



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.2763 OF 2022

- 1) Dipali W/o Vishnu Taur,
Age-26 years, Occu:Housewife,
R/o-C/o-Sunil Sheshrao Salunke,
Dharur Road, Bhavani Nagar,
Keij, Taluka-Kaij, Dist-Beed,
- 2) Sunil Sheshrao Solunke,
Age-59 years, Occu:Labour,
R/o-As Above,
- 3) Ashabai Sunil Solunke,
Age-55 years, Occu:Housewife,
R/o-As Above,
- 4) Mahesh S/o Sunil Solunke,
Age-27 years, Occu:Private Service,
R/o-As Above,
- 5) Manesh S/o Sunil Solunke,
Age-23 years, Occu:Private Service,
R/o-As Above.

...APPLICANTS

VERSUS

- 1) The State of Maharashtra,
(Through the Police Station,
MIDC Waluj, Aurangabad),
- 2) Keshavrao Bhagwanrao Taur,
Age-60 years, Occu:Agri.,
R/o-Balaji Nagar, Dhoki,
Taluka and District-Osmanabad.

...RESPONDENTS

...
Mr. Ganesh J. Kore Advocate for Applicants.
Mr. A.M. Phule, A.P.P. for Respondent No.1.
Mr. Gaurav L. Deshpande Advocate for Respondent No.2.
...

**CORAM: SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

DATE OF RESERVING JUDGMENT : 20th AUGUST 2024

DATE OF PRONOUNCING JUDGMENT : 20th SEPTEMBER 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 invoking the inherent powers of this Court under Section 482 of the Code of Criminal Procedure for quashing the First Information Report (for short "the FIR") vide Crime No. 215 of 2022 and byway of amendment prayer has been made for quashing the proceedings in R.C.C. No.2231 of 2022 pending before the learned Judicial Magistrate First Class, Aurangabad for the offence punishable under Section 306 read with Section 34 of the Indian Penal Code.

3. Heard learned Advocate Mr. Kore appearing for the applicants, learned APP Mr. Phule appearing for State and learned Advocate Mr. Deshpande appearing for respondent No.2.

4. Learned Advocate for the applicants states that applicant No.1 is the wife of deceased Vishnu Taur, who was the son of respondent No.2 – informant. Applicant Nos.2 and 3 are the parents of applicant No.1. Applicant Nos.4 and 5 are the brothers of applicant No.1. Perusal of the FIR would show that the informant wanted to say that the applicants, especially applicant No.1, used to give insulting treatment to the deceased. She used to quarrel with him and used to say that as to why he is not dying, he is not eligible to live. The deceased was taken to a person indulged in black magic and thereby the mental harassment was intensified. The applicants used to say to the deceased that he should die. Applicant No.1 had gone to her parental home for delivery and at that time the deceased was staying with applicant Nos.4 and 5. They used to ask him to cook the food for them also and clean the utensils thereby each one of them was contributing in insulting the deceased and due to the said harassment deceased Vishnu committed suicide by hanging, on 4th June 2021. The informant had in fact approached the

police, however, the police had not recorded his FIR. Therefore, he had given complaint by post to the Police Commissioner. No cognizance of the same was taken and therefore informant had filed application i.e. Criminal M.A. No.3165 of 2021 under Section 156(3) of the Code of Criminal Procedure before the learned Judicial Magistrate First Class, Court No.17, Aurangabad. That application came to be allowed on 20th October 2021 and then the FIR vide crime No.215 of 2022 came to be registered. There are allegations to the extent that suspicion has been expressed at the scene and it is then tried to say that the feet of the deceased were touching to the floor as it is seen from the photographs but the tongue has not come out. According to the informant the police have not investigated the matter properly. All these contentions were raised in the application under Section 156(3) of the Code of Criminal Procedure. But now the investigation is over and charge-sheet is filed. It is under Section 306 read with Section 34 of the Indian Penal Code. Perusal of the FIR and the material that has been collected, would show that except suspicion there is nothing. The acts alleged do not amount to instigation or abetment. Therefore, it would be unjust to ask the applicants to face the trial.

5. Per contra, the learned APP as well as learned Advocate Mr. Gaurav Deshpande for respondent No.2 strongly opposed the application and submitted that still after investigation it can certainly be said that the suicide was the result of the insulting treatment which amounted to abetment. All those treatments / acts of the applicants while interacting with the deceased and dealing with the deceased have been stated in the FIR as well as in the supplementary statement. It is stated that applicant No.1 was having desire to lead a luxurious life but deceased Vishnu could not afford the same and therefore, she used to give insulting treatment to the deceased. Even when applicant No.1 had gone for delivery, applicant Nos.4 and 5 gave insulting treatment to the deceased. After birth of the son, expectations of applicant No.1 from the deceased got increased. Father of the deceased had received phone call of the deceased wherein he told that he felt harassed and therefore, when the charge-sheet is filed, let the applicants face the trial.

6. It is not disputed that deceased Vishnu was found in hanging position in the room which was taken on rent. It is also not in dispute that on that day applicant No.1 was in her parental house and had gone there for delivery. The parental

house of applicant No.1 is at Kaij, District-Beed, whereas deceased Vishnu was residing in Aurangabad. Applicant No.1 delivered a son on 22nd January 2021 and it appears that till 4th June 2021 she had not returned / joined the company of the deceased. From the statements on record, it can be seen that Vishnu was serving in a company at M.I.D.C., Waluj, Aurangabad. Now as per the FIR, it is the contention that applicant No.1 and her mother used to give insulting treatment to the deceased. However, it shows that upon the information given by the deceased, the informant is making that kind of statement. It is not stated that he himself had seen or witnessed the insulting treatment. By mere use of word that insulting treatment was given, it cannot be so considered. When admittedly the informant was residing at Balajinagar, Dhoki, Taluka and District-Osmanabad and immediately after the marriage the deceased Vishnu and applicant No.1 were residing at Moshi, Pune for a year and thereafter went to reside at Aurangabad, informant was not the person who had regularly witnessed the behaviour of applicant No.1 with her husband.

7. In the statement recorded on 12th July 2021, informant gives an impression that Vishnu and applicant No.1 were taken

to Aurangabad by the other accused persons under the pretext that they would give him a service having good salary and some business in addition. But then informant says that neither service was given nor amount was given for starting business and then Vishnu was doing labour work. This indicates that in fact informant was having some expectations from the applicants. Time and again it is stated in the said statement that the applicants used to say to the deceased Vishnu that he should go and die and used to use insulting words by addressing him as a beggar. Even if we take the contents of the FIR and statement of the informant dated 12th July 2021 as it is and may be the statement of the other witness i.e. brother of the deceased, yet it cannot be said that those are attracting the ingredients of Section 107 and Section 306 of the Indian Penal Code. We would like to rely on *Swamy Pralhaddas vs. State of M.P. and another, 1995 Supp (3) Supreme Court Cases 438*, wherein the appellant was charged for an offence under Section 306 of the Indian Penal Code on the ground that the appellant during the quarrel asked the deceased "to go and die". The Hon'ble Supreme Court held that mere use of those words by the accused to the deceased were not even prima facie enough to instigate the deceased to commit suicide.

8. In fact, in such circumstances, even if we take that those persons had uttered those words, whether it was the intention of the accused persons that deceased should really go and commit suicide, is a question. Here the FIR and the other documents on record would show that such threats or asking 'to go and die' was given since many months prior to actual suicide but then applicant No.1 had become pregnant and she had given birth to a child. There is no evidence produced on record to show that after the birth of the child the relationship between deceased and applicant No.1 become strained, as they had never seen each other after the birth of the son till the deceased committed suicide. Important point also to be taken note of is that brother of deceased appears to be an Advocate, whose statement is also recorded on 12th July 2021. If whatever stated by him in his statement was a real fact, then he would have definitely helped out his brother and would have prevented the suicide. The statements later on made, cannot take the form of evidence of instigation. It appears that due to the suicide, now the allegations have been levelled but those cannot form the part of evidence or are not fulfilling the ingredients of the offence.

9. We would also 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."

10. 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) Proceedings in R.C.C. No.2231 of 2022 pending before the learned Judicial Magistrate First Class, Aurangabad and the Sessions Case, if the case is committed to the Court of Sessions arising out of FIR vide Crime No.215 of 2022 under Section 306 read with Section 34 of the Indian Penal Code, stands quashed and set aside as against Applicant Nos.1 to 5.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE