

**IN THE HIGH COURT AT CALCUTTA
(Criminal Revisional Jurisdiction)
Appellate Side**

Present:

The Hon'ble Justice Rai Chattopadhyay

C.R.R No.1423 of 2016

Neville Mcnamara

Vs.

State of West Bengal & Anr.

For the Petitioner

: Mr. Nigam Ashish Chakraborty,
: Mr. Agniva Banerjee,
: Mr. Anujit Mukherjee.

For the State

: Md. Anwar Hossain,
: Ms. Sreyashree Biswas

Hearing concluded on : 05/01/2023

Judgment on : 16/01/2023

Rai Chattopadhyay,J.

1. Petitioner is the retired principal of a renowned Educational Institution in Kolkata. A first information report was lodged on 4th February, 2012, by one Mr. Dipak Kumar Dam alleging *inter alia* that

his daughter, who was a student of Class VIII-C of the said school, where the petitioner happened to be the principal, and was aged 14 years, was wrongfully confined in the room of the principal for about three hours on 1st February, 2012. Allegations were also made that the said student was rebuked by the petitioner with abusive languages in presence of other teachers, staff and students. Allegedly this ruthless admonition has impacted the teenager negatively, so much so that she could not bear the pain and committed suicide on that date. It was also alleged that the petitioner threatened the said student of putting negative comments in the school diary for information of her guardian, i.e, the informant. The following incident was that the said student was taken by one of her classmates namely, Sudipto Chaki to 'Rita Apartment', Sajirhat and both of them jumped off the roof of the said apartment, thereby sustaining severe life threatening injuries. The mother of the boy came with an ambulance and took away the boy to the hospital for treatment, leaving the girl there, who ultimately succumbed to the injuries, she suffered. In the FIR the informant has also alleged against the mother of the boy of showing inhumanity and ascribing to the cause of death of the said girl. The informant sought for necessary police action and set the criminal justice system in motion by dint of the said FIR.

2. A Specific police case was started as Ghola PS Case No.32 of 2012 dated 04.02.2012 under Sections 306/304A/114/34 IPC. The investigation proceeded and ultimately the police has submitted charge-sheet on 5th December, 2014, against all the accused persons under Sections 306/304A and 309 IPC.
3. Mr. Nigam Ashis Chakraborty, appearing on behalf of the petitioner has firstly submitted that the FIR has not disclosed any *prima facie* case against his client. The actions, which are disclosed by the informant, to have been allegedly undertaken by the petitioner was in discharge of his duty as the principal and administrative head of the Educational Institution and as a matter of fact according to Mr. Chakraborty, the petitioner was duty bound to even take stringent steps to maintain order and discipline in the Educational Institution. Mr. Chakraborty, has further submitted that unless there is a case made out against his client, atleast *prima facie*, the law should not permit the prosecution to go into trial against his client. It has further been submitted as regards the fact of the case that the victim along with her classmate named in the FIR was found in a compromising position in one of the classrooms as they bunked their regular scheduled class. This fact was noticed by one of the teachers, who is a witness before the police in the investigation and whose statement is also available. As per the report the said students were

called to the principal's room and may be reprimanded for the undisciplined act they have done. According to Mr. Charkraborty, there was no *iota* of any criminal intent of his client to force and pursued the victim to commit suicide. What the petitioner had done is stated to be done in discharge of his duty as the administrative head of the Institution.

4. Mr. Chakraborty, for the petitioner submits the following case laws:-

(i) **V.P.Singh Etc vs. The State of Punjab & Ors.** an unreported judgment of the Hon'ble Supreme Court dated 24th November, 2022 in Criminal Appeal No. 2103 to 2105 of 2010. The Hon'ble Court has discussed the legal position and on the back drop of the same, the facts of the case was found to contain no ingredient of an offence of abetment. The deceased student was reprimanded and subjected to disciplinary action for the misconduct who later on committed suicide. The Court, though commiserates with anguish of a father whose young son has died untimely and unnaturally, holds that blame cannot be thrashed upon the teachers for what is a basic disciplinary action necessary for running the Institute. Court has further held that a contra position would create a lawless and unmanageable situation in an educational institution. The court emphasises that the approach should be of considering the

surrounding facts and circumstances in which the suicide happened.

(ii) Geo Varghese vs. State of Rajasthan & Anr. reported in 2021

SCC OnLine SC 873, where the Hon'ble Court held as follows :-

“28. It is a solemn duty of a teacher to instil discipline in the students. It is not uncommon that teachers reprimand a student for not being attentive or not being upto the mark in studies or for bunking classes or not attending the school. The disciplinary measures adopted by a teacher or other authorities of a school, reprimanding a student for his indiscipline, in our considered opinion, would not tantamount to provoking a student to commit suicide, unless there are repeated specific allegations of harassment and insult deliberately without any justifiable cause or reason. A simple act of reprimand of a student for his behaviour or indiscipline by a teacher, who is under moral obligations to inculcate the good qualities of a human being in a student would definitely not amount to instigation or intentionally aid to the commission of a suicide by a student.

29. ‘Spare the rod and spoil the child’ an old saying may have lost its relevance in present days and Corporal punishment to the child is not recognised by law but that does not mean that a teacher or school authorities have to shut their eyes to any indiscipline act of a student. It is not only a moral duty of a teacher but one of the legally assigned duty under Section 24 (e) of the Right of Children to Free and Compulsory Education Act, 2009 to hold regular meetings with the parents and guardians and apprise them about the regularity in attendance, ability to learn, progress made in learning and any other act or relevant information about the child.

30. Thus, the appellant having found the deceased boy regularly bunking classes, first reprimanded him but on account of repeated acts, brought this fact to the knowledge of the Principal, who called the parents on telephone to come to the school. No further overt act has been attributed to the appellant either in the First Information Report or in the statement of the complainant, nor anything in this regard has been stated in the alleged suicide note. The alleged suicide note only records insofar as, the appellant is concerned, ‘THANKS GEO (PTI) OF MY SCHOOL’. Thus, even the suicide note does not attribute any act or instigation on the part of the appellant to connect him with the offence for which he is being charged.”

(iii) Sathishchandra Ratanlal Shah vs. State of Gujarat & Anr.

reported in **(2019) 9 SCC 148**, the petitioner has relied on the

finding of the Court, that the duty of the Court at the time of framing of charges is to apply its judicial mind to the material placed before it and to come to a clear conclusion that a prima facie case has been made out against the accused. Court further held that an order for framing of charges is of serious concern to the accused as it affects his liberty substantially and that caution must be exercised to ensure causing no irreparable harm to the accused. Court has also held that the framing of charges being initial stages of trial process the court should base its decision on the limited question to the extent of prima facie examination.

(iv) **Union of India vs. Prafulla Kumar Samal & Anr.** reported in (1979) 3 SCC 4. The Hon'ble Court held:

“10. Thus, on a consideration of the authorities mentioned above, the following principles emerge:

(1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.

(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced court cannot act merely as a Post Office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not

mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.”

5. The submissions made on behalf of the petitioner and his prayer has been strongly objected to by the State. Md. Anwar Hossain, appearing for the State has relied on certain documents/statements of witnesses available in case diary to submit that the aggravated action of rebuking and reprimanding the teenager girl demining herself respect within the exposure of the all others of the school has caused serious mental agony of the person resulting into her committing the act of suicide. The entire burden and criminal liability is upon the perpetrator of the mental agony, i.e, the present petitioner. He has prayed for an expeditious trial in the case.

6. In this revision the petitioner has challenged an order dated 31st March, 2016 passed by the Ld. Additional Sessions Judge, Fast Track Second Court, Barrackpore in S.C. Case No. 32 of 2012. The trial court was hearing petitioner’s application under Section 227, Cr.P.C, 1973, wherein he had prayed for discharge from the case. The court held that the FIR has disclosed the *prima facie* case against the petitioner and therefore his prayer under Section 227, Cr.P.C, 1973, that, in absence of any sufficient ground to proceed, he should be discharged from the case, could not be allowed, and thus rejected his

application as above. Later on, the court has fixed a date for framing of charge in the case.

7. Let me now consider as to what are the materials available against the petitioner in this case. The first of those are available in the FIR itself as mentioned above. The date of incident was on 1st February, 2012, the victim girl was allegedly wrongfully confined in the room of the principal for about three hours. She was rebuked by the petitioner in abusive languages and within the knowledge of other teachers, staffs and students. Negative comments were put in her school diary for information of her parents.
8. During investigation several witnesses have been examined. Regarding the involvement of the petitioner, some of the witnesses have stated about detention of the victim by the petitioner in his room and rebuking her. Some other witnesses have stated of detention of both the victim and her classmate Sudipto Chaki to have been detained in the Principal's room. They have stated that though they were detained in the room no hue and cry could be noticed during the said period. The Vice Principal of the school has given statements disclosing the fact that Sudipto Chaki did not attain the P.T class on some pretext and when the P.T teacher, Mr. Bairagi searched for Sudipto, he could find him and the victim in a vacant classroom sitting secretly there. The P.T. teacher Mr. Bairagi took both the

students to the Principal's office and there they were questioned by the principal and the other teachers. Some of the guardians of other students have also been examined by police who have recorded their statements regarding the strict discipline and rules being followed by the petitioner in managing affairs of the school. Statement of the other student namely Sudipto Chaki is also available in case diary, which suggests that due to the detention of him and the victim made by the principal and his admonitions, both of them felt insulted and decided to commit suicide not been able to bear the pain of being insulted within the exposure of the knowledge of all others in the school. Statement of Sudipto Chaki is also available wherein he has admitted and asserted this.

9. Let me now find out as to what would be the requirement to be present in this case, at least *prima facie*, so that trial could be commenced against the petitioner on those charges.
10. Penalty has been provided under section 306 IPC for a person whoever abets commission of suicide by any other person. 'Abetment of a thing' is provided under section 107 IPC which reads as follows:

"A person abets the doing of a thing, who—

First.—Instigates any person to do that thing; or

Secondly.—Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly.—Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1.—

Illustration

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Explanation 2.—Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.

- 11.** Some of the judgments of the Hon'ble Supreme Court may be discussed in this regard:-

***Gurcharan Singh vs State of Punjab* reported in (2020) 10**

***Supreme Court Cases 200* which held that,**

“As in all crimes, mens rea has to be established. To prove the offence of abetment, as specified under section 107 IPC, the state of mind to commit a particular crime must be visible, to determine the culpability. In order to prove mens rea, there has to be something on record to establish or show that the appellant here in had a guilty mind and in furtherance of that state of mind, abetted the suicide of the deceased. The ingredient of mens rea cannot be assumed to be ostensibly present but has to be visible and conspicuous.”

In the case of ***S.S.Cheena vs Vijay Kumar Mahajan* reported in (2010) 12 SCC 190**, the Hon'ble Court held :

“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.”

The other case is of ***Amalendu Pal vs. State of West Bengal*** reported in (2010) 1 SCC 707, where the Hon'ble Court held that :

“12. Thus, this Court has consistently taken the view that before holding an accused guilty of an offence under Section 306 IPC, the court must scrupulously examine the facts and circumstances of the case and also assess the evidence adduced before it in order to find out whether the cruelty and harassment meted out to the victim had left the victim with no other alternative but to put an end to her life. It is also to be borne in mind that in cases of alleged abetment of suicide there must be proof of direct or indirect acts of incitement to the commission of suicide. Merely on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide, conviction in terms of Section 306 IPC is not sustainable.”

It would also be no less beneficial to seek guidance from the judgment of ***State of West Bengal vs Indrajit Kundu & Ors*** reported in (2019) 10 SCC 188 in which an earlier judgment reported in (2001) 9 SCC 618 [Ramesh Kumar vs State of Chattisgarh] was cited for approval setting out the consideration of the scope of section 306, in following words :

“20. Instigation is to goad, urge forward, provoke, incite or encourage to do “an act”. To satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. The present one is not a case where the accused had by his acts or omission or by a continued course of conduct created such circumstances that the deceased was left with no other option except to commit suicide in which case an instigation may have been inferred. A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation.”

12. There are a plethora of judgments by the Apex Court and different High Courts of the country, delineating principles of law to be followed

- in these kind of cases and the judgments mentioned above encompass those principles.
13. We have discussed the materials available against the petitioner and also the components on the basis of which it can be found if a case has been made out against the petitioner atleast, *prima facie*.
 14. It appears that the petitioner's criminal intent along with his expressive overt act and incitements would be a necessary component to conclude that the petitioner abated suicide of the victim. It can further be explained in a manner that there must be material to find that the FIR has made out a case against the petitioner when the materials suggest at least *prima facie* that the petitioner has intentionally forced the victim to commit an act of suicide by direct incitements. The word 'instigate' denotes incitement or urging to do some drastic or inadvisable action or to stimulate or incite. The presence of *mens rea*, therefore is the necessary concomitant of instigation.
 15. In this case the petitioner, who happened to be the Principal of the Educational Institution, where the two said teenagers were students, was *prima facie* entrusted with the duty of maintaining discipline and order in the said Institution. The complaint comes to him, involving the said two students. It is but only very natural practice that the administrative head would enquire about same from the persons

involved. Such duty of the principal is not only accepted in common parlance but also sometimes codified in the rule book of the school. In that event it is found not improbable that the petitioner being the principal of the school takes certain measure of reprimanding and giving punishment to the errant students. Neither this can ever be construed to be done with the criminal intent to force the said students to commit suicide nor any material is available in this case to disclose anything in terms of words or actions to suggest the petitioner to have possessed any such criminal intention to drive the said students to commit suicide. No doubt it is very unfortunate that an act of remedying indiscipline in students has impacted them so negatively and intensely that they thought it not any further possible to face the world. It may be their own thought process that their prestige has been diminished to that extent not to be able any further to face the surrounding persons, including parents. Witness have stated before the police that disgust of the boy namely Sudipta Chaki manifested when he came out of principal's room and yelled that everything is now known to everybody. In my considered opinion, the petitioner had no contribution to such a thought process of the said students, it was only common and natural duty of the petitioner to takes steps to set in discipline and the petitioner in doing so has taken the steps as he thought proper. By no stretch of imagination

one can conclude the principal of the school to have any *mens rea* to drive the students to commit suicide by rebuking them for the purpose of inculcating discipline into them.

16. As in the case of S.S.China, it was held that suicidability pattern of each person is different from other, having his own idea of self esteem and self respect, similarly nature and pattern in dealing with the errant students may also vary in terms of strictness from person to person and teacher to teacher. If the witness's version as to the strict nature of the petitioner in dealing with his students is taken on its face value, even then the materials on record from which the surrounding circumstances are unveiled do not disclose petitioner's criminal intention of thrusting those students to commit suicide. To inculcate fear of punishment might have been the worst plan in his mind, excepting to make the students disciplined and orderly. Findings of the Hon'ble Supreme Court in **Geo Varghese** case, as mentioned above, would provide adequate guidance in this regard.

17. As discussed earlier that the Supreme Court has been very serious in finding trial court's duty to be cautioned that framing of charges is of serious concern to the accused as it affects its liberty substantially and also that causing no irreparable harm to the accused should also be ensured by the Court (**Sathishchandra Ratanlal Shah** case). Therefore whether the accused has instigated the deceased to commit

suicide and whether they are involved in any manner so that the deceased committed suicide, the court had to see that if any indiscipline had taken place by the deceased and whether the revisionist being principal of the school was under the duty to take appropriate action to maintain the discipline in the school. Feeling of humiliation, panic and sudden and acute tension faced by a student due to punishment or fear of punishment cannot be attributed to the admonitory finger of the school principal, to have been caused with the criminal intention to make him or her to commit suicide. A reasonable certainty to incite the consequence must be capable of being spelt out. To emphasise the cardinal necessity required to be present in a case like this again the judgment of the Hon'ble Supreme Court may be resorted to , i.e, **State of West Bengal vs Indrajit Kundu & Others reported in (2019) 10 SCC 188** when Court held that where the accused by his acts or by a continued course of conduct creates such circumstances that the deceased was left with no other option except to commit suicide, an instigation may be inferred. Materials in this case is not suggestive of any extreme situation like this.

18. On the other hand the case diary contains sufficient material to show that there has been an act of indiscipline by the said two students including the deceased. Bunking of class by them, secretly taking

refuge to a vacant class room instead of attending class, are all spoken by the witnesses.

19. In such view of the fact, even if the contention of the informant made in FIR is taken at its face value, the same would not disclose an offence against the petitioner as alleged or make out any cognizable case against him.
20. Under such circumstances one may resort to the findings of the Supreme Court as to when the court exercising its extra ordinary power under Section 482 Cr.P.C, 1973, may interfere into a proceeding, in the celebrated judgment of **State of Haryana v. Bhajan Lal** [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] which is quoted below:-

“This Court in the backdrop of interpretation of various relevant provisions of CrPC under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 of the Constitution of India or the inherent powers under Section 482 CrPC gave the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of the court or otherwise to secure the ends of justice. Thus, this Court made it clear that it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list to myriad kinds of cases wherein such power should be exercised : (SCC pp. 378-79, para 102)

“102. (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

21. Following the precedence as mentioned above, and in the premises of the discussions made, the ultimate findings in this case would be that the allegations made against the petitioner would neither constitute any cognizable offence against him, nor make out any case. Hence no doubt his committal to trial would be an abuse of the Court’s process, which is to be prevented however. Therefore in this case this Court’s interference is found to be necessary.

22. The Trial Court, while dismissing discharge plea, had not examined the facts of the case, compiled with the requirement of offence under Section 107, 306 alternatively 305 IPC and Section 227 Cr.P.C, 1973. Accordingly, the order impugned dated 31st March, 2016, passed by the Ld. Additional Sessions Judge, Fast Track Second Court,

Barraackpore in S.C. Case No.32 of 2012 is found not to be free from infirmities, irregularities and illegalities. Instead the same, having not considered the settled provisions of law, is found to be liable to be quashed and set aside.

- 23.** On the discussion as above the impugned order dated 31st March, 2016, is set aside. No sufficient ground is found to proceed against the petitioner. Petitioner is discharged and released from the bail bonds.
- 24.** Criminal Revision being CRR 1423 of 2016 is disposed of.
- 25.** Case diary be returned.
- 26.** Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

(Rai Chattopadhyay, J.)