



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APL) NO.1019/2021

1. Shewantabai W/o Durvdas Sonbarse,
aged about 65 Yrs., Occ. Nil.
2. Shivanand S/o Durvdas Sonbarse,
aged about 32 Yrs., Occ. Private.
3. Parmanand S/o Durvdas Sonbarse,
aged about 29 Yrs., Occ. Private.

All 1 to 3 are R/o Manavata Nagar,
near TV Tower, Semenary Hills,
Nagpur 440 006.

... Applicants

- Versus -

1. State of Maharashtra,
through its Police Station Officer,
Police Station Gittikhadan,
Nagpur.
2. Suryakanta W/o Rajkumar Bondekar,
aged about 52 Yrs., Occ. Private, R/o
Omnagar, Chandrapur Ward No.2,
Milan Square, Khaparkheda, Nagpur.

... Non-applicants

Mr. T.U. Tathod, Advocate for the Applicants.
Mr. M.K. Pathan, A.P.P. for Non-applicant No.1.
Mr. M.P. Kariya, Advocate for Non-applicant No.2.

CORAM: VINAY JOSHI AND MRS.VRUSHALI V. JOSHI, JJ.

DATE OF RESERVING THE JUDGMENT : 16.1.2024.

DATE OF PRONOUNCING THE JUDGMENT : 25.1.2024.

ORAL JUDGMENT (Per Mrs. Vrushali V. Joshi, J.)

Heard. **Rule.** Rule made returnable forthwith.

Heard finally by consent of learned counsel for the parties.

2. This is an application seeking to quash proceedings in Regular Criminal Case No.3563/2020 pending on the file of learned Judicial Magistrate First Class, Court No.10, Nagpur for the offence punishable under Section 306 read with Section 34 of the Indian Penal Code.

3. The facts leading to the filing of this application are that the deceased has committed suicide and the mother of the deceased has lodged the complaint for the offence punishable under Section 306 read with Section 34 of the Indian Penal Code against the husband of the deceased and the in-laws. The applicants in this application are the mother-in-law and

brothers-in-law of the deceased. The husband is not the applicant in this application. The allegations are made that due to cruelty and ill-treatment meted by these applicants and the husband of the deceased, deceased has committed suicide.

4. The marriage of deceased Sadhana was performed with accused No.1 on 27.4.2012. She was having two children out of said wedlock. Prior to incident the complaints were lodged by deceased and her husband against each other on 27.8.2014 and in Aapadgrast Mahila Margadarshan Madat Kendra compromise took place between both of them on 20.11.2014. After said compromise she went to stay with accused No.1. She was staying separately from these applicants.

5. On 26.12.2018 Sadhana had committed suicide. On that day, in the afternoon when her sister came to meet her, she knocked the door but it was latched from inside. Thereafter her sister peeped from the window and she found deceased was lying on the floor and the *saree* was wrapped to her neck. She informed

it to accused No.1. They took her to hospital and doctor declared her dead.

6. The allegations against these applicants are made that they used to instigate the accused No.1 to beat her and they also used to suspect her character, due to their harassment the deceased had committed suicide.

7. The learned Counsel appearing for the applicants would submit that there are no specific allegations against these applicants about abetment to commit suicide. The vague and general allegations are made about harassing her. Only because the names of these applicants are mentioned, the crime is registered against these applicants. The deceased was not even staying with these applicants, deceased and her husband were staying separately. The quarrel took place between her husband and the deceased on same day and thereafter she had committed suicide. She was in habit of giving threats to commit suicide. She also used to leave the house without any reason. She has given an

undertaking specifically mentioning that she will not give the threats of committing suicide and she will behave properly. It shows that she was not behaving properly and was having the tendency to commit suicide. The applicants have not abetted to deceased for committing suicide hence prayed to quash the proceedings.

8. *Per contra*, the learned A.P.P. has resisted the application stating that the specific allegations are made against these applicants. It is alleged that accused No.2 informed the husband of deceased that deceased used to go out when he was not at home and suspected her character, and therefore her husband used to beat her. The applicant Nos.1 and 3 are also responsible for abetment and specific allegations are made against the applicant No.1 who is the mother-in-law of the deceased as she used to harass her. Considering the statements recorded after the registration of crime due to unbearable harassment by these applicants and her husband the deceased has committed suicide. Hence prayed to dismiss the application.

9. In order to consider whether Section 306 would apply to the facts in case, it is therefore necessary to consider whether the essential ingredients of Section 107 of the Indian Penal Code are disclosed hence it would be apposite to reproduce Sections 306 and 107 of the Indian Penal Code as under:-

“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.

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.”

10. The Hon'ble Supreme Court in case of Ramesh Kumar V/s. State of Chhattisgarh reported in [2001] 9 SCC 618 has observed in para 20 as under:-

“20. 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 consequences to actually follow cannot be said to be instigation.”

11. Recently the Supreme Court in case of Ude Singh and others V/s. State of Haryana reported in **2019 SCC Online SC 924**, extensively surveyed the law in the field and summarized the principles in cases of alleged abetment of suicide. The relevant observations contained in paragraph Nos. 16.1 and 16.2 read as below:-

“16.1. For the purpose of finding out if a person has abetted commission of suicide by another, the consideration would be if the accused is guilty of the act of instigation of the act of suicide. As explained and reiterated by this Court in the decisions above-referred, instigation means to goad, urge forward, provoke, incite or encourage to do an act. If the

persons who committed suicide had been hypersensitive and the action of accused is otherwise not ordinarily expected to induce a similarly circumstanced person to commit suicide, it may not be safe to hold the accused guilty of abetment of suicide. But, on the other hand, if the accused by his acts and by his continuous course of conduct creates a situation which leads the deceased perceiving no other option except to commit suicide, the case may fall within the four-corners of Section 306 IPC. If the accused plays an active role in tarnishing the self-esteem and self-respect of the victim, which eventually draws the victim to commit suicide, the accused may be held guilty of abetment of suicide. The question of mens rea on the part of the accused in such cases would be examined with reference to the actual acts and deeds of the accused and if the acts and deeds are only of such nature where the accused intended nothing more than harassment or snap show of anger, a particular case may fall short of the offence of abetment of suicide. However, if the accused kept on irritating or annoying the deceased by words or deeds until the deceased reacted or was provoked, a particular case may be that of abetment of suicide. Such being the matter of delicate analysis of human behaviour, each case is required to be examined on its own facts, while taking note of all the surrounding factors having bearing on the actions and psyche of the accused and the deceased.

16.2. We may also observe that human mind could be affected and could react in

myriad ways; and impact of one's action on the mind of another carries several imponderables. Similar actions are dealt with differently by different persons; and so far a particular person's reaction to any other human's action is concerned, there is no specific theorem or yardstick to estimate or assess the same. Even in regard to the factors related with the question of harassment of a girl, many factors are to be considered like age, personality, upbringing, rural or urban set ups, education etc. Even the response to the ill-action of eve-teasing and its impact on a young girl could also vary for a variety of factors, including those of background, self-confidence and upbringing. Hence, each case is required to be dealt with on its own facts and circumstances.”

12. The term “Abetment” involves mental process of instigating a person or intentionally aiding a person in doing of a thing. Without positive act on the part of the accused to instigate or aid in committing suicide, no one can be convicted for offence under Section 306, IPC. To proceed against any person for the offence under Section 306 IPC it 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. There is nothing on

record to show that the applicants were instigating and harassing the deceased and further there is absolutely no material to allege that the applicants abetted for suicide of the deceased within the meaning of Section 306, IPC.

13. The intention of the legislature and the ratio of the cases decided by the Supreme 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 she committed suicide.

14. In cases of alleged abetment of suicide, there must be a proof of direct or indirect act/s of incitement to the commission of suicide. It could hardly be disputed that the question of cause of a suicide, particularly in the context of an offence of abetment of suicide, remains a vexed one, involving multifaceted and complex attributes of human behaviour and responses/reactions. In the case of accusation for abetment of suicide, the Court would

be looking for cogent and convincing proof of the act/s of incitement to the commission of suicide. In the case of suicide, mere allegation of harassment of the deceased by another person would not suffice unless there be such action on the part of the accused which compels the person to commit suicide; and such an offending action ought to be proximate to the time of occurrence. Whether a person has abetted in the commission of suicide by another or not, could only be gathered from the facts and circumstances of each case.

15. In case of Chitresh Kumar Chopra V/s. State (Govt. of NCT of Delhi) reported in [2009] 16 SCC 605 the Supreme Court has an occasion to delve upon the mental state of the person committing suicide. Endeavour was made to unfold the mental trauma of such person. It is apt to note the relevant observations made in that regard, which read as below.

“20. In the background of this legal position, we may advert to the case at hand. The question as to what is the cause of a suicide has no easy answers because suicidal ideation and behaviours in human beings are complex and multifaceted. Different

individuals in the same situation react and behave differently because of the personal meaning they add to each event, thus accounting for individual vulnerability to suicide. Each individual's suicidability pattern depends on his inner subjective experience of mental pain, fear and loss of self-respect. Each of these factors are crucial and exacerbating contributor to an individual's vulnerability to end his own life, which may either be an attempt for self-protection or an escapism from intolerable self."

16. In order to apply aforesaid principles laid down by the Hon'ble Supreme Court and followed by this Court it would be necessary to refer the allegations made against these applicants. The applicants are the in-laws of the deceased. The allegations are made that they used to harass her. The specific allegations are made against applicant No.2 i.e. the brother-in-law that he informed her husband that she used to go out after he left the home. He suspects she must be doing something for earning money. These are the allegations against applicant No.2 and on his information her husband used to suspect her character and used to brat her. No allegations are made against applicant No.3.

The general allegations are made against applicant No.1 who is the mother-in-law.

17. The husband of the deceased had initially informed the police about her death and suicidal case was registered in police station on the statement of the husband of the deceased. He has stated about the quarrel which took place between both of them when he left the house, the cause of quarrel between them was consumption of electricity used by other family members as the bill was paid by the husband of the deceased. He has also stated that the quarrel was resolved by the neighbours. As per said statement applicants were not in picture. On the same day the statements of father and mother of the deceased are recorded. Though they have made allegations against the accused persons F.I.R. was not registered on the statement recorded on 2.1.2019 immediately after the death of the deceased. The F.I.R. was registered on 4.1.2019. The similar statement was given by the mother of the deceased on 2.1.2019. Though the cognizable offence was disclosed the crime was not registered till the mother

of deceased lodged complaint on 4.1.2019. Therefore, the F.I.R. itself creates doubt. The sister of the deceased found that the deceased was lying on the floor and thereafter she informed about it to the husband of the deceased. None has suspected about her suicidal death on that day but thereafter the allegations are made and the crime is registered against these applicants. From the allegations it does not reveal that any instigation was made by these applicants. Only because they are relatives of her husband the names of these applicants are mentioned. The applicants have placed reliance on the relevant observations in paragraph 11 of judgment in the case of Ravi Balram Agaldivate & Ors. V/s. The State of Maharashtra & Anr. reported in **2018 ALL MR (Cri.)**

5038 which read as under:-

“..... However, in the absence of any allegations to attribute mens rea on the part of the applicants it cannot legally constitute an abetment within the meaning of Section 107 of the Indian Penal Code. Suffice for the purpose to refer to the decision in the case of Sanju @ Sanjay Singh Sengar (supra). In that case, the accused had said to the deceased ‘to go and die’ as a sequel to the quarrel that had ensued between the accused and the deceased

it was held that even such utterances would not constitute instigation.”

18. In case in hand no specific allegations are made against these applicants. No specific incident took place between deceased and these applicants immediately before she has committed suicide to connect these applicants to said crime.

19. In the case of Chitresh Kumar Chopra (supra) the Hon'ble Supreme Court has observed that each person's suicidability pattern is different from the other and each person has his own idea of self-esteem and self-respect. Thus it depends upon the mental capacity, level of tolerance, courage to face the reality etc.

20. The entire allegations nowhere suggest any positive act on the part of the applicants, except their relationship. There is no element of continuous harassment on the part of these applicants. There is nothing on record to show that the applicants had either

approached to the deceased or persistently pressurized her for anything. *Prima facie* it is evident that since inception the matrimonial life of the deceased was not good. She was of quarrelsome nature. She used to leave matrimonial house frequently. In 2014 the husband of the deceased brought her back. In her undertaking she has stated that she will not give threats of committing suicide which shows that she used to give threats and was having suicidal tendency.

21. As per the postmortem report, no doubt, it is the case of suicide but whether the applicants are responsible for her death is the question.

22. The allegations made in the statement are not sufficient to register the offence under Section 306 of the Indian Penal Code against the applicants. The general allegations are made against these applicants. In case of Sanjaysingh s/o Sitaram Khatwar V/s. The State of Maharashtra reported in **2018 ALL MR (Cri) 5043** that when no specific accusations are made against

appellant, the evidence of other witnesses is also general in nature, it is difficult to accept that they would know any alleged harassment and no independent evidence by which case of appellant could be segregated from case of acquitted accused persons, this Court held that the prosecution has failed to prove case beyond reasonable doubt and hence conviction is quashed. It is profitable to reproduce the observations of the Hon'ble Apex Court in paragraph 12 in the case of Madan Mohan Singh V/s. State of Gujarat and another reported in (2010) 8 SCC 628 which read as follows:-

“12. In order to bring out the 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.”

23. Considering the judicial pronouncements as stated aforesaid and keeping the facts of the present case in mind and having regard to the parameters laid down by the Hon'ble Supreme Court in the case of State of Haryana V/s. Bhajan Lal reported in **AIR 1992 SC 604** we do not find any impediment in quashing the proceedings in hand qua the applicants. The *means rea* necessary to constitute the offence is missing. Apart from the allegations made in the F.I.R. nothing is there incriminating against these applicants.

24. In view of the above, we are inclined to invoke our inherent powers.

(a) The application is allowed.

(b) We hereby quash and set aside the proceedings pending before the J.M.F.C. Court No.10, Nagpur arising out of Crime No.0010/2019 registered by Police Station Gittikhadan, Nagpur for the offence punishable under Section 306 read with

Section 34 of the Indian Penal Code against these applicants only.

(c) The application stands disposed on in the above terms.

(MRS. VRUSHALI V. JOSHI, J.)

(VINAY JOSHI, J.)

Tambaskar.