

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-36570-2021 (O&M)

Date of decision : 02.02.2022

Rajbir Singh and others

... Petitioners

Versus

State of Punjab and another

... Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr.Shantanu Bansal, Advocate
for the petitioners.

Mr.Sarabjit Singh Cheema, AAG, Punjab.

Mr.Amandeep Singh Samra, Advocate
for respondent no.2.

VIKAS BAHL, J.(ORAL)

CRM-2938-2022

This is an application under Section 482 Cr.P.C. for placing on
record Annexure A-1.

Allowed as prayed for. Annexure A-1 is taken on record
subject to all just exceptions.

CRM-M-36570-2021

This is a petition under Section 482 Cr.P.C. praying for
quashing of FIR no.201 dated 03.09.2017 registered under Section 306 IPC
at Police Station Derabassi, SAS Nagar, Punjab and all other consequential
proceedings arising therefrom on the basis of compromise dated 27.08.2021
(Annexure P-2).

present FIR arises from a matrimonial dispute inasmuch as the deceased Tejinder Singh was the son-in-law of petitioner no.1 and was married to Ruchi, daughter of petitioner no.1. It is further submitted that petitioners no.4 and 5 are sons-in-law of petitioner no.1 and petitioners no.2 and 3 are also relatives of petitioner no.1. It is further submitted that in the present case compromise has been effected between the petitioners on one side and respondent no.2, legal representatives of deceased Tejinder Singh on the other side.

On 08.10.2021, this Court was pleased to pass the following order:-

“ This is a petition under Section 482 Cr.P.C. for quashing of the case/FIR No.201 dated 03.09.2017 (Annexure P-1) under Section 306 of IPC, registered at Police Station Dera Bassi, SAS Nagar, Punjab and all other subsequent proceedings, on the basis of compromise dated 27.08.2021 (Annexure P-2) arrived at between the parties.

On the last date of hearing, a Co-ordinate Bench of this Court had put the hearing of the case on the point of maintainability.

*Learned counsel for the petitioners has argued that the present case primarily arises out of the matrimonial dispute in which the husband of the daughter of petitioner No.1 is stated to have committed suicide. Learned counsel for the petitioners has referred to a judgment passed by a Co-ordinate Bench of this Court dated 25.02.2011 titled as “**Sucha Singh and others Vs. State of Punjab and another**” in CRM-M-9321-2010, judgment dated 07.11.2019, titled as “**Ishita Gupta and another Vs. State of Punjab and another**” in CRM-M-44140-2017 as well as judgment dated 28.09.2017 titled as “**Satish Kumar Bhargav and others***

Vs. State of Punjab and another”, passed in CRM-M-24010-2017, to contend that even in cases under Section 306 of IPC, the petitions under Section 482 Cr.P.C. have been allowed on the basis of compromise. Learned counsel for the petitioner has submitted that although in the present case, only respondent No.2, who is the father of the deceased has been made party but all the legal representatives of the deceased would give statement within one month with regard to the matter being compromised. It is further submitted that even if the allegations in the FIR are taken at the face value, the offence under Section 306 IPC has not been made out against the petitioner.

Adjourned to 14.12.2021.

In the meanwhile, the parties are directed to appear before the Illaqa Magistrate/trial Court for recording their statements qua compromise within a period of one month.

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. ”*

In pursuance to the said order, respondent no.2 as well as legal representatives of deceased Tejinder Singh got their statements recorded.

Sunita mother of Tejinder Singh, Ruchi wife of Tejinder Singh also got their

statements recorded in addition to the statement of Harbhajan Singh who is

father of deceased Tejinder Singh.

After recording their statements, the Additional District & Sessions Judge, SAS Nagar, Mohali, has submitted his report dated 23.11.2021. The relevant portion of the said report is reproduced hereinbelow:-

“Keeping in view the statements of the complainant, injured/victim and accused, it is submitted that it appears that the compromise between the complainant/Victim Harbhajan Singh, legal heirs of deceased namely Sunita (wife of complainant Harbhajan Singh), Ruchi (wife of deceased Tejinder Singh) and accused namely Rajbir Singh, Satpal, Tarsem Kumar, Harjinder Singh and Gurjant Singh of the FIR No.201 dated 03.09.2017, under Section 306 of IPC, Police Station Derabassi, District SAS Nagar, (Mohali) has been effected voluntarily, out of their free will and without any inducement, threat or promise from any quarter and the same is genuine one. As per the statement of investigating officer, none of the accused of the present FIR, has been declared as proclaimed offender in the present case and none of the accused of the present FIR has been involved in any other FIR or criminal case.

Copies of statements of the investigating officer SI Narinder Kumar, No. 1451/SGR Nagar, (Mohali) recorded in the above said FIR as well as the complainant/Victim Harbhajan Singh, legal heirs of deceased namely Sunita (wife of complainant Harbhajan Singh), Ruchi (wife of deceased Tejinder Singh) and accused namely Rajbir Singh, Satpal, Tarsem Kumar, Harjinder Singh and Gurjant Singh of the above said FIR, copy of compromise deed as Ex.C1 and copies of ID cards/aadhar cards of above said persons are attached

herewith as per directions.

It is further respectfully submitted that now the present case is fixed for 21.12.2021 for evidence of the prosecution.

Report is submitted accordingly.”

A perusal of the above said report would show that the compromise between the petitioners on one side and the complainant / victim Harbhajan Singh as well as legal representatives of the deceased on the other side has been found to be genuine, bonafide and voluntary.

Learned counsel for the petitioners has submitted that there is no other FIR against the petitioners and they were not declared proclaimed offender in the present case.

Learned counsel for the State has stated that he has no objection in case the FIR is quashed on the basis of compromise.

Learned counsel for respondent no.2 has again reiterated that the matter has been settled and the said compromise is in the interest of all the persons and would help in bringing out peace and amity between the parties. He prayed that FIR and subsequent proceedings may be quashed.

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

A co-ordinate Bench of this Court in judgment passed in CRM-M-13053-2017 titled as “**Varinder Kumar @ Bitra and others vs. State of Punjab and another**” decided on 22.08.2019 has held as under:-

“1. The petitioners have prayed for quashing of FIR No.83 dated 14.08.2016 for the offences punishable under Sections 306 of the Indian Penal Code ('IPC' for short), registered at Police Station Mahilpur, District Hoshiarpur and all the subsequent proceedings arising therefrom, on the basis of compromise effected between

the parties.

2. *Vide order dated 13.03.2018, the parties were directed to appear before the trial Court/Illaq Magistrate to get their statements recorded with regard to genuineness of the compromise.*

3. *A report dated 12.04.2018 has been submitted by the Judicial Magistrate 1st Class, Garhshankar, wherein it has been reported that statements of the petitioners and respondent No.2-complainant, who is son of deceased Dharam Pal, have been recorded and statements made by the parties in the Court reveal that they have voluntarily entered into a compromise and the Court is satisfied that the parties have amicably settled their dispute without any fear, pressure, threat or coercion and out of their free will.*

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9. *Since the parties have arrived at a compromise and have decided to live in peace, no useful purpose would be served in allowing the criminal proceedings to continue.*

10. *In view of what has been discussed hereinabove, present petition is allowed and FIR No.83 dated 14.08.2016 under Sections 306 IPC, registered at Police Station Mahilpur, District Hoshiarpur and all the subsequent proceedings arising therefrom are ordered to be quashed qua the petitioners.”*

A perusal of the above reproduced judgment would show that in a case where the FIR had been registered under Section 306 IPC and the matter had been compromised and the compromise was found to be genuine and bonafide, then the FIR and the subsequent proceedings arising therefrom were quashed qua the petitioners therein on the basis of compromise.

Singh and others Vs State of Punjab”, reported as **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*”, reported as **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. XXX---XXX”

In addition to the fact that the present FIR deserves to be quashed on the basis of compromise, a perusal of the FIR as well as the suicide note would show that in fact, in the present case, no offence, much less, offence under Section 306 IPC is made out. Mere vague and general

incident has been detailed so as to show that any of the petitioners had instigated the deceased to commit suicide. No active role has been attributed to any of the petitioners so as to make out a case under Section 306 read with Section 107 IPC. In fact, the alleged suicide is stated to have been committed on 30.07.2017 whereas, the complaint in the present case has been filed on 31.08.2017 i.e., after a delay of more than one month. 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

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, voluntary 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 unadvisable 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 aided the commission of suicide and had observed that in case the husband 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.

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.

Keeping in view the above said, present petition is allowed and

Station Derabassi, SAS Nagar, Punjab and all the subsequent proceedings emanating therefrom, are ordered to be quashed, qua the petitioners.

(VIKAS BAHL)
JUDGE

February 02, 2022.
Davinder Kumar

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