



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION NO.1166 OF 2022

1. Dr. Ratnakar s/o Ramaji Dahat, Aged about 60 years, Occupation : Principal Shri Chakrapani Mahavidyalaya, Hudkeshwar Road, Nagpur.
2. Dr. Sau. Mangala w/o Ratnakar Dahat, Aged about 54 years, Occupation : Head of the Department of Marathi Literature and Associate Professor, Santaji College, Wardha Road, Nagpur.

Both the applicants are residing at Plot No.203, Suyog Nagar, Narendra Nagar, Road, Nagpur.

... APPLICANTS

VERSUS

1. The State of Maharashtra, through P.S.O. Police Station, Saoner, District Nagpur.
2. Pankaj s/o Sunil Dahat, Aged about 28 years, Occupation : Business, R/o Ward No. 04, Bhagirathi Nagar, Dhapewada, Tal. Saoner, District Nagpur.

... NON-APPLICANTS.

Shri A.S. Mardikar, Senior Advocate with Shri N.S. Khandewale,
Advocate for the applicants.
Shri S.S. Doifode, Addl.PP for the State.
Shri A.B. Moon, Advocate for non-applicant no.2.

CORAM : VINAY JOSHI AND MRS. VRUSHALI V. JOSHI, JJ.
DATED : 12.03.2024.

JUDGMENT : (Per : Vinay Joshi, J.)

Heard. ADMIT.

2. The matter is taken up for final disposal by consent of learned Counsel appearing for the parties.

3. By this application, both applicants are seeking to quash the First Information Report bearing Crime No.530 of 2022 registered with the Saoner Police Station, Nagpur Rural for the offence punishable under Sections 306 read with Section 34 of the Indian Penal Code. The quashing is sought on account of absence of *prima facie* material to constitute the offence of abetment to commit suicide. Particularly, it is submitted that even if the prosecution case is accepted at its face value, it does not make out the alleged offence.

4. Learned Addl. Public Prosecutor as well as Learned Counsel appearing for non-applicant no.2 resisted this application by submitting that the statement of the informant and prosecution witnesses makes out a case of abetment. It is submitted that the applicants have created

such a circumstances by their act which left no alternative for the deceased to commit suicide. It is also submitted that at this stage, the Court cannot evaluate the prosecution evidence since it is a subject matter of trial.

5. Facts leading to the filing of this application are that one Nikita aged near about 20 years has committed suicide on 14.07.2022 by hanging. Deceased Nikita has done Masters in Science and was serving in private company. She was living with her grandfather at Dhapewada. Applicant no.1 is the uncle of the deceased Nikita whilst applicant no.2 is the wife of applicant no.1. It is the prosecution case, that on 24.04.2022, both applicants went to Dhapewada where the deceased was living temporarily. In absence of the deceased, the applicants have read personal diary of Nikita as well as took its photographs in mobile. When deceased Nikita learnt about that she felt very bad and got frustrated. She has also communicated the things to her parents, sister as well as her brother Pankaj.

6. It is alleged that applicant no.2 after reading the contents of diary telephoned to the sister of the deceased namely Akanksha and said that why the deceased has referred her (applicant no.2) as a devil of the family and to that effect she would arrange the family meeting.

Informant Pankaj stated that deceased Nikita got scared about such things and to avoid the family meeting she has committed suicide.

7. During the course of investigation, the Police have recorded statement of related witnesses. Admittedly, the deceased has not left suicidal note. Though she committed suicide on 14.07.2022, however FIR has been lodged after 5 days i.e. on 19.07.2022. Entire emphasis is laid by the prosecution on the statement of the informant, sister of the deceased Akanksha, father of deceased Sunil and brother Pankaj. All the statements are identical which conveys the same things about reading of diary of deceased by the applicants and communicating the same to other family members.

8. The learned Counsel appearing for the applicants submitted that even if the FIR, charge-sheet and the material available on record are taken into consideration, the ingredients to constitute an offence punishable under Section 306 of the Indian Penal Code are not made out, therefore, the FIR and the charge-sheet are liable to be quashed. The learned Counsel for the applicants relied on various decisions of Supreme Court to contend that, if collected material falls short to make out *prima facie* case to constitute an offence charged, the prosecution is required to be quashed. It is submitted that the essential aspect of

abetment as defined under Section 107 of Indian Penal Code is totally absent. It cannot be said that the petitioner has instigated the deceased to commit suicide. Reference was also made to number of decisions of this Court to substantiate said contention. At the inception it is worthwhile to note the decisions of the Supreme Court, which provides us the guiding factor while deciding the case of abetment to commit suicide.

9. In the case of *Swamy Prahalddas Vs. State of M.P. and another - 1995 Supp (3) SCC 438*, the Supreme Court was considering a situation where the accused was alleged to have remarked to the deceased 'to go and die' and thereafter, the deceased committed suicide. Even in such a situation the Supreme Court held that the allegations, even if they were to be accepted as it is, did not *prima facie* reflect requisite *mens rea* on the part of the accused and it was also found that the deceased did have time to weigh the pros and cons of the act by which he ultimately ended his life. It was held that the accused need not face the charge in such a situation.

10. In the case of *Sanju Alias Sanjay Singh Sengar Vs. State of M.P., -(2002) 5 SCC 371*, the Supreme Court was considering a situation where the deceased had left behind a suicide note, wherein it

was specifically stated that the accused was responsible for his death. In the said case, the Supreme Court considered the liability of the accused to face investigation and prosecution under Section 306 of the IPC, in the context of Section 107 thereof and it was held that the word “instigate” denotes incitement or urging to do some drastic or inadvisable action or to stimulate or incite, further holding that presence of *mens rea*, therefore, was a necessary concomitant of instigation. It was found that in the said case the alleged abusive words were used by the accused against the deceased, two days prior to the date when the deceased was found hanging. In these circumstances, the Supreme Court found it fit to quash the criminal proceedings.

11. In the case of ***Madan Mohan Singh Vs. State of Gujarat and another - (2010) 8 SCC 628***, the accused was alleged to have instigated his driver to commit suicide. There was a detailed suicidal note left behind by the deceased and the accused had approached the High Court for quashing of the FIR and the criminal proceedings, but his prayer was rejected, as consequence of which, the accused was before the Supreme Court seeking relief. The Supreme Court analyzed Section 306 read with 107 of the IPC and found that there has to be proximity between the alleged acts of the accused and the extreme step taken by the deceased of committing suicide. It was held that the allegations

made and the material ought to be of a definite nature and not imaginary or inferential. The Supreme Court went into the suicidal note of about 15 pages and found that the contents thereof expressed the anguish of the deceased, who felt that his boss (the accused) had wronged him, but it was noted that the contents fell short of depicting an intentional act on the part of the accused for driving the deceased to commit suicide. On this basis, the judgment of the High Court was set aside and the FIR and criminal proceedings were quashed.

12. Observations made by the Supreme Court in paragraph No.25 of the decision in case of ***S.S. Chheena Vs. Vijay Kumar Mahajan and another - (2010) 12 SCC 190***, are relevant, which reads as under :

“25. 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.”

13. Similarly, in the case of ***M.Mohan Vs. State Represented by the Deputy Superintendent of Police - (2011) 3 SCC 626***, the Supreme Court held in the context of abetment as follows: -

“44. 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.

45. The intention of the legislature and the ratio of the cases decided by this court are 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 this act must have been intended to push the deceased into such a position that he/she committed suicide.”

14. In the case of ***Geo Varghese Vs. State of Rajasthan and another, 2021 SCC Online SC 873***, the Supreme Court held as follows :

“23. What is required to constitute an alleged abetment of suicide under Section 306 IPC is there must be an allegation of either direct or indirect act of incitement to the commission of offence of suicide and mere allegations of harassment of the deceased by another person would not be sufficient in itself, unless, there are allegations of such actions on the part of

the accused which compelled the commission of suicide. Further, if the person committing suicide is hypersensitive and the allegations attributed to the accused is otherwise not ordinarily expected to induce a similarly situated person to take the extreme step of committing suicide, it would be unsafe to hold the accused guilty of abetment of suicide. Thus, what is required is an examination of every case on its own facts and circumstances and keeping in consideration the surrounding circumstances as well, which may have bearing on the alleged action of the accused and the psyche of the deceased.”

15. In order to consider whether section 306 would apply to the facts in case, one would have 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. The same read 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.”

16. 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 petitioner was instigating and harassing the deceased and further there is absolutely no material to allege that the petitioner abetted for suicide of the deceased within the meaning of Section 306, IPC.

17. 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 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 he committed suicide.

18. 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.

19. Applying the aforementioned principles laid down in various decisions, it is necessary to revisit the factual aspect. The deceased was well educated grownup lady, who was employed in the private company. It emerges from the Police report that the deceased Nikita was living separately with her grandfather. The informant has merely stated that while the deceased was living at Nagpur the applicants treated her like a servant. We are unable to perceive anything from said vague statement to gather that the applicants have abetted the deceased with requisite *mens rea*.

20. The entire thrust of the prosecution is on the act of the applicants of reading personal diary of the deceased and informing the others stating that as to why such material pertaining to applicant no.2 was written in diary. The question falls for consideration is whether the said isolated act of the applicants would constitute an offence of abetment. Reading of the material denotes that applicant read personal diary of the deceased, noted the contents and in order to question her arranged family meeting. It is apparent that deceased was scared that her personal things were read by the applicants in clandestine manner. She did not like that and was afraid that applicants may make her personal thoughts open to the family members. The report states that the deceased felt very bad as the applicants have read her diary and

particularly, she was scared about family meeting.

21. The various statements convey that it was own thinking process of deceased as all the time she expressed that applicants may defame her. There are no allegations or the act of incitement on the part of the applicants which has direct nexus with the suicide that too with requisite *mens rea*. Though it was inappropriate on the part of applicants to read personal diary, but it is difficult to constitute it as an abetment to commit suicide. Reading of the entire material as it stands it does not meet the essential requirement to constitute the offence of abetment. There was no continuous course of conduct on the part of the applicants, which created a situation which led the deceased to think that no other alternative is left for her than to commit suicide. Certainly, the act of the applicants of reading personal diary has irritated the deceased, she got afraid of facing the family meeting. It is apparent that the deceased was hyper sensitive and was unable to digest that the applicants has read her personal things and at her own imagination she thought that she would be defamed. We do not see any positive act of the applicants, which has direct nexus with the suicidal death.

22. Applying the position of law, as set out in various decisions

of Supreme Court to the facts of the present case, we are of the considered opinion that a case is made out for interdicting the criminal proceedings by quashing the FIR and the charge-sheet, for the reason that the material available on record does not indicate that the applicant deserves to face trial for alleged offence punishable under Section 306 of the Indian Penal Code.

23. In view of above the Criminal Application is allowed. The First Information Report bearing Crime No.530 of 2022 registered with the Saoner Police Station, Nagpur Rural for the offence punishable under Sections 306 read with Section 34 of the Indian Penal Code is quashed and set aside.

(MRS. VRUSHALI V. JOSHI, J.)

(VINAY JOSHI, J.)

Trupti