

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

Date of decision : 04.05.2022

1.

CRM-M-29142-2021

Arsh Vikram Singh

... Petitioner

Versus

State of Punjab and others

... Respondents

2.

CRM-M-29582-2021

Kushal Singh

... Petitioner

Versus

State of Punjab and others

... Respondent

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr.Rajiv Kataria, Advocate
for the petitioner in CRM-M-29142-2021.

Mr.H.S.Dhindsa, Advocate
for the petitioner in CRM-M-29582-2021.

Mr.Sukhbeer Singh, AAG, Punjab.

Mr. G.S.Gurna, Advocate
for respondents no.2 to 5 in CRM-M-29142-2021 &
for respondents no.4to 7 in CRM-M-29582-2021.

VIKAS BAHL, J.(ORAL)

This common order will dispose of two petitions filed under
Section 482 Cr.P.C. for quashing of FIR no.365 dated 25.12.2020 registered
under Sections 306, 34 IPC at Police Station Salem Tabri, District Ludhiana

and all other consequential proceedings arising therefrom on the basis of compromise.

The first petition, i.e. CRM-M-29142-2021 has been filed by Arsh Vikram Singh and the second petition, i.e. CRM-M-29582-2021 has been filed by Kushal Singh. With the consent of all the parties, the petition, i.e. CRM-M-29142-2021 is being taken up as the lead case and the facts are being taken up from the said petition.

On 04.04.2022, this Court was pleased to pass the following order:-

“This is a petition under Section 482 Cr.P.C., for quashing of FIR No.365 dated 25.12.2020 registered under Sections 306/34 IPC in Police Station Salem Tabri, District Ludhiana and all the consequential proceedings arising therefrom, on the basis of compromise (Annexure P-3).

*Learned counsel for the petitioner has submitted that, a perusal of FIR shows that in the present case prima facie offence under Section 306 IPC is not made out and has relied upon the judgment of this Court in case titled as **Rajbir Singh and others Vs. State of Punjab and another**, decided on 02.02.2022 passed in **CRM-M-36570 of 2021 (O&M)** to contend that in such a situation, the FIR under Section 306 IPC can also be quashed.*

The parties are directed to appear before the Illaqa Magistrate/trial Court for recording their statements qua compromise within a period of 15 days.

The Illaqa Magistrate/trial Court is directed to submit a report on or before the next date of hearing containing the following information:-

- 1. Number of persons arrayed as accused.*
- 2. Whether any accused is proclaimed offender ?*
- 3. Whether the compromise is genuine, voluntary and without any coercion or undue influence.*
- 4. Whether the accused persons are involved in any other FIR or not?*
- 5. The trial Court is also directed to record the statement of the Investigating Officer as to how many victims / complainants are there in the FIR.*

Adjourned to 04.05.2022.

04.04.2022

**(VIKAS BAHL)
JUDGE"**

Similar order was passed on the aforesaid date even in the connected petition, i.e. CRM-M-29582-2021.

In pursuance to the said order, a report has been submitted by the Judicial Magistrate Ist Class, Ludhiana. The relevant portion of the said report is reproduced hereinbelow:-

"Respected Sir,

In compliance of the order dated 04.04.2022 passed in CRM-M-29142-2021 by Hon'ble Punjab and Haryana High Court at Chandigarh, I have the honour to submit as under:

1. *The undersigned has recorded the statement of complainant namely Manjit Singh son of Nirmal Singh who stated in his statement that he is complainant of the present case and on his statement present case bearing FIR No. 365 dated 25.12.2020 registered under Section 306 IPC, Police Station Salemn Tabri, Ludhiana was registered against accused persons namely Kushal Singh and Arsh Vikram Singh and now with the intervention of respectables, he has entered into compromise vide compromise deed Ex.PA with the accused persons without any pressure, coercion and undue influence. He has no objection, if the present FIR be quashed. He also placed on record copy of his Aadhar card Ex-Pl as his identity proof. Statement of Manjinder Kaur (wife of deceased Ravinder Singh), Partap Singh and Tej Kaur also got recorded to this effect. Therea fter, separate statement of accused namely Arsh Vikram Singh was recorded who stated in his statement that he is accused in above said FIR and now with the intervention of respectables, he had entered into compromise with the complainant along with others as stated in compromise deed Ex. PA, without any pressure, coercion and undue influence. He further stated in his statement that no P.O. proceedings are pending against him nor he had been declared P.O. in any case and in any court. He had also placed on record his Aadhar card as his identity proof and same is Ex. DI.*

2. *Thereafter, undersigned recorded the statement of Investigating Officer of the present case namely IO ASI Rajwant*

Singh.

3. *It is humbly submitted that as per record available with the court of undersigned there are only two accused namely Arsh Vikram Singh and Kushal Singh who are arrayed as accused in FIR No. 365 dated 25.12.2020 registered under Section 306 IPC, Police Station Salem Tabri, Ludhiana. These accused persons have not declared as proclaimed offender in above said FIR. It is further submitted that the accused persons are not involved in any other case. Challan is yet to be presented in the present FIR. There is only one complainant namely Manjit Singh and the victim was his brother-in-law namely Ravinder Singh who had committed suicide.*

4. *It is, further humbly submitted that after going through the statements of parties so recorded, I am of the considered view that the compromise between the parties is valid, genuine, voluntary and without any coercion or undue influence.*

5. *The true copies of the statements so recorded are annexed herewith for kind reference please.*

Submitted Please.

Yours faithfully,

*(Tanishth Goyal),
Judicial Magistrate Ist Class,
Ludhiana."*

Even in the connected petition, i.e. CRM-M-29582-2021, similar report has been submitted.

A perusal of the above report would show that the complainant as well as parents and wife of the deceased have got their statements recorded to the effect that the matter has been compromised and they have no objection in case the FIR is quashed and the said compromise has been found to be voluntary, genuine, and out of free will.

Learned counsel for the private respondents has also reiterated the said fact and has submitted that the said compromise is genuine and bonafide and he has no objection in case the present FIR is quashed on the basis of above said compromise.

submitted that in addition to the fact that the compromise has been effected, even perusal of the FIR as well as suicide note would show that no offence under Section 306 IPC prima-facie is made out. Mere vague and general allegations have been levelled in the FIR as well as in the suicide note. No incident has been detailed so as to show that any of the petitioners had instigated the deceased to commit suicide. Learned counsel for the petitioners have relied upon the judgment of Madhya Pradesh High Court passed in “**Munnalal Jain vs. State of M.P.**” reported as **2008(29) RCR (Criminal) 512** in order to substantiate the pleas raised.

This Court has heard learned counsel for the parties and has perused the paper book.

The Hon'ble Supreme Court of India in ***Special Leave to Appeal (Crl.) no.7284 of 2017*** titled as “**Shabbir Hussain vs. The State of Madhya Pradesh & Ors.**” decided on 26.07.2021 has held as under:-

“On 10.09.2014, due to certain matrimonial dispute, Roshan Bee, wife of deceased Firoz Khan moved to her parental home. On 22.09.2014, Firoz Khan committed suicide in his house by consuming poison and also left four suicide notes.

Shabbir Hussain, brother of the deceased – Firoz Khan, preferred complaint i.e. Crime No. 1403/2014, which was registered against respondent Nos.2 to 4 under Section 306/34 IPC. After investigation, chargesheet was filed against respondent Nos.2 to 4 and Trial commenced against respondent Nos.2 to 4. Respondent Nos.2 to 4 preferred Criminal Revision No.725/2016 under Section 397/401 Cr.P.C. before the High Court of Madhya Pradesh at Indore. The High Court allowed the Criminal Revision filed by respondent Nos.2 to 4, aggrieved by which, the petitioner has preferred this special leave petition.

Learned counsel for the petitioner submitted that the High Court committed an error in allowing the Criminal Revision, especially after 10 witnesses had already been examined. He referred to the suicide notes that were written by the deceased Firoz Khan, to support his submissions that Firoz was harassed by

respondent Nos.2 to 4, due to which he took his own life. He argued that abetment of the offence of suicide by respondent Nos.2 to 4 is prima facie made out as the harassment by respondent Nos.2 to 4 facilitated the act of suicide by the deceased.

In order to bring a case within the provision of Section 306 IPC, there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigating or by doing a certain act to facilitate the commission of suicide.

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 IPC [Amalendu Pal v. State of West Bengal(2010) 1 SCC 707].

Abetment by a person is when a person instigates another to do something. Instigation can be inferred where the accused had, by his acts or omission created such circumstances that the deceased was left with no option except to commit suicide. [Chitresh Kumar Chopra v. State (Government of NCT of Delhi)(2009) 16 SCC 605].

In the instant case, the allegations against Respondent Nos. 2 and 4 is that they harassed the deceased. There is no other material on record which indicates abetment. The High court did not commit any error in allowing the Criminal Revision.

Therefore, special leave petition is dismissed.

Pending applications, if any, also stand disposed of.”

A perusal of the above judgment would show that the Hon'ble Supreme Court of India had upheld the order passed by the High Court allowing revision petition of the accused persons and while doing so had observed that in order to bring a case within the ambit of Section 306 IPC, there must be a case of suicide and in the commission of the said act, the persons who are stated to have abetted the said commission of suicide, must have played an active role by an act of instigation or by doing a certain act which facilitates the commission of suicide and mere harassment would not constitute the offence under Section 306 IPC. To a similar effect, a

coordinate Bench of this Court in ***State of Punjab vs. Kamaljit Kaur alias Bholi and another***, reported as ***2008(2) RCR (Criminal) 562*** had observed as under:-

“1. The present revision petition is directed by the State against the discharge of Kamaljit Kaur alias Bholi and Surinder Kumar alias Kala, accused. They were facing trial in case FIR No. 108 dated 31-12-1994 registered at Police Station Nawanshahr under Section 306, IPC. It is stated that Paramjit Singh son of Darshan Singh Hira and his son Amritpal alias Lovely committed suicide and left a suicide note to the effect that his wife Kamaljit Kaur alias Bholi is a woman of bad character. He is fed up with her. Therefore, he along with his son Lovely Amritpal Singh is committing suicide. It is further stated that his wife has illicit relations with three persons namely, Palli of Commando Force, Ludhiana, Kala residing opposite to their house and Ujjal Singh, her real uncle. In the suicide note, he has expressed that in these black days, such bad women are living in the Society. It is further stated that his wife Bholi is a lady of loose character. It is further stated that since Palli has come as a tenant in the house, Bholi has become lady of loose character. It is further stated that Kala had noticed Bholi in objectionable manner with Kala. He wanted in suicide note that if law contemplates action against wedded woman, the law should take its course.

2. On 27.8.1994 at 3.00 p.m. dead bodies of young unknown person aged about 30 years and a child aged about 5-6 years were found near the maize field. These dead bodies were of Paramjit Singh and his son Amritpal alias Lovely. Postmortem was conducted Visceras were sent to the Chemical Examiner. The Chemical Examiner found the cause of death to be Aluminum Phosphide. Suicide note was found from the pocket of Paramjit Singh. After completion of investigation, challan was submitted against Kamaljit Kaur alias Bholi and Surinder Kumar alias Kala. The name of Ujjal Singh was placed in column No. 2. Learned Sessions Judge, Jalandhar, while discharging the respondents had observed as under:-

“It cannot be disputed that charge can be framed merely on strong suspicion and the evidence at the time of framing charge is not to be considered meticulously. But I am of the considered opinion that the circumstances of the case are

such as, possibly, it cannot be stated that a prima facie case is made out against the accused within the meaning of [Section 306](#) of the Code. Abetment of suicide is punishable Under [Section 306](#) of the Code. [Section 107](#) of the Code defines abetment as under:

107. 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 incite, by any act or illegal omission, the doing of that thing.

Explanation I. 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.

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*For arguments sake, if it may be taken that the wife is a woman of easy virtue, even then, it cannot be stated if she had instigated or had aided the commission of suicide. The learned P.P. for the State has not been able to satisfy as to in which manner the commission of suicide has been instigated or aided by the accused. The husband might be feeling harassed or mentally disturbed with the alleged illicit relations of his wife but harassment and the mental disturbance do not constitute the offence of abetment. It looks that the deceased husband was unable to control his wife and he out of frustration has not only committed suicide but has also snuffed the life of his son. The authority *Charabhushan Bhimraj Bhushanwar and Ors. (supra)* is hardly of any help to the prosecution, I am of the firm view that from the facts of the case no prima facie case is made out against the accused. Though no direct authority is available pertaining to such like facts yet with advantage reference can be made to [Shri Ram v. the State of U.P.](#) , [Balbir Singh v. The State of Punjab 1987 \(1\) Crimes 76](#); [Wazir Chand v. The State of Haryana 1989 \(1\) Crimes 173 : 1989 CriLJ 809](#); [State of Haryana v. Babu Ram 1992 \(1\) Criminal Courts judgments 68 and Deepak v. State of M.P. 1984 Cri LJ 767"](#).*

3. I have perused the order passed by learned Sessions Judge

*Jalandhar. In Sanju alias **Sanjay Singh Sengar v. State of Madhya Pradesh 2002 (Supp) 1 JT 248**, it was held that the word 'instigate' denotes incitement or urging to do some drastic or undesirable action or to stimulate or incite. Presence of mens rea, therefore, is the necessary concomitant of instigation.*

4. The conduct of wife of the deceased though may be conduct of bad wife but was not for the purpose to incite the deceased to commit suicide.

*It was held by a Division Bench of this Court in **Raj Kumar v. State of Punjab 1983 (1) CLR 660** as under:*

“12. Expression 'instigate' in the Concise Oxford Dictionary is defined as 'urge on incite, bring about by persuasion and in Webster, it has been defined as 'urge forward, provoke with synonyms of stimulate, urge, spur, provide tempt, incite, impel, encourage, animate. The word 'instigate' in common parlance would mean to go, to urge forward or to provoke incite or encourage to do an act.”

5. Every husband or wife may not be living a life of virtue. The conduct of any spouse, if is not upto the expectations of other spouse, and result into commission of suicide by another abetment of suicide cannot be imputed to the other spouse.”

A perusal of the above reproduced judgment would show that the said case was also a case under Section 306 of IPC in which two persons i.e., husband of the accused therein and their son had committed suicide and there was a suicide note to the effect that Kamaljit Kaur, wife of the deceased Darshan Singh was a lady of bad character and had illicit relations with three persons and she was caught in an objectionable manner with one of the said three persons and in the suicide note, it was specifically stated that action should be taken against such a woman. Challan was filed against the said lady as well as her paramour. After considering the provisions of Sections 306 and 107 of Cr.P.C., it was observed by the Sessions Court as well as by this Court that even in a case where the wife is alleged of being a woman of easy virtue, then also, it cannot be said that she has instigated or

was feeling harassed or mentally disturbed due to the alleged illicit relationship of his wife, then the harassment and mental disturbance would not constitute the offence of abetment. It was further observed that the word 'instigate' denotes incitement or urging to do some drastic or unadvisable action and the presence of mens rea is a necessary concomitant of instigation. A person may be a bad wife but her conduct was not for the purpose to incite the deceased to commit suicide and, thus, abetment of suicide in such a case cannot be inferred and, thus, the wife in the above-said case was discharged. To a similar effect is the judgment dated 06.12.2012 passed by another coordinate Bench of this Court in the case of ***Maya Vs. State of Punjab***, wherein the wife and her paramour, both after being tried and convicted thereupon, were ultimately acquitted.

The Hon'ble Supreme Court of India in a case titled as ***"Gangula Mohan Reddy vs. State of Andhra Pradesh"*** reported as (2010)

1 Supreme Court Cases 750 has held as under:-

"3. The brief facts which are relevant to dispose of this appeal are recapitulated as under: according to the case of the prosecution, the appellant, who is an agriculturist had harassed his agriculture labour (servant) deceased Ramulu by levelling the allegation that he had committed theft of some gold ornaments two days prior to his death. It was also alleged that the appellant had demanded Rs.7,000/- from the deceased which was given in advance to him at the time when he was kept in employment. The prosecution further alleged that the deceased Ramulu could not bear the harassment meted out to him and he committed suicide by consuming pesticides.

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17. 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 this act must have been intended to push the deceased into such a position that he committed suicide.”

A perusal of the above judgment would also show that it had been observed by the Hon'ble Supreme Court that abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing and without there being a positive act on the part of the accused to instigate or aid in committing of suicide, conviction cannot be sustained and it was further observed that in order to convict a person under Section 306 IPC, there has to be a clear mens rea to commit the offence and also requires an active act or direct act which led the deceased to commit suicide.

From perusal of the suicide note as well as the FIR, it is clear that the deceased had borrowed an amount of Rs.20,000/- from Arsh Vikram Singh and was required to return the same and Arsh Vikram Singh and Kushal used to repeatedly ask him to return the said money. The said allegation would not even remotely constitute the offence under Section 306 IPC.

The Madhya Pradesh High Court in ***Munnalal Jain's*** case (supra) has held as under:-

“7. On perusal of the suicidal note alleged to be written by deceased Kalicharan it is apparent that he had taken a loan of Rs. 1,00,000/- from a person belonging to village Banskhedhi on the surety of the applicant/ accused Munna Chowdhary and also agreed to pay the amount with interest @ 3% per annum and out of which he had returned a sum of Rs. 1,40,000/-Thereafter it is alleged that the applicant/accused is further demanding remaining amount of Rs. 1,55,000/- and on the date of incident he also demanded the aforesaid due amount of Rs. 1,55,000/- positively till

the next morning. Thus, in the aforesaid suicidal note there is nothing written that the applicant/accused had stated anything to the deceased Kalicharan for commission of suicide and the only allegation against him is for demanding of remaining amount of Rs. 1,55,000/- forcefully. Admittedly the aforesaid amount is loan amount and in view of that the demand of any loan amount itself does not prove the instigation for commission of suicide.

8. The Hon'ble apex Court in case of Sanju @ Sanjay Singh Sengar (supra), has clearly laid down that to prove the offence punishable under Section 306 I.P.C., simple word stated by the appellant/accused "to go and die", that itself would not constitute ingredient of instigation as defined under section 306 and Section 107 of I.P.C.

9. On perusal of Section 107 of I.P.C. it is apparent that what is the meaning of 'abetment of a thing'.

Section 107 reads as under:

"107. Abetment of a thing. - A person abets the doing of a thing, who-

Firstly - 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."

On perusal of the aforesaid provision of Section 107 I.P.C. it is apparent that the prosecution must prove the fact that the appellant/accused has intentionally aided, by any act or illegal omission, the doing of that thing by the deceased. In the present case there is no such allegation against the appellant/accused that he had intentionally aided the deceased for doing the aforesaid act of suicide. Therefore, the material ingredient of Section 107 I.P.C. is clearly lacking in the evidence collected by the prosecution in the present case.

10. In the case of Pramod Kumar (supra), this Court had clearly

laid down that merely demand of the advanced money or pressurising by the accused to the deceased for the payment does not itself prove the instigation for commission of the offence of suicide by the deceased. Similar principle has also been laid down by this Court, in another case of Prakashchand (supra).

11. In the case of Ashok Kumar Sawadiya (supra), this Court has clearly laid down that merely written in the suicidal note with regard to the beating by the accused and public humiliation also does not constitute the offence of instigation for commission of suicide against the accused, as in present case also the deceased had written in the suicidal note that the appellant/ accused had slapped on his cheek at the time of demanding the due loan amount from him. Thus, that beating by the appellant/accused to the deceased does not prove any instigation to the deceased for commission of suicide.

12. Similarly, in the decision in case of Abdul Hanif(supra), this Court again laid down that merely threatening or beating by the accused to the deceased does not constitute any instigation for commission of suicide and in view of that the accused had been discharged from the charge under Section 306 I.P.C.

13. In case of Nirmal Jain (supra), this Court has again laid down that if there is no evidence with regard to provocation, incitement or encouragement by the accused to the deceased for commission of suicide, then certainly the accused cannot be charged for the offence under Section 306 of I.P.C.

14. Thus, on perusal of the decision of the Hon'ble apex Court relied on in various decisions of this Court and on perusal of the total evidence available against the applicant, it is not proved by the prosecution that the appellant-accused had ever instigated the deceased for commission of suicide and in view of that, framing of the charge under Section 306 I.P.C. appears to be erroneous. Hence, the impugned order is liable to be set aside.

15. Consequently, the revision petition is allowed. The impugned order of framing of charge under Section 306 I.P.C. against the applicant is set aside and the applicant is discharged from the aforesaid charge.”

A perusal of the above said judgment would show that it has been held in the above said judgment that even if there are allegations that

said loan even then, the same would not constitute the offence under Section 306 IPC. It has been further noted that merely threatening or beating the said deceased would also not constitute the said offence.

The above said ratio of law when applied to the facts of the present case would clearly show that in the present case offence under Section 306 IPC is not made out and even on merits, the FIR and subsequent proceedings arising therefrom, deserve to be quashed.

As per the Full Bench judgment of this Court in “***Kulwinder Singh and others Vs State of Punjab***”, 2007 (3) RCR (Criminal) 1052, it is held that High Court has power under Section 482 Cr.P.C. to allow the compounding of non-compoundable offence and quash the prosecution where the High Court is of the opinion that the same is required to prevent the abuse of the process of law or otherwise to secure the ends of justice. This power of quashing is not confined to matrimonial disputes alone.

Hon'ble the Apex Court in the case of “***Gian Singh Vs. State of Punjab and another***”, 2012 (4) RCR (Criminal) 543, had also observed that in order to secure the ends of justice or to prevent the abuse of process of Court, inherent power can be used by this Court to quash criminal proceedings in which a compromise has been effected. The relevant portion of para 57 of the said judgment is reproduced hereinbelow:-

“57. The position that emerges from the above discussion can be summarised thus: the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz; (i) to secure the ends of justice or (ii) to prevent abuse of the process of any Court.”

In view of what has been discussed hereinabove, both the petitions are allowed and FIR no.365 dated 25.12.2020 registered under Sections 306, 34 IPC at Police Station Salem Tabri, District Ludhiana and all the subsequent proceedings emanating therefrom are ordered to be quashed, qua the petitioners in both the petitions.

(VIKAS BAHL)
JUDGE

May 04, 2022
Davinder Kumar

Whether speaking / reasoned	Yes/No
Whether reportable	Yes/No