

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

CRIMINAL APPLICATION NO.3543 OF 2019
WITH APPLN/3144/2019 WITH APPLN/4141/2019

SATISH S/O. MADHAVRAO PINGLE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...

Mr. D. R. Markad h/f Mr. A. N. Kakade, Advocate for the Applicant in APPLN/3543/2019.

Mr. S. J. Salunke, Advocate for the Applicant in APPLN/3144/2019.

Mr. A. K. Bhosale, Advocate for the Applicant in APPLN/4141/2019.

Mr. M. M. Nerlikar, APP, for the Respondent – State.

Mr. G. A. Kulkarni h/f Mr. D.R. Deshmukh, Advocate for the Respondent No. 3.

...

CORAM : SMT. ANUJA PRABHUDESSAI &
R.M. JOSHI, JJ

DATE : FEBRUARY 21, 2023

PER COURT :

1. At the outset, learned Counsel for the Applicants in Criminal Application No. 3543/2019 & 4141/2019 seeks leave to amend the prayer clause so as to incorporate R.C.C. Number.

2. Leave granted. Amendment to be carried out forthwith.

3. With consent, heard finally at the stage of admission.

4. These applications are filed under Section 482 of the Cr.P.C. to quash the first information report bearing C.R. No. 259/2019 registered with Satara Police Station, Aurangabad and R.C.C. No. 50/2020 pending on the file of learned J.M.F.C, Aurangabad for the offences punishable under Section 306 & 420 read with Section 34 of the IPC.

5. The aforesaid crime was registered pursuant to the FIR lodged by the Respondent No. 2, the widow of the deceased Gopalkrishna Satarkar. The Respondent No. 2 has alleged that in the year 2012 her husband lent sum of Rs. 5 lacs to co-accused Rohan Patil and Chandrakala Patil for one day. It is stated that they did not return the money and used it for election purpose. It is stated that since the Applicants Chandrakala Patil and Rohan Patil did not return the loan amount, the deceased had to obtain a loan of Rs. 5 lac with the help of Satish Pingale and for which he had to transfer the plot in the name of Applicant - Satish Pingale. She has stated that her husband repaid Rs. 1,05,000/- towards interest on Rs. 5 lacs @ 10% p.a. Her husband was thereafter unable to pay interest

and owed total amount of Rs. 30 lakhs. She has stated that her husband was mentally disturbed as he apprehended that he will have to sell plot to the Applicant Pingale for sum of Rs. 5 lakhs.

6. The Respondent No. 2 has further alleged that the Applicants Prakash Zodge, Vishnu Sirsat and Sandipan Kudke had entered into an agreement with his son to purchase a plot and had given to his son Rs. 2.4 crores as token amount. It is alleged that these applicants had entered into the said transaction without verifying the documents. It is stated that these applicants were demanding the money since his son was unable to provide the plot. The Respondent No. 2 has alleged that these applications obtained a blank cheque from her husband on an assurance that they would not present the chque in the bank. Despite such assurance, applicants presented the cheque and upon being dishonoured, lodged complaints under Section 138 of Negotiable Instruments Act. It is alleged that Prakash, the brother-in-law of the Applicant helped them in filing the complaint. The Respondent No. 2, therefore, claimed that her husband committed suicide due to harassmet meted out to him by these applicants.

7. Learned Counsel for the Applicants submits that the FIR as well as other material on record, which forms part of the charge-sheet, does not disclose the essential ingredients of abetment or cheating. It is stated that there is no positive action in close proximity to the time of suicide. The mere fact that the deceased has left a suicide note, would not be sufficient to charge these applicants for offences under Section 306 of IPC when the essential ingredient of Section 107 of IPC are not made out.

8. *Per contra*, learned APP and learned Counsel for Respondent No. 2 submit that the suicide note clearly indicates that the Applicants herein had entered into an agreement with the son of the deceased without verifying the records. These applicants thereafter pressurized the deceased in repaying the amount paid by them to his son and it was because of their negligence and pressure that the deceased was under mental stress, which is one of the causes for committing suicide. It is further stated that the suicide note names these applicants as the persons involved in the harassment and hence the allegations in

the FIR and other material constitute abetment under Section 107 of IPC.

9. We have perused the records and considered the submissions advanced by learned Counsel for the respective parties.

10. The only question for our consideration is whether the allegations made in the FIR and the other material collected in the course of investigation, which forms part of the charge-sheet, disclose commission of cognizable offence as against these applicants.

11. 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."

12. 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, predicated 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."

13. 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."

14. 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."

15. 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."

16. 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."

17. In the instant case, it is not in dispute that the husband of the Respondent No. 2 had committed suicide on 06.07.2019. The FIR states that in the year 2012 the deceased had given to the Applicants Chandrakala Patil and Rohan Patil an amount of Rs. 5 lakhs for a period of one day and instead of returning the said amount, they spent the amount on election

process. It is to be noted that the deceased had committed suicide in the year 2019. There was no close proximity to the said incident of giving the money to the date of suicide. Similarly the allegations against other applicants are that they entered into an agreement for sale with the son of the deceased to purchase a plot and had paid earnest amount of Rs. 2.4 crores. The FIR reveals that the son of the deceased was unable to complete the sale transaction and was also unable to repay the earnest money. It was for this reasons, that the applicants had approached the deceased for repayment of money advanced to his son. The only allegation against these applicants is that they had entered into an agreement with the son of the deceased without verifying the document.

18. Suffice it to say that demanding the payment of money which was payable to them and or prosecuting the deceased for dishonour of cheque would not constitute abetment within the meaning of Section 107 of IPC. There is absolutely no material on record to indicate that the applicants had subjected the deceased to harassment or that they had instigated, abetted or

aided commission of suicide or further they had committed any act to facilitate the commission of suicide. In such circumstances, mere demanding money and or filing of cases under Section 138 of Negotiable Instruments Act would not constitute abetment within the meaning of Section 107 of IPC which is an essential ingredient of Section 306 of IPC. Hence, in our considered view, the allegations leveled in the FIR, and the suicide note as well as other material on record, do not disclose either an offence of cheating or abetment.

19. In the result, the applications are allowed. As a consequence, first information report bearing C.R. No. 259/2019 registered with Satara Police Station, Aurangabad and R.C.C. No. 50/2020 pending on the file of learned J.M.F.C, Aurangabad for the offences punishable under Section 306 & 420 read with Section 34 of the IPC are hereby quashed *qua* Applicants herein.

(R.M. JOSHI, J.)

(SMT. ANUJA PRABHUDESSAI, J)