

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

CRIMINAL APPLICATION [APL] No. 347/2020.

Pankaj s/o Kashinath Sonekar,
Aged about 48 years, Occupation -
Employee of State of Maharashtra
[Senior Clerk], Resident of Wadgaon
Colony, At/PO Bela, Tahsil
Umred, District Nagpur.

... **APPLICANT.**

VERSUS

1.State of Maharashtra,
through Police Station Officer,
Police Station Bela, Tahsil
Umred, District Nagpur.

2.Smt. Varsha wd/o Ramesh Raut,
Aged about major, resident of
Wadgaon Dam Colony,
At/PO Bela, Tahsil Umred,
District Nagpur.

... **NON-APPLICANTS.**

Mr. A.R. Patil, Advocate for the Applicant.
Mr. N.R. Rode, A.P.P. for Non-applicant No.1.
Non-applicant No.2 – Served.

CORAM : VINAY JOSHI AND
VALMIKI SA MENEZES, JJ.
DATE : AUGUST 11, 2023.

ORAL JUDGMENT (PER VINAY JOSHI, J) :

Heard. **Admit.**

By consent of the learned Counsel appearing for the parties, the matter is taken by for final disposal.

2. By this application the applicant had sought quashing of the first information report bearing Crime No.173/2019 registered with Bela Police Station, District Nagpur for the offence punishable under Section 306 read with Section 34 of the Indian Penal Code.

3. One Ramesh Shamrao Raut, working as junior clerk with Irrigation Department, Sub Division Bela, committed suicide by hanging on 13.05.2019. He left a suicidal note blaming the applicant Pankaj and co-accused Pradnya Patil, both working in the same office. At the relevant time, the applicant was serving as senior

Rgd.

3

clerk, whilst Pradnya Patil was junior engineer. After 10 days of the occurrence, wife of the deceased lodged report alleging that the applicant had abetted the deceased to commit suicide.

4. The quashing is sought on account of inadequacy of material to constitute the offence claimed. Moreover, it is pointed out that in Criminal Application No.556/2019, on similar facts this Court has quashed the first information report against the co-accused Pradnya Patil. The State has resisted this application by filing reply-affidavit. Non-applicant no.2 though served, remained absent.

5. The informant [wife of the deceased] has reported to the police that, on 05.03.2019 her husband [deceased] met with an accidental injury for which he was unable to join his duty for 15 days. When the deceased went to join his duty the applicant did not allowed him to join, but, asked him to produce medical fitness certificate. She stated that though the deceased has complied with the requirement, however, the applicant insisted for fitness certificate from Mayo Hospital, Nagpur. She stated that all the time the applicant and co-accused used to harass her for one or the other

reason. The applicant had not allowed the deceased to join the duties, therefore, he was under mental tension. On 12.04.2019, the deceased expressed that he was frustrated as the applicant had not permitted him to join the duties, hence, on the following day, he committed suicide by hanging. During investigation, police have recovered suicidal note and recorded statement of witnesses.

6. The learned Counsel appearing for the applicant would submit that even if the contents of the first information report and suicidal note is taken into consideration, the ingredients to constitute an offence under Section 306 of the Indian Penal Code are not made out. It is submitted that essential requirement of abetment as defined under Section 107 of the Indian Penal Code is suitably absent.

7. In the case of **Sanju Alias Sanjay Singh Sengar Vs. State of M.P., - (2002) 5 SCC 371**, the Supreme Court has considered a situation where the deceased had left behind a suicide note, wherein it was specifically stated that the accused was responsible for his death. In the said case, the Supreme Court considered the liability of

the accused to face investigation and prosecution under Section 306 of the Indian Penal Code, in the context of Section 107 thereof, and it was held that the word “instigate” denotes incitement or urging to do some drastic or inadvisable action or to stimulate or incite, further holding that presence of *mens rea*, therefore, was a necessary concomitant of instigation. It was found that in the said case the alleged abusive words were used by the accused against the deceased, two days prior to the date when the deceased was found hanging. In these circumstances, the Supreme Court found it fit to quash the criminal proceedings.

8. In the case of **Madan Mohan Singh Vs. State of Gujarat and another - (2010) 8 SCC 628**, the accused was alleged to have instigated his driver to commit suicide. There was a detailed suicidal note left behind by the deceased and the accused had approached the High Court for 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

6

found 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 this basis, the judgment of the High Court was set aside and the FIR and criminal proceedings were quashed.

9. Observations made by the Supreme Court in paragraph No.25 of the decision in case of **S.S. Chheena Vs. Vijay Kumar Mahajan and another - (2010) 12 SCC 190**, are relevant, which reads as under :

“25. 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 this 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.”

10. Similarly, in the case of **M.Mohan Vs. State Represented by the Deputy Superintendent of Police - (2011) 3 SCC 626**, the Supreme Court held in the context of abetment as follows: -

“44. 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.

45. The intention of the legislature and the ratio of the cases decided by this court are 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 this act must have been intended to push the deceased into such a position that he/she committed suicide.”

11. In the case of **Geo Varghese Vs. State of Rajasthan and another, 2021 SCC Online SC 873**, the Supreme Court held 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.”

12. 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. Hence, 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.”

13. 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 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.”

14. 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 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

12

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, self-confidence and upbringing. Hence, each case is required to be dealt with on its own facts and circumstances.”

15. The term “Abetment’ involves mental process of instigating a person or intentionally aiding a person in doing of a thing. Without positive act on the part of the accused to instigate or aid in committing suicide, no one can be convicted for offence under Section 306 of the Indian Penal Code. To proceed against any person for the offence under Section 306 of the Indian Penal Code, it 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

14

committed suicide. There is nothing on record to show that the applicant was instigating and harassing the deceased and further there is absolutely no material to allege that the applicant abetted for suicide of the deceased within the meaning of Section 306 of the Indian Penal Code.

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.

17. 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.”

18. In the light of various pronouncements of Supreme Court, we have examined the entire material. The informant has merely stated that the applicant did not allowed the deceased to join duties, and had insisted for medical fitness certificate. We have examined the undated suicidal note. The deceased had expressed that the applicant and co-accused used to harass him by not allowing him to go on leave. The applicant insisted him to produce medical fitness certificate for joining the duties. He stated that co-accused Pradnya Patil used to harass him at the instance of the applicant. Besides that the deceased expressed that the applicant was not passing his bills. The said material shows that the deceased had anguish against his superiors on account of non grant of leave and insistence for producing medical fitness certificate. The suicidal note conveys that the deceased was annoyed by the act of the applicant which may be harsh, but, made in official capacity. The entire material though taken to be accepted, fall short to infer an intentional act on the part of the applicant to drive the deceased to commit suicide. There is

17

no material to show that the applicant did something amounting to instigation to commit suicide.

19. 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 first information report, for the reason that the material available on record does not indicate that the applicant deserves to face trial for alleged offence punishable under Section 306 of the Indian Penal Code. In view of above, we proceed to pass the following order.

ORDER

- [i] Criminal Application is allowed and disposed of.
- [ii] The first information report bearing Crime No.173/2019 registered with Bela Police Station, District Nagpur for the offence punishable under Section 306 read with Section 34 of the Indian Penal Code is hereby quashed and set aside, so far as it relates to the present Applicant – Pankaj Kashinath Sonekar.

JUDGE**JUDGE**