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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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*Reserved: 15th September, 2023**Date of Decision: 10th October, 2023*+ CRL.REV.P. 3/2017

STATE OF NCT OF DELHI

..... Petitioner

Through: Mr. Yudhvir Singh Chauhan, APP
for State with SI Rajnish, PS Lodhi
Colony

V

HANUMAN SINGH BISHT & ANOTHER

..... Respondents

Through: Mr. Rakesh Nautiyal, Advocate
with respondents in person

CORAM

HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

JUDGMENT

1. The present revision petition is filed under section 397 read with section 399 of the Code of Criminal Procedure, 1973 (hereinafter referred to as “the Code”) on behalf of the petitioner/State to set aside the order dated 08.12.2015 passed in Sessions Case bearing no. 17/2015 titled as **State V Hanuman Singh Bisht & Another** by the Court of Sh. Lokesh Kumar Sharma, ASJ-04/Special Judge (NDPS), South East, Patiala House Courts,



New Delhi arising out of FIR bearing no. 67/2009 registered at P.S. Lodhi Colony under sections 306/506 IPC whereby the respondents were discharged for offences punishable under sections 306/506 IPC.

2. The factual background is that a PCR call was received on 12.06.2008 at about 01.07 pm vide DD No.10A in P.S Lodhi Colony regarding self-immolation by one person near CGO complex, Lodhi Road which was entrusted to ASI Suraj Singh for necessary action. ASI Suraj Singh reached at the spot where he came to know that said person had already been moved to the Safdarjung Hospital by PCR and no eye witness was found at the spot. ASI Suraj Singh also could not ascertain the cause of self-immolation by said person. ASI Suraj Singh reached at the hospital and collected the MLC of said person who was identified as Jasbir Singh (hereinafter referred to as **“the deceased”**) s/o Hanuman Singh Bisht i.e. the respondent no 1 and was declared unfit for statement. ASI Suraj Singh in hospital met with Saraswati Devi (mother of the deceased), Yashvir Singh (brother of the deceased) and Urmila. ASI Suraj Singh came to know Hanuman Singh i.e. the respondent no.1 who is father of the deceased and was employed as Sub Inspector in BSF was living with the respondent no 2 for last 12-13 years and was not maintaining his family comprising wife and three children. A criminal case



under sections 307/34 IPC was also got registered at the instance of respondent no.1 at PS Kalyan Puri against his sons namely Jasbir Singh i.e. the deceased and Yashbir Singh. Saraswati Devi, wife of the respondent no 1 also filed a case for claiming maintenance against the respondent no.1. The deceased due to these reasons was under depression and self-immolated himself by pouring kerosene. The deceased subsequently succumbed to burn injuries. ASI Suraj Singh conducted further proceedings subsequent to the death of the deceased.

2.1 Saraswati Devi, mother of the deceased filed a complaint titled as **Saraswati Devi V State & others** bearing no 2119/1 to initiate criminal proceedings against the respondents for offences punishable under sections 306/506 IPC primarily alleging that the deceased committed suicide on 12.06.2008 due to the harassment, frequent beatings and threats to kill extended by his father i.e. the respondent no 1 and his nefarious and extramarital activities. The respondent no 1 had refused to maintain his family. The respondent no 1 was having extramarital relationship with the respondent no.2 which was not approved by family of the respondent no 1 including the deceased. The respondents involved the deceased and his brother in a false criminal case under section 307/34 IPC. The family of the



respondent no.1 was not able to meet daily requirements despite filing of case under section 125 of the code. The sons of the respondent no 1 were compelled to live under depression due to acts of the respondent no1. The deceased due to immoral activities of the respondent no 1 and the depression caused to him committed suicide by immolating himself on 12.06.2008 at CGO Complex, Lodhi Road. The deceased also left a suicide note wherein he attributed relationship between the respondents as reason of his suicide. The police did not register FIR. It was prayed that FIR under section 306 IPC and other relevant legal provisions be registered.

2.2 The court of Sh. Sanjeev Kumar, Metropolitan Magistrate, South District, Saket Courts, New Delhi vide order dated 21.04.2009 observed that the complaint disclosed commission of cognizable offences for which investigation is required by the police and directed SHO, P.S Lodhi Colony to register FIR and investigate. Accordingly present FIR bearing no. 67/2009 was got registered under sections 306/506 IPC at P.S Lodhi Colony. The investigation was conducted by the Investigating Officer and during investigation, Saraswati Devi, mother of the deceased produced one suicide note stated to be written by the deceased wherein the deceased levelled allegations against the respondents for compelling him to commit suicide.



The suicide note in FSL Report was found to be written by the deceased. The deceased in suicide note primarily mentioned that the respondents have spoiled future of the family and have been causing trouble to the entire family for last 12-15 years. The respondents also falsely implicated the deceased and his brother Yashbir in false criminal case under section 307/34 IPC. The respondents also anticipated death of the deceased and Yashbir. The respondent no 1 also threatened to divorce Saraswati Devi. The respondent no 1 did not pay due attention towards the family. The respondent no. 2 and her family members always threatened the deceased for sending him to jail again. The family members of the deceased also filed a case and various complaints against the respondent no 1. The respondent no 1 was acting under dictate of the respondent no 2. The deceased committed suicide due to frustration caused by the threats extended by the respondents.

2.3 The charge sheet for offences punishable under sections 306/506 IPC was filed after conclusion of investigation wherein the respondents were implicated. The court of Sh.Pawan Kumar, Metropolitan Magistrate-01, South-East, Saket Courts, New Delhi vide order dated 19.08.2014 took cognizance of offences and accordingly the respondents were summoned.



The case was committed to court of Sessions vide order dated 28.01.2015 passed by the court of Sh.Pawan Kumar, Metropolitan Magistrate-01, South-East, Saket Courts, New Delhi.

2.4 The Court of Sh. Lokesh Kumar Sharma, ASJ-04/Special Judge (NDPS), South East, Saket Courts, New Delhi (hereinafter referred to as “**the trial court**”) vide order dated 08.12.2015 (hereinafter referred to as “**the impugned order**”) discharged the respondents for the offences punishable under sections 306/506 IPC. The impugned order is reproduced verbatim as under:-

SC No. 17/15

State Vs. Hanuman Singh Bisht and Sulochana Bisht

FIR No. 67/2009

PS : Lodhi Colony

U/s. 306/506 IPG

08.12.2015

Present: Sh. Anil Kumar, Ld. Addl. PP for the State.

Both accused on bail in person with Sh P P Gaimiyal, Ld. Adv.

Case is fixed for arguments on charge.

I have gone through the alleged suicide note written by deceased Jasbir Singh Bisht, who was son of accused Hanuman Singh Bisht.

Ld. Addl. PP for the State has argued that prima facie there is sufficient material on record to frame charge under sections 306/506/34 IPC against both the accused persons and so far as the admissibility of the suicide note is concerned, it is a matter of trial.



However, I am not impressed with this contention of Ld. Addl. PP for the State as even if the suicide note allegedly written by the deceased is taken on its face value itself, even then no offence under section 306 IPC is made out against any of the accused persons, because from perusal of the aforesaid suicide note, it appears that due to alleged relations between accused Hanuman Singh Bisht and Sulochana Bisht, who is stated to be 2nd wife of accused Hanuman Singh Bisht, the deceased was feeling bad and was under depression as he was not happy with the accused's conduct of neglect shown towards mother of the deceased, who was the first wife of accused Hanuman Singh Bisht and mother of deceased and his brother. From the aforesaid suicide note, which is the only incriminating document in the present case, nowhere it is mentioned that either of the accused persons had ever induced or enticed the deceased to commit suicide, nor any alleged threat given from the side of the accused persons to the deceased had been elaborated.

In the absence of aforesaid facts, there is no sufficient material available on record to frame charge against the accused persons for the offences under sections 306/506 IPC. Accordingly, both the accused are discharged in this case and they are directed to execute their personal bond in the sum of Rs. 10,000/- each with one surety in the like amount in terms of section 437-A CrPC.

3. The petitioner/State being aggrieved by the impugned order, filed the present revision petition and challenged the impugned order on the grounds that the impugned order is *ex facie* illegal, legally unsustainable, arbitrary and erroneous. The court at the stage of framing of charge cannot indulge in a mini trial. The trial court has failed to appreciate that *prima facie* material was available which was pointing towards the guilt of the respondents. The trial court has failed to appreciate the suicide note left by the deceased which



unequivocally spelled out clear, deliberate and unambiguous role of the respondents in abetting the suicide of the deceased. The trial court has erred in concluding that the suicide note did not mention that the respondents ever induced or enticed the deceased to commit suicide which is contrary to the contents of the suicide note. The trial court has overlooked clear participation and roles of the respondents as mentioned by the deceased in suicide note. The impugned order is not well reasoned. It is prayed that the impugned order be set aside.

4. Chapter XVIII of the Code deals with trial before a Court of Sessions. Section 227 deals with situation when the accused shall be discharged. Section 228 deals with framing of charge. Sections 227 and 228 of the Code of read as under:-

227. Discharge.-If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.

228. Framing of charge.—(1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which—
(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, 3 [or any other Judicial Magistrate of the first class and direct the accused to appear



before the Chief Judicial Magistrate, or, as the case may be, the Judicial Magistrate of the first class, on such date as he deems fit, and thereupon such Magistrate] shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

(2) Where the Judge frames any charge under clause (b) of subsection (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.

4.1 The purpose of framing a charge is to intimate the accused about the clear, unambiguous and precise nature of accusation that the accused is called upon to meet in the course of a trial as observed in **V.C. Shukla V State through C.B.I.**, 1980 Supp SCC 92. The prosecution is required to establish a *prima facie* before a charge can be framed. The Supreme Court in **Union of India V Prafulla Kumar Samal & another**, (1979) 3 SCC 4 considered scope of inquiry at the stage of framing of charge as per section 227 of the Code in Sessions criminal trial and observed as under:-

(1) That the Judge while considering the question of framing the charges under section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a *prima facie* case against the accused has been made out.

(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be, fully justified in framing a charge and proceeding with the trial.



(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under section 227 of the Code the Judge which under the present Code is a senior and experienced Judge cannot act merely as a Post office or a mouth-piece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

4.2 The Supreme Court in Onkar Nath Mishra & others V State (NCT of Delhi) & Another, Appeal (Crl.)1716 of 2007 decided on 14th December, 2007 regarding framing of charge observed as under:-

It is trite that at the stage of framing of charge the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclosed the existence of all the ingredients constituting the alleged offence. At that stage, the court is not expected to go deep into the probative value of the material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out. At that stage, even strong suspicion founded on material which leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of the commission of that offence.



4.3 The Supreme Court in *Dipakbhai Jagdish Chandra Patel V State of Gujarat*, (2019) 16 SCC 547 discussed law relating to the framing of charge and discharge by observing as under:-

15. We may profitably, in this regard, refer to the judgment of this Court in *State of Bihar v. Ramesh Singh* wherein this Court has laid down the principles relating to framing of charge and discharge as follows:

4.....Reading Sections 227 and 228 together in juxtaposition, as they have got to be, it would be clear that at the beginning and initial stage of the trial the truth, veracity and effect of the evidence which the prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused. It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter under Section 227 or Section 228 of the Code. At that stage the Court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of deciding prima facie whether the court should proceed with the trial or not. If the evidence which the prosecutor proposes to



adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial....

If the scales of pan as to the guilt or innocence of the accused are something like even at the conclusion of the trial, then, on the theory of benefit of doubt the case is to end in his acquittal. But if, on the other hand, it is so at the initial stage of making an order under Section 227 or Section 228, then in such a situation ordinarily and generally the order which will have to be made will be one under Section 228 and not under Section 227.

23. At the stage of framing the charge in accordance with the principles which have been laid down by this Court, what the Court is expected to do is, it does not act as a mere post office. The Court must indeed sift the material before it. The material to be sifted would be the material which is produced and relied upon by the prosecution. The sifting is not to be meticulous in the sense that the Court dons the mantle of the Trial Judge hearing arguments after the entire evidence has been adduced after a full-fledged trial and the question is not whether the prosecution has made out the case for the conviction of the accused. All that is required is, the Court must be satisfied that with the materials available, a case is made out for the accused to stand trial. A strong suspicion suffices. However, a strong suspicion must be founded on some material. The material must be such as can be translated into evidence at the stage of trial. The strong suspicion cannot be the pure subjective satisfaction based on the moral notions of the Judge that here is a case where it is possible that accused has committed the offence. Strong suspicion must be the suspicion which is premised on some material which commends itself to the court as sufficient to entertain the prima facie view that the accused has committed the offence.

4.4 The Supreme Court in Asim Shariff V National Investigation Agency,
(2019) 7 SCC 148 opined that the trial court is not expected or supposed to



hold a mini trial for the purpose of marshalling the evidence on record. The Supreme Court in **State of Karnataka V M.R. Hiremath**, (2019) 7 SCC 515 held that it is a settled principle of law that at the stage of considering an application for discharge the court must proceed on the assumption that the material which has been brought on the record by the prosecution is true and evaluate the material in order to determine whether the facts emerging from the material, taken on its face value, disclose the existence of the ingredients necessary to constitute the offence. The Supreme Court in **Ghulam Hassan Beigh V Mohammad Maqbool Magrey & Others**, Criminal Appeal No. 001041 of 2022 (Arising Out of S.L.P. (Criminal) no 4599 OF 2021) decided on 26th July, 2022 observed as under:-

Thus from the aforesaid, it is evident that the trial court is enjoined with the duty to apply its mind at the time of framing of charge and should not act as a mere post office. The endorsement on the charge sheet presented by the police as it is without applying its mind and without recording brief reasons in support of its opinion is not countenanced by law. However, the material which is required to be evaluated by the Court at the time of framing charge should be the material which is produced and relied upon by the prosecution. The sifting of such material is not to be so meticulous as would render the exercise a mini trial to find out the guilt or otherwise of the accused. All that is required at this stage is that the Court must be satisfied that the evidence collected by the prosecution is sufficient to presume that the accused has committed an offence. Even a strong suspicion would suffice. Undoubtedly, apart from the material that is placed before the Court by the prosecution in the shape of final report in terms



of Section 173 of CrPC, the Court may also rely upon any other evidence or material which is of sterling quality and has direct bearing on the charge laid before it by the prosecution. (See: Bhawna Bai v. Ghanshyam, (2020) 2 SCC 217).

5. Section 306 IPC deals with abetment of suicide and 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.

The abetment is defined under Section 107 IPC which 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.

Explanation 1- A person who by wilful misrepresentation, or by wilful 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.

6.1 The Supreme Court in various decisions has considered scope of section



306 IPC in ascertain culpability of the accused. The Supreme Court in **Geo Varghese V State of Rajasthan and another**, 2021 SCC OnLine SC 873 has re-examined the provisions of Section 306 IPC along with the definition of abetment under Section 107 IPC and observed as under:-

15. Section 306 of IPC makes abetment of suicide a criminal offence and prescribes punishment for the same.

16. The ordinary dictionary meaning of the word ‘instigate’ is to bring about or initiate, incite someone to do something. This Court in the case of Ramesh Kumar Vs. State of Chhattisgarh has defined the word ‘instigate’ as under:-

Instigation is to goad, urge forward, provoke, incite or encourage to do an act.

17. The scope and ambit of Section 107 IPC and its correlation with Section 306 IPC has been discussed repeatedly by this Court. In the case of S.S.Cheena Vs. Vijay Kumar Mahajan and Anr(2010) 12 SCC 190, it was observed as under:-

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 the Supreme 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.

6.2 The Supreme Court in M. Arjunan V State, represented by its



Inspector of Police, (2019) 3 SCC 315 considered ingredients of section 306 IPC in detail and observed as under:-

The essential ingredients of the offence under Section 306 I.P.C. are: (i) the abetment; (ii) the intention of the accused to aid or instigate or abet the deceased to commit suicide. The act of the accused, however, insulting the deceased by using abusive language will not, by itself, constitute the abetment of suicide. There should be evidence capable of suggesting that the accused intended by such act to instigate the deceased to commit suicide. Unless the ingredients of instigation/abetment to commit suicide are satisfied, accused cannot be convicted under Section 306 I.P.C.

6.3 The Supreme Court in **Ude Singh & Others V State of Haryana**, (2019) 17 SCC 301 held that in order to convict an accused under Section 306 IPC, the state of mind to commit a particular crime must be visible with regard to determining the culpability. It was observed as under:-

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 behavior 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.



16.1 For the purpose of finding out if a person has abetted commission of suicide by another; the consideration would be if the accused is guilty of the act of instigation of the act of suicide. As explained and reiterated by this Court in the decisions above referred, instigation means to goad, urge forward, provoke, incite or encourage to do an act. If the persons who committed suicide had been hypersensitive and the action of accused is otherwise not ordinarily expected to induce a similarly circumstanced person to commit suicide, it may not be safe to hold the accused guilty of abetment of suicide. But, on the other hand, if the accused by his acts and by his continuous course of conduct creates a situation which leads the deceased perceiving no other option except to commit suicide, the case may fall within the four-corners of Section 306 IPC. If the accused plays an active role in tarnishing the self-esteem and self-respect of the victim, which eventually draws the victim to commit suicide, the accused may be held guilty of abetment of suicide. The question of *mens rea* on the part of the accused in such cases would be examined with reference to the actual acts and deeds of the accused and if the acts and deeds are only of such nature where the accused intended nothing more than harassment or snap show of anger, a particular case may fall short of the offence of abetment of suicide. However, if the accused kept on irritating or annoying the deceased by words or deeds until the deceased reacted or was provoked, a particular case may be that of abetment of suicide. Such being the matter of delicate analysis of human behaviour, each case is required to be examined on its own facts, while taking note of all the surrounding factors having bearing on the actions and psyche of the accused and the deceased.

6.4 The Supreme Court in Mariano Anto Bruno & another V The Inspector of Police, Criminal Appeal No. 1628 of 2022 decided on 12.10.2022 after referring above referred decisions rendered by the Supreme Court in context of culpability under section 306 IPC observed as under:-



It is also to be borne in mind that in cases of alleged abetment of suicide, there must be proof of direct or indirect acts of incitement to the commission of suicide. Merely on the allegation of harassment without their being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide, conviction in terms of Section 306 IPC is not sustainable.

6.4.1 The Supreme Court also referred **Ramesh Kumar V State of Chhattisgarh**, (2001) 9 SCC 618 wherein the conviction for the offence under Section 306 IPC was set aside as ingredients of Section 306 IPC were not established. It was observed as under:-

20. Instigation is to goad, urge forward, provoke, incite or encourage to do "an act". To satisfy the requirement of instigation though 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.

21. In **State of West Bengal v. Orilal Jaiswal and Anr.**¹⁰, 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 transpires 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.

6.5 The Supreme court in **Gurcharan Singh V State of Punjab**, (2020) 10 SCC 200 observed that whenever a person instigates or intentionally aids by any act or illegal omission, the doing of a thing, a person can be said to have abetted in doing that thing. To prove the offence of abetment, as specified under Section 107 IPC, the state of mind to commit a particular crime must be visible, to determine the culpability.

6.6 The Supreme Court in **Kashibai & Others V The State of Karnataka**, Criminal Appeal No.000627 of 2023 (arising out of SLP (Crl.) No. 8584/2022) decided on 28.02.2023 observed that to bring the case within the purview of 'Abetment' under Section 107 IPC, there has to be an evidence with regard to the instigation, conspiracy or intentional aid on the part of the accused and for the purpose proving the charge under Section 306 IPC, also there has to be an evidence with regard to the positive act on the part of the accused to instigate or aid to drive a person to commit suicide.

7. The Supreme Court in **Netai Dutta V State of W.B.**, (2005) 2 SCC 659



regarding suicide note observed 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 workplace. 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 a 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 Knmar Nag. An offence under Section 306 IPC would stand only if there is an abetment for the commission of the crime. The parameters of “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 wilful misrepresentation or wilful 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 wilful 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.

7.1 The Supreme Court in Madan Mohan Singh V State of Gujurat & another, Criminal Appeal No 1291 of 2008 decided on 17.08.2010



regarding evidentiary value of suicide note opined as under:-

8.....We are convinced that there is absolutely nothing in this suicide note or the FIR which would even distantly be viewed as an offence much less under Section 306, IPC. We could not find anything in the FIR or in the so-called suicide note which could be suggested as abetment to commit suicide. In such matters there must be an allegation that the accused had instigated the deceased to commit suicide or secondly, had engaged with some other person in a conspiracy and lastly, that the accused had in any way aided any act or illegal omission to bring about the suicide. In spite of our best efforts and microscopic examination of the suicide note and the FIR, all that we find is that the suicide note is a rhetoric document in the nature of a departmental complaint. It also suggests some mental imbalance on the part of the deceased which he himself describes as depression. In the so-called suicide note, it cannot be said that the accused ever intended that the driver under him should commit suicide or should end his life and did anything in that behalf. Even if it is accepted that the accused changed the duty of the driver or that the accused asked him not to take the keys of the car and to keep the keys of the car in the office itself, it does not mean that the accused intended or knew that the driver should commit suicide because of this. In order to bring out an offence under Section 306, IPC specific abetment as contemplated by Section 107, IPC on the part of the accused with an intention to bring out the suicide of the concerned person as a result of that abetment is required. The intention of the accused to aid or to instigate or to abet the deceased to commit suicide is a must for this particular offence under Section 306, IPC. We are of the clear opinion that there is no question of there being any material for offence under Section 306, IPC either in the FIR or in the so-called suicide note.

10. As regards the suicide note, which is a document of about 15 pages, all that we can say is that it is an anguish expressed by the driver who felt that his boss (the accused) had wronged him. The suicide note and the FIR do not impress us at all. They cannot be depicted as expressing anything intentional on the part of the accused that the deceased might commit suicide. If the



prosecutions are allowed to continue on such basis, it will be difficult for every superior officer even to work.

8. The Additional Public Prosecutor for the petitioner argued that the impugned order is legally not sustainable and erroneous as the trial court indulged in a mini trial at stage of passing the impugned order. The trial court has not appreciated the suicide note left by the deceased in right and legal perspective which is reflective of clear, deliberate and unambiguous role of the respondents in abetting the suicide of the deceased. The impugned order is not supported by well-defined reasons.

8.1 The counsel for the respondents argued that it is reflecting that the deceased was not happy with relation of the respondent no 1 with the respondent no 2 which cannot be accepted as an act to instigate the deceased to take extreme steps. There was no positive act on part of the respondents which can be said to instigate the deceased to commit suicide. The trial court has rightly passed the impugned order after considering relevant facts and material. The present petition is liable to be dismissed. The counsel for the respondent submitted written submissions and relied on judgement titled as **Arnab Manoranjan Goswami V State of Maharashtra (2021) 2 SCC 427**, and also cited other case laws.



9. It is reflecting that the deceased was son of the respondent no.1 and the respondent no.1 was not staying with his family including the deceased. The respondent no.1 was not taking appropriate care of his family. The respondent no.1 was/is staying with the respondent no 2. There is nothing on record to establish that marriage between Saraswati Devi, mother of the deceased and the respondent no.1 has even been dissolved in legal way. The deceased was not happy with relationship between the respondents and was under depression. The respondents also implicated the deceased and his brother in a criminal case under sections 307/34 IPC. Saraswati Devi, mother of the deceased also filed a petition for claiming maintenance against the respondent no.1. The family of the respondent no.1 also filed various complaints against the respondents. The prime act as per prosecution which compelled the deceased to commit suicide was relationship between the respondents and the respondent no. 1 was not taking care and did not maintain his family including the deceased. The issue which needs judicial consideration is that these acts are sufficient to compel the deceased to commit suicide.

10. It is an accepted legal position which is emerging from above referred decisions that abetment to commit suicide should involve positive act on the



part of the accused to instigate or aid in committing suicide and there should be clear *mens rea* to commit the offence. The act complained of must be intended to push the deceased to commit suicide and there must be a proof of direct or indirect act/s of incitement to the commission of suicide. The Court should look for cogent and convincing acts of incitement towards the commission of suicide. The mere allegations of harassment caused to the deceased by the accused would not suffice unless such acts compel the person to commit suicide and such offending acts must be proximate to the time of occurrence. If the deceased happened to be hypersensitive and his action of committing suicide is not ordinarily expected to induce a similarly circumstanced person to commit suicide then it may not be safe to hold the accused guilty of abetment of suicide. However if the accused by his acts and continuous course of conduct creates a situation leading the deceased to commit suicide, then case may be covered under section 306 IPC. There should be evidences pertaining to the positive act on the part of the accused to instigate or aid to drive the deceased to commit suicide.

11. The deceased was not happy with relationship between the respondents rather has not accepted their relationship. The deceased was under depression as reflected from suicide note. Mere relationship of the



respondent no 1 with the respondent no 2 cannot be said that the respondents had in any way instigated the deceased to commit suicide or were responsible for the suicide of the deceased. The suicide note only reflects dissatisfaction of the deceased due to relationship of the respondents. There is absolutely nothing in suicide note or FIR which could be suggestive of abetment to commit suicide on the part of the respondents. The suicide note is just expressing dissatisfaction of the deceased for conduct of the respondent no.1 towards the family and psychological condition of the deceased which he himself describes as depression. The suicide note does not reflect that the respondents ever intended the deceased to commit suicide or end his life. Even if the respondent no.1 was living with the respondent no.2 without divorcing his wife i.e. mother of the deceased and was not taking appropriate care for family, it does not mean that the respondents ever intended to incite the deceased to commit suicide. There is nothing on the part of the respondents which can establish their intention to compel the deceased to commit suicide as required under section 107 IPC. The suicide note is merely reflective of expression of anguish and anger of the deceased which he felt for the conduct of the respondents and in particular conduct of his father i.e. the respondent no.1. The contents of the suicide note do not



either refer or make out the offence punishable under section 306 IPC against the respondents. The evidences against the respondents as collected after investigation are not sufficient and definite to put them to trial for the offences punishable under sections 306/34 IPC. The pain and sufferings of the deceased during his life time and the complainant i.e. mother of the deceased are understandable as a young boy has committed suicide but the sympathies, pain and suffering of the complainant cannot be transformed or translated into legal remedies i.e. for criminal prosecution against the respondents.

12. The court at stage of consideration framing of the charges is required to sift and weigh the evidence but only for the limited purpose to find out whether or not a *prima facie* case against the accused has been made out. If the material collected during evidence discloses grave suspicion against the accused then the court has to frame charge and to proceed with the trial. Whether a *prima facie* is made out depends upon the facts of each case. The court is justified in discharging the accused if evidence/material collected during investigation gives rise to some suspicion but not grave suspicion against the accused. The court is not supposed to make a roving enquiry and weigh the evidence as if the court



is conducting a trial. The court at stage of consideration of charge is not expected to go deep into the probative value of the material collected during investigation. The truth, veracity and effect of the proposed evidence of the prosecution should not to be meticulously judged. The material collected during investigation arising out of present FIR if accepted as true even no offence is made out under sections 306/506 IPC against the respondents. The impugned order reflects that the trial court has considered the allegations and contents of the suicide note and other material collected during the investigation and rightly discharged the respondents. The impugned order passed by the trial court is based on reasons and does not call for any interference. Hence, the present petition is dismissed.



DR. SUDHIR KUMAR JAIN
(JUDGE)

OCTOBER 10, 2023

sk/ak/sd