



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

CRIMINAL APPLICATION NO.2103 OF 2022

- 1) Vishavanath @ Vishnu S/o
Ranganath Kulkarni,
Age-63 years, Occu:Labour,
- 2) Sanjay S/o Vishavanath Kulkarni,
Age-42 years, Occu:Labour,
- 3) Chandrakala Vishavanath Kulkarni,
Age-58 years, Occu:Labour,
- 4) Sharda W/o Sanjay Kulkarni,
Age-40 years Occu:Household,
- 5) Sumit S/o Sanjay Kulkarni,
Age-15 years, Occu:Education,
Since minor under the guardian of
Applicant No.2.

Applicant Nos.1 to 5 R/o- Railway Station
Road, Karmad, Taluka and District-Aurangabad,

- 6) Balu S/o Sheshrao Hiwarale,
Age-42 years, Occu:Service,
R/o-Behind Sessions Court,
Kranti Nagar, Aurangabad,
Taluka and District-Aurangabad.

...APPLICANTS

VERSUS

- 1) The State of Maharashtra,
Through the Police Sub Inspector,
Karmad Police Station,
Taluka and District-Aurangabad,
- 2) Pankaj s/o Dondiram Kulkarni,
Age-34 years, Occu:Labour,
R/o-Mahadev Gali, Karmad,
Taluka and District-Aurangabad.

...RESPONDENTS

...
Mr. Ujwal S. Patil Advocate for Applicants.
Mr. S.A. Gaikwad, A.P.P. for Respondent No.1.
Mr. V.S. Wakale Advocate for Respondent No.2.
...

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

DATE : 22nd AUGUST, 2024

JUDGMENT [PER SMT. VIBHA KANKANWADI, J.] :

1. Heard finally with the consent of the learned Advocates for the rival parties.
2. 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.178 of 2022 registered with Karmad Police Station, District-Aurangabad for the offence punishable under Section 306 read with Section 34 of the Indian Penal Code and by way of amendment for quashing and setting aside the proceedings in Sessions Case No.511 of 2023 pending before the learned Sessions Judge, Aurangabad.
3. Heard learned Advocate Mr. Patil for applicants, learned APP Mr. Gaikwad for respondent No.1 – State and learned

Advocate Mr. Wakale for respondent No.2.

4. Learned Advocate for the applicants has vehemently submitted that perusal of the FIR, which is lodged by respondent No.2 Pankaj, who is son of deceased Dhondiram, would show that there were civil disputes. In fact the partition had taken place long back, still deceased was insisting that he should be given share in the compensation amount in respect of the land which was acquired for D.M.I.C. project. It is alleged that present applicants were avoiding to give the alleged share and when ever the deceased used to call applicant No.1, he used to say that he would give the amount and immediately used to cut the phone. At the most the deceased could have instituted suit or could have taken appropriate legal action. But at no point of time, the action of the applicants can amount to instigate the deceased to commit suicide. It would be then unjust to ask the applicants to face the trial. Even the alleged suicide note if considered as it is, will not support the prosecution to prove the instigation.

5. Per contra, the learned APP as well as learned Advocate for

respondent No.2 objected the application and submitted that since now investigation is over and charge-sheet is filed on record, Sessions Case is also committed to the Court of Sessions, let the applicants face the trial. The opinion of the handwriting expert is still awaited. In the suicide note the deceased has clearly blamed the applicants.

6. The first and foremost fact which is required to be considered is the law on the point. To constitute an offence under Section 306 of the Indian Penal Code, the prosecution should establish (1) that the person has committed suicide and (2) that the suicide was abetted by the accused/accused persons. Thus, for proving the said offence, proof for abetment of the commission of the crime is the *sine qua non*. Therefore, we will have to read Section 306 together with Section 107 of the Indian Penal Code.

7. 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 "goadings". 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."

8. Since the entire law has been considered in the above-said case, we are relying upon the said authority.

9. Now, turning to the facts of the case, it is to be noted that as per respondent No.2, there was ancestral land belonging to the family which was acquired for D.M.I.C. project and applicant No.1 had received an amount of Rs.50,00,000/-. According to deceased Dhondiram and respondent No.2, Dhondiram has half share in the same, which according to them was not given by applicant No.1. It is stated that Dhondiram was visiting to applicant No.1's house, 15 to 20 days prior to the FIR, daily to demand his share. However, the share was not given. On the contrary, applicant No.1 left the house when Dhondiram and respondent No.2 had gone along with other relatives to the house of applicant No.1. The relatives used to ask applicant No.1, as to whether the share has been given to Dhondiram and he used to say yes. Dhondiram was then going to the house of

applicant No.1 in the morning and evening daily. At some time, all the applicants had even man-handled Dhondiram, and son-in-law of applicant No.1 refused to give the amount. As a result of which, according to respondent No.2, Dhondiram committed suicide. At that time he has left the suicide note.

10. If we consider the suicide note, (even if we accept for a moment that it is in the handwriting of the deceased), it would show that first paragraph says about acquisition of property for D.M.I.C. Project and then the second paragraph says that land admeasuring 66 Gunthas has been given to his share but as per Court's decision, amount of Rs.44,00,000/- has been deposited in Maharashtra Bank. Amount of Rs.7,00,000/- has been given to sister Kalabai Sheshrao Hiwaral and one Balu Hiwaral. Amount of Rs.5,00,000/- has been given to one Ramkrushna Kulkarni. Then Rs.5,00,000/- were given to Raju Kulkarni and Deelip Kulkarni. But the amount of the deceased and brother is still pending, so also amount of another sister Gayabai is pending. He is paying visit to the house of brother but the brother is not giving amount. If he commits suicide, then after giving names of the applicants, he says that they should be held responsible. The suicide note runs in pages, but it also states about the partition.

11. Thus, even if we take the said suicide note as it is, it does not fulfill the ingredients of Section 306 read with Section 107 of the Indian Penal Code. The deceased could have definitely knocked the doors of the Civil Court if at all he has share in the property. Further, there appears to be no date on the suicide note. Therefore, we are unable to get when exactly the suicide note was written. An important point is that there was no evidence, even prima facie, from the entire charge-sheet, to arrive at a conclusion that the applicants had *mens rea* that deceased should commit suicide.

12. In view of the said legal position and after considering the facts of the case, we are of the opinion that it would be unjust to ask the applicants to face the trial. The case is squarely covered in the parameters laid down in ***State of Haryana vs. Ch. Bhajan Lal and others, AIR 1992 SC 604***. Therefore, we proceed to pass the following order:-

ORDER

(I) Application stands allowed.

(II) The First Informant Report vide Crime No. 178 of 2022 registered with Karmad Police Station, District-Aurangabad and the proceedings in Sessions Case No.511 of 2023 pending before the learned Sessions Judge, Aurangabad, for the offence punishable under Section 306 read with Section 34 of the Indian Penal Code, stands quashed and set aside as against Applicant Nos.1 to 6.

[S.G. CHAPALGAONKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asb/SEP24