

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 3525 OF 2023

Saraswatibai Sunilrao Nandode

...Petitioner

Versus

1. The State of Maharashtra

2. Vanita Dattatray Katare

...Respondents

....

Mr. Satish Borulkar i/by Mr. S.S. Borulkar, Advocate for the Petitioner.

Mr. Karan Gajra a/w Mr. Digvijay Kachare, for Respondent No.2.

Mrs. M.M.Deshmukh, Addl. P.P. for the Respondent No.1 – State.

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**CORAM : PRAKASH D. NAIK, &
N. R. BORKAR, JJ.**

DATE : 13th DECEMBER, 2023.

P.C.:

1. The Petitioner has invoked the writ jurisdiction of this Court under Article 226 of the Constitution of India and inherent powers under Section 482 of the Criminal Procedure Code praying for quashing the charge-sheet/proceedings in R.C.C. No.1107 of 2023 pending before the Court of learned 24th-6th Joint C.J.J.D. and J.M.F.C. Solapur.

2. The First Information Report (for short 'FIR') was registered on 21st March 2023 with M.I.D.C. Police Station, Solapur at the instance of Respondent No.2 for offence punishable under Section 306 r/w Section 34 of Indian Penal Code (for short "IPC").

3. The prosecution case is as under:

i) The complainant's husband Dattatray Apparao Katare had left the house on 7th March, 2023 by informing her that he is going out for a stroll. At about 11.30 a.m. the complainant gave a call on his cellphone which was responded by unknown person, who informed her that her husband is lying on the side on road in an unconscious condition.

ii) Complainant and her son immediately rushed to the spot and noticed that her husband was lying at the roadside in unconscious condition. He was taken to hospital for treatment. He was admitted in hospital. On 19th March 2023, he was declared dead.

iii) Sunil Katare and Anil Katare are brothers of complainant's husband. Sunil Katare is at Akkalkot. He is in possession of the ancestral property belonging to the family of Complainant's husband. Suit was filed for partition by Complainant's husband. Sunil Katare was annoyed with that. Complainant's husband had informed her that Sunil Katare is abusing and threatening him and maligning the image of their daughter Vasudha. He was under tremendous mental trauma. The Complainant's husband had lodged the complaint to Police Superintendent, Solapur Rural on 23rd March 2021

against his brother Sunil Katare.

iv) Divorce proceedings of Complainant's daughter Vasudha are pending in the Court at Jalana. On 25.01.2023, Advocate Manish Raut, who is handling the case of Complainant's daughter had informed that the Marriage Certificate of the Complainant was produced by the opponents in the Court proceedings and inquired whether Vasudha was born prior to their marriage or after marriage. Complainant's husband was disturbed on that count.

v) Mother-in-law of Complainant's daughter (Petitioner) gave a phone call to Sunil Dhaiphule, who is the friend of Complainant's husband on 24.02.2023 and performed first marriage and enquired about Vasudha whether she is from earlier marriage or marriage with Complainant. This fact was informed to Petitioner by Sunil Katare.

vi) While taking treatment at Ashwini Hospital, Complainant's husband had informed her while on regaining consciousness that he had taken the said step on account of frustration due to conduct of his brother Sunil and the mother-in-law of Vasudha (Petitioner).

vii) Sunil Katare and the Petitioner had acted in

connivance with each other to defame the Complainant's husband and on account of the frustration, he committed suicide.

4. Pursuant to the registration of FIR, statements of Complainant's daughter Vanita Katare and other witnesses were recorded. Post-mortem report was collected. On completing investigation, charge-sheet is filed.

5. Learned Advocate Mr. Borulkar appearing for the Petitioner submitted as under:

i) The Petitioner has been falsely implicated in this case. The marriage of the Petitioner's son was solemnized with Vasudha Katare on 27.11.2020. The deceased is father of Vasudha Katare.

ii) There were differences between Petitioner's son Gaurav and Vasudha. In December 2021 legal notice was sent by Gaurav requesting Vasudha to rejoin the matrimony. In reply to the legal notice, Vasudha had stated that she would rejoin the matrimony only on the condition if Gaurav lives separate from his family. In spite of several persuasions Vasudha did not join the matrimony. Hence, Gaurav filed divorce Petition in the year 2022 in the Family Court at Jalana.

iii) The Petitioner's son Gaurav amended the Petition for divorce and raised the question about Vasudha's birth status with documents. Amendment was carried out after due notice to Vasudha Katore. Pursuant to registration of C.R. No.171 of 2023, the Petitioner was arrested and granted bail. The allegations in the complaint are false. The offence under Section 306 of IPC is not attracted against the Petitioner.

iv) Perusal of FIR it can be seen that does not spell out ingredients to constitute the charge under Section 306 of IPC. Such charge cannot be sustained merely on the ground of allegations of harassment of the deceased. The ingredients of the abetment are absent in the FIR. The Petitioner is not responsible and has not abetted or instigated the deceased to commit suicide.

v) Matrimonial dispute was pending between the parties and certain averments were made with regards to the legitimacy of Vasudha in no terms can be said to be instigation to a person to commit suicide.

vi) The prosecution has failed to prima facie establish that the Petitioner had an intention to aid or instigate or abet the deceased to commit suicide. In the absence of availability of such material, the Petitioner cannot be compelled to face trial

for the offence under Section 306 of IPC.

vii) The complainant has alleged that there was dispute between the deceased and his brother Sunil Katare with regards to their ancestral property and that Sunil Katare was abusing and threatening him. Sunil Katare was also spreading rumours about the legitimacy of Vasudha. He has been impleaded as an accused. Surprisingly even the Petitioner has been impleaded as an accused on the ground that the Petitioner had made some inquiries with regards to legitimacy of Vasudha. Assuming that such inquiry was made, it would not amount to instigation or abetment to commit suicide.

viii) The Petitioner cannot be compelled to face the trial in the absence of *mens rea* to commit the offence. The Petitioner is not responsible in any manner for the suicide committed by the deceased.

ix) The FIR does not substantiate the charge under Section 306 of IPC. It is alleged that the Petitioner has acted in furtherance of common intention with the co-accused Sunil Katare. There is no evidence on record to fortify the said allegation.

x) The allegation with regards to the legitimacy of Vasudha cannot be considered as instigation which is required to constitute the offence of abetment to commit suicide under Section 306 of IPC.

xi) It would be an abuse of process of law to prosecute the Petitioner for the said offence. This Court in exercise of powers under Article 226 of the Constitution of India and or inherent powers under Section 482 of the Code of Criminal Procedure should quash and set aside the impugned proceedings.

6. Mr. Borulkar has relied upon the decision of the apex Court in the case of **Sandip Ajay Wadse and others Vs. State of Maharashtra and Anr¹**.

7. Learned A.P.P. submitted that the FIR and the other material collected during the investigation prima facie establishes that the Petitioner has abetted commission of crime under Section 306 of IPC.

8. Learned Advocate for Respondent No.2/Complainant submitted that the offence is of serious nature. There was matrimonial dispute between the Petitioner's son and the daughter of deceased. The Petitioner's son has filed matrimonial Petition for

¹ 2014(4) Mh..J. (Cri.) 471.

divorce. In the said Petition frivolous allegations were made against the deceased. Assertions were made about the character of the deceased. The legitimacy of the daughter of deceased was challenged. The Petitioner was instrumental in questioning the legitimacy of Complainant's daughter. The husband of Respondent No.2 has committed suicide. He had informed the Complainant that on account of the conduct of the Petitioner he was under mental trauma. The medical report indicate the cause of death which establishes that the deceased committed suicide. The Petition involves triable issues. The proceedings cannot be quashed on the basis of debatable issues. Prima facie case is made out for an offence under Section 306 of IPC against the Petitioner. Even otherwise the Petitioner has alternate remedy to apply for discharge before the trial Court. Hence, the Petition may be dismissed.

9. From the tenor of the FIR and the documents which form part of charge-sheet it is apparent that the prosecution case proceeds on the basis that there were dispute between the deceased and his brother Sunil Katare on account of the ancestral property the deceased has filed a suit for partition. His brother Sunil Katare was abusing, threatening and defaming the family of the deceased. The deceased was under mental trauma on account of the conduct

of Sunil Katare. The second aspect of the prosecution case is that there was matrimonial dispute between the son of the Petitioner and daughter of deceased. The Petitioner's son has filed a Petition for divorce which was pending before the concerned Court. In the FIR the only allegations which is attributed to the Petitioner is that she made an inquiry about legitimacy of daughter of the deceased with one Sunil Dhaiphule. It is also alleged that the Petitioner was informed about the said fact by Sunil Katare. It is pertinent to note that Sunil Katare as well as the Petitioner has been impleaded as an accused in this case by invoking Section 34 of IPC. It is alleged that the Petitioner and Sunil Katare were acting in furtherance of common intention. Assuming the allegations spelt out in the FIR to be true, the role attributed to the Petitioner would not constitute an instigation and thereby an abetment to commit suicide. There is no evidence on record to establish that the Petitioner and the co-accused Sunil Katare were acting in connivance with each other. From the FIR it appears that the complainant was not sure as to for what reason the deceased has committed suicide and attributed to the act to the co-accused Sunil Katare as well the Petitioner.

10. It is important to examine the basic ingredients of Section 306 IPC. It is reproduced 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.”

11. Section 107 of the IPC relates to the ‘Abetment of a thing’ which reads as follows :

“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. To constitute the offence under Section 306 of IPC there must be instigation in some form on the part of the accused to cause the deceased to commit suicide. The accused must have *mens rea* to instigate the deceased to commit suicide. The act of instigation must be of such intensity that it is intended to push the deceased to such a position under which he or she has no choice

but to commit suicide. Such instigation must in close proximity to the act of committing suicide. (**Mohit Singhal & Anr. Vs. The State of Uttarkhand & Ors.** decided by the Hon'ble Supreme Court in Criminal Appeal No.3578 of 2023.)

13. It is necessary for the prosecution to prima facie establish that the accused had an intention to aid or instigate or abet the deceased to commit suicide and in the absence of availability of such material, accused cannot be compelled to face trial for the offence under Section 306 of IPC.

14. In the case of **Sanju @ Sanjay Sengar Vs. State of Madhya Pradesh**², the Appellant before the Apex Court was the brother of wife of deceased. It was the prosecution case that after the marriage of deceased with appellant's sister, there was continuous ill treatment by the deceased and his family members to his appellant's sister. She had gone to her parents house and started living with the Appellant. About two months prior to the incident, the Appellant advised the deceased to take his sister back to her matrimonial house and treat her properly. On 25th July 1998, the Appellant visited the place of the parents of deceased and pleaded with them that his sister should be rehabilitated in the matrimonial home and should not be physically ill-treated or

2 2002 Cri.L.J. 2796

harassed. The appellant threatened the parents of the deceased that if they do not mend their behaviour towards his sister, he would be compelled to resort to filing a complaint under Section 498-A of IPC. The Parents of the deceased expressed helplessness. They informed the deceased about the same. He went to the house of the parents of the Appellant, where quarrel took place between them. The deceased returned alone and told his brothers and others that Appellant had threatened and abused him by using filthy words. On 27th July 1998, he committed suicide. Suicide note was left by him. On the basis of suicide note, charge-sheet was filed against the accused/Appellant. The Apex Court considered the decisions and in the light of definition of abetment under Section 107 of IPC held that, even if the Court accepts the prosecution story that the appellant told the deceased ‘to go and die’ that itself does not constitute the ingredient of ‘instigation’. The word ‘instigate’ denotes incitement or urging to do some drastic or unadvisable action or to stimulate or incite. Presence of *mens rea* is necessary concomitant of instigation.

15. In the case of **Ramesh Kumar Vs. State of Chattisgarh**³ it is observed that instigation is to goad, urge forward, provoke, incite or encourage to do “an act”. To satisfy the requirement of

3 (2001) 9 SCC 618

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 spelled out. A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation. Making the deceased free-to go wherever she like and to do whatever she wished, does not and cannot mean even by stretching that the accused had made the deceased free “to commit suicide”.

16. In the case of **Madan Mohan Singh Vs. State of Gujarat and Another**⁴, the appellant therein was working as DET in Bharat Sanchar Nigam Ltd. The deceased was working as driver in BSNL. The complaint was filed by the wife of the deceased. The deceased has written suicide note stating that the accused was responsible for his death. The Apex Court observed that there is absolutely nothing in suicide note or the FIR which would even distantly be viewed as an offence much less under Section 306 of IPC. There must be an allegation that the accused had instigated the deceased to commit suicide or had engaged with some other person in a conspiracy and lastly that the accused had in any way

⁴ (2010) 8 SCC 628

aided any act or illegal omission to bring about the suicide. In order to bring to an offence under Section 306 of IPC, specific abetment as contemplated by Section 107 of IPC on the part of the accused with an intention to bring about the suicide of the person concerned as a result of the abetment is required. The intention of the accused to aid or to instigate or to abet the deceased to commit suicide is a must for this particular offence under Section 306 of IPC. Unless there is specific allegation and material of definite nature, (not imaginary or inferential one), it would be hazardous to ask the accused to face the trial. A criminal trial is not exactly a pleasant experience.

17. in the case of **S.S. Cheena Vs. Vijay Kumar Mahajan**⁵, the factual matrix indicate that there was dispute between two students. This came to the notice of the the head of the department, who asked both the students to submit their versions of the incident in writing. Both gave their versions. Enquiry was conducted by the Security Officer/Appellant. During the inquiry, one of the student/deceased committed suicide. Suicide note was found. FIR was registered under Section 306 of IPC. The Apex Court observed that abetment involves the mental process of instigating a person or intentionally aiding a person in doing of a

⁵ 2010 All MR (Cri) 3298 (S.C.)

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 Court it is clear that in order to convict a person under Section 306 of 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 deceased in that case was hypersensitive to ordinary petulance, discord and differences which happen day to day life. Human sensitivity of each individual differs from the other. Different people behave differently in the same situation. It would not travesty of justice to compel the Appellant to face a criminal trial without any credible material whatsoever.

18. In the case of **Chitresh Kumar Chopra Vs. State Govt. of NCT of Delhi**⁶ the Apex Court dealt with the dictionary meaning of the words “instigation” and “goading”. The Court opined that there should be intention to provoke, incite or encourage the doing of an act by the latter. Each person’s suicidability pattern is different from the other. Each person has his own idea of self-esteem and self-respect. It is impossible to lay down any

⁶ (2009) 16 SCC 605

straitjacket formula in dealing with such cases. Each case has to be decided on the basis of his own facts and circumstances.

19. In the **State of Kerala and others Vs. S Unnikrishnan Nair and others**⁷, it was observed that the plain reading of the suicide note which forms the fulcrum of the allegations on plain reading of the same, it is difficult to hold that there has been any abetment by the accused. The note, except saying that the accused compelled to do everything and cheated him and to put him in deep trouble contents nothing else. The accused were inferior in rank and it is surprising that such a thing could happen.

20. In the light of the settled law as stated herein above the some of the facts of the present case, we find that, there is no prima facie evidence to prosecute the Petitioner for an offence under Section 306 of IPC.

21. Learned Advocate for Respondent No.2 had contended that the Petitioner has alternate remedy of preferring an application for discharge before the trial Court. However in the facts of this case we are of considered opinion that this Court is not powerless to quash the proceedings in exercise of powers under Article 226 of the Constitution of India and inherent powers under Section 482 of Code of Criminal Procedure, in the event this Court finds that it

⁷ AIR 2015 SC 3351

would be an abuse of process of law to prosecute the accused for alleged offence.

22. The Apex Court in the case of **M/s. Neeharika Infrastructure (P) Ltd. Vs. State of Maharashtra and Others** (Criminal Appeal No.330 of 2021 decided on 13.04.2021) has observed that while examining the FIR/complaint, quashing is sought, the Court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made therein, but if the Court thinks fit, regard being had to the parameters of quashing and the self restraining imposed by law, the Court would have jurisdiction to quash the FIR/complaint.

23. In the case of **State of Haryana and others Vs. Bhajan Lal and others**⁸, the Apex Court had set out by way of illustration, the broad categories of cases in which the inherent power under Section 482 of Code of Criminal Procedure could be exercised. Para 102 of the decision reads as follows :

102. In the backdrop of the interpretation of the various relevant provisions of the Code 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 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to

⁸ (1992) Supp (1) SCC 335

give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(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. 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.'

24. Considering the factual aspects of this case we are of the considered opinion that the contents of FIR and the charge-sheet does not constitute the offence under Section 306 of IPC against the Petitioner and this is a fit case to exercise powers under

Article 226 of the Constitution of India and inherent powers under Section 482 of Code of Criminal Procedure to quash the FIR and charge-sheet against the Petitioner.

25. Hence, we pass the following order :

ORDER

- i. Criminal Writ Petition No.3525 of 2023 is allowed and disposed of.
- ii. Impugned proceedings in R.C.C. No.1107 of 2023 pending before the Court of learned 24th-6th Joint C.J.J.D. and J.M.F.C. Solapur pursuant to the Charge-sheet No. 359 of 2023 filed by MIDC Police Station, Solapur City which are arising out of FIR No.171 of 2023 registered with MIDC Police Station, Solapur is quashed and set aside.

(N. R. BORKAR, J.)

(PRAKASH D. NAIK, J.)