

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE

C.R.R. 4233 of 2017

**Madusree Ghosh & Anr.
Vs.
The state of West Bengal and another**

For the Petitioners : Mr. Manas Kumar Das
Mr. Aritra Kumar Thokdar

For the State : Mr. Bidyut Kumar Roy
Ms. Sima Biswas

For the opposite party No.2 : Ms. Puja Goswami

Heard on : 08.01.2025

Judgment on : 17.02.2025

Dr. Ajoy Kumar Mukherjee , J.:

1. The FIR of the instant case was registered on 02.05.2012 on the basis of a written complain lodged by opposite party no.2 herein stating that on and from 18.01.2011, the petitioners started to reside as tenant at the house of the brother of the defacto complainant, on the basis of a verbal agreement for a period of three months. However, after a lapse of few days the brother of the defacto complainant/victim/landlord came to know

that the petitioners were carrying out illegal activities at their said rented house. It is alleged in the complaint that the victim/deceased on several occasions tried to restrain the petitioners from carrying out their illegal activities but the victim/deceased in due course of time came to know that several police officials also involved in such illegal activities and the illegal business of the petitioners, who threatened victim to implicate in false cases. The victim on several occasions went to the police station but did not get any relief. The petitioners allegedly turned the tenanted house into a center for unsocial activities and when the complainants brother/victim and sister in law/wife of victim, requested them to quit the house, they started inflicting physical and mental torture upon them, for which the victim committed suicide on 02.05.2012

2. On the basis of aforesaid complain, Kandi P.S. Case no. 258 of 2012 dated 02.05.2012 under section 306 of the Indian Penal Code was started. Thereafter, the investigation culminated into a charge sheet which was filed under section 306 of the Code against the petitioners.

3. Being aggrieved by the impugned proceeding, Mr. Das learned Counsel appearing on behalf of the petitioners submits that petitioner no. 1 and petitioner no.2 who is the husband of petitioner no. 1, are suffering from age old ailments. He further argued that during investigation the prosecution did not place any document regarding alleged illegal activities in the house nor any proceeding had been started for evicting the petitioners from their tenanted portion. In fact the statements made by the charge sheeted witnesses are concocted and those are fabricated story created with the intention to implicate the petitioners falsely. He further

stated that no suicide note left by victim in support of implicating petitioners. The victim admittedly was not staying in the same premises with the petitioners, rather he was staying two kms away from the tenanted property and as such the essential ingredients to constitute offence under section 306 of IPC, conspicuously absent in the present case. In the absence of any 'positive act' of instigation, aiding or active participation by the accused in committing suicide by the victim, mere allegation of unpleasant behavior, harassment or dispute do not constitute abetment, unless they result in unbearable mental trauma leading directly to the act of suicide. In this context petitioners relied upon judgment of **S.S. Chheena Vs. Vijay Kumar Mahajan & another**, reported in **(2010) 12 SCC 190**.

4. Mr. Das further argued that there must be a clear and proximate casual connection between the accused persons action and the suicide. The instigation must be deliberate, willful, which immediately prompted the victim to take such an extreme step, which is clearly absent in the petition of complaint and for which also the instant proceeding is not sustainable in the eye of law, against the petitioners. In this context petitioners relied upon judgment of **Sanju @ Sanjay Sing Sengar Vs. State of M.P.** reported in **(2002) 5 SCC 371**.

5. Mr. Das further argued that mens rea on the part of the accused is an essential requirement to constitute offence under the said section. The action of the accused must demonstrate an intentional effort to provoke or incite the victim to commit suicide and the intention must be evident and supported by direct evidence. In this context he relied upon **State of**

Kerala and ors. Vs. Unnikrishnan Nair and others, reported in **(2015) 9 SCC 639**. He further contended that general allegation of harassment or dispute without substantive proof of instigation or provocation do not satisfy the criteria for abetment under section 306 IPC.

6. Accordingly Mr. Das submits that in the present context the prosecution has failed to establish any direct evidence of instigation or provocation or active participation by the petitioners. In fact the tenancy dispute between the parties was of a civil nature and lacks any proximate link to the victim's suicide. Therefore, the continuation for the instant criminal proceeding before the trial court is nothing but an abuse of process of law and miscarriage of justice and as such the proceeding is liable to be quashed.

7. Mrs. Puja Goswami learned Counsel appearing on behalf of the defacto complainant/opposite party no.2 submits that defacto complainant promptly lodged the FIR against the petitioner and as such there is sufficient reason to believe that the incident alleged in the FIR are not a concocted or frivolous story. The victim/deceased inspite of his best effort, when could not oust the petitioners from the house and tried to apply force upon the petitioners, he was threatened by them and since one of the petitioners is a lady, the victim was also threatened to be implicated in false cases by the petitioners. She further contended that it is evident from the newspaper reporting that the petitioners with the help of police was carrying out honey trap business and other illegal activities in their rented accommodation.

8. She further argued that in the present case the petitioners created such a situation that the victim/deceased was left with no other option than to commit suicide. The victim was under constant threat by the petitioners which constitutes the offence of abetting as provided under section 107 of the Indian Penal Code. Relying upon the judgment of **Ude Singh Vs. State of Haryana** reported in **AIR 2019 SC 4570**, petitioners contended that continuous and repeated insult and intimidation and utterance of the accused persons were calculated to bring disgrace which amounted to abetment. Accordingly opposite party no.2 has prayed for dismissal of the present application.

9. Learned Counsel appearing for the State placed the Case Diary and submitted that there are sufficient materials collected during investigation which clearly suggest that the party should go on trial to unearth the truth and this is not a fit case where the proceeding can be quashed invoking jurisdiction of the court under section 482 of the Code of Criminal Procedure.

10. I have considered submissions made by both the parties.

11. In order to properly comprehend the scope and ambit of section 306 of IPC let me reproduce the section as under.

“Abetment of suicide. — *If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”*

12. Section 107 of the IPC defines offence of abetment which is a separate and distinct offence. A person said to have committed such offence if it is proved that he:-

(a) instigates any person to do that thing.

(b) engages with one or more other persons in any conspiracy for the doing of that thing.

(c) intentionally aids by act or illegal omission the doing of that thing.

13. For the purpose of present context I need to take note of the word “instigation” in the context of section 107, which literally means to provoke, incite, urge forward or bring about by persuasion to do an act. In **Ramesh Kumar Vs. State of Chattisgarh** reported in **(2001) 9 SCC 618**, the Supreme Court examined different shades of the word instigation’ and para 20 runs as follows:-

“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.”

14. A plain reading of the complaint as well as statement made by the witnesses, recorded under section 161 of Cr.P.C. during investigation, clearly reveals that the allegation is that victim committed suicide as the petitioner/accused persons created physical, mental and financial pressure upon the victim, when victim requested the petitioners to quit and vacate the tenanted premises and further allegation is that they threatened the victim to falsely implicate him in criminal cases and also for the reason that the victim could not get any relief inspite of informing the matter before the concerned authority and for which victim got frustrated and due to mental agony victim committed suicide. In the present case admittedly

victim has not left behind any suicide note and the autopsy report clearly suggests that the cause of victim's death was suicidal in nature.

15. Now even if I accept the prosecution case that the petitioners used to threat the victim at places to implicate him in false criminal case and/or they created financial, mental and physical pressure upon the victim, that by itself does not constitute the ingredient of instigation because the word "instigation" denotes incitement or urging to do something drastic or inadvisable action or to stimulate. Presence of *mens rea* is also the necessary concomitant of instigation.

16. On careful scrutiny of the contents of complaint as well as statement of witnesses, it is clear that the allegations made against the present petitioners are evasive. No specific role has been attributed to any of the particular accused and there is no specification in FIR as to which accused committed what kind of offence. Not only that no date or time or place has been mentioned anywhere stating when the alleged threats were given and on which date the victim got depressed due to alleged threat. The contents of the complaint as well as statements made by the witnesses during investigation clearly show that victim was in stress and got depressed but how can it be said that the suicide committed by the deceased was the direct result of any such alleged threat or any such alleged pressure. One plausible reason could be that the deceased got frustrated as he became unsuccessful in evicting the petitioners after expiry of their three months agreed tenancy.

17. In ***Ramesh Kumar (Supra)*** case the supreme Court held that a word uttered in a fit of anger or emotion without intending the consequences to

actually follow cannot be said to be instigation. It was further held that if it transpires to the court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life, quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the court should not be satisfied for basing a finding that the accused charged for abetting the offence of suicide should be found guilty.

18. In ***M. Mohan Vs. State*** reported in **(2011) 3 SCC 626**, while dealing with the issue of ‘abetment’, the Supreme Court observed:-

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.

19. Now when the present case is considered in the light of aforesaid settled legal propositions of law, I find that the FIR maker and the witnesses have only made casual reference of threatening about implicating victim with false criminal cases and/or creation of pressure. I find nothing to show that there was any persistent harassment or such harassment coupled with pressure created such a circumstance that any other person, in victim’s place would have certainly committed suicide.

20. In a recent judgment of the Apex Court in ***M. Vijay Kumar Vs. State of Tamilnadu*** reported in **(2024) 4 SCC 633** while considering a question as to whether a person can be convicted under section 306 IPC or whether

a conviction there under could be sustained, one has to consider the *mens rea* of the accused persons to bring about suicide of the victim. Accordingly it requires an active act or direct act which led the victim to commit suicide seeing no option and in other words, the act must have been of such a degree intending to push the deceased into such a position that he/she committed suicide. *Mens rea* is considered as the 'guilty intention' and unless it is found that the accused had the guilty intention to commit the crime, he could not be held guilty of committing the crime.

21. The materials so far placed before me, does not reveal existence of the element of *mens rea* on the part of the petitioners. There is nothing in the complaint or the materials collected during investigation, which would suggests that the petitioners had instigated the deceased to commit suicide.

22. Even if prosecution case is taken to be true about the words of threatening to implicate victim in false criminal cases, while victim insisted them to vacate rented premises, it does not reflect requisite of *mens rea*. In ***Swamy Prahaladdas Vs. State of M.P. and another***, reported in **1995 Supp (3) SCC 438** it was held that when the words are casual in nature which are often employed in the hit of the moment between quarreling people, nothing serious is expected to follow thereafter, the said act does not reflect the requisite *mens rea* on the assumption that these words would be carried out in all events.

23. In ***Madan Mohan Singh Vs. State of Gujarat***, reported in **(2010) 8 SCC 628**, the court held that in order to bring out an offence under section 306 IPC, specific abetment as contemplated in section 107 IPC on the part

of the accused, with an intention to bring about suicide of the person concerned, as a result of that abetment is required. It was further held that the intention of the accused to aid or to instigate or to abet the deceased to commit suicide is a must for attracting section 306.

24. In ***Prakash and Others Vs. The State of Maharashtra and another***, reported in **2024 INSC 1020** (decided on 20th December, 2024) the Supreme Court again had the occasion to interpret the offence under section 306 IPC as below.

“13. Section 306 of the IPC has two basic ingredients-first, an act of suicide by one person and second, the abetment to the said act by another person(s). In order to sustain a charge under Section 306 of the IPC, it must necessarily be proved that the accused person has contributed to the suicide by the deceased by some direct or indirect act. To prove such contribution or involvement, one of the three conditions outlined in Section 107 of the IPC has to be satisfied.

14. Section 306 read with Section 107 of IPC, has been interpreted, time and again, and its principles are well- established. To attract the offence of abetment to suicide, it is important to establish proof of direct or indirect acts of instigation or incitement of suicide by the accused, which must be in close proximity to the commission of suicide by the deceased. Such instigation or incitement should reveal a clear mens rea to abet the commission of suicide and should put the victim in such a position that he/she would have no other option but to commit suicide.”

25. Thus, even if the prosecution case taken to be true in its entirety even then after examining the facts and circumstances of the case and the statement of the witnesses and the materials collected during investigation including the statement of witnesses, there is nothing to say that the cruelty or harassment or threat or pressure allegedly meted out to the victim had led the victim with no other alternative but to put an end to his life. There is no material to show direct or indirect acts of incitement to the commission of suicide. Mere evasive allegation of harassment or threat without even mentioning date time or place of such occurrence of positive

action, proximate to the time of occurrence on the part of petitioners which led or compelled the victim to commit suicide, conviction under section 306 is not possible. In fact if the prosecution story taken literally, it could not be said that the petitioners intended to instigate the commission of suicide by the victim. It cannot be said from the facts and circumstance of the case that the petitioners by their conduct had created a situation to the deceased with no other option but to commit suicide.

26. In a recent judgment in ***Mahendra Awase Vs. State of M.P., 2025 INSC 76*** (decided on 17th January, 2025) the Apex Court expressed it's concern over the casual approach of the police in registering offences under section 306 of IPC. Para 20 of the said judgment runs as follows:-

20. This Court has, over the last several decades, repeatedly reiterated the higher threshold, mandated by law for Section 306 IPC [Now Section 108 read with Section 45 of the Bharatiya Nyaya Sanhita, 2023] to be attracted. They however seem to have followed more in the breach. Section 306 IPC appears to be casually and too readily resorted to by the police. While the persons involved in genuine cases where the threshold is met should not be spared, the provision should not be deployed against individuals, only to assuage the immediate feelings of the distraught family of the deceased. The conduct of the proposed accused and the deceased, their interactions and conversations preceding the unfortunate death of the deceased should be approached from a practical point of view and not divorced from day-to-day realities of life. Hyperboles employed in exchanges should not, without anything more, be glorified as an instigation to commit suicide. It is time the investigating agencies are sensitised to the law laid down by this Court under Section 306 so that persons are not subjected to the abuse of process of a totally untenable prosecution. The trial courts also should exercise great caution and circumspection and should not adopt a play it safe syndrome by mechanically framing charges, even if the investigating agencies in a given case have shown utter disregard for the ingredients of Section 306.

27. In view of above factual background and judicial pronouncements, even if all evidence on record including the charge sheet and the statement made by the witnesses are taken to be correct, I find that the acts of petitioners are too remote and indirect to constitute the offence under

section 306 IPC. In short there is no material against the petitioners of such a nature that the victim was left with no alternative but to commit suicide. Furthermore a threat of implicating someone with false criminal case does not gain the status of abetment to commit suicide by the victim. There needs to be positive act that creates an environment where the deceased is pushed to an edge in order to sustain the charge of section 306 IPC.

28. The upshot of the discussion is that the prosecution has miserably failed to make out that the petitioners herein had abated the victim to commit suicide. From the available materials there is hardly any chance of conviction of the petitioners at the end of trial.

29. In such view of the matter **CRR 4233 of 2017** is allowed. The impugned proceeding being Kandi P.S. Case no. 258 of 2012 dated 02.05.2012 under section 306 of IPC corresponding to G.R. Case no. 607 of 2012 stands quashed.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Dr. AJOY KUMAR MUKHERJEE, J.)