

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO.1223 OF 2022

Jitendra s/o Nagnathrao Surnar ... **APPLICANT**

VERSUS

The State of Maharashtra & anr. ... **RESPONDENTS**

.....
Mr. B.G. Londhe, Advocate holding for
Mr. M.D. Godhamgaonkar, Advocate for applicant
Mr. A.R. Kale, A.P.P. for respondent No.1
Mrs. Pooja V. Langhe, Advocate for respondent No.2 (appointed)
.....

WITH

CRIMINAL APPLICATION NO.1224 OF 2022

Sanjay s/o Keshavrao Jogdand ... **APPLICANT**

VERSUS

The State of Maharashtra & anr. ... **RESPONDENTS**

.....
Mr. B.G. Londhe, Advocate holding for
Mr. M.D. Godhamgaonkar, Advocate for applicant
Mr. A.R. Kale, A.P.P. for respondent No.1
Mrs. Pooja V. Langhe, Advocate for respondent No.2 (appointed)
.....

WITH

CRIMINAL APPLICATION NO.1046 OF 2022

Premjeetsingh s/o Indarsingh Taylor ... **APPLICANT**

VERSUS

The State of Maharashtra & anr. ... **RESPONDENTS**

.....

Mr. B.G. Londhe, Advocate holding for
Mr. M.D. Godhamgaonkar, Advocate for applicant
Mr. A.R. Kale, A.P.P. for respondent No.1
Mrs. Pooja V. Langhe, Advocate for respondent No.2 (appointed)

.....

WITH

CRIMINAL APPLICATION NO.922 OF 2022

Pravin Omprakash Pokarna ... **APPLICANT**

VERSUS

The State of Maharashtra & anr. ... **RESPONDENTS**

.....

Mr. M.K. Bhosale, Advocate for applicant
Mr. A.R. Kale, A.P.P. for respondent No.1
Mrs. Pooja V. Langhe, Advocate for respondent No.2 (appointed)

.....

WITH

CRIMINAL APPLICATION NO.1645 OF 2022

Madhav s/o Sahebrao Kadam ... **APPLICANT**

VERSUS

The State of Maharashtra & anr. ... **RESPONDENTS**

.....

Mr. V.S. Kadam, Advocate for applicant
Mr. A.R. Kale, A.P.P. for respondent No.1
Mrs. Pooja V. Langhe, Advocate for respondent No.2 (appointed)

.....

**CORAM : SMT. ANUJA PRABHUDESSAI AND
R.M. JOSHI, JJ.**

DATE : 13th JANUARY, 2023

P.C. :

With the consent of learned counsel for rival parties,
heard finally at the stage of admission.

2. By these applications filed under Section 482 of the Code of Criminal Procedure, the applicants have sought to quash First Information Report No.263/2021, dated 8/8/2021, registered with Bhagyanagar Police Station, Nanded for the offence punishable under Section 306 read with Section 34 of the Indian Penal Code.

3. These applicants are arrayed as accused Nos.5 to 9 in the aforestated crime, which is registered pursuant to the First Information Report lodged by respondent No.2 Jyoti Mundhe, widow of the deceased Yayati Mundhe. The First Information Report reveals that the deceased Yayati Mundhe, who was engaged in real estate business, committed suicide on 5/8/2021 in his residential room. In the suicide note, which was recovered from his pant pocket, it was stated that, he had borrowed money from several persons. He had specified the

names of the creditors, includes these applicants and the other co-accused. The suicide note stated that he was unable to repay the loan and blamed the creditors for subjecting him to mental cruelty by raising constant demands for repayment of the money. The suicide note further states that he had committed suicide since he was fed up with the loan liability. It is on this basis that the complainant alleged that these applicants have abetted suicide of her husband.

4. Learned counsel for the applicants state that the crime against the other co-accused has already been quashed by this Court. They submit that the allegations in the First Information Report, even if taken at face value, do not disclose essential ingredients of abetment within the meaning of Section 107 of the Indian Penal Code. In such circumstances, subjecting the applicants to face trial in criminal proceedings would be sheer abuse of the process of law.

5. Per contra, learned A.P.P. for the State and learned counsel for respondent No.2 submit that, the crime is of serious nature. It is stated that the names of these applicants are reflected in the suicide note and the suicide note reveals that these applicants had harassed the deceased by raising constant

demands for repayment of the loan amount. Thus, according to learned A.P.P. and learned counsel for respondent No.2, the First Information Report discloses offence under Section 306 of the Indian Penal Code.

6. We have perused the First Information Report and the other investigation papers produced before us by learned A.P.P. The question for our consideration is whether the First Information Report and other material collected in the course of the investigation prima facie disclose essential ingredients of the offence under section 306 of the Indian Penal Code.

7. Before advertng to the facts, it would be necessary to set out the relevant provisions and the propositions of law relating thereto, enunciated by the Hon'ble Apex Court.

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.

8. The term 'abetment' as defined under Section 107 of the Indian Penal Code, reads thus :-

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 : A person who, by willful misrepresentation, or by willful 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.

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 facilitate the commission thereof, is said to aid the doing of that act.

9. In the case of Geo Varghese Vs. The State of Rajasthan [2021 SCC OnLine SC 873], a F.I.R. was lodged that the deceased student committed suicide because of the mental harassment meted out by the appellant, who was a Physical Training (P.T.) Instructor. Being aggrieved by the order of the High Court dismissing the application under Section 482 of the Code of Criminal Procedure, the appellant Geo Varghese

approached to Apex Court. The Hon'ble Supreme Court took note of the various previous decisions and observed that :

“17. The scope and ambit of Section 107 IPC and its co-relation with Section 306 IPC has been discussed repeatedly by this Court. In the case of S.S.Cheena Vs. Vijay Kumar Mahajan and Anr. [(2010) 12 SCC 190], it was observed as under:-

“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 the Supreme 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.”

18. In a recent pronouncement, a two-Judge Bench of this Court in the case of Arnab Manoranjan Goswami Vs. State of Maharashtra & Ors. [(2021) 2 SCC 427], while considering the co-relation of Section 107 IPC with Section 306 IPC has observed as under :-

“47. The above decision thus arose in a situation where the High Court had declined to entertain a petition for quashing an FIR under Section 482 of the CrPC. However, it nonetheless directed the investigating agency not to arrest the accused during the pendency of the investigation. This was held to be

impermissible by this Court. On the other hand, this Court clarified that the High Court if it thinks fit, having regard to the parameters for quashing and the self restraint imposed by law, has the jurisdiction to quash the investigation “and may pass appropriate interim orders as thought apposite in law. Clearly therefore, the High Court in the present case has misdirected itself in declining to enquire prima facie on a petition for quashing whether the parameters in the exercise of that jurisdiction have been duly established and if so whether a case for the grant of interim bail has been made out. The settled principles which have been consistently reiterated since the judgment of this Court in State of Haryana vs Bhajan Lal (Bhajan Lal) include a situation where the allegations made in the FIR 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. This legal position was recently reiterated in a decision by a two-judge Bench of this Court in Kamal Shivaji Pokarnekar vs State of Maharashtra.

48. The striking aspect of the impugned judgment of the High Court spanning over fifty-six pages is the absence of any evaluation even prima facie of the most basic issue. The High Court, in other words, failed to apply its mind to a fundamental issue which needed to be considered while dealing with a petition for quashing under Article 226 of the Constitution or Section 482 of the CrPC. The High Court, by its judgment dated 9 November 2020, has instead allowed the petition for quashing to stand over for hearing a month later, and therefore declined to allow the appellant’s prayer for interim bail and

relegated him to the remedy under Section 439 of the CrPC. In the meantime, liberty has been the casualty. The High Court having failed to evaluate prima facie whether the allegations in the FIR, taken as they stand, bring the case within the fold of Section 306 read with Section 34 of the IPC, this Court is now called upon to perform the task.”

19. In the case of M. Arjunan Vs. State, Represented by its Inspector of Police [(2019) 3 SCC 315], a two-Judge Bench of this Court has expounded the ingredients of Section 306 IPC in the following words:-

“The essential ingredients of the offence under Section 306 I.P.C. are: (i) the abetment; (ii) the intention of the accused to aid or instigate or abet the deceased to commit suicide. The act of the accused, however, insulting the deceased by using abusive language will not, by itself, constitute the abetment of suicide. There should be evidence capable of suggesting that the accused intended by such act to instigate the deceased to commit suicide. Unless the ingredients of instigation/abetment to commit suicide are satisfied, accused cannot be convicted under Section 306 I.P.C.”

20. At this stage, we may also refer to another recent judgment of a two- Judge Bench of this Court in the case of Ude Singh & Ors. Vs. State of Haryana [(2019) 17 SCC 301], which elucidated on the essential ingredients of the offence under Section 306 IPC in the following words:-

“16. In cases of alleged abetment of suicide, there must be a proof of direct or indirect act/s of incitement to the commission of suicide. It could hardly be disputed that the

question of cause of a suicide, particularly in the context of an offence of abetment of suicide, remains a vexed one, involving multifaceted and complex attributes of human behaviour and responses/reactions. In the case of accusation for abetment of suicide, the Court would be looking for cogent and convincing proof of the act/s of incitement to the commission of suicide. In the case of suicide, mere allegation of harassment of the deceased by another person would not suffice unless there be such action on the part of the accused which compels the person to commit suicide; and such an offending action ought to be proximate to the time of occurrence. Whether a person has abetted in the commission of suicide by another or not, could only be gathered from the facts and circumstances of each case.

16.1. For the purpose of finding out if a person has abetted commission of suicide by another; the consideration would be if the accused is guilty of the act of instigation of the act of suicide. As explained and reiterated by this Court in the decisions above-referred, instigation means to goad, urge forward, provoke, incite or encourage to do an act. If the persons who committed suicide had been hypersensitive and the action of accused is otherwise not ordinarily expected to induce a similarly circumstanced person to commit suicide, it may not be safe to hold the accused guilty of abetment of suicide. But, on the other hand, if the accused by his acts and by his continuous course of conduct creates a situation which leads the deceased perceiving no other option except to commit suicide, the case may fall within the four-corners of Section 306 IPC. If the accused plays an active role in tarnishing the self-esteem and

self-respect of the victim, which eventually draws the victim to commit suicide, the accused may be held guilty of abetment of suicide. The question of mens rea on the part of the accused in such cases would be examined with reference to the actual acts and deeds of the accused and if the acts and deeds are only of such nature where the accused intended nothing more than harassment or snap show of anger, a particular case may fall short of the offence of abetment of suicide. However, if the accused kept on irritating or annoying the deceased by words or deeds until the deceased reacted or was provoked, a particular case may be that of abetment of suicide. Such being the matter of delicate analysis of human behaviour, each case is required to be examined on its own facts, while taking note of all the surrounding factors having bearing on the actions and psyche of the accused and the deceased.”

21. We may also refer to a two-Judge Bench judgment of this Court in the case of *Narayan Malhari Thorat Vs. Vinayak Deorao Bhagat and Anr.*, [(2019) 13 SCC 598] wherein the judgement rendered by the High Court quashing the FIR under Section 482 was set aside. In the said case, an FIR was registered under Section 306 IPC stating that the son and daughter-in-law were teachers in a Zila Parishad School where the accused was also a teacher used to make frequent calls on the mobile of the daughter-in-law, and used to harass her. Despite the efforts of the son of the informant in trying to make the accused see reason and stop calling, the accused continued with his activity. On 09.02.2015, there was a verbal altercation between the son of the informant and the accused and on 12.02.2015, he committed suicide leaving a note stating that his family life has been ruined by the accused who should not be pardoned and should be

hanged. Under Section 482 Cr.PC, a petition was filed by the accused challenging the FIR, which was allowed by the High Court and thereafter, was challenged before this Court. The appeal was allowed by this Court and made the following observations:-

“We now consider the facts of the present case. There are definite allegations that the first respondent would keep on calling the wife of the victim on her mobile and keep harassing her which allegations are supported by the statements of the mother and the wife of the victim recorded during investigation. The record shows that 3-4 days prior to the suicide there was an altercation between the victim and the first respondent. In the light of these facts, coupled with the fact that the suicide note made definite allegation against first respondent, the High Court was not justified in entering into question whether the first respondent had the requisite intention to aid or instigate or abate the commission of suicide. At this juncture when the investigation was yet to be completed and charge-sheet, if any, was yet to be filed, the High Court ought not to have gone into the aspect whether there was requisite mental element or intention on part of the respondent.”

22. In the above quoted observations of this Court, there is a clear indication that there was a specific averment in the FIR that the respondent had continuously harassed the spouse of the victim and did not rectify his conduct despite being objected by the victim. Thus, as a matter of fact he had actively facilitated in the commission of suicide.

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.”

10. These principles have been reiterated by the Hon’ble Supreme Court in Mariano Anto Bruno Vs. The Inspector of Police [2022 SCC OnLine SC 1387] and it held that :

“36. To convict a person under Section 306 IPC, there has to be clear mens rea to commit offence. It also requires an active act or direct act which leads deceased to commit suicide finding no other option and the act must be such reflecting intention of the accused to push deceased into such a position that he commits suicide. The prosecution has to establish beyond reasonable doubt that the deceased committed suicide and Appellant No. 1 abetted the commission of suicide of the deceased.”

11. In the instant case, the First Information Report as well as the suicide note clearly indicate that the deceased had taken loan from several persons. He was in financial doldrums and was unable to repay the loan amount which the creditors were constantly demanding. It was under such mental stress and pressure that the deceased committed suicide by hanging himself. Though the names of the applicants are mentioned in the suicide note, there is absolutely no material on record to indicate that they had intentionally instigated, abetted or committed any such act to facilitate the commission of suicide. The only allegation in the First Information Report is that the creditors were constantly demanding repayment of the loan amount. Suffice it to say, the persistent demand for the repayment of the loan amount would not per se constitute 'abetment' within the meaning of Section 107 of the Indian Penal Code. Thus, the allegations in the First Information Report as well as the other material on record, even if accepted in their entirety, do not disclose 'abetment' within the meaning of Section 107 of the Indian Penal Code. Under the circumstances, the case would be covered by illustration No.1 of the judgment of the Hon'ble Apex Court in case of **State of Haryana & ors. Vs. Ch. Bhajan Lal [AIR 1992 SC 604]**.

In such circumstances, in our considered view, subjecting the applicants to face criminal prosecution would be sheer abuse of the process of Court. Hence, this is a fit case to quash the First Information Report, in exercise of powers under Section 482 of the Criminal Procedure Code.

12. In the result, the Criminal Applications are allowed. The First Information Report No.263/2021 registered with Bhagyanagar Police Station, Nanded is quashed as against the applicants herein.

13. Fees of Mrs. P.V. Langhe, learned counsel appointed for respondent No.2 is quantified at Rs.10,000/- (Rupees ten thousand).

(R. M. JOSHI, J.)

(SMT. ANUJA PRABHUDESSAI, J.)

fmp/-