

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

CRIMINAL APPLICATION NO.1840 OF 2021

**AJINATH DEVRAO BHAVAR AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

Mr. S. J. Salunke, Advocate for the applicants
Mr. P. G. Borade, APP for the respondent/State
Mr. V. Y. Bhide, Advocate for respondent No.2.

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

DATE : 31ST JANUARY, 2023

PER COURT :-

1. At the outset learned counsel for the applicants seeks leave to amend the prayer clause 'C' to incorporate the Sessions Case No. 95 of 2022. Leave granted. Amendment to be carried out forthwith.
2. With consent, heard finally at the stage of admission.
3. This is an application under Section 482 of Cr.P.C. to quash the first information report No. 187/2021 registered with Ashti Police Station, Dist. Beed and Sessions Case No. 95/2022 pending before the learned Sessions Judge, Beed for the offence punishable under Section 306 read with Section 34 of the Indian Penal Code.

4. The crime against the applicants for offence under Section 306 IPC came to be registered on the basis of the first information report lodged by the respondent No.2. A perusal of the FIR reveals that the marriage of Anil Aabasaheb Jagtap, son of the complainant and the applicant No. 3 Ashwini Anil Jagtap was solemnized on 1st December, 2014. They have two children from the said wedlock. Said Anil committed suicide on 28th May, 2021. The respondent No.2 has alleged that since the year 2014 the applicant No.3 used to constantly fight with Anil. He has alleged that in year 2015 the applicant No.3 had assaulted the deceased Anil by a blunt object and her parents and the applicant Nos. 1, 2 and 4 herein. It is further stated that there used to be constant fights between the applicant No.3 and her husband Anil and that she left the matrimonial home in the month of May, 2021. She refused to return to the matrimonial home till the property was transferred in her name. The respondent No.2 claims that his son Anil committed suicide due to the harassment meted out to him by the applicants. He, therefore, lodged the FIR against the applicants for abetting suicide.

5. Learned counsel for the applicants submits that the FIR as well as the other material which forms part of the charge-sheet does not disclose essential ingredients of abetment. There was no positive action in close proximity to the time of suicide. The mere fact that the applicant

No. 3 left the matrimonial home or demanded transfer of the property in her name would not constitute abetment.

6. Per contra, learned APP and learned counsel for the respondent No.2 submitted that there are specific allegations of harassment, which compelled the deceased Anil to take an extreme step of suicide. They submitted that the allegation in the FIR constitute abetment within the meaning of Section 107 IPC.

7. We have perused the records and considered the submissions advanced by learned counsel for the respective parties.

8. Before advertng to the factual aspect, it would be apt to consider the relevant provisions of law and legal position with regard to offence of abetment to suicide. Sections 306 and 107 of IPC read thus;

"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.*

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

First – Instigates any person to do that thing; or

Secondly - Engages with one or more other person or persons in any conspiracy for the doing of that thing,

if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

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

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.

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 **Gurcharan Singh Versus State of Punjab** reported in **(2017) 1 SCC 433**, the Hon'ble Supreme Court has held that,

"21. It is thus manifest that the offence punishable is one of abetment of the commission of suicide by any person, predicating existence of a live link or nexus between the two, abetment being the propelling causative factor. The basic ingredients of this provision are suicidal death and the abetment thereof. To constitute abetment, the intention and involvement of the accused to aid or instigate the commission of suicide is imperative. Any severance or absence of any of these constituents would militate against this indictment. Remoteness of the culpable acts or omissions rooted in the intention of the accused to actualise the suicide would fall short as well of the offence of abetment essential to attract the punitive mandate of Section 306 IPC. Contiguity, continuity, culpability and complicity of the indictable acts or omission are the concomitant indices of abetment. Section 306 IPC, thus criminalise the sustained

incitement for suicide."

10. A fruitful reference can also be made to the judgment of Hon'ble Apex Court in ***Ude Singh and Others Versus State of Haryana*** reported in **(2019)17 SCC 301** which it is observed thus;

"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."

11. In **Geo Varghese Versus State of Rajasthan and Another** reported in **2021 SCC OnLine SC 873**, the Hon'ble Supreme Court has observed thus;

"13. In our country, while suicide in itself is not an offence as a person committing suicide goes beyond the reach of law but an attempt to suicide is considered to be an offence under Section 309 IPC. The abetment of suicide by anybody is also an offence under Section 306 IPC. It would be relevant to set out Section 306 of the IPC which reads as under :-

"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."

14. Though, the IPC does not define the word 'Suicide' but the ordinary dictionary meaning of suicide is 'self-killing'. The word is derived from a modern latin word 'suicidium' , 'sui' means 'oneself' and 'cidium' means 'killing'. Thus, the word suicide implies an act of 'self-killing'. In other words, act of death must be committed by the deceased himself, irrespective of the means adopted by him in achieving the object of killing himself.

15. Section 306 of IPC makes abetment of suicide a criminal offence and prescribes punishment for the same. Abetment is defined under Section 107 of IPC which reads as under :-

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

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

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

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.

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."

16. The ordinary dictionary meaning of the word 'instigate' is to bring about or initiate, incite someone to do something. This Court in the case of Ramesh

Kumar Vs. State of Chhattisgarh¹ has defined the word 'instigate' as under :-

"Instigation is to goad, urge forward, provoke, incite or encourage to do an act."

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.², 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."

12. In **M. Arjunan Versus State Represented by Its Inspector of Police** reported in **(2019)3 SCC 315**, the Apex Court elucidated to essential ingredients of offence under Section 306 IPC as under:

"7. 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."

13. In **Mariano Anto Bruno and Another Versus Inspector of Police** reported in **2022 SCC OnLine SC 1387**, the Hon'ble Supreme Court referred to the aforesaid reasons judgments and held that,

"42. 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."

14. In the instant case, the marriage of applicant No.3 and the deceased was solemnized in the year 2014. The deceased committed suicide in the year 2021. It is alleged that applicant No.3 had assaulted the deceased in the year 2014 and the other applicants had supported her in the said act. This act is not in close proximity of the time of suicide. There is no material to indicate that there was continuous harassment of such nature that the deceased was left with no other option but the to commit suicide. In the absence of such material the mere fact that the applicant No. 3 left the matrimonial home and demanded transfer of property in her name, would not constitute 'abetment' within the meaning of Section 107 IPC. Consequently, the

contents of the FIR and the other material on record do not disclose ingredients of abetment under Section 107 IPC and consequented abetment of suicide under Section 306 of IPC. Present case thus, is squarely covered by illustrations (1) and (3) laid down by the Hon'ble ***State of Haryana and others Vs. Ch. Bhajan Lal and others*** reported in ***(1992) 3 SCR 735 (SC)***. In such circumstances, compelling the applicants to face trial would be an abuse of the process of law. Hence in our considered view this is a fit case to exercise inherent powers under Section 482 of the Cr.P.C. to prevent the abuse of the process of Court.

15. In the result, the application is allowed. The FIR No. 187/2021 registered with Ashti Police Station, Dist. Beed and Sessions Case No. 95/2022 pending before the learned Sessions Judge, Beed for the offence punishable under Section 306 read with Section 34 of the Indian Penal Code stands quashed.

(R. M. JOSHI, J.)

(SMT. ANUJA PRABHUDESSAI, J.)

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