

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-39016-2020 (O&M)

Date of Decision: 24.01.2023

Dr. Nisha Kumari

.....Petitioner

Vs.

State of Haryana

.....Respondent

CORAM:- HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Anshuman Dalal, Advocate for the petitioner.

Mr. Randhir Singh, Addl. A.G., Haryana.

DEEPAK GUPTA, J.

Petitioner is the complainant of FIR No.207 dated 14.06.2019 under Section 306 of the Indian Penal Code, registered at Police Station PGIMS, Rohtak. By way of this petition filed under Section 482 Cr.P.C., prayer is made by the petitioner to quash order dated 18.08.2020 (Annexure P-9), whereby cancellation report in respect of the aforesaid FIR has been accepted by Learned Additional Sessions Judge, Rohtak.

2. Dr. Omkar Maanik Baridabad had joined MD (Pediatrics) at PGIMS Rohtak on May 9, 2017. He committed suicide on 14.06.2019. Dr. Geeta Gathwala was Head of Department in the said department of Pediatrics. Petitioner Dr. Nisha Kumari along with 32 other junior doctors made a complaint to the police alleging illegal harassment by Head of Department Dr. Geeta Gathwala; that Dr. Omkar was not allowed to attend the marriage of his sister despite leave granted to him, due to non-submission of thesis; that he was being harassed for the last two years; that in order to save herself, Head of the Department had implicated the deceased

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in a false case of Section 304-A IPC and had insulted him in front of everyone and that all the junior doctors were disturbed because of this mental harassment by the Head of the Department, on account of which Dr. Omkar had committed suicide. On the basis of this complaint, FIR No.207 dated 14.06.2019 under Section 306 IPC (Annexure P-1) was registered at Police Station PGIMS Rohtak.

3. Petitioner contends that during inquest proceedings under Section 175 Cr.P.C., real brother and cousin of the deceased made statements alleging allegations of harassment against the Head of Department Dr. Geeta Gathwala. However, their statements were not recorded under Section 161 Cr.P.C. Although 33 doctors of the Pediatrics Department disclosed in their statements under Section 161 Cr.P.C. about the harassment and insult on the part of the Head of the Department, which compelled Dr. Omkar to commit suicide and that immediate cause of suicide was that deceased was not allowed to go home for the marriage of his sister despite leave sanctioned to him but the police took the affidavits of some employees of PGIMS Rohtak favouring Dr. Geeta Gathwala, ignored the allegations in the FIR or the statements of the witnesses under Section 161 Cr.P.C. and submitted a cancellation report before Learned Jurisdictional Magistrate.

4. Learned Magistrate did not accept the cancellation report and returned the same vide order dated 10.01.2020 (Annexure P-6) clearly holding that the investigation was faulty. By way of this order, notice was also issued to four police officials under Section 166-A, 167 and 218 of IPC for their role in preparing a false report of cancellation so as to save the

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culprit. The accused named in the FIR i.e. Dr. Geeta Gathwala filed revision against that order, which was accepted by Learned Additional Sessions Judge, Rohtak vide order dated 06.03.2020 (Annexure P-8) by holding that the Magistrate did not have the power to take cognizance of the cancellation report and that it is only the Special Court constituted under Section 14 of the SC & ST (Prevention of Atrocities Act, 1989), who was competent to scrutinize the final report. Direction was given to the Learned Magistrate to return the cancellation report to SHO Police Station PGIMS Rohtak for presentation of the cancellation report before the Special Court. Consequent to the said order dated 18.08.2020 of Learned Additional Sessions Judge, Rohtak, the cancellation report was filed before the Special Judge, Rohtak, who accepted the same vide impugned judgment dated 18.08.2020, against which this revision has been filed.

5. It is contended by learned counsel for the petitioner that order dated 06.03.2020 (Annexure P-8) was wrongly passed, inasmuch as the Magistrate as well as the Special Judge under Section 14 of the Act was competent to entertain and take cognizance of the final report filed under Section 173 Cr.P.C. and so, the order dated 10.01.2020 of Learned Magistrate was not without jurisdiction. It is further contended that while accepting the cancellation report, Learned Special Judge ignored the provisions of Section 8 of the SC/ST Act, which provides for a clear presumption of guilt to be drawn regarding the offence. At the stage of presentation of challan, it was not required to go into the question of ingredients of the offence, as it was beyond the powers at the stage of framing of the charges. It is also submitted that after passing of the order

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dated 10.01.2020 by Learned Magistrate, police did not bother to look at the cancellation report or to conduct any further investigation and rather, re-filed the same before Learned Additional Sessions Judge, Rohtak. With these submissions, prayer has been made to set aside the order dated 18.08.2020 (Annexure P-9) of Learned Additional Sessions Judge, Rohtak, accepting the cancellation report.

6. In reply filed by Deputy Superintendent of Police, Rohtak on behalf of the respondent-State, it is submitted that during course of investigation, Dr. Geeta Gathwala was duly interrogated. Several other persons including various doctors and officials of the Pediatrics Department were questioned. Records produced by the parties and PGIMS Rohtak was considered and it is only thereafter that cancellation report was submitted, as allegations against Dr. Geeta Gathwala were found to be false. Respondent thus defended the impugned order passed by Learned Additional Sessions Judge, Rohtak accepting the cancellation report.

7. On 02.12.2020, this Court noticed that two questions arise at the initial stage, which are as follows:

“(i) Whether the learned Additional Sessions Judge, Rohtak, vide the order dated 6.3.2020, was correct in holding that the learned Magistrate was not competent to “try the cases under the Atrocities Act as they are triable by Special Court only”, in the context of a report filed under Section 173 of the Cr.P.C. before the Magistrate, who at that stage was obviously not holding a trial;

(ii) Whether the impugned order passed by the learned Additional Sessions Judge thereafter on 18.8.2020, is sustainable on the merits of it or not.”

8. In order to determine the Competent Court before which a report under Section 173 Cr.P.C. is to be submitted, as regards the offences punishable under the provisions of the SC & ST Act, direction was issued to place on record the notification issued by the Government of Haryana appointing such Courts. Necessary notification has already been placed on record.

9. I have considered submissions of both the sides at considerable length.

10. Section 14 (1) of The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 reads as under:

“14. Special Court and Exclusive Special Court. - (1) For the purpose of providing for speedy trial, the State Government shall, with the concurrence of the Chief Justice of the High Court, by notification in the Official Gazette, establish an Exclusive Special Court for one or more Districts:

Provided that in Districts where less number of cases under this Act is recorded, the State Government shall, with the concurrence of the Chief Justice of the High Court, by notification in the Official Gazette, specify for such Districts, the Court of Session to be a Special Court to try the offences under this Act:

Provided further that the Courts so established or specified shall have power to directly take cognizance of offences under this Act.”

11. In exercise of the power conferred by Section 14 of the Act, Administration of Justice Department of Haryana Government, by way of a notification dated 08.09.2017 specified the Courts of all First Additional

Sessions Judges in every District in the State of Haryana to be a Special Court to try the offences under the said Act.

12. It may be noted here itself that aforesaid Section 14 was substituted by Act No.1 of 2016 with effect from 26.01.2016. Prior to its amendment in 2016, Section 14 used to read as under:

*“14. **Special Court.** - For the purpose of providing for speedy trial, the State Government shall, with the concurrence of the Chief Justice of the High Court, by notification in the Official Gazette, specify for each district a Court of Session to be a Special Court **to try the offences under this Act**”*

13. It is apparent that prior to 2016, the Special Court to be specified by the State Government under Section 14 was competent only to try the offences under the Act. However, by way of amendment brought in 2016, the Special Court is not only competent to try the offence but also have the power to directly take cognizance of the offences under the Atrocities Act.

14. However, the question arises as to whether in view of the newly substituted Section 14 of the Act, the jurisdictional Magistrate is debarred from taking cognizance of offences punishable under the provisions of The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, despite the fact that offences in question are cognizable.

15. The aforesaid question arose for consideration before Hon'ble Supreme Court in ***Shantaben Bhurabhai Bhuriya Versus Anand Athabhai Chaudhari & Ors., Criminal Appeal No.967 of 2021 decided on 26.10.2021, reported as Law Finder Doc ID # 1901190.*** In the said case

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before Hon'ble Supreme Court, the offence was committed on 06.09.2019. A formal complaint was lodged before the Magistrate on 13.09.2013, as police had refused to lodge the FIR on 07.09.2013. Magistrate sent the complaint for investigation as per Section 156(3) Cr.P.C. The Investigating Officer filed a summary report to the effect that there was no evidence to proceed with the matter. Learned Magistrate passed an order for further investigation under Section 173 (8) Cr.P.C. on 03.10.2015 by observing that summary report was not clear with regard to the involvement of one of the accused and the other police officers. Then, Deputy Superintendent of Police, SC/ST submitted the report pointing out that alleged offences are prima facie appeared to have been committed by the accused. On that basis, Learned Magistrate took cognizance of the alleged offences vide order dated 15.02.2017 and issued process under Section 204 Cr.P.C. The said order was challenged by the accused before High Court by contending that Magistrate did not have the authority to take cognizance of the offence under the provisions of Atrocities Act and it is only the Special Court, which could have taken cognizance of the offences. Quashing of the FIR and order issuing the summons was opposed by the complainant by submitting that as per Section 14 of the Act, the Special Court has power only for trial and that Special Court cannot take cognizance directly. However, it was submitted for the accused that in view of the amended Section 14 of the Atrocities Act, the Special Court can take direct cognizance of the offence and therefore, Learned Magistrate is not empowered to take cognizance directly. High Court allowed the special criminal application and quashed and set aside the FIR and the consequent proceedings mainly on the ground that in view of

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the amendment to Section 14 of the Atrocities Act, the Special Court can take cognizance directly and so, jurisdiction of Learned Magistrate can be said to be ousted. The aggrieved complainant approached Hon'ble Supreme Court, where the following question was considered.

“8.0 Therefore, the issue/question posed for the consideration of this Court is, whether in a case where cognizance is taken by the learned Magistrate and thereafter the case is committed to the learned Special Court, whether entire criminal proceedings can be said to have been vitiated considering the second proviso to Section 14 of the Atrocities Act which was inserted by Act 1 of 2016 w.e.f. 26.1.2016?”

16. Hon'ble Supreme Court held as under:

*“9.1 On fair reading of [Sections 207](#), [209](#) and [193](#) of the Code of Criminal Procedure and insertion of proviso to Section 14 of the Atrocities Act by Act No.1 of 2016 w.e.f. 26.1.2016, we are of the opinion that on the aforesaid ground the entire criminal proceedings cannot be said to have been vitiated. Second proviso to Section 14 of the Atrocities Act which has been inserted by Act 1 of 2016 w.e.f. 26.1.2016 confers power upon the Special Court so established or specified for the purpose of providing for speedy trial also shall have the power to directly take cognizance of the offences under the Atrocities Act. Considering the object and purpose of insertion of proviso to [Section 14](#), it cannot be said that it is not in conflict with the [Sections 193](#), [207](#) and [209](#) of the Code of Criminal Procedure, 1973. **It cannot be said that it takes away jurisdiction of the Magistrate to take cognizance and thereafter to commit the case to***

the Special Court for trial for the offences under the Atrocities Act.

Merely because, learned Magistrate has taken cognizance of the offences and thereafter the trial / case has been committed to Special Court established for the purpose of providing for speedy trial, it cannot be said that entire criminal proceedings including FIR and charge-sheet etc. are vitiated and on the aforesaid ground entire criminal proceedings for the offences under [Sections 452, 323, 325, 504, 506\(2\) and 114](#) of the Indian Penal Code and under Section 3(1)(x) of the Atrocities Act are to be quashed and set aside. It may be noted that in view of insertion of proviso to Section 14 of the Atrocities Act and considering the object and purpose, for which, the proviso to Section 14 of the Atrocities Act has been inserted i.e. for the purpose of providing for speedy trial and the object and purpose stated herein above, it is advisable that the Court so established or specified in exercise of powers under Section 14, for the purpose of providing for speedy trial directly take cognizance of the offences under the Atrocities Act. But at the same time, as observed herein above, merely on the ground that cognizance of the offences under the Atrocities Act is not taken directly by the Special Court constituted under Section 14 of the Atrocities Act, the entire criminal proceedings cannot be said to have been vitiated and cannot be quashed and set aside solely on the ground that cognizance has been taken by the learned Magistrate after insertion of second proviso to [Section 14](#) which confers powers upon the Special Court also to directly take cognizance of the offences under the Atrocities Act and thereafter case is committed to the Special Court / Court of Session.

9.2. In support of the above conclusion, the words used in second

proviso to Section 14 are required to be considered minutely. The words used are “Court so established or specified shall have power to directly take cognizance of the offences under this Court”. The word “only” is conspicuously missing. If the intention of the legislature would have to confer the jurisdiction to take cognizance of the offences under the Atrocities Act exclusively with the Special Court, in that case, the wording should have been “that the Court so established or specified only shall have power to directly take cognizance of offences under this Act”. Therefore, merely because now further and additional powers have been given to the Special Court also to take cognizance of the offences under the Atrocities Act and in the present case merely because the cognizance is taken by the learned Magistrate for the offences under the Atrocities Act and thereafter the case has been committed to the learned Special Court, it cannot be said that entire criminal proceedings have been vitiated and same are required to be quashed and set aside.”

[Bold and under-lined portion emphasised by this court]

17. Thus, it is clear that merely because of the reason that additional power has been given to the Special Court to take cognizance of the offences under the Atrocities Act, it cannot mean that jurisdictional Magistrate is debarred from taking cognizance of the offence under the Atrocities Act. He can take the cognizance and then commit the case to the Special Court, though it is advisable that the Court so established or specified in exercise of powers under Section 14, for the purpose of providing for speedy trial directly take cognizance of the offences under the Atrocities Act.

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18. In view of the above legal position, although the order dated 06.03.2020 (Annexure P-8) passed by Learned Additional Session Judge, Rohtak, whereby Learned Magistrate was directed to return the cancellation report for submitting to the Special Court, cannot be sustained in the eyes of law but at the same time, it has been rightly pointed out by Learned State Counsel for the respondent that order dated 06.03.2020 has not been challenged by the petitioner or anybody else till date. Before this Court, the only challenge given by the petitioner is to the order dated 18.08.2020 (Annexure P-9), whereby cancellation report has been accepted by Learned Special Judge, Rohtak.

19. As the occurrence in this case took place on 14.06.2019, therefore, it cannot be disputed that in view of the amended Section 14 of the Atrocities Act and the consequent notification of 08.09.2017 issued by the Haryana Government, Administration of Justice Department, the Special Court has the power to directly take cognizance of the offence and as such, Learned Special Judge was competent to consider the cancellation report.

20. As the Magistrate as well as the Special Judge have the power to take cognizance of the offences under the Atrocities Act as per **Shantaben Bhurabhai Bhuriya case (supra)**, so it is required to be seen as to when the cognizance of offence is taken and what options are available to the magistrate.

21. Section 190 Cr.P.C. provides about cognizance of offences by Magistrate. The relevant portion of the said section reads as under :

“190. Cognizance of offences by Magistrates.—(1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any

Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence—

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts;

c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.”

22. What is meant by ‘taking cognizance of an offence by the Magistrate’ within the contemplation of Section 190 of Cr.P.C. is not defined in the Code. The modes, in which the cognizance can be taken, are set out in Clauses a, b & c of Section 190. As to whether the Magistrate has taken or not taken the cognizance will depend upon circumstances of the particular case including the mode in which the case is sought to be instituted, and the nature of the preliminary action, if any, taken by the Magistrate, as has been observed by Hon'ble Supreme Court in **Devarapalli Lakshminarayana Reddy v. V. Narayana Reddy, (1976) 3 SCC 252; Law Finder Doc ID # 106126.**

23. While considering the cancellation report filed under Section 173 Cr.P.C, Ld. Special Judge acted within the scope of his power to take cognizance. The question is whether the order passed by Ld. Special Judge dated 18.08.2020, accepting the cancellation report, is illegal or perverse in any manner whatsoever. In order to examine this issue, it is required to be seen as to what options were there before learned Special Judge while considering the cancellation report submitted by the Police.

24. It is the consistent position of law that when a report under Section 173 Cr.P.C comes up for consideration before the Magistrate

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(Special Judge in this case), there may be two situations. One is that report may conclude that offence appears to have been committed by a particular person or persons; and the other is that no offence appears to have been committed. In the first situation, the Magistrate has three options:- (a) he may accept the report and take cognizance of the offence and issue process; (b) he may disagree with the report and drop the proceedings; and (c) he may direct further investigation under Section 156(3) Cr.P.C and require the Police to make a further report. In the second situation, when the Police report says that no offence appears to have been committed, Magistrate has again three courses open to him:- (a) he may accept the report and drop the proceedings (which course has been adopted by Ld. Special Judge in this case while accepting the cancellation report); (b) he may disagree with the report and take the view that there is sufficient ground for proceeding further and take cognizance of the offence and issue the process ; and (c) he may direct further investigation to be made by the Police under Section 156(3) Cr.P.C. Reliance in this regard can be placed upon **Bhagwant Singh Vs. Commissioner of Police and another, (1985) SCC 537, H.S. Bains, Director, Small Saving-cum-Deputy Secretary Finance, Punjab, Chandigarh Vs. State (UT, Chandigarh) (1980) 4 SCC 631 and M/s India Carat Pvt. Ltd., Vs. State of Karnataka & Another, (1989) 2 SCC 132.**

25. Having adopted the course of not taking cognizance by accepting the cancellation report, learned Special Judge acted within his jurisdiction. The said order can be interfered in revision only if it is found to be perverse or passed on no material. So, it is required to be seen as to

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whether Learned Special Judge, having equivalent power as that of the Magistrate to take cognizance, has rightly accepted the cancellation or not.

26. As rightly noticed by learned Special Judge in the impugned order, mainly three allegations were made against the Head of the Department of Pediatrics i.e. Dr. Geeta Gathwala. (1) regular harassment for last 2 years; (2) that deceased was not allowed to go home for the marriage of his sister despite leave sanctioned to him, which was the immediate cause for committing the suicide; and (3) false implication of the deceased in a case under Section 304-A IPC at the instance of the accused.

27. Most important to notice. It was noticed by Learned Special Judge that after filing of the cancellation report, no protest petition was filed either by the complainant or any family member of the deceased. It is specifically noticed by Learned Special Judge that adequate opportunities were provided to the complainant to file objections/protest petition, if any, to the cancellation report but nothing to this effect was done. In the absence of filing of any protest petition/objection, there was no occasion for the Special Judge to give opportunity to the complainant to produce any evidence contrary to the evidence collected by the investigating agency. Thus, the only material before Ld. Special Judge, to reach at the conclusion qua the cancellation report, was the evidence as collected during investigation.

28. It is noted by Learned Special Judge that neither complainant nor any of her associates nor even the deceased had ever made any complaint to any authority about alleged misconduct or harassment of Dr. Geeta Gathwala and thus, there was no evidence to substantiate the

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allegation. It is noticed by Learned Special Judge that complainant Dr. Nisha Kumari was heard in person and specific queries were put to her regarding the alleged misconduct of Dr. Geeta Gathwala with the deceased Dr. Omkar in particular and other students in general but she was unable to indicate anything except for asserting that Dr. Geeta Gathwala was hostile to the deceased.

29. Still further, it was found that deceased had been granted leaves on several occasions including for the period 10.06.2019 to 18.06.2019. The marriage of the sister of deceased was to take place on 12.06.2019, for which date he had already been sanctioned leave. The allegation that despite sanction of the leave, deceased was not allowed to leave the department is not substantiated, as once the leave was sanctioned, nothing had stopped the deceased to leave him. It is further noticed that last date for submitting the thesis on the part of the deceased was 30.06.2019 and obviously for not submitting the thesis within time, he was under pressure. Considering the subject in which deceased was pursuing his MD, there can be no dispute that it is quite an arduous task to pursue the higher education in this field. The Branch of Pediatrics is more complicated as the doctors have to deal with patients who are merely infants and unable to speak for themselves.

30. Still further, it was alleged that deceased had been falsely implicated in a case under Section 304A IPC. However, said allegation was found to be false by the investigating agency, as it was found on investigation that a nine months old baby child had died in the Pediatrics Department, regarding which an enquiry committee was constituted under the Chairmanship of Dr. V.K. Katiyal, Senior Professor, Head of the

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department of Medicine. Dr. Geeta Gathwala was not associated with the said enquiry in any manner, as she was not even a member of the same. The Enquiry Committee prepared the report on 04.10.2017 and gave unanimous opinion that there was gross mismanagement and neglect on the part of the doctors on duty, which included Dr. Omkar, resulting in the death of the child. On the basis of this enquiry report, it was the Dean of PGIMS Rohtak, who suspended Dr. Omkar for one month vide letter dated 13.11.2017 and warned him not to repeat such mistake. Case under Section 304A was registered on the complaint of Rajesh son of Man Singh. Thus, Dr. Geeta Gathwala was neither member of the Enquiry Committee nor had any concern with the same. Not only the fact that Dr. Geeta Gathwala was not associated with the said incident, the same had taken place way back in October/November 2017, whereas the deceased committed suicide in June, 2019 and so, that incident of death of the child cannot be connected in any manner with the suicide of Dr. Omkar.

31. One more allegation against Dr. Geeta Gathwala to the effect that stipend of the deceased was not released, was also found to be false, as the record collected by the investigating agency from the accounts department of PGIMS Rohtak revealed that stipend from May 2017 to May 2019 had already been paid; whereas the stipend for June, 2019 had not become due by the time deceased committed suicide.

32. Sections 306 and 107 of the Indian Penal Code are relevant provisions to be noticed. These are extracted 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 an act or illegal omission, the going of that thing.

Explanation 1. - A person who, by willful misrepresentation, or by willful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Explanation 2. - Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitate the commission thereof, is said to aid the doing of that act.”

33. Hon'ble Supreme Court while dealing with Sections 306 and 107 of the Indian Penal Code in **Gangula Mohan Reddy Vs. State of Andhra Pradesh, 2010 (2) Cri.L.J. 2110** held as under:-

*“1. In order to convict a person under Section 306 Indian Penal Code, 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 committed suicide.*

*2. **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.*

*3. 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 others - Each person has his own idea of self esteem and self respect - Therefore, it is impossible to lay down any straight-jacket formula in dealing with such cases - Each case has to be decided on the basis of its own facts and circumstances. 2009(4) RCR (Crl.) 196 (SC) relied.”*

Same view was taken **M. Mohan Vs. State Tr. Dy. Supdt. of Police, 2010 (2) Cri.L.J. 2110 (SC)**; and **Sanju alias Sanjay Singh Sengar v. State of M.P. 2002, Cri.L.J.2796**.

34. In **Sanju's case (supra)**, Hon'ble Supreme Court has in emphatic words described, what is instigation. In that case, the accused had asked the deceased 'to go and die' and in that backdrop, Hon'ble Supreme Court observed as follows:-

“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 inadvisable action or to stimulate or incite. Presence of means 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 means rea.”

35. In **Randhir Singh Vs. State of Punjab (2004) 13 SCC 129**, it has been held by Hon'ble Supreme Court that abetment involves a mental process of instigating a person or intentionally aiding a person in the doing of a thing. It was further held that in the absence of any positive act on the part of the accused to instigate or aid in committing suicide, conviction under Section 306 IPC cannot be sustained.

36. Thus, in view of the settled legal position as referred above, the prosecution is required to show following essential ingredients to make out a case of the abetment of suicide on the part of accused:

- (a) the deceased committed suicide;
- (b) accused abetted and played positive role with the intention that it results in suicide;
- (c) suicide is the direct result of the instigation.

37. When in the light of aforesaid legal position, evidence collected by the investigating agency is perused, to find out the culpability of the accused in commission of suicide by deceased Dr. Onkar, it is noticed that prima facie, accused did not play any positive role with the intention that it results in suicide.

38. Having regard to the factual and legal position as above, it cannot be stated that cancellation report has been wrongly accepted by Learned Special Judge, Rohtak by way of the impugned order. Impugned order can not be stated to be perverse or illegal in any manner.

39. As such, finding no merit in the present petition, same is hereby dismissed.

January 24, 2023

(DEEPAK GUPTA)

Neetika Tuteja

JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No