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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-3672-2018 (O & M)
Date of decision: 07.10.2023

Sharanjit Singh

..... Petitioner

V/s

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Vishal Aggarwal, Advocate, for the petitioner.

Mr. Harkanwar Jeet Singh, AAG, Punjab.

Mr. A.P. Kaushal, Advocate, for the complainant.

JASJIT SINGH BEDI, J. (Oral)

The present revision petition has been preferred against the order dated 04.08.2018 passed by the Additional Sessions Judge, Patiala whereby charges have been framed against the petitioner and others under Sections 420, 306, 34 and 120-B IPC.

2. The brief facts of the case are that a criminal complaint bearing No.1969/2013 came to be instituted at the instance of the petitioner-Sharanjit Singh against the deceased-Rajnish Kumar with respect to the dishonour of a cheque bearing No. 871744 dated 01.10.2013 for an amount of Rs.90,000/-. The deceased came to be convicted by the Court of the Judicial Magistrate Ist Class, Patiala, vide judgment of conviction and order of sentence dated 07.07.2015 (Annexure P-1). The finding of the Court was that the cheque was dated 01.10.2013 and was supposed to have been lost on 18.12.2013 whereas the complaint had been filed on 20.11.2013. No evidence had been produced by the accused to substantiate his defence that the cheque had been lost and a DDR had been registered in this regard and that 'stop payment'

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taken of the cheques having been issued as security viz-a-viz they having been stolen. In the said proceedings, the statement of the deceased (accused therein Rajnish Kumar) was recorded under Section 313 Cr.P.C. and is as under:-

“I am innocent. I have been falsely implicated in present case. The complainant is neither holder nor holder in due course in cheque in question. The cheque in question alongwith other cheques were taken by complainant from me by fraudulent means by complainant and without any sought of legally enforceable debt and liability. I have no outstanding liability or legally enforceable debt towards the complainant. As such there was no occasion for me to submit the instant cheque to the complainant. The instant cheque was given as security towards the loan of acquittance and the complainant has misused the cheque cheques. I am entitled benefit of acquittal”.

3. One Jaskirat Singh, brother of the petitioner filed a criminal complaint bearing No.1991 dated 21.11.2013 against the deceased-Rajnish Kumar with respect to the dishonour of a cheque bearing No.238130 dated 03.10.2013 for an amount of Rs.1,70,000/-. The deceased came to be convicted by the Court of the Judicial Magistrate Ist Class, Patiala vide a judgment of conviction and order of sentence dated 06.10.2015. In the said proceedings, the statement of the deceased (accused therein Rajnish Kumar) was recorded under Section 313 Cr.P.C. and is as under:-

"I am innocent. I am falsely implicated in this case. I have not taken any loan from anybody as alleged. I am Govt employee and regularly drawing salary per month in GPF account. There was no need of money as alleged at any point of time. Moreover there was no friendly relation between me and complainant and I met complainant first time in this present case. Some cheques in which some signed and some blank has lost for which two

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DDR has been lodged by me in police. The bank was duly intimated by me to make stop payment with regard to my post cheques. The complainant has found my lost cheques. Since then he is blackmailing me to flee easy money. The cheques are being misused by the complainant and his relatives and his close friends. I have already filed a civil suit against the complainant, his brother Sharanjit Singh and his friends/supporters for misusing my lost cheques for permanent injunction. The complainant is not legibly holder of the present cheque and I may kindly be acquitted accordingly ".

4. The accused-Rajnish Kumar (now deceased) preferred an appeal before the Court of the Additional Sessions Judge, Patiala and on 23.02.2016 got recorded his statement as under:-

"I admit this cheque being issued by me which was dishonoured on presentation. Now we have compromised the matter and I will pay the cheque amount to the complainant. Sometime please be given to me".

As the accused did not make the payment, the aforesaid appeal came to be dismissed and the conviction was upheld vide judgment dated 29.02.2016 (Annexure P-2).

5. The deceased had also instituted a suit for permanent injunction on 14.12.2014 (Annexure P-4) restraining the defendants therein (present petitioner included) from misusing and handing over blank undated cheques to any other person. In the said suit, in Para 05, the plaintiff therein (present deceased) disclosed the manner in which the cheque book and other relevant papers had been lost. Para 05 of the aforesaid suit/plaint is reproduced hereinbelow:-

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“5. That on 18.12.2013 the bag containing the cheque book and other relevant papers belonging to the wife of the plaintiff have been fallen while travelling in the Auto Rickshaw.”

6. As the plaintiff did not appear in Court, the said suit was dismissed in default vide order dated 11.03.2016 (Annexure P-4) passed by the Court of the Civil Judge (Junior Division), Patiala.

7. Thereafter, on 29.05.2016, the deceased committed suicide by consuming Aluminium Phosphate, leading to the registration of the present FIR No.35 dated 29.05.2016 under Sections 306, 420, 120-B and 34 IPC at Police Station GRP, Patiala. The translated version of the FIR (Annexure P-5) is as under:-

“Statement of Taran Kumar son of Rajnish Kumar Caste Balmiki R/o E-22, Punjabi University campus, Police Station Urban Estate Phase II Patiala, District Patiala aged about 23 years mobile No. 90413293320. Stated that 7 am resident of aforesaid address and doing ITI course at Mayor Polytechnical College, Jalandhar, Today morning i.e. 29.05.2016 I received a call from my mother Neelam saying that yesterday on 28.05.2016 your father had given a call saying that he will be back home within an hour but he has not come home till now but you please come home now. Then I reached home from Jalandhar. There after, I and my uncle Rajan went out in order to look out my father. While searching my father, we reached at Railway station Rajpura, where we saw a great rust of public gathered at platform No.1, where a dead body of a person was lying with face towards the floor and on turning that dead body upside, I found the same was of my father Rajnish Kumar. My father always used to say that he is being tortured and harassed by Jaskirat Singh and his brother Sharanjit Singh sons of Narinder Pal resident of 90/8, Namdhar Khann Road, Patiala. They have obtained from my father 30 Blank cheques of him, on the pretext of getting him a loan but no loan was arranged by

them. They in connivance with Surinder Pal Sharma, Advocate filed the said cheques in the courts at Patiala. For that reason there was always a gossip at our home that a big fraud has been played with us and my father always used to tell that the aforesaid two have compelled him to commit suicide. But we always gave moral support to my father by saying that God will definitely do justice with us. Jaskirat Singh and Sharanjit Singh have made a gang in connivance with other persons who used to play fraud with the people. Today you have searched the dad body of my father in my presence. During search, you have found a suicide note written in Hindi in the purse of my father which was found from the pocket of his pant, where in the details of the persons and their names who compelled my father to commit suicide, has been given and my father has signed the suicide note at its end and I identify the same. A legal action may kindly be taken against the persons named in the suicide note and they have compelled my father to commit suicide. I have recorded my statement t you in the presence of my uncle Rajan Singh. After recording my statement same has been read over to me your which is admitted to be correct. Action may be taken against the persons named in the suicide note. Time is about 14:00 Taran Kumar Rajan Singh attested Satwinder Singh 657 GRP police post Railway Police Rajpura dated 29.05.2016”

8. During the course of investigation, a suicide note (Annexure P-4 in the connected petition bearing No. CRM-M-46031-2019) was recovered and the translated version of the same is as under:-

“I Rajnish Kumar son of Darshan Lal do hereby state that in case anything happens to me then Jaskirat Singh and his brother Sharanjit Singh son of Lata Sardar Narinderpal Singh H.No.90/80 Namdhar Road Patiala along with Surinder Pal Sharma advocate shall be responsible for the same. In this the friends of these brothers are also involved namely Kuldip Singh, Sameer Kumar, Murli Sharma, Ram Chander University

wala, Gurpreet Singh, Sanjiv Kumar, Manjit Singh, Dr. Maninder Singh, Pandit Sohan Lal, his son Bunty. Inspector Karan Singh and Baba tripuri wale, Sohan Tripuri Wala, Lala Ji Patiala wala, Commission Agent Pappu Patiala wala who all are involved. Jaskirat Singh had fraudulently taken chques from me for getting a loan worth Rs.3 lacs sanctioned from a company in Delhi. Thereafter he had also given me sanctioned letter and asked for 30 cheques saying that the same shall be sent to the company who shall verify the cheques and after preparing the required documents shall give a DD worth Rs.3 lacs and that thereafter no one from the company shall come in court. Thereafter when I demanded my chques then Jaskirat Singh told me that they have been sent to the company and further told whatever information gets from there he shall informed me. He did not guide me properly and thereafter Jaskirat Singh along with her brother and friend presented the chques in the Bank and harassed me mantelly and also issued threats that he shall ruin me. Sarabjit also threatened me in court that he shall kill me and no one can do anything against him. Regarding this I also given the complaint along with my wife to PS Division No 4 but the police officials did not accept my application and told that they shall see to it. It is due to the same that I have taken this step. If you people do not punish them then in future they shall trap another person like me in their conspiracy and shall die. Pandit Sohan Lal and son Bunty started telling me to give Rs. 60000 and that after getting the amount from me on 10.07.2015 they will get the cases withdrawn pertaining to Kuldip Singh and Sanjiv Kumar. But after receiving the money they did not get the cased withdrawn. Jaskirat Singh and Sarabjit Singh have connived and taken me to a point where I am committing suicide for the second time Surinder Pal Sharma advocate is also involved with them because they have shown this dream to the advocate that the gold worth rupees crores pertaining to the Maharajs Raja's time is present in our house, which we will dig it out, out of

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which you have to give us some share. And the remaining cases filed by us, he will contest those cases free of cost. Kindly consider this letter and take action. In this suicide note neither my parents, brother, sisters nor my in-laws, my wife, son and daughter are responsible for my death. The persons whose names are written in this suicide note are responsible for my death”.

9. During the course of investigation, the statement (Annexure R-1/T) of Neelam Rani wife of the deceased-Rajnish Kumar was recorded and the translated version of the same is as under:-

“Made the statement that I am resident of above noted address and am domestic lady. My husband Rajneesh Kumar was an Government Servant in Punjabi University. He was having salary account in State Bank of Patiala Branch, Punjabi University, Patiala and State Bank of Patiala has issued cheque book to my husband. My husband was having bank Account No. MSB 55081483664. My husband had given me 30 cheques after signing it. So that I could withdraw the money from the bank for domestic need and pay fee of children. I usually kept these cheques in lady purse. One day, I went to Patiala in a Tempo and my purse was lost, which was being searched by us. After lapse of time, cheques could not be found. We lodged the complaint with Suvidha Centre regarding loss of cheques but after some time, Jaskirat Singh presented a cheque of Rs. 1,70,000/- in State Bank of Patiala. Since amount of Rs. 1,70,000/- was not in our account, so this cheque was bounced. When we went to State Bank of Patiala, Branch University, Patiala then we learnt that cheques are with Jaskirat Singh son of Narinder Pal Singh r/o H.No. 2090/8, Namdarkhan Road, Patiala. Then myself and my husband Rajneesh Kumar went at the residence of Jaskirat Singh, where Jaskirat Singh and his brother Sharanjit Singh and his mother was present. We asked Jaskirat Singh to return our lost cheques. At this, Jaskirat Singh

said that he has got sanctioned loan of Rs.3 Lakhs from a company. We will give these cheques to the company as security presented your cheques in the bank as a person namely Rajneesh has signed on the cheques. There was no address of any person. Jaskirat Singh started alluring us, we came under his influence, then Jaskirat Singh by sending us to his brother Sharanjit Singh got prepared documents for getting sanctioned loan from Krishna Group Private Limited Company After passing many days, no loan was sanctioned in our favour. Then we went to Jaskirat Singh but every time, he was telling that you will be sanctioned. Then he got signatures on blank cheques of my husband for sending cheques to the company at Delhi. When the loan was not sanctioned, then we filed a complaint against him at Urban Estate, Patiala. At this, Jaskirat Singh annoyed with us and started threatening us and told that you are blank cheques duly signed are with him. I have filed the case against you after getting bouncing the cheques. We became fearful and Jaskirat Singh started taking undue advantage of our innocence and he in connivance with his friends and brother Sharanjit Singh, Kuldeep Singh son of Karam Singh r/o # B 35/213, Jatta Wala Chotran, Patiala, Shamir Kumar son of Suresh Kumar r/o H.No.56 B, Hem Bagh Colony, Patiala, Murli Manohar Sharma son of Pushap Sharma, r/o # 40 Near Jain Petrol Pump, Patiala Gurpreet Singh son of Paramjit Singh r/o # 1054/3, Near Lal Maszid Seran Wala Gate, Patiala, Sanjeev Kumar son of Ram Kewal r/o #16 - F. Partap Nagar, Patiala, Manjit Singh son of Ram Singh r/o # 261/2 Mohalla Takia Rahim near Dharampur Bazar, Patiala, Dr. Maninder Singh son of Jaswant Singh r/o # 816, Gall No.1, Anand Nagar A, Patiala, Harpreet Singh, Suresh Kumar, Vijay Kumar, Rajinder Jaiswal, Jaskirat Singh has got presented our cheques taken from us fraudulently. After handing over to the above noted persons, they filed number of cases against us and also got stopped our salary by them. At this, my husband Rajneesh Kumar started staying under

depression We have fixed by the gang prepared by Jaskirat Singh. This gang also include Satinder Pal Sharma, Advocate. Inspector Karan Singh Babia Tripuri Wala, Sholak Tripuri Wala and Lal Ji of Patiala Wala and Pappu Commission of Patiala Wala, who have threatened us after coming to our house. Some time Ram Chand of University also visited our house and threatened my husband. We came under threat and my husband Rajneesh Kumar came under tension but to take undue advantage of our innocence, Pandit Sohan Lal and his son Bunty, who is residing in Sarai of Mandir in Books Market, Near Sadhu Ram Kichori Wala came to our house and disclosed that Jaskirat Singh is my man and he is under my influence, will get compromise effected with him but I will take Rs.1 Lakh, then myself and my husband went to the house of Pandit Sohan Lal after three days after making arrangement of Rs.60,000/- and after taking Rs.60,000/- from my husband, Pandit Sohan Lal after writing date 10/07/15 in a dairy told us that in case compromise could not be effected then will return your amount on Friday, but he did not got effected our compromise with Jaskirat Singh and nor returned of our Rs. 60,000/-. We came in more problem as we are already in problem. My husband Rajneesh Kumar was under tension. He has filed application with State Bank of Patiala regarding loss of cheques. At the end, my husband Rajneesh Kumar committed suicide on 29/5/2016 due to harassment by above noted persons. He has sent a suicide note to your house through courier. The above noted persons have played a fraud upon us. Whereas, we were leading happy life before loss of cheques. Jaskirat Singh and his gang has also played fraud upon Hon'ble Court, because no money was taken by us. Even Jaskirat Singh and his brother Sharanjit Singh was not known to my husband. On all the bounced cheques cases have been filed by Jaskirat Singh through Advocate Satinder Pal Sharma. By pleading before the persons, who filed cases against us went to the houses including Sameer Kumar, Murli Manohar

Sharma, Kuldeep Singh, Dr. Maninder Singh, Sanjiv Kumar, Manjit Singh, but these peoples were telling to us that it is correct they do not know us and nor paid any money to you but our friend is Jaskirat Singh, who has given these cheques to us. You entered into compromise with Jaskirat Singh. We will withdraw the cases. I told these persons that due to filing cases by them, my husband is under depression. If some thing goes wrong with him, then you will be responsible. The above noted persons have compelled my husband to commit suicide. These people have played fraud upon Honble Court and with me. I got recorded statement with you, heard, is correct”.

10. Though, as many as 18 persons had been named in the FIR. The report under Section 173(2) Cr.P.C. was prepared on 27.07.2016 whereas the supplementary challan was prepared on 18.01.2017 against Jaskirat Singh, Sharanjit Singh (petitioner), Gurpreet Singh, Ram Chander, Kuldeep Singh, Sanjeev Kumar and Samir Kumar.

11. The charges came to be framed under Sections 306, 420, 120-B IPC on 04.08.2018 by the Court of the Additional Sessions Judge, Patiala.

12. Thereafter, the instant petition came to be filed.

13. The learned counsel for the petitioner contends that a bare reading of the FIR would reveal that no offence whatsoever is made out. Merely because the petitioner had availed his legal remedy under Section 138 of the Negotiable Instruments Act in which the deceased came to be convicted could not amount to abetment or harassment as envisaged under Section 306 IPC. The deceased and his family had given different versions as to how the signed cheques in question had come into the possession of the petitioner and the other accused upon which proceedings had been initiated under Section 138 of the Negotiable Instruments Act. This fact completely

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falsified the prosecution case, moreso, as there was no evidence on the file that the deceased had either initiated proceedings against the accused for cheating/theft of the cheques during his life-time or had given intimation of the theft of the cheques to his Bank. In fact, the cheques in question were allegedly stolen on 18.12.2013 though the complaint under the Negotiable Instruments Act had been instituted earlier on 20.11.2013. He contends that merely because the petitioner and his co-accused were named in the suicide note would not establish their culpability as the contents of the note must establish the ingredients of the offence. Reliance is placed on the judgments in '*Sanju @ Sanjay Singh Sengar versus State of Madhya Pradesh, 2002(2) RCR (Criminal) 687, Netai Dutta versus State of Wes Bengal, AIR 2005 (SC) 1775, S.S. Chheena versus Vijay Kumar Mahajan 2010(4) RCR (Criminal) 66, Gurcharan Singh versus State of Punjab, 2017 (1) RCR (Criminal) 118, Surender Kumar versus State of Haryana, 1999 (1) RCR (Criminal) 558, Kashmiri Lal versus State of Haryana 2008 (4) RCR (Criminal) 497, Ram Sarup versus Ravi and others 2012(5) RCR (Criminal) 594, Shri Subhash Ramgopal Bharuka versus The State of Maharashtra through Police Inspect, Police Station, Kannad, Tal:Kannad, Dist. Aurangabad and others 2020(4) Bom. C.R. (Cri.) 410 and Harbhajan Sandhu versus State of Punjab and another, 2022(2) RCR (Criminal) 317*'.

14. The learned counsel for the State assisted by the learned counsel for the complainant while referring to the reply dated 08.05.2019 filed by way of an affidavit of Devinder Singh PPS, Deputy Superintendent of Police (Investigation), Government Railway Police, Punjab, Patiala, contends that the offence has been established beyond reasonable doubt. As

per the report of the FSL, the suicide note had been found to be in the hand-

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writing of the deceased. As per the investigation conducted by an SIT, the petitioner had allured the deceased to procure a loan for him for which the deceased had given 30 blank signed cheques. Thereafter, the petitioner in connivance with his brother Sharanjit Singh and other friends including Kuldeep Singh, by filling up huge amounts in the blank cheques, presented them for encashment. The said cheques were dishonoured, leading to the institution of multiple criminal cases under Section 138 of the Negotiable Instruments Act. On the complaint of the petitioner, Sharanjit Singh and Gurpreet Singh, the deceased came to be convicted. However, in the complaints filed by Sanjeev Kumar and Murli Manohar Ram, as the said complainants did not appear in the Court, the said complaints were dismissed in default. This fact showed that Sharanjeet and Murli manohar Ram had not received any money from the deceased for which the deceased had purportedly issued cheques but they had filed the cases at the instance of the petitioner. Further, from the investigation, it had been established that co-accused Jaskirat Singh wanted to earn more money by illegal means and he would advance loans on interest and would fill-up huge amounts in the blank cheques which he would receive as security. The said cheques were filled-up later on and used to black-mail the borrower. Thereafter, the petitioner would enter into a compromise with the said person. It is, therefore, contended that no case for quashing of the order framing charges was made out and the petitioner was liable to face trial in accordance with law.

15. I have heard both the parties at length and have perused the record.

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16. Before proceeding further in the matter, it would be useful to refer to the relevant provisions of law for the proper adjudication of the present case.

Section 306 of the IPC reads 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."

Section 107 of the IPC reads as under:-

"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."

17. As to what constitutes abetment has been a matter of considerable debate.

The Hon'ble Supreme Court in '***Sanju @ Sanjay Singh Sengar v. State of Madhya Pradesh, 2002(2) RCR (Criminal) 687***', has discussed, as to what constitutes abetment and the relevant extract of the said judgment reads as under;-

"13. Reverting to the facts of the case, both the courts below have erroneously accepted the prosecution story that the suicide by the deceased is the direct result of the quarrel that had taken place on 25th July, 1998 wherein it is alleged that the appellant had used abusive language and had reportedly told the deceased 'to go and die'. For

this, the courts relied on a statement of Shashi Bhushan, brother of the deceased, made under Section 161 Criminal Procedure Code, 1973 when reportedly the deceased, after coming back from the house of the appellant, told him that the appellant had humiliated him and abused him with filthy words. The statement of Shashi Bhushan, recorded under Section 161 Criminal Procedure Code, 1973 is annexed as annexure P -3 to this appeal and going through the statement, we find that he has not stated that the deceased had told him that the appellant had asked him 'to go and die'. Even if we accept the prosecution story that the appellant did tell 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, therefore, is the necessary concomitant of instigation. It is common knowledge that the words uttered in a quarrel or in a spur of the moment cannot be taken to be uttered with mens rea. It is in a fit of anger and emotional. Secondly, the alleged abusive words, said to have been told to the deceased were on 25th July, 1998 ensued by quarrel. The deceased was found hanging on 27th July, 1998. Assuming that the deceased had taken the abusive language seriously, he had enough time in between to think over and reflect and, therefore, it cannot be said that the abusive language, which had been used by the appellant on 25th July, 1998 derived the deceased to commit suicide. Suicide by the deceased on 27th July, 1998 is not proximate to the abusive language uttered by the appellant on 25th July, 1998. The fact that the deceased committed suicide on 27th July, 1998 would itself clearly point out that it is not the direct result of the quarrel taken place on 25th July, 1998 when it is alleged

that the appellant had used the abusive language and also told the deceased to go and die. This fact had escaped notice of the courts below."

[Emphasis supplied]

The Hon'ble Supreme Court in '*Netai Dutta v. State of West Bengal, AIR 2005 (SC) 1775*', has held as under:-

"5. There is absolutely no averment in the alleged suicide note that the present appellant had caused any harm to him or was in any way responsible for delay in paying salary to deceased Pranab Kumar Nag. It seems that the deceased was very much dissatisfied with the working conditions at the work place. But, it may also be noticed that the deceased after his transfer in 1999 had never joined the office at 160 B.L. Saha Road, Kolkata and had absented himself for a period of two years and that the suicide took place on 16.2.2001. It cannot be said that the present appellant had in any way instigated the deceased to commit suicide or he was responsible for the suicide of Pranab Kumar Nag. An offence under Section 306 IPC would stand only if there is an abetment for the commission of the crime. The parameters of the "abetment" have been stated in Section 107 of the Indian Penal Code. Section 107 says that a person abets the doing of a thing, who instigates any person to do that thing; or 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, or the person should have intentionally aided any act or illegal omission. The explanation to Section 107 says that any willful misrepresentation or willful concealment of a material fact which he is bound to disclose, may also come within the contours of "abetment".

6. In the suicide note, except referring to the name of the appellant at two places, there is no reference of any act or incidence whereby the appellant herein is alleged to have committed any willful act or omission or intentionally aided or instigated the deceased Pranab Kumar Nag in committing the act of suicide. There is no case that the appellant has played any part or any role in any conspiracy, which ultimately instigated or resulted in the commission of suicide by deceased Pranab Kumar Nag.

7. Apart from the suicide note, there is no allegation made by the complainant that the appellant herein in any way harassing his brother, Pranab Kumar Nag. The case registered against the appellant is without any factual foundation. The contents of the alleged suicide note do not in any way make out the offence against the appellant. The prosecution initiated against the appellant would only result in sheer harassment to the appellant without any fruitful result. In our opinion, the learned Single Judge seriously erred in holding that the First Information Report against the appellant disclosed the elements of a cognizable offence. There was absolutely no ground to proceed against the appellant herein. We find that is a fit case where the extraordinary power under section 482 of the Code of Criminal Procedure, 1973 is to be invoked. We quash the criminal proceedings initiated against the appellant and accordingly allow the appeal."

[Emphasis supplied]

The Hon'ble Supreme Court in '**S.S. Chheena v. Vijay Kumar**

Mahajan and Another, 2010(4) RCR (Criminal) 66', has held as under:-

"26. In *State of West Bengal v. Orilal Jaiswal*, 1994 (3) RCR (Criminal) 186 : (1994) 1 SCC 73, this Court has cautioned that the court should be extremely careful in

assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end the life by committing suicide. If it appears to the court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty.

27. This Court in Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi) 2009 (4) RCR (Criminal) 196 : 2009 (5) R.A.J. 278 : (2009) 16 SCC 605, had an occasion to deal with this aspect of abetment. The 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. Therefore, it is impossible to lay down any straitjacket formula in dealing with such cases. Each case has to be decided on the basis of its own facts and circumstances.

28. 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.

29. In the instant case, the deceased was undoubtedly hypersensitive to ordinary petulance, discord and differences which happen in our day-to-day life. Human sensitivity of each individual differs from the other. Different people behave differently in the same situation.

30. When we carefully scrutinize and critically examine the facts of this case in the light of the settled legal position the conclusion becomes obvious that no conviction can be legally sustained without any credible evidence or material on record against the appellant. The order of framing a charge under section 306 Indian Penal Code against the appellant is palpably erroneous and unsustainable. It would be travesty of justice to compel the appellant to face a criminal trial without any credible material whatsoever. Consequently, the order of framing charge under section 306 Indian Penal Code against the appellant is quashed and all proceedings pending against him are also set aside."

[Emphasis supplied]

Further the Hon'ble Supreme Court in '**Gurcharan Singh v.**

State of Punjab, 2017 (1) RCR (Criminal) 118', has held as under:-

"22. It is thus manifest that the offence punishable is one of abetment of the commission of suicide by any person, predicated existence of a live link or nexus between the two, abetment being the propelling causative factor. The basic ingredients of this provision are suicidal death and the abetment thereof. To constitute abetment, the intention and involvement of the accused to aid or instigate the commission of suicide is imperative. Any severance or absence of any of this constituents would militate against this indictment. Remoteness of the

culpable acts or omissions rooted in the intention of the accused to actualize the suicide would fall short as well of the offence of abetment essential to attract the punitive mandate of Section 306 I.P.C. Contiguity, continuity, culpability and complicity of the indictable acts or omission are the concomitant indices of abetment. Section 306 I.P.C., thus criminalises the sustained incitement for suicide.

29. Significantly, this Court underlined by referring to its earlier pronouncement in *Orilal Jaiswal (supra)* that courts have to be extremely careful in assessing the facts and circumstances of each case to ascertain as to whether cruelty had been meted out to the victim and that the same had induced the person to end his/her life by committing suicide, with the caveat that if the victim committing suicide appears to be hypersensitive to ordinary petulance, discord and differences in domestic life, quite common to the society to which he or she belonged and such factors were not expected to induce a similarly circumstanced individual to resort to such step, the accused charged with abetment could not be held guilty. The above view was reiterated in *Amalendu Pal @ Jhantu v. State of West Bengal* 2010 (1) RCR (Criminal) 643 : 2010 (1) Recent Apex Judgments (R.A.J.) 184 : (2010) 1 SCC 707.

30. That the intention of the legislature is that in order to convict a person under Section 306 I.P.C., there has to be a clear mens rea to commit an offence and that there ought to be an active or direct act leading the deceased to commit suicide, being left with no option, had been propounded by this Court in *S.S. Chheena v. Vijay Kumar Mahajan* 2010 (4) RCR (Criminal) 66 : 2010 (4) Recent Apex Judgments (R.A.J.) 629 : (2010) 12 SCC 190 ."

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This Court in '*Surender Kumar v. State of Haryana, 1999 (1)*

RCR (Criminal) 558', has held as under:-

"4. There is no dispute with the proposition of law as propounded by the learned trial Court that a charge can be framed on strong suspicion and that the merits of the case at that stage are not supposed to be inquired into, but this Court is of the considered opinion that the trial Court has not rightly appreciated the allegations so as to bring the case of the State under Section 306 Indian Penal Code. As per Section 306 whoever abets the commission of suicide, in that eventuality only he will be attracted with the ingredients of that section. Abetment can be express, direct, indirect or implied but there must be a close proximity between the alleged abetment and the effect. The petitioner was the employer. If his gold had been stolen or had not been accounted for by his employees or apprentice he had the right to take the search and interrogate. In that eventuality if one or two slaps are given by the employer to his servant in order to get a confession even that is not barred. There is not an iota of evidence on the record prima facie to suggest that the petitioner ever goaded, urged or excited the deceased to jump before a running train. Moreover, the alleged incident has taken place after a lapse of 20 days. The jumping in front of the running train was the independent act of the deceased, it cannot be connected with the petitioner. In these circumstances, the learned trial Court was not justified in framing a charge against the petitioner under Section 306 Indian Penal Code. In this regard, reliance can also be placed on *Gurdeep Singh v. State of Haryana, 1998(3) RCR (Criminal) 266*."

[Emphasis supplied]

This Court in '*Kashmiri Lal v. State of Haryana, 2008(4) RCR*

"15. Needless to say, there was clear-cut interval of 3 days in between 26th April, 1993 and the date of occurrence i.e. 30.4.1993. If the deceased had taken decision to commit suicide, her passions for this act might have cooled down during this interregnum. Now it is to be noticed as to what has to be established by the prosecution to earn conviction under Section 306 of Indian Penal Code. The accused will be guilty of abetment in case of suicide if the cruelty meted out to the deceased had the effect of inducing her to end her life by committing suicide. He will not be guilty of the same if the victim was hypersensitive to ordinary discord and differences in domestic life. It is not enough that the husband treated the deceased with cruelty. There must be proof of direct or indirect acts of incitement to the commission of suicide. The abetment involves mental process of instigating a person or intentionally aiding that person in doing of a thing. Section 107 of Indian Penal Code defines abetment of a thing. The offence of abetment is a separate and distinct offence. A person abets the doing of thing when (i) he instigates any person to do that thing; or (ii) engages with one or more other persons in any conspiracy for the doing of that thing; (iii) intentionally aids, by act or illegal omission, the doing of that thing. These things are essential to complete abetment as a crime. The word, 'instigate' literally means to provoke, incite, urge or bring about by persuasion to do any thing. Abetment may be by instigation, conspiracy or intentional aid, as provided in the 3 clauses of Section 107 ibid. Section 109 of Indian Penal Code provides if the act abetted is committed in consequence of abetment and there is no provision for the punishment of such abetment, then the offender is to be punished with the punishment for the original offence. The offence for the abetment of which a person is charged with, the abetment

is normally linked with proved offence. [See Sohan Raj Sharma v. State of Haryana, [2008 (2) RCR (Criminal) 810 : 2008 (2) RAJ 272]."

[Emphasis supplied]

18. As regards the culpability of a person for having committed an offence under Section 306 IPC where he was availing his legal remedy;

This Court in '**Ram Sarup versus Ravi and others 2012(5) RCR (Criminal) 594**', has held as under:-

"11. In the instant case the petitioners were having loan transactions with the deceased and it was normal for them to insist that their money be returned. No act has been attributed to them which can be termed to be taking recourse to illegal activity for recovery of such an amount. Rather, they had used the agency of the police to register FIR against the deceased and had also filed complaints against him under Section 138 of the Negotiable Instruments Act. Their conduct, therefore, was that of a prudent law abiding citizen making an endeavour to recover a bad loan.

12. The deceased, on the other hand, was surrounded by numerous such transactions which had gone bad and it is, therefore, the cumulative effect of all such bad transactions which pushed him to a corner. Such situation could possibly be have been a result of his own mismanagement, but that is not for the Court to comment upon. Suffice it to say that the complaint even if taken on its face value does not sufficiently establish the commission of an offence under Section 306 Indian Penal Code and since it has been filed in the backdrop of a tussle where the petitioners seek to recover their loan from the estate of the deceased, the lodging of the complaint in order to ward off such action cannot be ruled out implying thereby that the complaint is motivated".

The Bombay High Court in '*Shri Subhash Ramgopal Bharuka versus The State of Maharashtra through Police Inspect, Police Station, Kannad, Tal:Kannad, Dist. Aurangabad and others 2020(4) Bom. C.R. (Cri.) 410*', has held as under:-

“10. The submissions made and the record show that Petitioner Subhash Bharuka had filed two complaints under section 138 of the Negotiable Instruments Act against the deceased in the year 2014 (SCC No.9509 of 2014 and SCC No.9510 of 2014). In the year 2015, Subhash Bharuka had filed Summery Suit No.13 of 2015 for recovery of amount of rupees 27.77 lakh against the deceased. The submissions made and the record show that permission was granted to the deceased to defend the summery suit subject to condition of depositing of 50% of the suit amount within one month. In Civil Writ Petition No.10428 of 2018, the learned Single Judge of this Court granted installments of aforesaid amount and granted some time to the deceased to make the payment. This order was made on 18th September, 2018. Thus, the record shows that steps for recovery of the amount due, were taken in the years 2014 and 2015. As per the orders made in civil matter, some amount was already deposited by the deceased. The order made by the Trial Court Judge in summery suit shows that the record like correspondence made by the plaintiff to defendant and also the letter given by the defendant to the plaintiff in respect of transaction of diesel on credit basis were produced before the Trial Court. The record showing that some payment made, copies of bills, ledger account and cheques and also demand notices was produced. Account certificate issued by the chartered account was also produced. There is record like examination-in-chief and some cross-examination of the chartered accountant recorded in SCC No.9509 of 2014. This record shows that certificate was issued by the chartered accountant with regard to transactions recorded in books of accounts and bills and these transactions were reflected in

income tax returns. This cross- examination was made on 4th January, 2018. The aforesaid record shows that Subhash Bharuka had filed legal proceeding for enforcing his right, for recovery of the amount due from the deceased. Some record is produced by other side to show that in other matters filed by Subhash Bharuka under section 138 of the Negotiable Instruments Act, defence was taken by accused that Subhash was doing money lending business illegally. That circumstances cannot be considered in the present matter as it is not the case of informant and it is not mentioned in so-called suicide note that with him there was money lending transaction. Admittedly, the deceased had purchased diesel for his business on credit basis, cheques were issued by the deceased and on the basis of cheques, which bounced, legal action was taken by Subhash. The Applicant from other proceeding is son of Subhash and he has no connection with these transactions. If Subhash was prosecuting legal proceeding for getting the aforesaid remedies, he cannot be blamed for it. The suicide note and other contentions also do not show as to whether and what rate of interest was claimed by Subhash in respect of the amount due. Everything is vague. The sum and substance of the so-called suicide note shows that the deceased was in financial crunch and he had taken loan from many persons. Naturally, the persons who had given him loan were insisting for return of the amount. The contents of the suicide note show that there were no financial resources left with the deceased and he was expecting his daughter, who had just completed some course, to work and help the family. Thus, financial crunch appears to be the reason behind the suicide.

11. The learned counsel for Respondent informant has submitted notes of arguments, in which the provisions of Sections 107 and 306 of the Indian Penal Code are mentioned. He has produced copies of citations like AIR 2001 Supreme Court 3837, (Ramesh Kumar v. State of Chhattisgarh) and AIR 2011 Supreme Court 1238, (M. Mohan v. State). In both the

matters, the wife of the accused had committed suicide. In the first matter, there was possibility of use of Section 113A and 113B of the Evidence Act and from that angle the facts were considered by the Apex Court. In the second matter, the provisions of Sections 306 and 107 of the Indian Penal Code are considered. In the second matter while interpreting Section 107 of the Indian Penal Code, the Apex Court has made it clear that there has to be clear mens-rea to commit offence and conviction cannot be sustained without positive act on the part of accused to instigate or aid in committing suicide. In the present matter, there is no question of using of presumptions, which are made available under Sections 113A and 113B of the Evidence Act.

12. The learned counsel for Petitioner placed reliance on observations made by the Apex Court in the decision given in Criminal Appeal No.1291 of 2008, (Madan Mohan Singh v. State of Gujarat and Ors.) decided on 17th August, 2010 and Criminal Appeal No.2086 of 2014, (State of Kerala and Ors. v. S. Unnikrishnan Nair and Ors.), decided on 13th August, 2015. In the second matter, there was suicide note left behind by the deceased and the Apex Court had occasion to discuss the provision of Section 107 of the Indian Penal Code. The Apex Court observed that in suicide note there was no mention of particulars of inducement/instigation. The Court referred the previous case in which the term "instigate" was interpreted. On the basis of facts of those cases, the Apex Court held that if a person is scared of the immediate calamity or self-perceived consequences, the others cannot be blamed for the same. The Apex Court has laid down that in such a situation, the High Court needs to use the power given under section 482 of the Code of Criminal Procedure, 1973. In the other case, there was allegation of commission of offence punishable under Section 294(b) of the Indian Penal Code also. The Apex Court held that the material was not sufficient to infer that such offence was committed and then due to such

circumstance the suicide was committed. The learned counsel for Petitioner placed reliance on observations made by this Court in the judgment delivered in Criminal Application No.155 of 2019, (Chandrakant S/o Yadavrao Gavhane v. The State of Maharashtra and another), dated 8th November, 2019. This Court has also discussed Section 107 of the Indian Penal Code in similar manner.

13. The position of law given in aforesaid cases show that intention a kind of mens-rea needs to be there for use of Section 107 of the Indian Penal Code. For proving the abetment of suicide, which is made punishable under Section 306 of the Indian Penal Code, 1860 Section 107 of the Indian Penal Code needs to be used and if there is nothing to show that there was such intention in existence of the accused, he cannot be prosecuted for the offence of abetment of suicide. The matters of committing suicide by debtors when it becomes impossible to return the debt are increasing day by day. Many persons help their friends and others by giving hand loan or by selling goods on credit. They are bound to ask the debtor to pay the dues. If the debtor feels such demand as harassment, on the basis of that circumstance, inference cannot be drawn that situation was created by the creditors due to which no other alternative was left to the debtor than to commit suicide. If he finds himself unable to return the amount and he takes such step, the persons who are entitled to recover the amount and who have prosecuted legal action, which is permissible under law, cannot be blamed for suicide of such person even if he has blamed such persons for suicide in suicide note like present one. If the Court goes with the presumption, in such cases, that inference is possible of abetment as defined in Section 107 of the Indian Penal Code, the intention behind the provision of Section 107 of the Indian Penal Code will become otiose.

14. This Court had directed both the sides to see that the matters, which are filed by Subhash against others under section 138 of the Negotiable Instruments Act are produced and

copies of some complaints are produced. In those complaints, Subhash had specifically admitted that he had given hand loan and for re-payment of the hand loan, the cheque was given. Those matters need not be considered in the present matter. In the present matter, this Court is expected to consider as to whether there was money lending transaction between Subhash and the deceased. The aforesaid material does not show that there was such transaction between Subhash and the deceased. In view of these circumstances, this Court holds the reliefs claimed in the two proceedings need to be granted. In the result, the following order is passed:

ORDER

I. The criminal writ petition and the criminal application are allowed.

II. Relief is granted to the Petitioner and the Applicant of quashing of FIR to their extent and quashing of R.C.C. No.85 of 2019 filed against them.

III. Rule is made absolute in those terms”.

19. As to whether being named in a suicide note, proves the guilt of the accused, this Court in ***‘Harbhajan Sandhu versus State of Punjab and another 2022(2) RCR (Criminal) 317’*** has held as under:-

“16. Even, otherwise, merely being named in a suicide note would not by itself establish the guilt of an accused until the ingredients of an offence are made out. In the present case, taking the suicide note to be absolutely correct, the allegations therein do not constitute an offence for which the petitioner can be prosecuted”.

20. In the instant case, the prosecution has sought to make out an offence under Section 306 IPC against the petitioner on the ground that he had induced the deceased to part with 30 blank cheques for obtaining a loan for the deceased. However, the blank signed cheques were used to initiate

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petitioner and his co-accused in order to pressurize the deceased to part with money. However, the prosecution case stands falsified by the different stands taken by the deceased and his family members regarding the circumstances in which the cheques came into the possession of the accused (complainant in complaint under Section 138 of the Negotiable Instruments Act). One version is that the blank signed cheques were stolen on 18.12.2013 whereas the other version is that they were given to the petitioner for the purposes of obtaining a loan for the deceased. There is yet another version that the cheque had been given as security. However, what stands out is that the cheque is dated 01.10.2013, it was purportedly stolen on 18.12.2013 though the complaint had been filed on 20.11.2013. Further, no evidence was lead in the Trial under Section 138 of the Negotiable Instruments Act of the deceased making any police complaint of the theft of the cheques or intimating the bank for issuing 'stop payment' instructions. This leads to the conclusion that cheque was issued for the purpose as mentioned in the complaint under Section 138 of the Negotiable Instruments Act.

It appears that the deceased was overwhelmed by the multiple proceedings being faced by him under Section 138 of the Negotiable Instruments Act was unable to repay his debts and was facing a financial crunch. However, the petitioner cannot be held liable for the initiation of legal proceedings for the dishonour of the cheque in question which subsequently lead to the conviction of the deceased. Merely by initiating legal proceedings, it cannot be held that the petitioner had abetted the commission of the suicide as defined under Section 107 IPC and punishable under Section 306 IPC.

Further, the FIR and the suicide note do not disclose any specific act or conduct on the part of the petitioner or his brother-Jaskirat Singh which would amount to harassment or instigation committed with the necessary *mens rea* to commit the offence other than the initiation of proceedings under the Negotiable Instruments Act.

21. In view of the above, this revision petition is allowed and the impugned order dated 04.08.2018 passed by the Additional Sessions Judge, Patiala whereby charges have been framed against the petitioner and others under Sections 420, 306, 34 and 120-B IPC is set aside qua the petitioner only and the petitioner is discharged from the charges framed against him.

(JASJIT SINGH BEDI)
JUDGE

October 07, 2023
sukhpreet

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No