



Judgment

904 apl 1072.23

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

CRIMINAL APPLICATION (APL) NO. 1072/2023

Pratik s/o Narhari Mate,
Aged about 22 yrs.,
Occ. Police Constable,
R/o. Gandhi Ward, Desaiganj,
Tah. Desaiganj, Dist. Gadchiroli.

... **APPLICANT**

VERSUS

1. The State of Maharashtra,
through Police Station Officer,
Police Station Armori,
Dist. Gadchiroli.
2. Purnima Namdeo Khobragade,
Aged 35 yrs., Occ. Constable,
R/o. Shivani, Sindewahi,
Tah. Armori, Dist. Gadchiroli.

... **NON-APPLICANTS**

Mr. Madhur Deo, Advocate for applicant.
Mr. M.J.Khan, Addl. Public Prosecutor ('APP') for non-applicant
No.1.
Mr. A.N. Darunde, Advocate h/f Ms. Mohini Sarma, Advocate
(appointed) for non-applicant No.2.

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

DATE : 22.01.2024.

ORAL JUDGMENT (PER VINAY JOSHI, J.) :

Heard.

2. **Admit.**

3. By this application, the applicant is seeking to quash Final Report filed under Section 173 of the Code of Criminal Procedure ('Code') for the offence punishable under Section 306 of the Indian Penal Code arising out of First Information Report ('FIR') Crime No. 215/2023 registered with Police Station Armori, Dist. Gadchiroli which is numbered as Sessions Case No.3/2024.

4. The learned Counsel appearing for the applicant submitted that even if the First Information Report ('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 is not made out, therefore, the FIR and the charge-sheet are liable to be quashed. The learned Counsel for the applicant relied on various decisions of the 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

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essential aspect of abetment as defined under Section 107 of the Indian Penal Code was totally absent. The material fell short to make out that the applicant has instigated the deceased to commit suicide.

5. The learned counsel appearing for the non-applicant No.2/informant and the learned APP for State took us through certain statements of witnesses and stated that the act of the applicant was of such a nature that he has instigated deceased to commit suicide. It is argued that there is clear material to indicate that the applicant gave constant threats to the deceased to make viral photographs which caused deceased to take such extreme step. It is submitted that the material collected by the prosecution is sufficient to make out prima facie case.

6. With the assistance of both sides, we have examined the entire material. Deceased Sharda was serving in the Police Department as well applicant/accused too. Sharda committed suicide by drowning on 30.06.2023 at about 04.00 p.m. by jumping into the river. On the following day in the evening, elder brother of Sharda has lodged report which caused Police to register an offence

and investigate the matter.

7. It is informant's case that on 20.06.2023, she noticed that deceased Sharda was remaining in disturbed condition. The informant inquired, on which deceased disclosed that while she was serving at Laheri, she met accused, love relationship was developed between them from four to five months. The accused assured her for marriage, however latter on refused to marry. Deceased disclosed that since the accused refused for marriage, she has been defamed at her service place and therefore, she does not find interest in living. The informant and her brother tried to convince that it is a routine affair, and she shall not live under tension.

8. The informant stated that on 30.06.2023 around 02.00 p.m. deceased left the house by her two wheeler (scooty) without informing anybody. The informant telephonically tried to contact her, on which deceased stated that she is at Armori – Bramhapur road. Informant and her brother rushed to said place, however found two wheeler and slippers in abandoned condition on the river bridge. After search, they found that she was lying dead in the river water. The informant stated that since the applicant has denied for

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marriage, the deceased committed suicide under frustration.

9. The learned counsel appearing for applicant would submit that the contents of FIR nowhere discloses that the applicant has either instigated or abetted the deceased in the act of committing suicide. The contents of FIR only discloses that though the applicant was having love relation with deceased, however he has merely denied for the marriage. We have gone through the supplementary statement of informant, wherein she added that the applicant took some photographs of deceased and had threatened her to make viral the photographs. The entire thrust of the prosecution is on the alleged threats given by the applicant. In this regard, the learned APP took us through the statements of informant's another sister Shama, and one Gangadhar who stated about alleged threats. We have also been taken through the statement of the applicant's brother. The learned defence counsel pointed that though Shama has made reference about alleged threat, however there are no particulars about the threat. Moreover, our attention has been invited to the statement of Shama recorded under Section 164 of the

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Code which is totally silent about alleged threats. It appears that witness Pankaj Wanjari has expressed fear that the applicant may viral the photographs. It reveals that it was the perception of Wanjari, however he never stated that actual threats were given.

10. The learned counsel appearing for applicant would submit that the essential ingredients of the offence under Section 306 of the Indian Penal Code are totally missing. The prosecution case does not make out the intention of the accused to abet or instigate deceased to commit suicide. The evidence is not capable of suggesting that the accused intended by such act to instigate deceased. It is pointed out that no such photographs or video clips have been seized during investigation. There appears to be totally vague reference to that effect.

11. The learned counsel appearing for applicant would submit that even if the prosecution case is accepted, that the applicant has threatened deceased to make viral photographs, however neither there are particulars nor does isolate act amounts to intentional instigation. It is submitted that the presence of *mens rea* is necessary which is totally missing. The allegation of either direct or indirect act

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of incitement cannot be made out. Particularly it is argued that because of only the applicant refused for marriage, the lady took extreme step. In order to substantiate said contention, the learned counsel for applicant relied on the following decisions:-

(I) Arnab Manoranjan Goswami Vs. State of Maharashtra & ors., (2021) 2 SCC 427.

(II) Geo Varghese Vs. State of Rajasthan, 2021 SCC Online SC 873.

(III) Gurcharan Singh Vs. State of Punjab, (2020) 10 SCC 200,

(IV) S.S. Chheena Vs. Vijay Kumar Mahajan & another, (2010) 12 SCC 190.

(V) Vaijnath Kondiba Khandke Vs. State of Maharashtra & anr. (2018) 7 SCC 781.

(VI) Lata Vs. State of Maharashtra, through Police Station Officer Parva and anr., 2022 SCC OnLine Bom 2840.

(VII) Bhartendra s/o Dhanraj Bhoyar Vs. The State of Maharashtra & anr. (Criminal Writ Petition No.519/2014, decided on 13.04.2023).

(VIII) Akash Dashrath Khanzode Vs. The State of Maharashtra & anr. (Criminal Application [APL] No. 1076/2022 decided on 22.12.2022).

(IX) State of Kerala & ors. Vs. S. Unnikrishnan Nair &

ors., (2015) 9 SCC 639.

(X) Salib alias Shalu alias Salim Vs. State of U.P. & ors. 2023 SCC OnLine SC 947.

(XI) State of Karnataka Vs. Muniswamy & ors., (1977) 2 SCC 699.

(XII) Dipakbhai Jagdishchandra Patel Vs. State of Gujarat & anr, (2019) 16 SCC 547.

12. In order to impress that the cause for suicide was not the threats, but refusal of marriage, the applicant took us through the statement of witness Chandramani. He has stated that soon before the suicidal death, he had telephonic talk with the deceased. He stated that on the day of occurrence, around 02.30 p.m., he had talk with deceased on telephone. Deceased inquired with him about whereabouts of the applicant. Again, within few minutes, Chandramani had conversation with deceased on which she stated that I cannot go to the house of the applicant as they would not accept. The said conversation soon before death assumes significance. Deceased did not disclose that since she was under persistent threat, she took such extreme step rather it is evident that since the applicant denied for marriage, she has committed suicide under frustration.

13. 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 Indian Penal Code, 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.

14. 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

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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 Indian Penal Code 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.

15. 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.”

16. 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

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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.”

17. 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

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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.”

18. 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.”

19. In the case of **Ramesh Kumar V/s. State of Chhattisgarh –**

[2001] 9 SCC 618, the Apex Court has observed in para as under;

“20. Instigation is to goad, urge forward, provoke, incite or or encourage to do “an act”. To satisfy the requirement of instigation through 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.”

20. Recently the Supreme Court in case of **Ude Singh and others .vrs. State of Haryana - 2019 SCC Online SC 924**, extensively surveyed the law in the field and summarized the principles in cases

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of alleged abetment of suicide. The relevant observations contained in paragraph nos. 16.1 and 16.2 reads 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

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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, selfconfidence and upbringing. Hence, each case is required to be dealt with on its own facts and circumstances.”

21. 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, Indian Penal Code. To proceed against any person for the offence under Section 306 Indian Penal Code 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 applicant was instigating and harassing the deceased and further there is absolutely no material to allege that the applicant abetted for suicide of the deceased within

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the meaning of Section 306, Indian Penal Code.

22. 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 Indian Penal Code 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.

23. By applying above law, the material available on record shows that beside vague statements, there is nothing to indicate positive act of the applicant, rather there are no circumstances which could indicate that the applicant made deceased's life miserable by his act compelling her to end her life. Pertinent to note that deceased never left any suicidal note. Over all, material suggests that due to refusal for marriage, deceased committed suicide under

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frustration. Moreover, the material indicates that the brother of deceased was insisting for marriage, but since the applicant was younger than 10 years from the deceased, there was refusal. True, the incident was unfortunate, however we could not see the material to make out prima facie case. In the circumstances, continuation of prosecution amounts to abuse of the process of the Court.

24. In view of above, application is allowed, we hereby quash and set aside FIR vide Crime No. 215/2023 registered with Police Station Armori, Dist. Gadchiroli for the offence punishable under Section 306 of the Indian Penal Code and related Sessions Case No. 3/2024 pending on the file of learned Principal District and Sessions Judge, Gadchiroli.

(MRS. VRUSHALI V. JOSHI, J.)

(VINAY JOSHI, J.)