetment at the

hands of the present applicant and hence the FIR registered against him is to be quashed and set aside.

5. Said application is strongly opposed by Shri M.J. Khan, learned Additional Public Prosecutor for the State. He submitted that the material collected during the investigation is sufficient to show the involvement of the present applicant. He had developed love relationship with the deceased on the promise of marriage. As he had not performed the marriage, deceased was under depression and she had committed the suicide. Therefore, there is no merit in the application and prayed for dismissal of the present application.

6. Heard Shri Y.B. Mandpe, learned Counsel for the applicant. He submitted that alleged incident had occurred on 04/02/2018 whereas FIR was lodged on 19/09/2020 that is after 2 years and 7 months. There is no explanation regarding the said delay. Initially, merge inquiry was conducted and no offence was revealed from the said inquiry but the Sub-Divisional Magistrate had not approved the said report and directed to investigate. After thought the suspicion was raised against the present applicant. He further submitted that even if the allegations made in the complaint are taken at its face value no offence is made out under Section 306 of the Code. He submitted that only the allegation against the applicant is that he promised for marriage and deceased was under

depression because of the love affair and committed the suicide. The allegation does not constitute any offence under Section 306 of the Code and he prayed for quashment of the FIR in question.

7. On the other hand, Shri M.J. Khan, learned Additional Public Prosecutor for the State strongly opposed the application and submitted that the allegation made in the complaint *prima facie* constitute an offence under Section 306 of the Code against the applicant and, therefore, this is not a case where this Court may exercise the jurisdiction under Article 226 of the Constitution of India or under Section 482 of the Cr.P.C. and he prayed for dismissal of the present petition.

8. Before entering into the merits of the case it is necessary to examine the requirements to attract Section 306 of the Code. The Hon'ble Apex Court in the case of ***Arnab Manoranjan Goswami Vs. State of Maharashtra and others 2020 SC Online SC 964*** considered the same and observed that :

“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.”

9. In the above said case the Hon'ble Apex Court had also referred *Madan Mohan Singh Vs. State of Gujarat and anr. (2010) 8 SCC 628* and observed that in a petition under Section 482 of the Cr.P.C where the High Court had dismissed the petition for quashing an FIR registered for the offences under Sections 306 and 294(B) of the IPC. In that case, the FIR was registered on a complaint of the spouse of the deceased who was working as a driver with the accused. The driver had been rebuked by the employer and was later found to be dead on having committed suicide. A suicide note was relied upon in the FIR, the contents of the FIR indicated that the driver had not been given a fixed vehicle unlike other drivers besides which he had no other complaints. The suicide note named the accused. It is held by the Hon'ble Apex Court that there is absolutely nothing in this suicide note or the F.I.R. which would even distantly be viewed as an offence much less under Section 306 IPC. We could not find anything in the F.I.R. or in the so-called suicide note which could be suggested as abetment to commit suicide. In such matters there must be an allegation that the accused had instigated the deceased to commit suicide or had engaged with some other person in a conspiracy and lastly, that the accused had in any way aided any act or illegal omission to bring about the suicide.

10. In the light of the above discussion by the Hon'ble Court and after going through the provisions of Section 306 of the Code and the

definition of abetment given under Section 107 of the Code. It is apparent that in order to bring out an offence under Section 306 of the Code 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. The Division Bench of this Court also in the case of ***Dilip and others Vs. State of Maharashtra and others 2016 ALL MR (cri) 4328*** held that :

“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, which 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”.

11. Thus, the pre-requisites to attract Section 306 of the Code is that :

- (i) There has to be a clear *mens rea* to commit the offence.
- (ii) The person must have played a positive and an active role which involves a mental process of instigating or intentionally aiding or doing certain act to facilitate the commission of suicide. (Instigation literally means to provoke, incite, urge on or bring about by persuasion to do anything.)

12. In the light of the above legal principles, after reverting back to the facts of the present case and after going through the contents of the FIR it revealed that the deceased had committed suicide by taking the pills. The allegation made in the FIR discloses that the present applicant had developed love affair with her and promise her to marriage. The FIR nowhere discloses that the applicant subsequently refused to marry with her. On the contrary, the facts show that the applicant as well as his wife both were serving in the Zilla Parishad as Medical Officer and the deceased was serving as a Staff Nurse. After considering the contents of the FIR, we do not find that any of the allegations made in the FIR, discloses the case of abetment against the applicant or that the applicant had instigated or aided the deceased to commit suicide. Thus, the contents of the FIR are not sufficient to show that by these allegations, offence under Section 306 of the Code is made out. The police diary contains the statements of the witnesses including

the statement of father of the deceased and other family members. There is nothing on record where from it can be gathered that the applicant either instigated or aided the deceased to commit suicide.

13. Apart from the merits, the FIR lodged by the father of the deceased is after 2 years and 7 months. The informant has not offered any explanation in the FIR for the delay which creates a doubt about its reasonableness and genuineness.

14. Having observed that the offence under Section 306 of the Code does not attract against the applicant and the delay caused is also fatal. We are of the considered view that if the applicant is forced to face the criminal trial would amount to miscarriage of justice.

15. Recently, in the case of ***Jagmohan Singh Vs. Vimlesh Kumar and ors. 2022 LiveLaw (SC) 546*** it is observed by the Hon'ble Apex Court that while exercising jurisdiction under Section 482 of the Cr.P.C., the High Court should not ordinarily embark upon an enquiry into whether there is reliable evidence or not. The jurisdiction has to be exercised sparingly, carefully and with caution only when such exercise is justified by the specific provisions of Section 482 of the Cr.P.C. itself. It is further held that the criminal proceedings can be said to be in abuse of the

process of Court, to warrant intervention under Section 482 Cr.P.C., when the allegations in the FIR do not at all disclose any offence or there are materials on record from which the Court can reasonably arrive at a finding that the proceedings are in abuse of the process of the Court.

16. In view of that FIR is rather delayed and nothing is on record to show that there was any instigation, aiding or conspiracy by the present applicant to commit the said offence. On perusal of the statements and suicide note, none of the statements show soon before death there was goading, influence, pressure or threat by the applicant.

17. In the result, to secure the ends of justice we proceed to pass the following order :

(a) The criminal application is allowed.

(b) The First Information Report vide Crime No.40/2020 registered at police station Etapalli, District Gadchiroli punishable under Section 306 of the Indian Penal Code is quashed and set aside.

18. Rule is made absolute in the aforesaid terms. There will be no order as to costs.