



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO.1262 OF 2021

Sunil S/o Tukaram Ghusale,
Age-35 years, Occu:Labour,
R/o-sulibhanjan, Taluka-Khultabad,
District-Aurangabad

...APPLICANT

VERSUS

- 1) The State of Maharashtra,
(Through Khultabad Police Station,
District-Aurangabad,
- 2) Milind S/o Pundlik Bhalerao,
Age-33 years, Occu:Driver,
R/o-Sulibhanjan, Taluka-Khultabad,
District-Aurangabad.

...RESPONDENTS

...
Mr. Sohel Subhedar Advocate h/f. Mr. N.S. Ghanekar
Advocate for Applicant.
Ms. P.R. Bharaswadkar, A.P.P. for Respondent No.1
...

**CORAM: SMT. VIBHA KANKANWADI AND
S.G. CHAPALGAONKAR, JJ.**

DATE : 9th SEPTEMBER, 2024

ORAL ORDER [PER SMT. VIBHA KANKANWADI, J.] :

1. Present Application has been filed under Section 482 of the
Code of Criminal Procedure for quashing the First Information

Report (for short "the FIR") vide crime No.110 of 2021 registered with Khultabad Police Station, District-Aurangabad and by way of amendment for quashing the proceedings in Sessions Case No.679 of 2023 pending before the learned Sessions Judge, Aurangabad for the offence punishable under Sections 306, 506 read with Section 34 of the Indian Penal Code.

2. Heard learned Advocate Mr. Subhedar holding for learned Advocate Mr. Ghanekar for the applicant and learned APP Ms. Bharaswadkar for respondent No.1 – State.

3. Present applicant is original accused No.1. The FIR is lodged by the son of the deceased. Pundlik Keroji Bhalerao is the deceased who was residing with his wife, son Milind - informant and his family. According to the informant, as his father was landless, the Government has given 5 acres of land from Gut No.67 (Survey No.50) at Sulibhanjan, in 1972. The revenue entry to that effect is available with Tahsil Office. According to the informant, out of said 5 acres of land, they had given 2½ acres of land to one Ramrao Shankar Ghusale for cultivation and remaining 2½ acres of land was given for cultivation to one Murlidhar Pawar. After some time said Ramrao Ghusale and

Murlidhar Pawar had stopped giving income / rent amount to the deceased. It is then stated that after some time the present applicant had encroached on the 2½ acres of land which was given for cultivation to Murlidhar Pawar. The applicant was not allowing the deceased and family members to enter the said land. The deceased had made applications for getting the possession of the encroached land and get the online 7 X 12 extract, however the revenue authorities did not help him. According to the informant, though the revenue entry was clear, yet when 7 X 12 extract was not given, the deceased had met Talathi of Khultabad so that he can get the document. At that time, according to the informant, the Talathi had told deceased Pundlik that he should not indulge with the applicant and the other persons as they are Gundas and they may kill him. According to the informant, since then his father was restless. He says that he approached to the Advocate and filed a proceeding with Khultabad Court. When deceased and his family members were asking the relief from various departments, it is then stated that the applicant and his family members gave threats to Pundlik on 1st April 2021 that he should not give complaint to anybody otherwise he would be killed, so also his relatives would be killed. His father went from home around 5.30

a.m. of 4th April 2021 for answering nature's call, however, he did not return. Therefore the W.C. unit was broke open. At that time it was found that Pundlik has committed suicide by hanging. He had left the suicide note. Upon the said contents the FIR came to be lodged.

4. Since the investigation is over and the copy of the charge-sheet is made available, we have considered the material. The inquest panchnama, postmortem report, provisional cause of death certificate and other statements would certainly show that the deceased had committed suicide by hanging. The question before us is whether the material in the charge-sheet is sufficient to attract the offence under Section 306, 506 read with Section 34 of the Indian Penal Code. For that purpose, the contents of the suicide note are important. The suicide note runs thus:-

" मी सुलीभंजन येथील रहिवासी असून माझी जमीन ग.नं.६७ व स.नं.५० पाच एकर फेरे झालेली असून नमुना नं.८ तयार झालेला आहे. परंतु, संबंधीत तलाठी व इतर गावगुंड माझी शेती माझे नावे होवू देत नाही आणि यास दोषी फक्त तलाठी व सुनील (बेंडा) आणि विशाल कारभारी घुसळे येवढे जबाबदार आहे. कारण तलाठी याने आम्हास धमकी दिली की, तू पुढे कारवाई केलीस तर तुला व तुझा नातेवाईकास जीवंत मारून टाकीन.

आपला विश्वासू,
श्री. पुंडलिक भालेराव

टिप : तसेच, ऑनलाईन ७/१२ व त्यांना

शासन शिक्षा केल्या शिवाय डेथ बॉडी देऊ नये"

. English translation of the said suicide note reads as under:-

" I am residing at Suli Bhanjan. There is mutation of 5 acres of land situated at Gat No.67 and Survey No.50 and Specimen 8 is prepared. But the concerned Talathi and other village-bullies do not allow my land to be named after me. Talathi and Sunil Ghusale, R/at Sulibhanjan are responsible for this Because Talathi threatened us that if I will take further action, he will kill me and my relatives alive.

Yours faithfully

Sd/-

Shri Pundlik Bhalerao

Note:- Unless the online 7 X 12 extract is not given and the government punishes them the dead body should not be taken away."

(Translated by Senior Translator and Interpreter,
High Court of Bombay, Bench at Aurangabad)

5. Perusal of the FIR, which is reproduced earlier, and the statements of witnesses would show that there is absolutely no date or approximate month and year when the applicant is stated to have made encroachment on the land given to the deceased. Except the alleged threat on 1st April 2021, the contents of the FIR as well as statement under Section 161 of

the Code of Criminal Procedure do not show that at any earlier point of time there was any interaction between the deceased and the applicant. Now, whether the alleged threat given on 1st April 2021 can be stated to be sufficient to say that it amounts to abetment, would be a question and then the answer is certainly in the negative. Further, except the statement that Pundlik was restless between 1st April 2021 to 4th April 2021, the informant and witnesses have not stated anything nor it is their say that during that period the applicant had again interacted with the deceased.

6. We would like to rely on *Dilip S/o Ramrao Shirasao and others vs. State of Maharashtra and another, 2016 ALL MR (Cri) 4328*, wherein this Court, relying upon the catena of the decisions of the Hon'ble Supreme Court, held that it is necessary for the prosecution to at least prima facie establish that the accused had an intention to aid or instigate or abet the deceased to commit suicide and in the absence of availability of such material, the accused cannot be compelled to face trial for the offence punishable under Section 306 of the Indian Penal Code. We would like to reproduce Paragraph Nos. 11 to 18 of the said decision:-

" 11. The law as to what are the requirements to constitute an offence punishable under Section 306 of the IPC is no more res integra. The law is very well crystalized by the Hon'ble Apex Court in the catena of cases including in the cases of *Sanju alias Sanjay Singh Sengar vs. State of Madhya Pradesh*, reported in *2002 Cri.L.J. 2796*; *Madan Mohan Singh vs. State of Gujrat and another, reported in (2010) 8 SCC 628*; and in the *case of S.S. Chheena vs. Vijay Kumar Mahajan reported in 2010 All MR (Cri) 3298 (S.C.)*.

12. In the case of *Sanju @ Sanjay Sengar* cited supra, the appellant before the Apex Court was the brother of Neelam wife of deceased Chander Bhushan @ Babloo. It was the prosecution case that after marriage of Neelam with the deceased, there was continuous ill-treatment by the deceased and his family members to Neelam. As such she had gone to her parents house and started living with her brother, the appellant before the Apex Court. About two months prior to the incident, the appellant advised the deceased to take his sister back to her matrimonial house and treat her properly. It was the prosecution case that on 25th July, 1998, the appellant visited the place of the parents of the deceased and pleaded with them that his sister should be rehabilitated in the matrimonial home and should not be physically ill-treated or harassed. It was also the prosecution case that on that day the appellant also said to have threatened the parents of the deceased that if they do not mend their behaviour towards his sister, he would be compelled to resort to filing a complaint under Section 498-A of the Indian Penal Code. On this, the parents of the deceased expressed helplessness. It was the further prosecution case that the parents of the deceased informed the deceased about the same. He went to the house of parents of the appellant, where quarrel took place between them. Therefore, the deceased returned alone and told his brothers and other acquaintances that the appellant had threatened and abused him by using filthy words. On the next date i.e. on 27th July, 1998, the deceased was

found hanging with a rope by neck on the raft of his house and he was found dead. A suicide note was left by the deceased. On the basis of the said suicide note, the charge-sheet was filed against said Sanju alias Sanjay Sengar . A petition challenging filing of charge-sheet was filed before the High Court under Section 482 of the Code of Criminal Procedure. The same was rejected. Hence, said Sanju alias Sanjay Sengar approached the Hon'ble Apex Court.

13. The Apex Court in *Sanju @ Sanjay Sengar's* case considered the earlier judgments in paragraphs 9 to 12 of the said judgment. It would be appropriate to refer to the same -

"9. In *Swamy Prahaladdas v. State of M.P. & Anr. , 1995 Supp. (3) SCC 438*, the appellant was charged for an offence under Section 306 I.P.C. on the ground that the appellant during the quarrel is said to have remarked the deceased 'to go and die' . This Court was of the view that mere words uttered by the accused to the deceased 'to go and die' were not even prima facie enough to instigate the deceased to commit suicide.

10. In *Mahendra Singh vs. State of M.P., 1995 Supp.(3) SCC 731*, the appellant was charged for an offence under Section 306 I.P.C basically based upon the dying declaration of the deceased, which reads as under:

"My mother-in-law and husband and sister-in-law (husband's elder brother's wife) harassed me. They beat me and abused me. My husband Mahendra wants to marry a second time. He has illicit connections with my sister-in-law. Because of those reasons and being harassed I want to die by burning."

11. This Court, considering the definition of 'abetment' under Section 107 I.P.C., found that the charge and conviction of

the appellant for an offence under Section 306 is not sustainable merely on the allegation of harassment to the deceased. This Court further held that neither of the ingredients of abetment are attracted on the statement of the deceased.

12. In *Ramesh Kumar vs. State of Chhattisgarh (2001) 9 SCC 618*, this Court while considering the charge framed and the conviction for an offence under Section 306 I.P.C. on the basis of dying declaration recorded by an Executive Magistrate, in which she had stated that previously there had been quarrel between the deceased and her husband and on the day of occurrence she had a quarrel with her husband who had said that she could go wherever she wanted to go and that thereafter she had poured kerosene on herself and had set fire. Acquitting the accused this Court said :

"A word uttered in a fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation. If it transpires to the court that a victim committing suicide was hypersensitive to ordinary petulance, discord and difference in domestic life quite common to the society to which the victim belonged and such petulance, discord and difference 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 for abetting the offence of suicide should be found guilty."

14. After considering the earlier judgments, Their Lordships observed thus at paragraph 13 -

"13. 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 drove 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 pointed 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."

15. Their Lordships of the Apex Court further have reproduced the suicide note in the said case in paragraph 14 of the judgment, wherein Sanjay Sengar was directly implicated to be the person responsible for suicide of the deceased. After reproducing the said suicide note, Their Lordships observed thus at paragraph 15 -

"15. The prosecution story, if believed, shows that the quarrel between the deceased and the appellant had taken place on 25th July, 1998 and if the deceased came back to the house again on 26th July, 1998, it cannot be said that the suicide by the deceased was the direct result of the quarrel that had taken place on 25th July, 1998. Viewed from the aforesaid circumstances independently, we are clearly of the view that the ingredients of 'abetment' are totally absent in the instant case for an offence under Section 306 I.P.C."

After these observations, Their Lordships allowed the appeal and quashed and set aside the charge-sheet.

16. In the case of *Madan Mohan Singh, [2010 ALL MR (Cri) 3245 (S.C.)]* (cited supra), the petitioner was working as a DET in Bharat Sanchar Nigam Ltd. The deceased i.e. Deepakbhai Krishnalal Joshi has committed suicide. On the basis of complaint filed by his wife, an FIR came to be registered. The petitioner had applied for discharge. The trial Court rejected it. The Gujarat High Court upheld the order of the trial Judge. Being aggrieved thereby the petitioner has approached the Apex Court. The prosecution heavily relied on the suicide note of the deceased wherein it was stated that the petitioner was responsible for his death. The Apex Court negating the contention on behalf of prosecution observed thus:-

"10. 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.

11. 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 even 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.

12. 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 about the suicide of the person concerned 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.

13. It is absurd to even think that a superior officer like the appellant would intend to bring about suicide of his driver and, therefore, abet the offence. In fact, there is no nexus between the so-called suicide (if at all it is one for which also there is no material on record) and any of the alleged acts on the part of the appellant. There is no proximity either. In the prosecution under Section 306 IPC, much more material is required. The courts have to be extremely careful as the main person is not available for cross-examination by the appellant-accused. Unless, therefore, there is specific allegation and material of definite nature (not imaginary or inferential one), it would be hazardous to ask the appellant-accused to face the trial. A criminal trial is not exactly a pleasant experience. The person like the appellant in the present case who is serving in a responsible post would

certainly suffer great prejudice, were he to face prosecution on absurd allegations of irrelevant nature. In the similar circumstances, as reported in *Netai Duta v. State of W.B.*, this Court had quashed the proceedings initiated against the accused.

14. 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." emphasis supplied)

17. In case of ***S.S.Cheena*** (cited supra) , there was a dispute between one Saurav Mahajan, who was a final year student of Law Department and Harminder Singh, a fellow student of the same class with regard to the theft of a mobile phone. This came to the notice of M.D.Singh, the then Head of the Law Department who asked both the students to submit their versions of the incident in writing. The deceased and Harminder gave their versions and, thereafter, M.D.Singh forwarded their versions to the University authorities for taking necessary action. An inquiry was conducted on 13th October 2003 by the Security Officer of the University Shri S.S.Chheena. During the course of inquiry, on 17th October 2003, Saurav Mahajan committed suicide by jumping in front of the train. A suicide note was seized from the the pocket of the deceased. On the complaint of father of the deceased, an offence under Section 306 of I.P.C. was registered against Harminder Singh. During the course of trial, S.S.Cheena was also impleaded as accused. Being aggrieved by the framing of charge, S.S.Cheena approached the High Court. The High Court refused to interfere.

Being aggrieved thereby, said S.S.Cheena approached the Supreme Court. The Apex Court observed thus:

"27. This Court in *Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi) (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 IPC against the appellant is palpably erroneous and unsustainable. It would be criminal travesty of justice to compel the appellant to face a trial without any credible material whatsoever. Consequently, the order of framing charge under Section 306 IPC against the appellant is quashed and all proceedings pending against him are also set aside." (emphasis supplied)

18. Recently, in the case of ***State of Kerala and others vs. S. Unnikrishnan Nair and others***, reported in ***AIR 2015 Supreme Court 3351 : [2015 ALL SCR 2824]***, Their Lordships had an occasion to consider a similar case. In the said case, the Chief Investigating Officer had committed suicide pending investigation in a murder case. In the suicide note, it was alleged that two of his subordinates were responsible for his this situation. There were some allegations against one Advocate and the Chief Judicial Magistrate. The First Information Report came to be lodged against the subordinate officers. They filed a petition under Section 482 of the Criminal Procedure Code. The Kerala High Court quashed the First Information Report. Being aggrieved thereby, the State went in appeal before the Hon'ble Apex Court. While dismissing the appeal, the Their Lordships of the Apex Court observed thus :

"13. As we find from the narration of facts and the material brought on record in the case at hand, it is the suicide note which forms the fulcrum of the allegations and for proper appreciation of the same, we have reproduced it herein-before. On a plain reading of the same, it is difficult to hold

that there has been any abetment by the respondents. note, except saying that the the respondents The compelled him to do everything and cheated him and put him in deep trouble, contains nothing else. The respondents were inferior in rank and it is surprising that such a thing could happen. That apart, the allegation is really vague. It also baffles reasons, for the department had made him the head of the investigating team and the High Court had reposed complete faith in him and granted him the liberty to move the court, in such a situation, there was no warrant to feel cheated and to be put in trouble by the officers belonging to the lower rank. That apart, he has also put the blame on the Chief Judicial Magistrate by stating that he had put pressure on him. He has also made the allegation against the Advocate."

7. Taking into consideration the legal position as aforesaid, we are of the opinion that the contents of the FIR as well as the charge-sheet do not attract the ingredients of Section 107 of the Indian Penal Code and/or Section 306 of the Indian Penal Code. Even if we take the contents of the suicide note as it is, in the suicide note except the name no further action amounting to abetment or which can clarify that the applicant had the intention that deceased should commit suicide is not reflected and therefore, it would be unjust to ask the applicant to face the trial. The case squarely comes within the parameters laid down in in *State of Haryana vs. Ch. Bhajan Lal and others, AIR 1992 SC 604*. Therefore, we proceed to pass the following order:-

ORDER

(I) The Application stands allowed.

(II) The First Informant Report vide Crime No. 110 of 2021 registered with Khultabad Police Station, District-Aurangabad and the proceedings in Sessions Case No.679 of 2023 pending before the learned Sessions Judge, Aurangabad for the offence punishable under Sections 306, 506 read with Section 34 of the Indian Penal Code, stands quashed and set aside as against the present applicant.

[S.G. CHAPALGAONKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE