



Judgment

apl1467.22

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

CRIMINAL APPLICATION [APL] No. 1467/2022.

Vaishali Arun Chikhalkar @
Roundalkar, Age 42 years,
Occupation -Service, resident
of Samarth Wadi, Badnera Road,
Amravati, Tahsil and District
Amravati.

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APPLICANT.

VERSUS

1.The State of Maharashtra,
through Police Station Officer,
Police Station Badnera,
District Amravati.

2.Anjali Divakar Sisode,
Age 41 years, Occupation
Private, resident of Sitaram
Baba Colony, Khandelwal
Nagar, Amravati.

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NON-APPLICANTS.

Mr. S.V. Sirpurkar, Advocate for the Applicant.
Ms S.P. Kolhe, A.P.P. for Non-applicant No.1.
Ms A.P. Murrey, Advocate [Appointed] for Non-applicant No.2.

**CORAM : VINAY JOSHI AND
M.W. CHANDWANI, JJ.**

DATE : DECEMBER 01, 2023.

ORAL JUDGMENT (PER VINAY JOSHI, J.) :

Heard.

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

2. By this application, the applicant – Headmistress is seeking to quash the first information report in Crime No.721/2022 registered by Badnera Police Station, District Amravati for the offence punishable under Sections 305 and 306 of the Indian Penal Code. The applicant has invoked the inherent powers of this Court under Section 482 of the Code of Criminal Procedure and powers under Article 226 of the Constitution of India seeking appropriate relief. Undoubtedly the inherent powers conferred upon this Court entitles to quash a proceeding if it comes to a conclusion that allowing a proceeding to continue would be an abuse of the process

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of the Court or the ends of justice require that the proceedings are to be quashed.

3. The facts leading to filing of the application are that on 08.09.2022 informant's school going son Chaitanya, aged 14 years, was found hanging on ceiling fan at her residence. A handwritten suicidal note was found, which led the informant mother to lodge the report. The informant mother stated that the deceased Chaitanya was studying in 8th standard in a school of which the present applicant was headmistress. On 08.09.2022, the informant went to the school to fetch her child on which Chaitanya asked whether she has been telephonically called by the teacher. The mother replied in the negative and took her child to the house. In the evening the informant – mother was away for some domestic reason, but, on return found Chaitanya hanging to ceiling fan. On the very day a suicidal note was found blaming the applicant, which resulted into filing of the first information report.

4. The investigation papers are made available which contain various statements as well as copy of handwritten suicidal

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note. For the sake of convenience, the contents of the suicidal note are reproduced hereinbelow :

“... Mother I am not taking this decision at your instance or at the instance of sister or my friends. I took the decision to commit suicide at the instance of headmistress. Today when I was in the class room, one of my friend called me, and at that time the headmistress came to the class room on her round. I was caught by the headmistress, hence, I was slapped. I was made to stand out of the class room. Similarly the headmistress caused other 4 to 5 students to stand out of the class room. When I entered into the class room, my fellow students laughed at me. I was insulted in presence of the teacher and other students. I cannot bear the insult, hence, I am committing suicide. Kindly forgive me.”

5. Besides suicidal note, the prosecution is relying on statements of some students and a teacher. The statement of students are on the similar lines. Most of them have stated that Chaitanya has changed his seat in the class room which was seen by the headmistress while on round. 4 to 5 students including Chaitanya were made to stand outside the class room for some time. The headmistress slapped at the back of Chaitanya. After 5 minutes he was allowed to go back.

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6. While resisting this application, the learned A.P.P. has attracted our attention to the statement of a student namely Mohammad dated 23.09.2022. He has similarly stated about the occurrence. He added that Chaitanya was his close friend. After the incident Chaitanya said that he was slapped by the headmistress in presence of students, on which he felt very bad. Chaitanya expressed that he has been insulted in the class room. Further it is stated that father of Chaitanya had committed suicide in past and thus, Chaitanya was under mental trauma. The learned A.P.P. also took us through the statement of class teacher dated 14.09.2022. She has stated that the headmistress asked Chaitanya and two others to stand out of the class room and gave a pat at his back. Within two minutes, Chaitanya was allowed to come back, but, he was weeping at the relevant time.

7. The learned Counsel appearing for the applicant submitted that even if the FIR, charge-sheet and the material available on record are taken into consideration, the ingredients to constitute an offence punishable under Section 306 of the Indian Penal Code is not made out, therefore, the FIR is liable to be

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quashed. The learned Counsel for the applicant has relied on various decisions of Supreme Court to contend that, if collected material falls short to make out prima facie case to constitute an offence charged, the prosecution is required to be quashed. It is submitted that the essential aspect of abetment as defined under Section 107 of Indian Penal Code was totally absent. It cannot be said that the applicant has instigated the deceased to commit suicide. Reference was also made to number of decisions of this Court to substantiate said contention.

8. The learned Counsel for the applicant has referred to Sections 107 and 305 of the Indian Penal Code, as well as took us through the entire suicidal note. He would submit that scolding by the headmistress or class teacher is a matter of routine, which cannot be treated as an abetment to commit suicide. Essentially he would submit that there is total absence of *mens rea*. The act of Headmistress, even if accepted to be true, does not amount to abetment within the legal framework. In support of said contentions, he has relied on the decision of Supreme Court in cases of (1) **Geo Varghese .vrs. State of Rajasthan and another – 2021 SCC Online SC**

873, (2) Swamy Prahaladdas .vrs. State of M.P. and another – 1995 SUPP [3] SCC 438, and (3) Sanju .vrs. State of M.P. - (2002) 5 SCC 371.

9. In above referred case of Sanju, the Supreme Court was considering 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 IPC, 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.

10. 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.”

11. 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.”

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 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 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

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

15. 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 from the ratio of cases decided by the Supreme Court is clear that in order to convict a person under Section 306 of the Indian Penal Code, there has to be a clear mens rea to commit an

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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.

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 had 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 case of **Geo Varghese** [supra], the Supreme Court held as follows : -

“23. What is required to constitute an alleged

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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.”

19. Incidentally facts of this case are quite similar to the above decision. In said case also a school going boy aged 14 years has committed suicide, as he has been scolded by physical training teacher. In that context, besides above observations, it is expressed that maintaining overall discipline by the student cannot be construed as an abetment to commit suicide.

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20. Applying the aforementioned principles it would be necessary to go through the suicidal note and other relevant material. A tender immature boy has expressed that his headmistress gave a pat and asked him to stand outside the class room for few minutes. He felt insulted. Statements of other students majorly speaks about the occurrence, and added that none of the student has either laughed or teased Chaitanya on said count. Pertinent to note that 2 to 3 other students were also made to stand outside the class room, meaning thereby similar treatment was given by the headmistress to them also. Apparently the deceased was more sensitive and acted differently by taking an extreme step. In that context, the act of the headmistress, rather it was her duty to maintain discipline, cannot be termed as an act of abetment. It is evident that the deceased was hyper sensitive towards ordinary affairs. The act of scolding to the student by a teacher is a routine affair in every school, which are essential in peculiar facts to shape the students in a proper manner.

21. We are conscious of the pain and suffering of the informant who is mother of the deceased. It is very unfortunate that

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a young life has been lost in suicidal way, but, sympathizing and sufferings of the informant cannot translate into legal remedy, much less criminal prosecution in absence of prima facie material. Hence, 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 Sections 305 and 306 of the Indian Penal Code.

22. In view of above the Criminal Application is allowed. The first information report bearing Crime No.721/2022 registered by Badnera Police Station, District Amravati for the offence punishable under Sections 305 and 306 of the Indian Penal Code is quashed and set aside.

23. Fees of the appointed Counsel for non-applicant no.2 be paid as per Rules.

JUDGE

JUDGE