

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

PRACHI
PRANESH
NANDIWADEKAR

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Date: 2024.03.27
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WRIT PETITION NO.104 OF 2021

- | | |
|---------------------------------|---|
| 1. Meenabai Deepak Mahale |) |
| Age 41 yrs. Occ. Housewife |) |
| 2. Deepak Jagannath Mahale |) |
| Age 51 yrs. Occ. Service |) |
| Both R/at Ravalgaon, |) |
| Tal. Malegaon, Dist. Nashik. |) |
| 3. Jyotibai Chotu Morkar |) |
| @ Trishna Dinesh Morkar |) |
| Age 50 yrs., Occ. Housewife |) |
| 4. Gokul Supadu Morkar |) |
| Age 42 yrs., Occ. Agriculturist |) |
| 3 & 4 R/at Post Kautikpade, |) |
| Tal. Baglan, Dist. Nashik |) |

.. Petitioners

Versus

- | | |
|--|---|
| 1. State of Maharashtra |) |
| through Investigating Officer |) |
| in C.R. No.57 of 2020 |) |
| registered with Satana Police Station, |) |
| Tal. Baglan, Dist.Nashik |) |
| 2. Namdeo Pandurang Solunke |) |
| Age 36 yrs. Occ. Agriculturist |) |
| R/at post Kothure, |) |
| Tal. Malegaon, Dist. Nashik |) |

.. Respondents

WITH

WRIT PETITION NO.105 OF 2021

- | | |
|---------------------------------|---|
| 1. Mukund Vijaysingh Pawar |) |
| Age 39 yrs., Occ. Agriculturist |) |

2. Vijaysingh Ramsing Pawar)
 Age 65 yrs., Occ. Agriculturist)
 Both R/at Post Ajmer Saundane)
 Tal. Satana/Baglan, Dist. Nashik) .. Petitioners

Versus

1. State of Maharashtra)
 through Investigating Officer)
 in C.R. No.57 of 2020)
 registered with Satana Police Station,)
 Tal. Baglan, Dist.Nashik)

2. Namdeo Pandurang Solunke)
 Age 36 yrs. Occ. Agriculturist)
 R/at post Kothure,)
 Tal. Malegaon, Dist. Nashik) .. Respondents

WITH

WRIT PETITION NO.106 OF 2021

1. Sulabai Ramsing Pawar)
 Age 85 yrs., occ. Nil)

2. Amar @ Bhausahab Milin Pawar)
 Age 38 yrs. Occ. Agriculturist)
 Both R/at Post Ajmer Saundane)
 Tal. Satana/Baglan, Dist. Nashik) .. Petitioners

Versus

1. State of Maharashtra)
 through Investigating Officer)
 in C.R. No.57 of 2020)
 registered with Satana Police Station,)
 Tal. Baglan, Dist.Nashik)

2. Namdeo Pandurang Solunke)
 Age 36 yrs. Occ. Agriculturist)
 R/at post Kothure,)
 Tal. Malegaon, Dist. Nashik) .. Respondents

Mr.Jayendra D. Khairnar a/w Mr.Mufeez Ansari for the petitioners in all petitions.

Mr.J.P. Yagnik, APP for respondent no.1-State.

***CORAM : A. S. CHANDURKAR,
JITENDRA JAIN, J.J.***

Date on which the Arguments were concluded : 19th March 2024

Date on which the Judgment is pronounced : 27th March 2024

JUDGMENT: (Per Jitendra Jain, J.) :-

. Rule. Rule made returnable forthwith. Shri Yagnik, learned counsel APP waives service of notice for respondent no.1-State. By consent of the parties, heard finally at the admission stage.

2. These three writ petitions have been filed by the husband and his relatives (father, grand-mother, sister and brother-in-law of the petitioner-husband, etc.) under Section 482 of the Code of Criminal Procedure, 1973 (Cr. P. C.) read with Article 226 of the Constitution of India for quashing C.R. No.57 of 2020 dated 25th February 2020 registered for the offenses punishable under Sections 498-A, 306, 323, 504 and 34 of the Indian Penal Code, 1860 (IPC) registered by respondent no.1 on the complaint made by respondent no.2 being brother of the deceased-Sumitra. Since the issues involved in all these three writ petitions arise out of the common First Information Report

(FIR), all the writ petitions were heard together and are being disposed of by a common judgment. For the sake of convenience, we propose to deal with Criminal Writ Petition No.105 of 2020 and the facts relating to the said writ petition are discussed for adjudication of the issue raised before the Court.

Facts as per the FIR :-

3. Respondent no.2 had three sisters, youngest being Sumitra. On 10th March 2004, Sumitra married petitioner no.1 Mr.Mukund Vijaysingh Pawar according to the Hindu rituals. As per the FIR, it is stated that after two months of marriage, on refusal by Sumitra to hand over the jewellery to her in-laws the relatives of the husband started harassing Sumitra. On a visit by Sumitra to her parental house, she narrated the harassment to respondent no.2 and her family members. Respondent no.2 pacified Sumitra and requested her to go back to her matrimonial house. It is stated in the FIR that on 14th May 2004, Sumitra consumed poison. However, on recovering from the said incident, she refused to return to her matrimonial house. It is stated by respondent no.2 that at the intervention of the senior members of the Society, Sumitra returned to her matrimonial house. However, the harassment of Sumitra continued by the relatives of petitioner no.1. As per the FIR, Sumitra had approached the Police Station and Women Rights

Commission by lodging a complaint. However, on a joint meeting by the family members of respondent no.2 and petitioner no.1, the issue was resolved. Respondent no.2 explained to Sumitra that as she has two children and as she is a part of the society, it is better to stay at matrimonial house which was agreed in the year 2006. However, as per the statement in the FIR, it is stated by respondent no.2 that the deceased Sumitra asked her brother not to visit her matrimonial house since her in-laws did not approve the visit. However, there were regular phone calls between respondent no.2 and deceased Sumitra. It is further stated that 8 days prior to 24th February 2020, respondent no.2 made a phone call to Sumitra. At that time, Sumitra stated that she is being harassed more and would like to leave matrimonial house and stay at parental house. Respondent no.2 agreed to permit Sumitra to stay with them. However, on 24th February 2020 at around 10:00 p.m. respondent no.2 received a phone call from one Mr. Jayansingh Morkar who informed him that his sister Sumitra has passed away. Respondent no.2 thereafter at 1:00 a.m. midnight on 25th February 2020 visited the Government Hospital and saw the dead body of her sister. Respondent no.2 further stated that after two months from the date of marriage, petitioner no.1 and his relatives were harassing Sumitra since she refused to hand over the jewellery and they were suspicious about her

character. They used to ill-treat her physically. On being tired with this treatment, Sumitra committed suicide by jumping into the well on 24th February 2020.

Lodging of FIR :-

4. On 25th February 2020 at 19:02 hours, respondent no.2 lodged a complaint on the basis of the above statement and an FIR under Section 154 of the Cr. P. C. came to be lodged by respondent no.1 charging the petitioner no.1-husband and his relatives under the following Sections of the IPC:-

Section 498-A - Husband or relative of husband of a woman subjecting her to cruelty.

Section 306 - Abetment of suicide

Section 323 - Punishment for voluntarily causing hurt

Section 504 - Intentional insult with intent to provoke breach of the peace.

Section 34 - Acts done by several persons in furtherance of common intention.

5. The period of offence specified in the FIR is from 10th March 2004 to 24th February 2020. On 1st March 2020, statement of respondent no.2-brother of the deceased Sumitra was recorded wherein he reiterated what is recorded in the FIR.

6. On 2nd March 2020, statement of Ashok Kisan Choure, Police Constable was recorded wherein he has narrated the incident on his visit at the site of crime. A panchnama was also drawn up and a pictorial

depiction of the site of crime was also drawn. On 26th February 2020, statement of the father of the deceased Sumitra was recorded which is similar to what has been stated by respondent no.2-brother of the deceased. The statement of other relatives of the deceased were also recorded which are similar to what has been stated by respondent no.2-brother of the deceased.

7. On 27th February 2020, statement of the daughter of the deceased-Sumitra, Ms.Kunti Pawar was recorded in which she stated that at around 8:15 p.m. on 24th February 2020, she along with other family members were sitting in the hall and at that time there was a verbal quarrel between her father and grand-father and her mother was in kitchen. When she went out to use washroom which was outside the house, she realised that her mother was not in the house and therefore, she informed her father about the same. Thereafter, the family members started searching the deceased and after sometime the family members found her body in the well which was on the field. The body of the deceased was thereafter brought outside by the villagers. On the same date i.e. 27th February 2020, the statement of the son of the deceased was also recorded which is on the same lines as that of his sister.

8. It is on the above backdrop that the petitioner no.1-husband

and his relatives have approached this Court for quashing of the FIR dated 25th February 2020.

Submissions of the Petitioners :-

9. The petitioners took us through the FIR and submitted that on a bare reading of the FIR, none of the ingredients of Sections invoked in the FIR i.e. Sections 498-A, 306, 323, 504 r/w 34 of the IPC are attracted to the facts of the present case. The petitioners stated that there is only a general averment against the petitioners and his relatives and except mentioning about a couple of incidents which also is to make the complaint effective, there is no other material attributable to the petitioner or his relatives which would amount to the petitioners having abetted Sumitra to commit suicide. The petitioners further submitted that the FIR does not bring out any ingredients to attract Section 498-A for being inflicted cruelty upon the deceased by the petitioners. The petitioners submitted that the statement of the children of the deceased recorded by the Police also supports the case of the petitioners that they were not responsible for the suicide of the deceased. The petitioners further submitted that respondent no.2 in his statement which is reproduced in the FIR has himself stated that either it could be a case of suicide or somebody must have killed her. The petitioners further submitted that respondent no.2 subsequently in the statement before

police has sought to improvise the allegation which did not appear at the time of lodging FIR. The petitioners submitted that this is a fit case where this Court should exercise the jurisdiction under Section 482 of the Cr.P.C. r/w Article 226 of the Constitution of India to quash the FIR dated 25th February 2020. The petitioners in support of their contentions have relied upon the following decisions of this Court and the Supreme Court :-

- (i) *Sandip Ajay Wadse & Ors. Vs. State of Maharashtra & Ors.*¹ ;
- (ii) *Geo Varghese Vs. State of Rajasthan & Anr.*²;
- (iii) *Arun A. Pawar Vs. State of Maharashtra & Anr.*³ ;
- (iv) *Dilip Ramrao Shirasao & Ors. Vs. State of Maharashtra & Anr.*⁴ ;
- (v) *Madan Mohan Singh Vs. State of Gujarat & Anr.*⁵;
- (vi) *S.S. Chheena Vs. Vijay Kumar Mahajan & Anr.*⁶;
- (vii) *State of West Bengal Vs. Indrajit Kundu & Ors.*⁷;
- (viii) *Rajesh Vs. State of Haryana*⁸;
- (ix) *Sanju alias Sanjay Singh Sengar Vs. State of M.P.*⁹;
- (x) *Ude Singh & Ors. Vs. State of Haryana*¹⁰.

1 Criminal Application No.428 of 2016 decided on 6th January 2017 (Bom)

2 AIR 2021 SC 4764

3 Criminal Application No.4681 of 2017 decided on 10th October 2017

4 Criminal Application No.332 of 2016 decided on 5th August 2016

5 (2010) 8 SCC 628

6 (2010) 12 SCC 190

7 (2019) 10 SCC 188

8 AIR 2019 SC 478

9 AIR 2002 SC 1998

10 2019 SCC OnLine SC 924.

Submissions of the Respondents :-

10. Per contra, respondent no.1-State opposed the petition and submitted that this is not a case that this Court should exercise its jurisdiction to quash the FIR. It is the submission of the State that the FIR does show the prima facie case for the offence for which the FIR is lodged and based on the statements recorded in the course of the investigation, an offence can be said to have been made out. Respondent no.1 submitted that the petitioners should face the trial and therefore, prayed for dismissal of the present petitions.

11. Insofar as respondent no.2 is concerned, although they were served and at one stage entered their appearance, thereafter there has been no appearance by respondent no.2. The petitioners have filed an affidavit of service dated 28th February 2024 stating that respondent no.2 has been served by private notice again under the orders of this Court. The petitions were adjourned on various occasions to enable respondent no.2 to enter his appearance. However, there is no appearance by respondent no.2 on 5th December 2023, 14th December 2023, 14th February 2024, 29th February 2024. Accordingly, the writ petitions are taken up for consideration.

12. We have heard the learned counsel for the petitioners and the

respondent and with their assistance have perused the documents annexed to the petitions.

Analysis and Conclusions :-

13. Section 482 of the Cr.P.C. provides that nothing in the said Court shall be deemed to limit or effect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Court or to prevent abuse of process of any Court or otherwise to secure the ends of justice.

14. The issue when the Court should exercise its powers under Section 482 read with Article 226 of the Constitution of India has been exhaustively dealt with by the Supreme Court in the case of ***State of Haryana & Ors. Vs. Bhajan Lal & Ors.***¹¹. On a reading of the decision of the Supreme Court broad categories of cases in which the inherent power under Section 482 of the Cr.P.C. could be exercised are as under:-

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156 (1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

11 AIR 1992 SC 604

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

15. In this connection for the Court to exercise its jurisdiction under section 482 of the Cr.PC., it is apt to refer to paragraph 30 of the judgment of the Supreme Court in the case of **Rajiv Thapar & Ors. Vs. Madan Lal Kapoor**¹², which reads thus:-

“30. the following steps to determine the veracity of a prayer for quashing raised by an accused by invoking the power vested in the High Court under Section 482 Cr.PC.:

30.1. Step one: whether the material relied upon by the accused is sound, reasonable, and indubitable i.e. the material is of sterling and impeccable quality?

30.2. Step two: whether the material relied upon by the accused would rule out the assertions contained in the charges levelled against the accused i.e. the material is sufficient to reject and overrule the factual assertions contained in the complaint i.e. the material is such as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false?

30.3. Step three: whether the material relied upon by the accused has not been refuted by the prosecution/ complainant; and/or the material is such that it cannot be justifiably refuted by the prosecution/complainant?

30.4. Step four: whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

30.5. If the answer to all the steps is in the affirmative, the judicial conscience of the High Court should persuade it to quash such criminal proceedings, in exercise of power vested in it under Section 482 Cr.PC. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as, proceedings arising therefrom) specially when it is clear that the same would not conclude in the conviction of the accused.”

16. The above decisions have stood the test of the time and are equally a guiding force even today.

17. In the light of the above decisions of the Supreme Court and the provisions of Section 482 of the Cr.PC., we now propose to deal with each of the offences noted in the FIR to ascertain whether the case of the Petitioner falls under any of the category laid down in the **Bhajan Lal's case (supra)**. On a reading of the FIR and its application to the sections of the offences which are invoked by respondent No.1, if on the face of it, these Sections are not attracted then this Court could exercise its jurisdiction under Section 482 of the Cr.PC. to quash the proceedings. However, if there is a *prima-facie* case for further investigation, then this Court would restrain itself from exercising its inherent powers to stall the investigation. We, therefore, now propose to analysis the sections which are invoked by respondent No.1 in the FIR.

18. Section 306 of the Indian Penal Code defines abetment of suicide.

“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”.

Section 306 provides that whoever abets the commission of such suicide shall be punished with imprisonment and shall also be liable to fine. Therefore, we need to ‘ascertain’ whether the petitioners can be said to have abetted the commission of suicide by Sumitra.

19. Section 107 of the Indian Penal Code defines abetment of a thing.

“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.

Illustration

A, a public officer, is authorised by a warrant from a Court of Justice to apprehend Z. B, knowing that fact and also that C is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C.

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.”

20. Section 108 of the Indian Penal Code defines abettor.

“108. Abettor. – A person abets an offence, who abets either the commission of an offence, or the commission of an act which would be an offence, if committed by a person capable by law of committing an offence with the same intention or knowledge as that of the abettor.

Explanation 1. – The abetment of the illegal omission of an act may amount to an offence although the abettor may not himself be bound to do that act.

Explanation 2. – To constitute the offence of abetment it is not necessary that the act abetted should be committed, or that the effect requisite to constitute the offence should be caused.

Illustrations

(a) A instigates B to murder C. B refuses to do so. A is guilty of abetting B to commit murder.

(b) A instigates B to murder D. B in pursuance of the instigation stabs D. D recovers from the wound. A is guilty of instigating B to commit murder.

Explanation 3. – It is not necessary that the person abetted should be capable by law of committing an offence, or that he should have the same guilty intention or knowledge as that of the abettor, or any guilty intention or knowledge.”

21. Section 306 of the Indian Penal Code, 1860 has been analyzed time and again by the Supreme Court. The Supreme Court in the case of *Shabbir Hussain vs. The State of Madhya Pradesh*¹³ has observed that in order to bring a case within the provisions of Section 306 of the IPC, there must be a case of suicide and in the commission of

the said offence the person who is said to have abetted the commission of suicide must have played an active role by an act of instigating or by doing a certain act to facilitate the commission of suicide. The Supreme Court further goes on to observe that mere harassment without any positive action on the part of the accused proximate to the time of occurrence which led to the suicide would not amount to an offence under Section 306 of IPC.

22. The Supreme Court in the case of *Bhagwan Das vs. Kartar Singh & Ors*¹⁴ observed that mere harassment of wife by husband *per-se* does not attract Section 306 read with Section 107 IPC, if the wife commits suicide.

23. A question arises as to when is a person said to have instigated another? The word of 'instigate' literally means to goad or urge to provoke or encourage to do an act which the person otherwise would not have done. It is well settled that in order to amount to abetment there must be *mens rea*. Without knowledge or intention there cannot be any abetment. The knowledge and intention must relate to the act said to be abetted which in this case, is the act of committing suicide. Therefore, in order to constitute 'abetment by instigation', there must be direct incitement to do the culpable act.

14 (2007) 11 SCC 205

24. In *Sanju alias Sanjay Singh Sengar Vs. State of Madhya Pradesh*¹⁵ the Supreme Court of India extensively dealt with the concept of 'abetment' in the context of the offence punishable under Section 306 of the Indian Penal Code. In that case, the allegation against the accused/appellant before the Supreme Court was that he had abetted the commission of suicide of his sister's husband one Chander Bhushan. The facts show that there were matrimonial disputes between Neelam, sister of the appellant/accused and her husband and that, in connection with these disputes, the appellant had allegedly threatened and abused the said Chander Bhushan. Chander Bhushan committed suicide and the suicide was attributed by the prosecution to the quarrel that had taken place between the appellant and the said Chander Bhushan, a day prior. It was alleged that the appellant had used abusive language against said Chander Bhushan and had told him "to go and die". The appellant, who had been chargesheeted for an offence punishable under Section 306 of the Indian Penal Code, filed a Petition under Section 482 of the Code of Criminal Procedure, for quashing the proceedings against him, but his Petition was dismissed by the High Court. The petitioner had, therefore, appealed to the Supreme Court. While allowing the appeal, the Apex Court, *inter alia*, observed as follows : -

15 2002 Criminal Law Journal 2796

"Even if we accept the prosecution story that the appellant did tell 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, therefore, is the necessary concomitant of instigation." (Para 13 of the reported judgment).

25. A direct influence or an oblique impact with the acts or utterances of the accused caused or created in the mind of the deceased and which draw him to suicide will not be sufficient to constitute offence of abetment of suicide. A fetal impulse or ill-fated thoughts of the suicide, however unfortunate and touchy it may be, cannot fray the fabric of the provision contained in Section 306 of the IPC. It is not what the suicide deceased 'felt' but what the accused 'intended by his act' which is more important while dealing with Section 306 of the IPC. In order to bring out an offence under Section 306 of the IPC specific abetment as contemplated by Section 107 of the 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 an offence under Section 306 of the IPC.

26. The Supreme Court in the case of ***Ramesh Kumar vs. State of Chattishgarh***¹⁶ was posed with a situation where in a dispute between the husband and wife, the husband uttered "you are free to do whatever

16 (2001) 9 SCC 618

you wish and go wherever you like”. Thereafter, the wife committed suicide. The Supreme Court in para 20 of the said decision has examined different shades of the meaning of the ‘instigation’ which reads thus :-

“Instigation is to goad, urge, forward, provoke, incite or encourage to do “an act”. To satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. The present one is not a case where the accused had by his acts or omission or by a continued course of conduct created such circumstances that the deceased was left with no other option except to commit suicide in which case an instigation may have been inferred. A word uttered in the fit of anger or emotion without intending the consequence to actually follow cannot be said to be instigation.”

27. On a conjoint reading of Sections 306, 107 and 108 of IPC, what is required is a positive act on the part of the accused to instigate or aid in committing suicide and in the absence of the same, conviction cannot be sustained. There has to be a clear *mens rea* to commit the offence for being held liable under Section 306 of IPC.

28. Section 306 of IPC has been analyzed by the Supreme Court in the case of ***Amalendu Pal alis Jhantu vs. State of West Bengal*** and the relevant para reads as under :-

“12. Thus, this Court has consistently taken the view that before holding an accused guilty of an offence under Section 306 IPC, the court must scrupulously examine the facts and circumstances of the case and also assess the evidence adduced before it in order to find out whether the cruelty and harassment meted out to the victim had left the victim with no other alternative but to put an end to her life. It is also to be borne in mind that in cases of alleged abetment of suicide there must be proof of direct or indirect acts of incitement to the commission of suicide. Merely on the allegation

of harassment without there being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide, conviction in terms of Section 306 IPC is not sustainable.

13. In order to bring a case within the purview of Section 306 IPC there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide. Therefore, the act of abetment by the person charged with the said offence must be proved and established by the prosecution before he could be convicted under Section 306 IPC."

8.6. On a careful reading of the factual matrix of the instant case and the law regarding Section 306 IPC, there seems to be no proximate link between the marital discord between the deceased and the appellant and her subsequent death by burning herself. The appellant has not committed any positive or direct act to instigate or aid in the commission of suicide by the deceased."

29. It is also important to note the decision of the Supreme Court in the case of ***Atmaram Raysingh Rathod vs. State of Maharashtra***¹⁷ the Supreme Court was considering the provisions of Sections 306, 498-A of the Indian Penal Code, 1860 and Section 113-A of the Indian Evidence Act, 1872. The Supreme Court observed that for holding the appellant guilty of the offences under Sections 306 and 498-A of the IPC based on an invocation of the presumption under Section 113-A of the Evidence Act, there must be evidence of "cruelty" under clause (a) of the Explanation to Section 498-A of IPC i.e. evidence of wilful conduct of the appellant towards his wife soon before her drowning which could have driven her to commit suicide. The Supreme Court observed that drowning of the wife took place 3 months after the incident of the

¹⁷ (2013) 12 SCC 286

appellant beating his wife and refusing to giving her food. The Supreme Court observed that in such a scenario it cannot be held that the appellant was guilty of “cruelty” under explanation to Section 498-A and consequently the presumption under Section 113-A is not attracted and the appellant cannot be held guilty of abetting the suicide.

30. In the case of ***Tushar s/o Mahadeorao Arsul vs. State of Maharashtra and Anr.***¹⁸, the Division of the Bombay High Court, Bench at Aurangabad, in para 6 of the Judgment observed that:

"We are of the considered view that the act or acts of accused to insult do not by themselves constitute abetment. It has to be shown from a statement in the complaint that these accused have actually instigated and aided in the victim's act of committing suicide. In absence of any such description, the FIR is liable to be viewed Cri.Appeal.253.2004 as a text which does not contain the ingredients of offence."

31. In the case of ***Dilip s/o Ramrao Shirasao and others vs. State of Maharashtra and Anr.***¹⁹, the Division Bench of the Bombay High Court, Bench at Nagpur considered the various Judgments of the Supreme Court and the High Court and in Para 20 of the Judgment, held thus:

"20. As has been held by Their Lordships of the Apex Court that for permitting a trial to proceed against the accused for the offence punishable under Section 306 of the Indian Penal Code, 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. In the absence of availability of such material, the accused cannot be compelled to face trial for the Cri.Appeal.253.2004 offence punishable

18 Criminal Application No.3683 of 2012 decided on 26th November, 2012.

19 Criminal Application No.332 of 2016 decided on 5th August, 2016.

under Section 306 of the Indian Penal Code. As has been held by Their Lordships of the Apex Court that abetment involves mental process of instigating a person or intentionally aiding a person in doing of a thing and without a positive act on the part of the accused in aiding or instigating or abetting the deceased to commit suicide, the said persons cannot be compelled to face the trial. Unless there is clear mens rea to commit an offence or active act or direct act, which led the deceased to commit suicide seeing no option or the act intending to push the deceased into such a position, the trial against the accused under Section 306 of the Indian Penal Code, in our considered view, would be an abuse or process of law."

32. On the application of the above legal position as explained by the Supreme Court and the Co-ordinate Benches of this Court to the facts stated in the FIR before us, it cannot be said that the petitioners instigated Sumitra to commit suicide nor can it be said that the petitioner and his relatives engaged in any conspiracy which led to the act of committing suicide by Sumitra. It can also not be inferred from what is stated in the FIR that the Petitioner and his relatives had *mens rea* or intentionally aided commission of suicide. In the FIR, there is no mention about any acts by the petitioner or his relatives on the date of incident which resulted into Sumitra being driven to commit suicide. The incident of harassment recorded in the FIR is of the year 2004, 2006 and 8 days before the day on which Sumitra committed suicide. There is no proximate allegation made by respondent no.2 and recorded in the FIR which led to Sumitra committing suicide. The statement of the children of Sumitra also does not state that on the day of the incident or shortly prior thereto there were any acts by the petitioner or his relatives

which could have led Sumitra to commit suicide. On the contrary, the statement of the children recorded states that their mother was in the kitchen at around 8:15 p.m. on the fateful day and all other members of the family were in the hall and there was a quarrel between the petitioner no.1-husband of the deceased and petitioner no.2-father-in-law of the deceased. The family members did not even know when the deceased-Sumitra left the house and it is only when the girl child went out for washroom that she realized her mother is not to be seen and thereafter the family members started searching and ultimately found the deceased in the well. It is also important to note that cousin brother in-law, two sisters-in-law and their husbands, who are also the petitioners in the companion petition are residing not at the marital house of the deceased or around them but at different places. In one of the petitions, the grand mother-in-law, who is a 85 year old lady is also made a party. The general incident of harassment recorded in the FIR cannot in our view satisfy the ingredients required under Sections 107 and 108 of the IPC so as to make the petitioner and his relatives liable for offence under Section 306 of the IPC.

33. It is also important to note that Section 113-A of the Indian Evidence Act, 1872 which states that if a woman commits suicide within a period of seven years from the date of her marriage and that her

husband or such relative of her husband had subjected her to cruelty, the Court may presume, that such suicide had been abetted by her husband or by such relative of her husband. In the instant case before us, the marriage of the petitioner no.1 and the deceased Sumitra took place on 10th March 2004. Sumitra committed suicide on 24th February 2020 which is after 16 years of their marriage. Therefore, the presumption under Section 113-A of the Indian Evidence Act would also not get attracted. This is supported by the decision in the case of ***State of Punjab vs. Iqbal Singh***²⁰, wherein the Supreme Court has observed that if the suicide takes place after more than seven years of the marriage, the presumption under Section 113-A of the Indian Evidence Act is not attracted.

34. In our view, and on a reading of the FIR, which we have summarized hereinabove we are of the view that no offence under Section 306 can be said to have been made out even *prima-facie*. Therefore, it would not be in the interest of justice to permit the trial to go on since the result would be same even after the trial.

35. Now we proposed to deal with Section 498-A of the IPC.

498-A. Husband or relative of husband of a woman subjecting her to cruelty– Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

20 AIR 1991 SC 1532

Explanation. For the purpose of this section, "cruelty" means–

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.]

36. Under Section 498-A of the IPC, if the husband or relatives of the husband subjects such woman to cruelty the offence thereunder gets attracted. Under Explanation to Section 498-A any wilful conduct of such nature that is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health of the woman or her harassment with a view to coerce her or any person related to her to meet any unlawful demand for any property or valuable security or on account of failure by her or any person related to her to meet such demand amounts to cruelty.

37. On a perusal of the FIR, in our view, it cannot be said that the pre-condition of the deceased being subjected to cruelty can be said to have been satisfied. Explanation (a) of Section 498-A provides cruelty to mean any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health of the woman. In the instant case, on a perusal of the FIR

which we have narrated in detailed above except stating about the harassment in the year 2004, 2006 and 8 days prior to the date of incident there does not appear to be any incident which would indicate that the petitioner and his relatives have inflicted cruelty. It is important to note that in the FIR it is stated that marriage took place on 10th March 2004 and for two months there was a cordial relationship between the deceased and the family members of the petitioner. Thereafter FIR states that on 14th May 2004 the deceased attempted to consume poison. These two statement appears to be contradictory. If it is the case of respondent no.2-complainant that during first two months his sister was having cordial relationship with the husband and his family and then immediately within couple of days her act of consuming poison cannot be attributed to the petitioner and his relatives. There could be many other reasons which compelled the deceased to consume the poison, but certainly based on what is stated in the FIR the said act cannot be said to found to be falling within the meaning of the term cruelty. Even if the incident of 2006 is considered, thereafter there have been no instances upto 2020 which are stated in the FIR which would indicate any form of cruelty being inflicted on the deceased. Therefore in our view, clause (a) of Section 498-A of IPC cannot be said to have been attracted.

38. Insofar as the clause (b) of Explanation to Section 498-A is

concerned it provides harassment with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account and failure by her to meet such demand. In the instant case, in the FIR there is no such demand in and around the date of incident. The FIR states that the petitioner and his relatives demanded jewellery which was in possession of the deceased to be handed over in the year 2004 itself. Thereafter, there is no such demand which is stated in the FIR. In our view, even this ingredient cannot be said to have been satisfied on a reading of FIR. Therefore the provisions of Section 498-A, in our view cannot be said to have been attracted.

39. The Supreme Court in the case of ***Giridhar Shankar Tawade vs. State of Maharashtra***²¹ analyzed the object and ingredient of Section 498-A of IPC reads as under:-

“3. The basic purport of the statutory provision is to avoid “cruelty” which stands defined by attributing a specific statutory meaning attached thereto as noticed hereinbefore. Two specific instances have been taken note of in order to ascribe a meaning to the word “cruelty” as is expressed by the legislatures: whereas Explanation (a) involves three specific situations viz. (i) to drive the woman to commit suicide or (ii) to cause grave injury or (iii) danger to life, limb or health, both mental and physical, and thus involving a physical torture or atrocity, in Explanation (b) there is absence of physical injury but the legislature thought it fit to include only coercive harassment which obviously as the legislature intent expressed is equally heinous to match the physical: whereas one is patent, the other one is latent but equally serious in terms of the provisions of the statute since the same would also embrace the

21 (2002) 5 SCC 177

attributes of “cruelty” in terms of Section 498-A.”

40. In our view, and on the application of the decision of the Supreme Court and the provisions of Section 498-A of IPC to the facts recorded in the FIR, we are of the view that the ingredients to Section 498-A are not attracted.

41. This Court in the case of *Ramesh Sitaldas Dalal vs State of Maharashtra*²² and in the case of *Smt. Vrushali Jayesh Kore Vs. The State of Maharashtra*²³ have quashed similar offence when it was invoked against the relatives of the husband.

42. The next Section invoked in the FIR is Section 323 of the Indian Penal Code, 1860, which reads as under:-

“323. Punishment for voluntarily causing hurt. - Whoever, except in the case provided for by section 334, voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.”

43. The aforesaid Section would be applicable if a person voluntarily causes hurt. For this section to attract, there is a requirement of more than one person at the time of the incident where, one person causes hurt to another. In the instant case, this requirement does not exist, since the deceased-Sumitra committed suicide by jumping into

²² 2024 (1) ABR (CRA) 29

²³ 2023 (1) ABR (CRI) 514

the well, when the other family members were sitting in the hall of the house and the well was away from the house. The statement of the children also shows that the deceased-Sumitra was in the kitchen when all the other family members were in the hall and they did not know when Sumitra left the house. As per the post-mortem report, the cause of death is by drowning and no physical marks have been found on the body to indicate any hurt being caused to the deceased. From the facts of the present case, the petitioners and their relatives were not even stated to be present around the well. In our view, on the basis of what is stated in the FIR and the statements recorded, thereafter, no case is made out for invoking Section 323 of the IPC, but on the contrary on the basis of what is recorded in the statement, invocation of Section 323 is without any application of mind to the facts of the present case. Therefore, in our view, on the face of it this section could not have been invoked by the respondent no.1. In this connection, the decision of this Court in the case of *Yusuf Sardaar Vs. State of Maharashtra*²⁴, would be relevant, wherein charge under Section 323 was held to be not applicable since the accused was not present at the site of the crime.

44. The next Section which finds its place in the FIR is Section 504 which reads thus:-

24 1979 Bom CR 125

“504. Intentional insult with intent to provoke breach of the peace. - Whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”

45. Section 504 provides a remedy for using abusive and insulting language which may lead to a breach of the public peace and the insult should be intentional which would provoke a person to break the public peace or to commit any other offence. For an offence under Section 504, what is material is the intention of the offender to provoke or his knowledge that he is likely to provoke the person insulted to commit an offence. The offence punishable under Section 504 would come under the category of mis-demeanours.

46. In the statements recorded in the FIR and subsequently, there is no averment or material that the petitioners or his relatives in and around the time of incident insulted the deceased-Sumitra, which would result into invocation of Section 504 of the IPC. We fail to understand as to how the present incident whereby Sumitra committed suicide has resulted into breaking the public peace and from the material on record as evident from the FIR, there is not even a whisper of the same. Furthermore, the insult should result into provocation to any person to commit any other offence. In the instant case, we have already observed that there was no provocation or insult and in any case dying by

committing suicide is not treated as an offence under the IPC.

47. Therefore, in our view, there is no material on record which would satisfy the ingredients of Section 504 to be invoked in the incident case before us.

48. The last section which is invoked in the FIR is Section 34 of the IPC which reads thus:-

“34. Acts done by several persons in furtherance of common intention. - When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.”

45. Section 34 applies when a crime act is done by several persons in furtherance of the common intention of all of them. In such a case each such person is liable as if it were done by him alone. We have already observed above that none of the provisions of Section 498-A, 306, 323 and 504 of the IPC are attracted and consequently, the question of invoking Section 34 of the IPC for these offences would also not be applicable. There is no material on record which would indicate that the petitioners and his relatives had common intention to provoke the deceased to commit suicide or to inflict cruelty. The incident referred to in the FIR are stray incidents in the year 2004, 2006 and 8 days before the date of the incident. These stray incidents over a period of 16 years of marriage can certainly would not satisfy the ingredients of any of the

Sections invoked in the FIR. Therefore, in our view, respondent no.1 is not justified in invoking Section 34 of the IPC on the facts of the present case.

49. Section 34 does not create a substantive offence or a distinct offence but it lays down that when two or more persons jointly acts to commit an offence then to the extent to which they have a common intention to cause injuries would be gathered from the circumstances and make them liable accordingly. Section 34 is not a penal provision but a rule of evidence and, therefore, there can be no such thing as an acquittal under the said section. It is a principle of constructive liability on account of existence of common intention which is given a statutory recognition. It requires a pre-arrange plan to act in furtherance of common intention of them all. Accordingly, there must be prior meeting of minds amongst the accused, so as to invoke Section 34.

50. In view of above, we are of the opinion that this is a fit case, where this Court should exercise its jurisdiction to prevent the abuse of the process of the Court, so as to secure the ends of justice. In our view, the analysis made by us above would squarely fall within the guidelines laid down in the case of *Bhajanlal (supra)* for this Court to exercise jurisdiction under Section 482 of the Cr. P. C. specially clauses 1, 3 and 5

of the said decision.

51. In these circumstances, all the writ petitions are allowed in terms of prayer clause (b) which is identical in all the petitions and which reads thus :-

(b) That after perusing record and proceedings in respect of C.R. No. 57 of 2020, dated 25-02-2020 registered for the offences punishable under sections 498-A, 306, 323, 504 r/w. 34 of the Indian Penal Code, registered with Satana Police Station, Satana, Tal. Baglan, Dist. Nashik, this Hon'ble Court be pleased to quash and set aside the Complaint & chargesheet filed in C.R. No.57 of 2020.

JITENDRA JAIN, J.

A.S. CHANDURKAR, J.