

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

CRIMINAL APPLICATION NO.3300 OF 2021

Madhuri w/o Vilas Totewad & ors. ... **APPLICANTS**

VERSUS

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

.....

Mr. Hemantkumar F. Pawar, Advocate for applicants

Mrs. V.N. Patil Jadhav, A.P.P. for respondent No.1

Mr. A.H. Bramhankar, Advocate for respondent No.2

.....

WITH

CRIMINAL APPLICATION NO.3067 OF 2021

Kerba S/O Nagoji Jetewad & ors. ... **APPLICANTS**

VERSUS

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

.....

Mr. Hemantkumar F. Pawar, Advocate for applicants

Mrs. V.N. Patil Jadhav, A.P.P. for respondent No.1

Mr. A.H. Bramhankar, Advocate for respondent No.2

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

DATE : 1st FEBRUARY, 2023

P.C. :

At the outset, learned counsel for the applicants seeks leave to amend the prayer clause (B) as to incorporate R.C.C. Number and the Court where the same is pending. Leave granted. Amendment to be carried out forthwith.

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

3. These applications are filed under Section 482 of the Code of Criminal Procedure to quash First Information Report No.221/2021, registered at Osmannagar Police Station, and the consequential charge sheet and R.C.C. No.174/2022, pending on the file of learned Judicial Magistrate, First Class, Kandhar, District Nanded for the offences punishable under Section 306 read with Section 34 of the Indian Penal Code.

4. The applicant No.1- Madhuri in Criminal Application No.3300/2021 was in love with Vilas, the son of respondent No.2 and they performed registered marriage in the year 2015. They have two children from the said wedlock. Said Vilas consumed poison on 22/10/2021 and he died on 3/11/2021. The respondent No.2 lodged the First Information Report against the applicant No.1 Madhuri and her family members alleging that Madhuri had left the matrimonial home and was refusing to cohabit with his son Vilas. The respondent No.2 has further stated that his son Vilas had told him that the applicant No.1 Madhuri had refused to cohabit with him and that when he had gone to her house, her entire family as well as her friends and her mother-in-law and brother-in-law had assaulted him.

The respondent No.2 claimed that his son Vilas told him that the applicant no.1 Madhuri was roaming with another person and whenever he used to question about the same, her relatives would assault him. The respondent No.2 has therefore accused all the applicants and two others for abetting suicide of his son Vilas.

5. Before adverting to the facts, it would be relevant to refer to Sections 306 and 107 of the Indian Penal Code, which 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. 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.

6. While analysing these provisions in case of Arnab Manoranjan Goswami Vs. State of Maharashtra & ors. [(2021) 2 SCC 427], it is observed by the Hon'ble Apex Court thus :-

“50. The first segment of Section 107 defines abetment as the instigation of a person to do a particular thing. The second segment defines it with reference to engaging in a conspiracy with one or more other persons for the doing of a thing, and an act or illegal omission in pursuance of the conspiracy. Under the third segment, abetment is founded on intentionally aiding the doing of a thing either by an act or omission. These provisions have been construed specifically in the context of Section 306 to which a reference is necessary in order to furnish the legal foundation for assessing the contents of the FIR. These provisions have been construed in the earlier judgments of this Court in State of W.B. Vs. Orilal Jaiswal [(1994) 1 SCC 73], Randhir Singh Vs. State of Punjab [(2004) 13 SCC 129, Kishori Lal vs State of MP [(2007) 10 SCC 797] (“Kishori Lal”) and Kishangiri Mangalgiri Goswami vs State of Gujarat [(2009) 4 SCC 52]. In Amalendu Pal vs State of West Bengal [(2010) 1 SCC 707], Mukundakam Sharma, J. speaking for a two judge

Bench of this Court and having adverted to the earlier decisions, observed:

“12. 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.”

7. In the case of Mariano Anto Bruno Vs. The Inspector of Police (Criminal Appeal No.1628 of 2022, the Hon'ble Apex court has observed thus :

“24. While analyzing the provisions of Section 306 IPC along with the definition of abetment under Section 107 IPC, a two-Judge Bench of this Court in Geo Varghese Vs. State of Rajasthan and Another [2021 SCC OnLine SC 873], has observed as under:-

“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.

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 Chhattisgarh [(2010) 1 SCC 707] 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 [(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.”

25. *The ingredients of Section 306 IPC have been extensively laid out in M. Arjunan Vs. State, represented by its Inspector of Police [(2019) 3 SCC 315] which are as under: -*

“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.”

26. *In order to convict an accused under Section 306 IPC, the state of mind to commit a particular crime must be visible with regard to determining the culpability. With regard to the same, a two-judge bench of this Court in Ude Singh & Ors. Vs. State of Haryana [(2019) 17 SCC 301] observed as under:-*

“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 behavior 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.”

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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.”

8. In the light of the above principles, the question for our consideration is whether the First Information Report and the other material on record disclose essential ingredients of abetment within the meaning of Section 107 and commission of offence under Section 306 of the Indian Penal Code.

9. The deceased Vilas and applicant No.1 Madhuri were

married in the year 2015. They have two children from the said wedlock. Deceased Vilas was operating a tempo. The respondent No.2 has alleged that Vilas had defaulted in repaying the loan installments, as a result of which the finance company had attached the vehicle and since then the deceased was unemployed.

10. The complainant has stated that, in the year 2020, he and his wife had gone to Mangansangvi. He stated that, whenever Vilas visited them, he complained that his wife was not living with him and that her parents were assaulting him. He has further stated that, Vilas had told him that in the year 2021 all the applicants had called him home and assaulted him. He has further stated that about 15 days prior to the incident, his son Vilas told him that he had gone to the parental home of the applicant No.1 Madhuri and had requested her to return and that she had refused to return to her matrimonial home. He has stated that, said Vilas had told him that, his wife, father-in-law, sisters-in-law, brothers-in-law as well as uncle and friends of mother-in-law and brother-in-law had assaulted him. He has stated that, said Vilas was always under mental stress and pressure and that he used to complain that his wife was having an affair with another person and whenever he questioned her about the same, his wife and her family would assault him.

11. Neither the complainant nor the other witnesses, whose statements have been recorded in the course of investigation, had seen any of the applicants assaulting the deceased Vilas. None of these witnesses had seen Vilas going to the house of the applicants. Hence there is no material to indicate that the applicants had subjected the deceased to harassment which compelled the deceased to commit suicide.

12. Furthermore, it is stated that, a suicide note was recovered from the house of Vilas and that his mother had handed over the same to the police after registration of the crime. In the said suicide note, said Vilas had allegedly stated that he was under stress because he was being assaulted by the applicants. It is stated that the said suicide note is sent to the handwriting expert and that the report is yet to be received. The records, however, show that, the suicide note is not forwarded to the handwriting expert along with any admitted handwriting of Vilas. In such circumstances, the opinion of the handwriting expert will otherwise have no evidentiary value.

13. The contents of the First Information Report and the other material on record reveal that the deceased was mentally disturbed since he had lost the job and he was unemployed. In addition, his wife had left him and had refused to cohabit with

him. He had also made allegation that she was moving around with some other person due to which he was mentally disturbed. There is no material on record to indicate that the applicants had instigated, aided and/or committed any such act as to facilitate commission of suicide. Commission of suicide in such mental stress and state by deceased would not amount to abetment by applicants within the meaning of Section 107 of the Indian Penal Code.

14. Under the circumstances, in our considered view, subjecting the applicants to face trial in such serious offence would be sheer abuse of the process of law. Hence, the applications are allowed. The First Information Report No.221/2021, registered at Osmannagar Police Station, and the consequential charge sheet and R.C.C. No.174/2022, pending on the file of learned Judicial Magistrate, First Class, Kandhar, District Nanded for the offences punishable under Section 306 read with Section 34 of the Indian Penal Code are quashed.

(R. M. JOSHI, J.)

(SMT. ANUJA PRABHUDESSAI, J.)

fmp/-