

IN THE HIGH COURT OF JUDICATURE AT BOMBAY :
NAGPUR BENCH : NAGPUR.

CRIMINAL APPLICATIN (APL) NO. 76/2021

1. Manohar s/o Bakaramji Gabhane,
aged about 51 yrs., Occ. Service,
R/o. Samruddhi Nagar, Takiya
Ward, Bhandara, Tah. & Dist.
Bhandara.
2. Sudhir s/o. Devrao Kalamkar,
Aged about 48 yrs., Occ. Service,
R/o. C/o. Anil Deshmukh, Shriram
Nagar, near Gajanan School,
Tumsar, Bhandara, Dist. Bhandara.
3. Navnath s/o Gorakh Doifode,
Aged about 33 yrs., Occ. Service,
R/o. Yellamb (Ghat), Tal. Beed,
Doifodwadi, Yellambghat-431125.
4. Gokul s/o. Dagdu Raut,
Aged about 55 yrs., Occ. Service,
R/o. Near Seram Company, Rahi,
Sr-No.267/3/4, Anand Nagar, Lane
No.1, Malwadi, Pune City, Hadapsar,
Pune City, Pune – 411028.

... **APPLICANTS**

VERSUS

1. The State of Maharashtra,
through Police Station Officer,
Police Station Bhandara,
Dist. Bhandara.
2. Dhanraj s/o. Saoji Koche,
Aged about 64 yrs., Occ. Retired,
R/o. Rajni Nagar, Khat Road,
Bhandara.

...**NON-APPLICANTS**

Mr. Sameer Sonwane, Advocate with Mrs. Shiba Thakur, Advocate &
Mr. Amit Thakur, Advocate for applicants.
Mr. S. S. Doifode, APP for non-applicant/State
Mr. Raju Kadu, Advocate for non-applicant No.2.

**CORAM : VINAY JOSHI AND
VALMIKI SA MENEZES, JJ.**

JUDGMENT RESERVED ON : 14.06.2023.
JUDGMENT PRONOUNCED ON : 28.07.2023.

JUDGMENT (PER VINAY JOSHI, J.) :

Police personnel namely Ramanbabu Walde attached to the District Traffic Branch, Bhandara, committed suicide on 05.04.2017 by consuming poison. Three suicide notes were recovered from the dead body blaming applicants to be responsible for his suicidal death. Father-in-law of deceased namely Dhanraj has lodged police report alleging that the applicants have abetted deceased to commit suicide which led to the registration of crime vide Crime No. 211/2017 for the offence punishable under Sections 306, 506 read with Section 34 of the Indian Penal Code, and Section 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act ('SC and ST Act').

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2. Applicant Nos. 1 to 3 are the Police Constables whilst applicant No. 4 is a Police Inspector attached to the same office namely District Traffic Branch, Bhandara. Applicants have applied to this Court in terms of Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure seeking to quash First Information Report ('FIR') and charge-sheet on the premise that the material collected during the course of investigation does not make out the case of abetment.

3. It is applicants' case that the allegations about physical and mental harassment on their part are false and fabricated. Inspector General of Police Nagpur Range has conducted annual inspection of Traffic Branch, Bhandara in which certain lapses have been found. Particularly the lapses were on the part of the deceased Head Constable Walde. It is submitted that deceased got disturbed and frustrated due to inspection report, therefore under frustration he committed suicide. It is argued that the applicants were performing their official duty and the acts made therein cannot be termed as an abetment to commit suicide.

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4. Learned counsel for the applicants would submit that the material available on record does not disclose the ingredients to constitute an offence punishable under Section 306 of the Indian Penal Code. The prosecution has failed to adduce the material from which the act of abetment as defined under Section 107 of the Indian Penal Code could be construed. *Per se*, it cannot be said that the applicants had instigated the deceased to commit suicide with requisite *mens rea* and therefore First Information Report as well as charge-sheet is liable to be quashed.

5. Per contra, learned APP and learned counsel appearing for informant would submit that material available on record, particularly three suicidal notes clearly indicate that the act of the applicants was of such a nature that it left no option with the deceased than to commit suicide. They also took us through statement of the family members of deceased stating that besides suicide notes, the deceased had stated them about the harassment on the part of the applicants. It is submitted that the applicants were humiliating deceased by making casteist remark and tarnished his self-esteem which led him to commit suicide. Moreover, it is

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submitted that the material collected during the course of investigation including three suicidal notes and a letter written by deceased to the Inspector General of Police are sufficient to put the applicants at least on trial.

6. Informant Dhanraj is father-in-law of deceased. It is his contention that on 05.04.2017, deceased sent WhatsApp message to his relatives conveying his intention to commit suicide. In-fact, deceased sent WhatsApp images of three handwritten suicide notes to his relatives, expressing his intention to commit suicide due to persistent harassment. The Police have recorded statement of informant, wherein he stated that prior to the occurrence in the month of October 2016 and April 2017 deceased had disclosed that the applicants who are his fellow colleagues were humiliating and harassing him at the instance of caste.

7. Apart from the oral statement of informant and relatives about disclosure of harassment, it is essential to go through all the suicide notes which were transmitted to the relatives on WhatsApp and original found with dead body.

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8. First suicidal note (undated) speaks that applicants Kalamkar and Raut always used to convey bad things about deceased to the superior and thus, harassed him. Particularly, applicant Raut his superior, was not providing him assistant for official work. Applicant Kalamkar was saying that the persons from a particular caste of which deceased belongs, does not deserve to work in the public office. Applicant Raut always conveys bad remarks and was humiliating him and therefore, he is committing suicide.

9. Second suicidal note (undated) similarly speaks about the harassment. Deceased has stated that applicant Raut does not permit him to avail leaves. The rest applicants were always instigating to Mr. Raut. He stated that by putting extra work pressure, they were intentionally harassing him and therefore, by getting rid of harassment, he is committing suicide. Third suicidal note (undated) speaks that applicant Raut was putting extra work pressure on deceased. Deceased stated that though his work was appropriate, however inspection report was against him. Applicant Raut and Kalamkar use to harass him and Raut was saying that he will see him. Deceased stated that since he belongs to a particular

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caste, all applicants were harassing him and therefore, he is committing suicide.

10. Learned counsel appearing for applicants relied on the decision of this Court in case of **Bhartendra Vs. The State of Maharashtra**, decided on 13.04.2023 (Criminal Writ Petition No. 519/2014), to substantiate the case of quashing, wherein one of us (Coram: Vinay Joshi, J) was a member. In the said case also there was suicidal note, however this Court has formed opinion that the material available on record does not constitute an offence, hence FIR and charge-sheet was quashed. The said decision was purely on the basis of facts of said case. Basically, one has to analyze each case on its own facts.

11. The learned counsel appearing for applicants further relied on the decision of Supreme Court in case of **Madan Mohan Singh Vs. State of Gujarat and anr.**, (2010) 8 SCC 628. In the said case, the accused was alleged to have instigated his driver to commit suicide. There was a detailed suicidal note left behind by the deceased. The accused had approached to the High Court for

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quashing of the FIR and the criminal proceedings, but his prayer was rejected, as consequence of which, the accused was before the Supreme Court seeking relief. The Supreme Court analyzed Section 306 read with 107 of the Indian Penal Code, and ruled that there has to be proximity between the alleged acts of the accused and the extreme step taken by the deceased of committing suicide. It was held that the allegations made and the material ought to be of a definite nature and not imaginary or inferential. The Supreme Court went into the suicidal note of about 15 pages and found that the contents thereof expressed the anguish of the deceased, who felt that his boss (the accused) had wronged him, but it was noted that the contents fell short of depicting an intentional act on the part of the accused for driving the deceased to commit suicide. On that basis, the judgment of the High Court was set aside and the FIR and criminal proceedings were quashed.

12. In the case of **Geo Varghese Vs. State of Rajasthan and another, 2021 SCC Online SC 873**, the Supreme Court observed as follows : -

“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.”

13. In order to consider whether section 306 would apply to the facts in case, one would have to consider whether the essential ingredients of Section 107 of the Indian Penal Code are disclosed. It would be apposite to reproduce Sections 306 and 107 of the Indian Penal Code. The same read as under;

“306. Abetment of suicide – If any person commits suicide, whoever abets the commission of such suicide,

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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.”

14. In the case of **Ramesh Kumar V/s. State of Chhattisgarh – [2001] 9 SCC 618**, the Apex Court has observed in para as under;

“20. Instigation is to goad, urge forward, provoke, incite or or encourage to do “an act”. To satisfy the requirement of instigation through 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 spelt out. The present one is not a case where the accused had by his acts or omission or by a continued course of conduct created such circumstances that the deceased was left with no other option except to commit suicide in which case an instigation may have been inferred. A word

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uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation.”

15. Recently the Supreme Court in case of **Ude Singh and others .vrs. State of Haryana - 2019 SCC Online SC 924**, extensively surveyed the law in the field and summarized the principles in cases of alleged abetment of suicide. The relevant observations contained in paragraph nos. 16.1 and 16.2 reads as below :

“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

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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.

16.2. We may also observe that human mind could be affected and could react in myriad ways; and impact of one's action on the mind of another carries several imponderables. Similar actions are dealt with differently by different persons; and so far a particular person's reaction to any other human's action is concerned, there is no specific theorem or yardstick to estimate or assess

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the same. Even in regard to the factors related with the question of harassment of a girl, many factors are to be considered like age, personality, upbringing, rural or urban set ups, education etc. Even the response to the ill-action of eve-teasing and its impact on a young girl could also vary for a variety of factors, including those of background, selfconfidence and upbringing. Hence, each case is required to be dealt with on its own facts and circumstances.”

16. 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, charge may not sustain. 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 commits suicide. Always it is an intricate question which was hidden in the mind of deceased as to what caused him to take such an extreme step. Different individuals in the same situation would react and behave differently. The material available on record shows that the applicants were working with the deceased in the same office namely District Traffic Branch,

Bhandara.

17. Applicant No. 4 Raut was immediate superior officer of deceased whilst rest are his fellow colleagues. We have minutely examined all three suicide notes to see whether it makes out essentials to constitute the offence of abetment. In first suicidal note (undated), it is recited that applicant Kalamkar used to mislead applicant No. 4 Raut, who in turn used to harass him. Applicant Raut was not providing assistance to the deceased for official work which gave him mental tension. Kalamkar used to say that he dislikes the people of community to work in the office. He made general allegation that all applicants used to mislead the superior and thus, were harassing him. In second suicidal note (undated), deceased mainly stated that his superior applicant Raut, was not allowing him to proceed on leave which put him under mental pressure. The third suicidal note (undated) conveys that since deceased was over burdened by work, he has asked applicant Raut to provide one assistant, but it was refused. Deceased expressed that his work was not recognized by the inspection team and thus, he has been harassed. It is his contention that all applicants used to harass

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him because he belongs to particular Class and thus, he is taking the extreme step.

18. 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.

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19. In case of **Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi)** – [2009] 16 SCC 605 the Supreme Court has an occasion to delve upon the mental state of the person committing suicide. Endeavor was made to unfold the mental trauma of such person. It is apt to note the relevant observations made in that regard, which reads as below.

“20. In the background of this legal position, we may advert to the case at hand. The question as to what is the cause of a suicide has no easy answers because suicidal ideation and behaviours in human beings are complex and multifaceted. Different individuals in the same situation react and behave differently because of the personal meaning they add to each event, thus accounting for individual vulnerability to suicide. Each individual’s suicidability pattern depends on his inner subjective experience of mental pain, fear and loss of self-respect. Each of these factors are crucial and exacerbating contributor to an individual’s vulnerability to end his own life, which may either be an attempt for self-protection or an escapism from intolerable self.”

20. The material available a record shows that besides suicidal notes, there is nothing to indicate that the applicants have instigated the deceased to commit suicide. There are some

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statements which say that prior to the occurrence also deceased expressed about harassment, however no complaint was made to the higher authority. Oral report was lodged after finding a suicidal note with deceased. Careful examination of all suicidal notes indicate that from the perspective of deceased, the applicants were harassing him at the instance of his caste. Moreover, majority of grievances were about non co-operation by the colleagues and superior officer. It was grievance of deceased that the applicants were misleading superior about the deceased. Applicant No. 4 Raut was not allowing him to proceed on leave and always he was put in extra work burden. The suicidal notes also conveys that some lapses were noted in the annual inspection report which according to the deceased on account of misdirection of the applicants.

21. Besides suicidal notes, one letter written by the deceased to Inspector General (IG) was also found. In said letter, deceased has communicated that during annual inspection though he has shown all account books, however they were not taken on record. He was not provided assistant to do the work which caused him to suffer physically as he started pains at his back. The said letter does

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not bear any expression against the applicants' harassment or humiliation at the instance of caste.

22. On analysis, we find that the contents of the suicidal notes mostly speak about own perspective of deceased that the harassment was on account of his caste. Secondly, he expressed about total non co-operation in the official work amounting to harassment meted out by the superior. In above referred case of Geo Varghese, it is expressed by the Supreme Court that mere allegation of harassment of the deceased would not sufficient unless there is adequate mens rea. Pertinent to note that deceased had not made any grievance to his superior about harassment made by the applicants. It is apparent that certain lapses on part of the deceased were noted in annual inspection which put him under mental tension and pressure. It prominently surfaces that the deceased felt uncomfortable while doing official work and he was under clot of inspection report. Always it depends upon mental capacity and level of tolerance of individual. Concededly, deceased has not made any complaint against applicants under the special Act nor communicated to his seniors about the non co-operation. The entire allegations nowhere

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suggest any positive act on the part of the applicants except mere non co-operation in the official work.

23. Considering the judicial pronouncement as stated aforesaid and keeping the facts of the present case, in mind, and having regard to the parameters laid down by the Apex Court in the case of State of Haryana and Ors V/s Bhajan Lal, we do not find any impediment in quashing the proceedings in hand qua the applicants. We may note, that there is nothing specific in the suicidal note nor does the suicidal note spells out the acts (much less a positive act) done by the applicants. There is nothing in the statements showing that the petitioner in anyway instigated or conspired or intentionally aided to commit suicide. The requisite 'mens rea' necessary to constitute the offence, is missing.

24. Applying the position of law, as set out in various decisions of Supreme Court to the facts of the present case, we are of the considered opinion that a case is made out for interdicting the criminal proceedings by quashing the FIR and the charge-sheet, for the reason that the material available on record does not indicate

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that the petitioner deserves to face trial for alleged offence punishable under Section 306 of the Indian Penal Code.

25. It would be an abuse of process of Court to allow any action which would result in injustice and prevent promotion of justice. The ultimate object of justice is to find out the truth and punish the guilty as well as to protect the innocent. Experience reveals that long and protracted criminal trials lead to rancour, acrimony, bitterness in parties. The Court will be well justified in preventing injustice by invoking inherent powers. Mere undated suicidal note mostly expressing the official difficulties and the treatment given by the colleagues and superior prima facie does not make out a case of intentional act over requisite mens rea.

26. In view of above the application is allowed. We here by quash and set aside the first information report bearing Crime No.211/2017 registered by Police Station Bhandara for the offence punishable under Sections 306 read with Section 34 of the Indian Penal Code and Section 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and the

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proceedings pending before District Judge-1, Bhandara in Special Case No. 15/2020 along with final report/charge sheet No. 51/2020.

27. Application stands disposed of in above terms.

(VALMIKI SA MENEZES, J.)

(VINAY JOSHI, J.)

Gohane