

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

CRIMINAL WRIT PETITION NO. 866 OF 2021

Lata w/o Pramod Dangre
Aged 22 years, r/o Quarter No.D-41,
Civil Lines, Bhandara

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.. Petitioner

Versus

1. State of Maharashtra
Through Police Station Officer Parva,
Taluka Ghatanji, District Yavatmal
2. Mahadeo Narayan Kamble,
aged 63 years, Dorli, Taluka Ghatanji,
District Yavatmal

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.. Respondents

Mr. A. M. Sudame, Advocate for petitioner.

Mr. S. M. Ghodeswar, APP for respondent No.1 State.

**CORAM : MANISH PITALE AND
G.A.SANAP, JJ.**

RESERVED ON : 20/08/2022

PRONOUNCED ON : 22/09/2022

JUDGMENT (Per : Manish Pitale J.)

Rule. Rule made returnable forthwith. Heard finally
with the consent of the learned counsel for the rival parties.

(2) The petitioner is one of the two accused persons in

First Information Report (FIR) No. 429 of 2021, dated 24/09/2021, registered at Police Station, Parva, Taluka–Ghatanji, District–Yavatmal, for offence under Section 306 read with 34 of the Indian Penal Code, 1860 (IPC). The present writ petition is filed seeking quashing of the aforesaid FIR and charge-sheet filed in pursuance thereof.

(3) The facts leading up to filing of the present writ petition are that – one Kavadu Sambhaji Tiple, committed suicide on 14/09/2021 by hanging himself on a tree in an agricultural field, within the jurisdiction of the aforesaid Police Station. The son-in-law of the deceased i.e. Mahadev Narayan Kamble caused the FIR to be registered after 10 days on 24/09/2021, against the petitioner and her mother. A perusal of the report, leading to registration of the FIR, shows that it is based almost entirely on the contents of two suicide notes found on the person of the deceased. The contents of the two suicide notes are identical, wherein the deceased stated that he was fed up with life and constrained to take the extreme step because of the petitioner and her mother. On this basis, the FIR stood registered and police undertook investigation.

(4) During the course of investigation, the police

recorded statements of witnesses and took the suicide notes on record. The charge-sheet was filed on 27/11/2021 and it was stated therein that the material on record pointed towards the guilt of the petitioner and her mother for offence under Section 306 read with 34 of the IPC. Much emphasis was placed on the suicide note dated 09/09/2021. This Court issued notice in the present writ petition, wherein the respondent No.1 State appeared through the learned Assistant Public Prosecutor. The respondent No.2 i.e. original informant/ complainant was served, but he chose not to appear before this Court.

(5) Mr. A. M. Sudame, learned counsel appearing for the petitioner submitted that even if the FIR, charge-sheet and the material available on record were to be taken into consideration, the ingredients of the offence under Section 306 of the IPC were not made out against the petitioner and that therefore, the FIR and the charge-sheet deserved to be quashed. It was submitted that, applying the position of law laid down by the Hon'ble Supreme Court and this Court in various judgments as regards offence under Section 306 of the IPC, even if the contents of the suicide note allegedly left behind by the deceased were to be accepted, ingredients of the offence under Section

306 of the IPC were not made out, because the essential aspect of abetment as defined under Section 107 of the IPC was absent and it could not be said that the petitioner before this Court was even prima facie liable for instigating the deceased to commit suicide. Reference was made to a number of judgments in support of the aforesaid contentions, which will be referred to at the appropriate place hereinafter.

(6) The learned counsel for the petitioner referred to Sections 107 and 306 of the IPC and read the suicide note in detail, to submit that at worst the contents thereof brought out the anguish of the deceased in respect of the demands for share in property made by the co-accused i.e. mother of the petitioner, allegedly at the behest of the petitioner. It was submitted that the demands made by the mother of the petitioner, even if at the instigation of the petitioner, could at worst be said to be demands that the accused persons thought were genuine and it could not be said that such demands were made with the intention to drive the deceased to commit suicide. It was further submitted that there was no proximity between the suicide note, which was written on 09/09/2021 and the actual act, which took place on

14/09/2021. On this basis it was submitted that the present writ petition deserved to be allowed.

(7) On the other hand, Mr. S. M. Ghodeswar, learned APP submitted that the material available on record, particularly the suicide note, clearly demonstrated that no option was left for the deceased, but to take the extreme step, because of the aggressive behavior of the co-accused i.e. mother of the petitioner, due to instigation on the part of the petitioner. It was submitted that a perusal of the suicide note and the material available on record with the charge-sheet demonstrated that prima facie the ingredients of the offence under Section 306 of the IPC were made out and that the actions attributed to the petitioner were prima facie covered under the concept of abetment as per Section 107 of the IPC. By referring to the various judgments on which the learned counsel appearing for the petitioner had placed reliance, the learned APP submitted that ultimately the Court in those cases had concluded in favour of the accused on facts and that the facts of the present case were distinguishable, demonstrating that no case was made out for quashing of the FIR and the charge-sheet. The learned APP also relied upon

judgments to support his arguments and they shall be referred to at the appropriate place hereinbelow.

(8) In order to appreciate the contentions raised on behalf of the petitioner as well as the respondent – State, it would be necessary to refer to Sections 107 and 306 of the IPC which read as follows : -

“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.

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.”

(9) The consideration and analysis of the above quoted provisions has attracted the attention of the Supreme Court and this

Court in various cases and the judgments rendered by the Courts have elucidated the essential ingredients of the same and they are guiding lights for applying the aforesaid provisions to the facts of individual cases. Before applying the principles that can be culled out from the said judgments to the facts of the present case, it would be appropriate to refer to some of them.

(10) This Court is referring to only those judgments relied upon by the learned counsel for the petitioner where the Courts were concerned with the question of quashing of FIR/Charge-sheet under Section 482 of the Cr.P.C. or exercise of power in writ jurisdiction for quashing of the same and where the accused contended that the criminal proceedings did not deserve to be continued any further.

(11) In the case of *Swamy Prahalddas Vs. State of M.P and another, 1995 Supp (3) SCC 438*, the Supreme Court was considering a situation where the accused was alleged to have remarked to the deceased 'to go and die' and thereafter, the deceased committed suicide. Even in such a situation the Supreme Court held that the allegations, even if they were to be accepted as it is, did not

prima facie reflect *mens rea* on the part of the accused and it was also found that the deceased did have time to weigh the pros and cons of the act by which he ultimately ended his life. It was held that the accused need not face the charge in such a situation.

(12) In the case of *Sanju Alias Sanjay Singh Sengar Vs. State of M.P., (2002) 5 SCC 371*, the Supreme Court was considering a situation where the deceased had left behind a suicide note, wherein it was specifically stated that the accused was responsible for his death. In the said case, the Supreme Court considered the liability of the accused to face investigation and prosecution under Section 306 of the IPC, in the context of Section 107 thereof and it was held that the word “instigate” denotes incitement or urging to do some drastic or inadvisable action or to stimulate or incite, further holding that presence of *mens rea*, therefore, was a necessary concomitant of instigation. It was found that in the said case the alleged abusive words were used by the accused against the deceased, two days prior to the date when the deceased was found hanging. In these circumstances, the Supreme Court found it fit to quash the criminal proceedings.

(13) In the case of *Madan Mohan Singh Vs. State of Gujarat and another, (2010) 8 SCC 628*, the accused was alleged to have instigated his driver to commit suicide. There was a suicide note of 15 pages left behind by the deceased and the accused had approached the High Court for quashing of the FIR and the criminal proceedings, but his prayer was rejected, as consequence of which, the accused was before the Supreme Court seeking relief. The Supreme Court applied Section 306 read with 107 of the IPC and found that there has to be 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 Supreme Court went into the suicide note of about 15 pages and found that the contents thereof expressed the anguish of the deceased, who felt that his boss (the accused) had wronged him, but it was noted that the contents fell short of depicting an intentional act on the part of the accused for driving the deceased to commit suicide. On this basis, the judgment of the High Court was set aside and the FIR and criminal proceedings were quashed.

(14) In the case of *S.S. Chheena Vs. Vijay Kumar Mahajan and another*, (2010) 12 SCC 190, the Supreme Court considered 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 the said judgment as follows : -

“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.

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.”

(15) Similarly, in the case of *M.Mohan Vs. State Represented by the Deputy Superintendent of Police*, (2011) 3 SCC 626, the Supreme Court held in the context of abetment as follows: -

“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.”*

(16) The Supreme Court in the said case also emphasized that there ought to be a proximate link between the incidents alleged against the accused and the suicide by the deceased. On the facts of the said case, it was found that when the alleged incidents had taken place about four days prior to the suicide committed by the deceased, no proximate link could be attributed.

(17) In the case of *Vajjnath Kondiba Khandke Vs. State of Maharashtra and another, (2018) 7 SCC 781*, the Supreme Court took note of the fact that there were indeed two lines of cases in the context of quashing of criminal proceedings, when the accused was facing charge of offence under Section 306 of the IPC. After taking note thereof, in the said judgment, the Supreme Court held that the accused

may face trial if the material on record prima facie shows that the situation was created deliberately by the accused so as to drive the victim to suicide. On the facts of the said case, it was found that the FIR and the criminal proceedings deserved to be quashed.

(18) In the case of *Geo Varghese Vs. State of Rajasthan and another, 2021 SCC Online SC 873*, the Supreme Court held as follows : -

“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.”

(19) In the case of *Shabbir Hussain Vs. The State of Madhya Pradesh and Ors. (order dated 26/07/2021 passed in SLP*

(*Cri.No.7284/2017*), the Supreme Court relied upon earlier judgment in the case of *Amalendu Pal Vs. State of West Bengal, (2010) 1 SCC 707*, and held that mere harassment without any positive action on the part of the accused proximate to the time of occurrence, which led to the suicide, would not amount to an offence under Section 306 of the IPC.

(20) 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 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,

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.”

(21) Much emphasis was placed by the learned APP on recent judgment of the Supreme Court in the case of ***Mahendra K.C. Vs. State of Karnataka and another, (2022) 2 SCC 129***, wherein the Supreme Court set aside an order passed by the High Court granting relief of quashing of criminal proceedings in an offence under Section 306 and 107 read with 34 of the IPC. In the said case also, a suicide note was left behind by the deceased. The Supreme Court reversed the order of the High Court by reading the suicide note, accepting the contents as they were and holding that the High Court had erred in analyzing the same from its own perspective, while examining the veracity of the allegations. It was held that the approach adopted by the High Court in the said case was not sustainable, although the position of law laid down by the Supreme Court in earlier judgments in the context of Sections 107 and 306 of the IPC, was indeed taken note of. But, on the facts of the said case, the Supreme Court found that quashing of criminal proceedings was not justified and that the accused deserved to face trial.

(22) Similarly, the Supreme Court in the cases of *Didigam Bikshpathi and another Vs. State of A.P, AIR 2008 SC 527*, *Munshiram Vs. State of Rajasthan, AIR 2018 SC 1923* and *Narayan Malhari Thorat Vs. Vinayak Deorao Bhagat, AIR 2019 SC 224*, 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.

(23) Therefore, it becomes clear that the principles that have been laid down by the Supreme Court in the aforementioned judgments in the context of Sections 107 and 306 of the IPC, have to be applied to the facts of the individual case to conclude, as to whether the criminal proceedings deserve to be interdicted at this stage of FIR and charge-sheet itself or that the accused deserves to face trial.

(24) In order to apply the aforementioned principles laid down by the Supreme Court and followed by this Court, it would be necessary to refer to the suicide note in the present case. The material available on record shows that the oral report lodged by the informant/complainant was virtually based on the aforementioned suicide note. A perusal of the suicide note shows that it was dated

09/09/2021, while the actual act of suicide was committed on 14/09/2021. We have noted above that even when there was a gap of only two days between the incident alleged against the accused and the actual act of suicide committed by the deceased, the Supreme Court found that there was no proximate link between the two, because the deceased had enough time to weigh the pros and cons of the act of committing suicide.

(25) The suicide note shows that the deceased stated the following facts : -

- (a) The co-accused i.e. Shobha, mother of the petitioner, was the second wife of the deceased.
- (b) Shobha was illiterate and she used to act as per the advice given by her elder daughter Lata i.e. the petitioner.
- (c) Last year it was agreed between Shobha and the deceased that a fixed deposit of Rs.2,00,000/- would be made in her name to take care of her expenses.

- (d) The petitioner was not happy with the situation and she asked her mother Shobha (co-accused) to demand Rs.5,00,000/- from the deceased.
- (e) As a consequence, the deceased spoke to his relatives and when they agreed to help him, the deceased agreed to give Rs.5,00,000/- to Shobha.
- (f) But, the petitioner asked Shobha to increase the demand to Rs.15,00,000/- or three acres of agricultural land.
- (g) The deceased did not have agricultural land and he also did not have Rs.15,00,000/- and due to this the petitioner was angry with him and using her mother i.e. co-accused Shobha, she had started harassing the deceased. The petitioner was asking her mother Shobha (co-accused) to threaten the deceased by coming to Dorli.
- (h) Shobha did come to Dorli and abused the deceased and threatened that she will file false report against him, that she will set herself on fire or take poison and report that the

deceased was responsible for the same.

(i) Shobha was capable of doing the same as she had earlier lodged some false reports.

(j) Shobha and her daughter i.e. the petitioner had harassed the deceased. He found no meaning in living any further as people close to him had turned against him and hence, he was committing suicide for which he held the accused responsible.

(26) The contents of the suicide note have been heavily emphasized upon by the learned APP to contend that a prima facie case regarding ingredients of offence under Section 306 read with 107 of the IPC are clearly made out and that therefore, the petitioner deserves to face trial.

(27) We have analyzed the contents of the suicide note, the gist of which is stated hereinabove. We find that the contents of the suicide note bring out anguish of the deceased as regards the alleged harassment by the petitioner and her mother. But, it also brings out the fact that Shobha (co-accused) i.e. mother of the petitioner was the

second wife of the deceased and that at worst the said Shobha (co-accused) at the behest of the petitioner was making monetary demands or asking for a share in agricultural land from the deceased. The informant in the present case is the son-in-law the deceased, who is married to the daughter of the deceased from his first wife.

(28) As held by the Supreme Court in the case of *Geo Varghese Vs. State of Rajasthan* (supra) the Court is required to take into consideration surrounding circumstances as well, which may have a bearing on the alleged action of the accused and the psyche of the deceased. It is significant that in the present case the petitioner, allegedly through her mother, was making demands towards share in the agricultural land or monetary relief from the father. We are of the opinion that such repeated demands or alleged increase in the demands cannot lead to a finding that prima facie the demands were being made with the intention of driving the father to commit suicide. The demand in itself, at worst, may have been unreasonable or a demand which the father was unable to fulfill, but it would be stretching things a bit far to reach a finding that the accused as the daughter, through her mother i.e. co-accused, intentionally acted in

such a manner to drive the deceased to commit suicide. The surrounding circumstances also indicate that the deceased had two wives and children from both the wives and it cannot be said that driving the deceased to commit suicide would have led to any exclusive gain to the petitioner.

(29) It is also significant, as noted above, that the suicide note is dated 09/09/2021, while the actual act of committing suicide took place after about five days on 14/09/2021. There is no proximate link between the suicide note recording harassment allegedly at the behest of the petitioner and the extreme step taken by the deceased on 14/09/2021. The judgment in the case of *Mahendra K.C. Vs. State of Karnataka* (supra) of the Supreme Court is distinguishable on facts, for the reason that there was specific threat of being killed by rowdies, recorded in the suicide note, which led to anxiety and fear in the mind of the deceased, but such is not the case in the present matter.

(30) Applying the position of law clarified by the Supreme Court in the aforementioned judgments to the facts of the present case, we are convinced that a case is made out for interdicting

the criminal proceedings, by quashing the FIR and the charge-sheet for the reason that the material available on record does not indicate that the petitioner deserves to face trial for alleged offence under Section 306 of the IPC.

(31) In view of the above, the present writ petition is allowed and the FIR No.429/2021 dated 24/09/2021, as also charge-sheet bearing No.449/2021 dated 27/11/2021 are quashed, insofar the petitioner before this Court is concerned.

(32) Rule made absolute in above terms.

[G. A. SANAP, J.]

[MANISH PITALE, J.]

KOLHE