

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 1869 OF 2023

Girish Vinayak Pandharkar

...Petitioner

Versus

1. The State of Maharashtra
2. Smt. Shobha Ganesh Shinde

...Respondents

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Mr. Rajesh More, Advocate for the Petitioner.

Mr. Rohin R. Chauhan i/by Mr. Nagesh Khedkar, for Respondent No.2.

Mr. A. S. Shalgaonkar, APP for the Respondent No.1 – State.

Mr.Arvind Shinde, Farashkhana Police Station, Pune City, present.

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**CORAM : PRAKASH D. NAIK, &
N. R. BORKAR, JJ.**

DATE : 22nd APRIL, 2024.

P.C.:

1. Leave to amend the prayer clause. Amendment may be carried out forthwith.

2. The Petitioner has invoked the writ jurisdiction of this Court under Article 226 of the Constitution of India challenging the proceedings in S.C. No.353 of 2024 pending in the Court of learned 8th Adhoc and District Judge-3 and Additional Sessions Judge, Pune arising out of FIR dated 19.09.2022 registered with Faraskhana Police Station, District Pune vide C.R. No.165/2022 for offences

punishable under Sections 306 r/w Section 34 of IPC and Sections 44, 45 & 46 of the Maharashtra Money Lending (Regulation) Act, 2014.

3. The First Information Report was lodged by the wife of deceased/Respondent No.2. The case of the prosecution is that the deceased was employed with Co-operative Department as Special Auditor, Class-II Officer. He was deputed at Mumbai. He had undergone surgery of leg and hence he was at home. On 19.09.2022, he was at home alone. The complainant(wife) went to school to drop their wards. When she returned home, she found that the deceased has committed suicide by hanging to the ceiling fan. With the help of neighbours, he was pulled down and taken to K.E.M. Hospital for treatment. The doctors declared him dead. The cell phone of the deceased was lying on the table with bunch of papers. The writing was executed by the deceased running into several pages. It was handed over to Police. On reading the contents of the notes written by the deceased, the complainant found that the private money lenders were harassing him for payment of money and under that pressure he took the step of suicide. In the suicide note the deceased had given names of the persons from whom he took money. He took 6 to 7 Lakhs from

Shankar Laxman Gaikwad, Rs.5 Lakhs from Vijay Soni and Rs.19 Lakhs from the father of Vijay Soni, Rs.40 Lakhs from Balkrishna Kshirsagar, Rs.9 Lakhs from Ganesh Salunkhe and Rs.4.50 Lakhs from Manish Hajara. The money lenders were charging him monthly heavy interest. They were demanding money. They caused harassment to the deceased. The Petitioner/Accused had assured the deceased that he would arrange the loan of Rs.1 Crore by accepting money. He kept on delaying arrangement of loan. and thereafter he told the deceased to make arrangements from some other person.

4. Learned Advocate for the Applicant Mr. More submitted that accepting the version of the deceased reflected in the purported suicide note, it is difficult to establish that the accused has abetted commission of suicide by the deceased. The FIR and the suicide note would indicate that the deceased had borrowed money from money lenders. They were demanding the amount. The deceased had approached the Petitioner for arrangement of loan. The amount towards the registration and other charges for sanction of loan was allegedly deposited. The Petitioner had purportedly assured the deceased that he would arrange the loan and ultimately told him that he should make an arrangement through

some other person as it was not possible to sanction the loan as per the requirement of the deceased. To constitute the offence under Section 306 of IPC there has to be instigation or mens rea. The facts of this case does not make out any ingredients to establish the charge under Section 306 of IPC.

5. Mr. More has relied upon the following decisions:

- i) **Mohit Singhal & Anr. Vs. The State of Uttarkhand & Ors.** decided by the Hon'ble Supreme Court in Criminal Appeal No.3578 of 2023.
- ii) **Sharad Darade Vs. State of Maharashtra**¹.
- iii) **M. Arjunan Vs. State Rep. by its Inspector of Police**².
- iv) **Naresh Kumar Vs. State of Haryana**³.
- v) **A.R. Satish Vs. State of Maharashtra**⁴.

6. Learned A.P.P. submitted that the grounds urged by the Petitioner cannot be considered at this stage. Charge-sheet is filed. The Petitioner is required to face the prosecution. The defence of the Petitioner will be tested in the trial. Prima facie case is made out constituting the offence under Section 306 of IPC. The deceased had obtained loan from the money lenders, who were insisting for repayment of the loan. The deceased was in need of the loan. He approached the Petitioner. Assurances were given by

1 (2022) 0 Supreme (Bom) 811

2 2019 AIR (SC) 43

3 2024 INSC 149

4 2018 (3) Bom. C.R. (Cri.) 143.

the Petitioner. Amount was paid for making arrangement of loan. The Petitioner did not fulfill the assurances. As a result of the pressure and the disturbed state of mind, the deceased was compelled to adopt the step of suicide.

7. Learned Advocate for the Respondent No.2 submitted that the contents of FIR and the suicide note recovered during the course of investigation supports the charge under Section 306 of IPC. The deceased was in need of money. He approached the Petitioner/Accused. There was assurances of providing loan of Rs.1 Crores. The suicide note makes reference to payment being made to the Petitioner/accused for getting the loan sanctioned. The Petitioner kept on delaying the loan required by the deceased. After the gap of about six months, the Petitioner told the deceased that he should make arrangement from some other person. This conduct of the Petitioner compelled the deceased to commit suicide. The deceased was desperately in need of money as money lenders were demanding their dues with heavy interests and at the same time the Petitioner/Accused, who gave assurance of making arrangement for the loan did not fulfill the assurance. The grounds urged by the Petitioner will have to be considered at the time of trial.

8. We have perused the FIR, statements of witnesses, suicide note purportedly written by the deceased. From the tenor of the suicide note it is apparent that the deceased had obtained loan from various money lenders. They were demanding the repayment of loan. The deceased then approached the Petitioner for providing loan. The Suicide note indicate that the loan of about Rs. 37 lakhs was sanctioned. It was appropriated towards the dues and small amount had remained in his account. The deceased was in need of huge loan which was not arranged. The role attributed to Petitioner is that he was supposed to arrange the loan. The role attributed to the money lenders is that they had lent money to victim and there was demand from them for repayment of loan. The deceased had allegedly recorded two detailed notes which are treated as suicide notes. One referring to the purported harassment caused to him and other one addressed to the family members. Assuming the overt act attributed to the Petitioner is true, it is difficult to accept that it would amount to abetment to commit suicide.

9. It is settled law that to constitute the offence of abetment, there has to be instigation, mens rea and the act of accused to compel the person to take the step of committing suicide.

10. In the present case it is apparent that the deceased had obtained the loan from various persons. He was allegedly disturbed on account of the pressure of repaying the loan.

11. Section 306 of IPC reads as follows :

“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.”

12. To understand the meaning of abetment which is one of the constituent to constitutes the offence of Section 306 it would be necessary to refer to Section 107 of IPC which reads as follows:

“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..”

13. In the case of **Sanju @ Sanjay Sengar Vs. State of Madhya Pradesh**⁵, the Appellant before the Apex Court was the brother of wife of deceased. It was the prosecution case that after the marriage of deceased with appellant's sister, there was continuous ill treatment by the deceased and his family members to appellant's sister. She had gone to her parents house and started living with the Appellant. 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. On 25th July 1998, the Appellant visited the place of the parents of deceased and pleaded with them that his sister should be rehabilitated in the matrimonial home and should not be physically ill-treated or harassed. The appellant 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 IPC. The Parents of the deceased expressed helplessness. They informed the deceased about the same. He went to the house of the parents of the Appellant, where quarrel took place between them. The deceased returned alone and told his brothers and others that Appellant had threatened and abused him by using filthy words. On 27th July 1998, he committed suicide. Suicide note was left by

5 2002 Cri.L.J. 2796

him. On the basis of suicide note, charge-sheet was filed against the accused/Appellant. In the light of definition of abetment under Section 107 of IPC it is held that, even if the Court accepts the prosecution story that the appellant told the deceased 'to go and die' that itself does not constitute the ingredient of 'instigation'. The word 'instigate' denotes incitement or urging to do some drastic or unadvisable action or to stimulate or incite. Presence of *mens rea* is necessary concomitant of instigation.

14. In the case of **Ramesh Kumar Vs. State of Chattisgarh**⁶ it is observed that 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 spell out. A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation. Making the deceased free-to go wherever she like and to do whatever she wished, does not and cannot mean even by stretching that the accused had made the deceased free "to commit suicide".

⁶ (2001) 9 SCC 618

15. In the case of **Madan Mohan Singh Vs. State of Gujrat and Another**⁷, the appellant therein was working as DET in Bharat Sanchan Nigam Ltd. The deceased was working as driver in BSNL. The complaint was filed by the wife of the deceased. The deceased has written suicide note stating that the accused was responsible for his death. The Apex Court observed that there is absolutely nothing in suicide note or the FIR which would even distantly be viewed as an offence much less under Section 306 of IPC. There must be an allegation that the accused had instigated the deceased to commit suicide or had engaged with some other other person in a conspiracy and lastly that the accused accused had in any way aided any act or illegal omission to bring about the suicide. In order to bring to an offence under Section 306 of IPC, specific abetment as contemplated by Section 107 of IPC on the part of the accused with an intention to bring about the suicide of the person concerned as a result of the 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 of IPC. Unless there is specific allegation and material of definite nature, (not imaginary or inferential one), it would be hazardous to ask the accused to face the trial. A criminal trial is not exactly a

⁷ (2010) 8 SCC 628

pleasant experience.

16. In the case of **S.S. Cheena Vs. Vijay Kumar Mahajan**⁸, the factual matrix indicate that there was dispute between two students. This came to the notice of the the head of the department, who asked both the students to submit their versions of the incident in writing. Both gave their versions. Enquiry was conducted by the Security Officer/Appellant. During the inquiry, one of the student/deceased committed suicide. Suicide note was found. FIR was registered under Section 306 of IPC. The Apex Court observed that abetment involves the 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 Court it is clear that in order to convict a person under Section 306 of 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. The deceased in that case was hypersensitive to ordinary petulance, discord and differences which happen day to

⁸ 2010 All MR (Cri) 3298 (S.C.)

day life. Human sensitivity of each individual differs from the other. Different people behave differently in the same situation. It would not travesty of justice to compel the Appellant to face a criminal trial without any credible material whatsoever.

17. In the case of **Chitresh Kumar Chopra Vs. State Govt. of NCT of Delhi**)⁹ the Apex 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. It is impossible to lay down any straitjacket formula in dealing with such cases. Each case has to be decided on the basis of his own facts and circumstances.

18. In the **State of Kerala and others Vs. S Unnikrishnan Nair and others**¹⁰, it was observed that the plain reading of the suicide note which forms the fulcrum of the allegations on plain reading of the same, it is difficult to hold that there has been any abetment by the accused. The note, except saying that the accused compelled to do everything and cheated him and to put him in deep trouble contents nothing else. The accused were inferior in rank and it is

⁹ (2009) 16 SCC 605

¹⁰ AIR 2015 SC 3351

surprising that such a thing could happen.

19. In the light of the aforesaid circumstances, we are inclined to quash the impugned proceedings.

ORDER

- i) Criminal Writ Petition No.1869 of 2023 is allowed qua the Petitioner;
- ii) Criminal Proceedings in S.C. No.353 of 2024 pending in the Court of learned 8th Adhoc and District Judge-3 and Additional Sessions Judge, Pune arising out of FIR dated 19.09.2022 registered with Faraskhana Police Station, District Pune vide C.R. No.165/2022 are quashed and set aside.

(N. R. BORKAR, J.)

(PRAKASH D. NAIK, J.)