

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

**CRIMINAL WRIT PETITION NO. 225/2023**

1. Karishma w/o Nilesh Damodar,  
Aged about 29 yrs., Occ. Household,  
R/o. Khurpuri, at present  
R/o. Jagdamaba Nagar, Shegaon,  
Tah. Shegaon, Dist. Buldana.
2. Sau. Rama w/o. Vishwanath Dandge,  
Aged about 45 yrs., Occ. Service,  
R/o. Ghatpuri, Post Gondha Napur,  
Tq. Khamgaon, Dist. Buldana.

... **PETITIONERS**

**VERSUS**

1. The State of Maharashtra,  
through its Police Station Officer,  
Police Station, Patur, Dist. Akola.
2. Sau. Panchfula w/o. Ramesh Damodar,  
Aged about 62 yrs., Occ. Housewife,  
R/o. Rajjak Plot Barad, Paras,  
Tah, Balapur, Dist. Akola.

... **RESPONDENTS**

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Mrs. Nisha Gajbhiye (Wasnik), Advocate for petitioners.  
Mr. V.A. Thakare, Addl. Public Prosecutor for respondent No.1.  
Mr. A.P. Fuley, Advocate for respondent No.2.  
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**CORAM** : **VINAY JOSHI AND**  
**VALMIKI SA MENEZES, JJ.**

**DATE** : 01.08.2023.

**ORAL JUDGMENT (PER VINAY JOSHI, J.) :**

Heard.

2. One Nilesh Damodar has committed suicide by hanging on 17.04.2022. Petitioner No.1 Karisma Damodar is wife of deceased Nilesh whilst petitioner No. 2 is her mother. Report dated 25.04.2022 has been lodged by the mother of deceased alleging that petitioners have abetted deceased to commit suicide. Investigation is complete and charge-sheet has been filed. Petitioners have urged to invoke inherent powers of this Court to quash criminal prosecution on account of absence of prima facie case.

3. Briefly stated, deceased Nilesh got married with petitioner No.1 Karishma, ten years preceding to the incident. Since beginning, there was matrimonial dispute in between the couple. On an often, Karishma was leaving her matrimonial house and was residing with her mother. She was of quarrelsome nature. In the year 2015, Karishma has lodged report against deceased as well as got executed a bond from deceased by putting him under pressure. All the time, Karishma was insisting her husband (deceased) to reside at her

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maternal house. In the month of April 2022, Karishma went to her maternal house for residing. On 02.04.2022, deceased went to the maternal house of Karishma to bring her back, but, he was abused by both petitioners and driven away. On 17.04.2022, deceased informed to his mother that he had gone to the house of Karishma but again he was abused by both petitioners. After sometime, informant's mother learnt that deceased committed suicide by way of hanging. In short, the informant alleges that due to harassment meted out by the petitioners, deceased committed suicide and therefore, the offence of abetment.

4. Learned counsel appearing for the petitioners would submit that the contents of First Information Report ('FIR') even if accepted at its face value, it does not make out a case of abetment. Mere matrimonial dispute in between husband and wife cannot be construed as an act of abetment in absence of requisite mens rea. Learned counsel for the petitioners 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

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abetment as defined under Section 107 of the Indian Penal Code could be construed. *Per se*, it cannot be said that the petitioners 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 the informant would submit that the material collected during course of investigation is sufficient to make out a case of abetment. It is argued that the deceased was constantly harassed and thus, petitioners by their act made life of deceased miserable. Moreover, deceased has left suicidal note blaming petitioners responsible for his death. It is submitted that during quarrel, petitioners have said deceased to go and die and thus, it is a case of abetment to commit suicide.

6. Reading of the FIR indicates that since beginning the marriage does not run smoothly. As per prosecution case, all the time, Karsihma remained to be unhappy in marital life and was quarreling with her husband. Whenever deceased went to bring

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Karishma back, he was abused and insulted. We have gone through the suicidal note, wherein deceased expressed his concern. Deceased stated that his mother-in-law took his wife to her house and also filed criminal case for the offence punishable under Section 324 of the Indian Penal Code. They have also got executed a bond and thus, he is committing suicide due to harassment. Reading of suicide note indicates that deceased was unhappy with the behaviour of his wife and mother-in-law. Since they have quarreled, filed criminal case, deceased expressed his dissatisfaction and took a step of committing suicide.

7. 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, 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.”*

8. 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*

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*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.”*

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

10. Recently the Supreme Court in case of **Ude Singh and others .vrs. State of Haryana - 2019 SCC Online SC 924**, extensively

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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 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 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*

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*case is required to be dealt with on its own facts and circumstances.”*

11. 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.

12. 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

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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.

13. The material available on record indicates that there was a matrimonial discord since inception. All the time, wife Karishma was in habit of quarreling and leaving her husband. Whenever deceased went to bring his wife back, she refused. Wife has also filed criminal case as well as a settlement bond was got executed. The suicide note does not speak anything more than the above aspect. Though the informant stated that on the day of occurrence, she received phone call from deceased, however learned counsel appearing for the petitioners took us through call detail record which shows that there was no such phone call.

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14. Now a days matrimonial hustle has become an order of day. Experience reveals that sizable number of case are pending in Courts on account of matrimonial dispute. The grievance is usual that the wife was of quarrelsome nature, left matrimonial house and reluctant to come back. The suicidal note does not convey anything besides domestic dispute. The act of wife of filing a report about assault cannot be treated as an intentional act on her part to construe as an abetment.

15. 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. 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 petitioners. There is nothing in the statements showing that the petitioners in anyway instigated or conspired or intentionally aided to commit suicide. The requisite 'mens rea' necessary to constitute the offence, is missing.

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16. 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 that the petitioners deserve to face trial for alleged offence punishable under Section 306 of the Indian Penal Code.

17. 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.

18. In view of above, petition is allowed. We hereby quash and set aside the first information report bearing Crime No.153/2022 registered by Police Station Patur, Dist. Akola punishable under Sections 306 read with Section 34 of the Indian Penal Code and

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charge-sheet No. 101/2022 pending on the file of Judicial Magistrate  
First Class, Patur.

19. Petition stands disposed of in above terms.

(VALMIKI SA MENEZES, J.)

(VINAY JOSHI, J.)

Gohane