



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

CRIMINAL APPLICATION (REVN) NO. 70 OF 2024

APPLICANT : Navneet Ambadasji Agrawal,
Aged 50 years, Occu: Business,
R/o Ghatanji, Tah. Ghatanji,
District Yavatmal.

VERSUS

RESPONDENT State of Maharashtra,
through Station House Officer, City Police
Station, Shegaon, Tq. Shegaon,
District Buldana.

Mr. A.B. Bhide, counsel for applicant.
Mrs. Swati Kolhe, APP for respondent/State.

CORAM : **URMILA JOSHI-PHALKE, J.**
DATE : **04/02/2025**

ORAL JUDGMENT :

1. Heard.
2. **Admit.** Heard finally by consent of learned counsel appearing for the parties.
3. The revision application is filed by the applicant

(Accused No.1) in connection with Crime No. 50/2015 registered under Section 306 read with Section 34 of the Indian Penal Code, 1860 against rejection of the discharge application Exhibit No.6 filed under Section 227 of the Cr.P.C.

4. The factual matrix of the case for disposal of the present revision application is as under;

Shri Kishor Tawade has lodged a report alleging that when he was present on duty on 27/03/2015, one Sheikh Shakil Ahmad Gulam Dastgir gave a report, he is the owner of the Swagat Guest House and room No. 12 was obtained by the deceased Naresh Dattarya Yemsanwar, aged about 41 years, resident of Sayatkharda, Tah. Ghatanji, District Yavatmal. He has closed the door of this room and thereafter, he consumed a poison and committed suicide. The door of the room was broken and thereafter, the inquest panchanama was drawn. During the inquiry, with the said suicide, the investigating officer has seized five chits from one envelope and the said envelope was addressed in the name of Police and it was kept on one tile. During the investigation, it further revealed that the present applicant and the deceased entered into an agreement to purchase the agricultural

field and the present applicant obtained money as well as golden ornaments from him and not executed agricultural land and also not returned the amount, as well as the golden ornaments and therefore, he committed suicide. On the basis of the said report, police have registered the crime against the present applicant.

5. After completion of the investigation, the present applicant has filed an application under Section 227 of the Cr.P.C. for discharge, which came to be rejected. The said application is filed on the ground that there is no nexus between the act of suicide and the abetment at the hands of the present applicant. In fact, there is no material to show that the present applicant has either instigated, abetted or aided the deceased to commit suicide. However, the learned Sessions Court has not considered the same and rejected the application.

6. Heard learned counsel for the applicant, he submitted that absolutely there is no proximity between the two acts the agreement of sale was executed in the year 2011, whereas the deceased has committed suicide in the year 2015. Thus, there is no nexus between the two acts. He has also invited my attention towards various statements of the witnesses and submitted that

none of the statement discloses that what type of abetment was at the hands of the present applicant, there is no direct or circumstantial evidence to show the nature of abetment at the hands of present applicant. Thus, prima-facie case is not made out against the present applicant, and therefore, he be discharged from the discharge from the act.

7. Learned APP strongly opposed the said application and submitted that at the time of framing of charge, strong suspicion is also sufficient to frame the charge. Whether there was a requisite *mens rea* or not is a matter of evidence. Over all contentions shows that the applicant created certain circumstances, which compelled the deceased to commit suicide. At the stage of framing charge the court is required to evaluate the material and documents on record with a view to find out with the facts emerging therefrom taken at there face value disclose existence. Thus, at this stage, the material collected during the investigation is sufficient to frame charge and therefore, no interference is called for.

8. In support of the application, learned counsel for the applicant placed reliance on decision of this Court in Criminal

Application No. 502/2015, wherein the FIR against the co-accused is quashed observing that the deceased committed suicide and there is no proximity between the two acts. There is no active act or direct act committed by the applicant.

9. Learned counsel for the applicant submitted similar is the case regarding the present applicant. He further placed reliance on the decision of *Shabbir Husain vs State of Madhya Pradesh (2021) 17 SCC 807* wherein the Hon'ble Apex Court held 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 Indian Penal Code, 1860. It is further held that abetment by a person is when a person instigates another to do something. Instigation can be inferred where the accused had, by his acts or omission created such circumstances that the deceased was left with no option except to commit suicide.

10. Before entering into the merits of the case, it is necessary to see what is the consideration for considering the application for discharge.

11. It is a settled principle of law that at the stage of

considering an application for discharge, the court must proceed on the assumption that the material which has been brought on record by the prosecution is true and evaluate the material in order to determine whether the facts emerging from the material, taken on its face value, disclose the existence of the ingredients necessary of the offence alleged.

12. The Hon'ble Apex Court in the case of ***State Of Gujarat Versus Dilipsinh Kishorsinh Rao [MANU/SC/1113 2023]***, advertent to the earlier propositions of law in its earlier decisions in the cases of ***State of Tamil Nadu vs. N.Suresh Rajan and ors, [(2014) 11 SCC 709]*** and the ***State of Maharashtra vs. Somnath Thapa, [(1996) 4 SCC 659]*** and the ***State of MP Vs. Mohan Lal Soni, [(2000) 6 SCC 338]***, as held as under:

“10. It is settled principle of law that at the stage of considering an application for discharge the court must proceed on an assumption that the material which has been brought on record by the prosecution is true and evaluate said material in order to determine whether the facts emerging from the material taken on its face value, disclose the existence of the ingredients necessary of the offence

alleged. This Court in State of Tamil Nadu vs. N.Suresh Rajan and ors, (2014) 11 SCC 709 adverting to the earlier propositions of law laid down on this subject has held:

"29. We have bestowed our consideration to the rival submissions and the submissions made by Mr. Ranjit Kumar commend us. True it is that at the time of consideration of the applications for discharge, the court cannot act as a mouthpiece of the prosecution or act as a post office and may sift evidence in order to find out whether or not the allegations made are groundless so as to pass an order of discharge. It is trite that at the stage of consideration of an application for discharge, the court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate the said materials and documents with a view to find out whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and

not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage."

13. Thus, the defence of the accused is not to be looked into at this stage when the application is filed for discharge. The expression "the record of the case" used in Section 227 of the Code of Criminal Procedure is to be understood as the documents and materials, if any, produced by the prosecution. The provisions of the Code of Criminal Procedure does not give any right to the accused to produce any document at the stage of framing of the charge. The submission of the accused is to be confined to the material produced by the investigating agency. The primary consideration at the stage of framing of charge is the test of existence of a prima facie case, and at this stage, the probative value of materials on record need not be gone into. At the stage of entertaining the application for discharge under Section 227 of the Code of Criminal Procedure, the court cannot analyze or direct the

evidence of the prosecution and defence or the points or possible cross examination of the defence. The case of the prosecution is to be accepted as it is.

14. In the case of ***Union of India vs. Prafulla Kumar Samal and anr, [(1973)3 SCC 4]***, the Hon'ble Apex Court considered the scope of Section 227 of the Code of Criminal Procedure. After advertng to the various decisions, the Hon'ble Apex Court has enumerated the following principles:

“(1) That the Judge while considering the question of framing the charges under section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.

(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be, fully justified in framing a charge and proceeding with the trial.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally

possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under section 227 of the Code the Judge which under the present Code is a senior and experienced Judge cannot act merely as a Post office or a mouth-piece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.”

15. With the above principles, if the material in the present case collected during the investigation is discussed, there is no dispute as to the fact that the present applicant and the deceased entered into an agreement recording the sale of the landed property.

16. The additional statement of Dattatraya Ramchandrea Yemsanwar, who is the father of the deceased discloses that the

said agreement was entered in the year 2011, whereas the deceased has committed suicide in the year 2015. As observed by this Court by referring the decision of the Hon'ble Apex court in the case of ***Ramesh Kumar vs. State of Chhattisgarh reported in (2001) 1 SC 618***, wherein in the context of ingredient of Section 306 of the Indian Penal Code, 1860 it is held that "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 heat of anger or emotion without intending the consequences to actually follow cannot be said to be instigation.

17. In ***State Of West Bengal vs Orilal Jaiswal And Another [1994 (1) SCC 73]***, this Court has cautioned that the court should

be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end the life by committing suicide. 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 of abetting the offence of suicide should be found guilty.

18. Now, a question remains, whether breaking of the relationship with the deceased or demanding the money from the applicant or due to the economical transactions between the parties, whether the act of the victim committing suicide is sufficient to show that the applicant has abetted him to commit suicide.

19. Section 306 (Section 108 of the Bharatiya Nyaya Sanhita, 2023) of the Indian Penal Code, 1860 defines abetment of

suicide, which reads thus:

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.

Classification of offence. - The offence under this section is cognizable, non-bailable, non-compoundable and triable by Court of Session.

20. Section 107 of the Indian Penal Code, 1860 (Section 45 of the Bharatiya Nyaya Sanhita, 2023) defines abetment of a thing, which reads thus:

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, willfully 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 facilitates the commission thereof, is said to aid the doing of that act.

21. Section 108 of the Indian Penal reads thus:

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.

Illustrations

(a) A, with a guilty intention, abets a child or a lunatic to commit an act which would be an offence, if committed by a person capable by law of committing an offence, and having the same intention as A. Here

A, whether the act be committed or not, is guilty of abetting an offence.

(b) A, with the intention of murdering Z, instigates B, a child under seven years of age, to do an act which causes Z's death. B, in consequence of the abetment, does the act in the absence of A and thereby causes Z's death. Here, though B was not capable by law of committing an offence, A is liable to be punished in the same manner as if B had been capable by law of committing an offence, and had committed murder, and he is therefore subject to the punishment of death.

(c) A instigates B to set fire to a dwelling-house, B, in consequence of the unsoundness of his mind, being incapable of knowing the nature of the act, or that he is doing what is wrong or contrary to law, sets fire to the house in consequence of A's instigation. B has committed no offence, but A is guilty of abetting the offence of setting fire to a dwelling-house, and is liable to the punishment, provided for that offence.

(d) A, intending to cause a theft to be committed, instigates B to take property belonging to Z out of Z's possession. A induces B to believe that the property

belongs to A. B takes the property out of Z's possession, in good faith, believing it to be A's property. B, acting under this misconception, does not take dishonestly, and therefore does not commit theft. But A is guilty of abetting theft, and is liable to the same punishment as if B had committed theft.

Explanation 4.— The abetment of an offence being an offence, the abetment of such an abetment is also as offence.

Illustration

A instigates B to instigate C to murder Z. B accordingly instigates C to murder Z, and C commits that offence in consequence of B's instigation. B is liable to be punished for his offence with the punishment for murder; and, as A instigated B to commit the offence, A is also liable to the same punishment.

Explanation 5.— It is not necessary to the commission of the offence of abetment by conspiracy that the abettor should concert the offence with the person who commits it. It is sufficient if he engages in the conspiracy in pursuance of which the offence is committed.

Illustration

A concerts with B a plan for poisoning Z. It is agreed

that A shall administer the poison. B then explains the plan to C mentioning that a third person is to administer the poison, but without mentioning A's name. C agrees to procure the poison, and procures and delivers it to B for the purpose of its being used in the manner explained. A administers the poison; Z dies in consequence. Here, though A and C have not conspired together, yet C has been engaged in the conspiracy in pursuance of which Z has been murdered. C has therefore committed the offence defined in this section and is liable to the punishment for murder.

22. Section 306 of the Indian Penal Code, 1860 talks about abetment of suicide and states that whoever abets the commission of suicide of another person, he/she shall be punished with imprisonment of either description for a term not exceeding ten years and shall also be liable to fine.

The said Sections penalizes abetment of commission of suicide. To charge someone under this Section, the prosecution must prove that the accused played a role in the suicide. Specifically, the accused's actions must align with one of the three criteria detailed in Section 107 of the Indian Penal Code, 1860. This means the accused either encouraged the individual to take

their life, conspired with others to ensure the person committed suicide.

23. A question arises as to when is a person said to have instigated another. The word “instigate” means to goad or urge forward provoke, incite or encourage to do “an act” which the person otherwise would not have done.

24. 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, there must be direct incitement to do culpable act.

25. The Hon’ble Apex Court has considered its earlier decision in the case of *Kamlakar vs. State of Karnataka (Criminal Appeal No.1485/of 2011, decided on 12.10.2023* and explained ingredients of Section 306 of the Indian Penal Code, 1860 and held, as under:

"8.2. Section 306 IPC penalizes abetment of commission of suicide. To charge someone under this Section, the prosecution must prove that the accused

played a role in the suicide. Specifically, the accused's actions must align with one of the three criteria detailed in Section 107 IPC. This means the accused either encouraged the individual to take their life, conspired with others to ensure the person committed suicide, or acted in a way (or failed to act) which directly resulted in the person's suicide.

26. The essentials of Section 306 Indian Penal Code, 1860 were elucidated by this Court in ***M.Mohan vs. State, AIR 2011 SC 1238***, as under:

“43. This Court in Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi) [(2009) 16 SCC 605 : (2010) 3 SCC (Cri) 367] had an occasion to deal with this aspect of abetment. The Court dealt with the dictionary meaning of the word “instigation” and “goading”. The Court opined that there should be intention to provoke, incite or encourage the doing of an act by the latter. Each person's suicidability pattern is different from the others. Each person has his own idea of selfesteem and selfrespect. Therefore, it is impossible to lay down any straitjacket formula in dealing with such cases. Each case has to be decided on the basis of its own facts and circumstances.

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.

27. Thus, the Hon'ble Apex Court has consistently taken the view that before holding an accused guilty of an offence under Section 306 Indian Penal Code, 1860, 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 Indian Penal Code, 1860 is not sustainable.

28. In order to bring a case within the purview of Section 306 Indian Penal Code, 1860 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.

29. On the basis of the above principles, if the facts of the present case, and the material during the investigation is taken into consideration, it reveals from the first information report and material produced on record that there is no material are even the allegation to show that the applicant has either instigated or intentionally aided the victim to commit suicide. There is no active act or direct act committed by the applicant which led victim to commit suicide nor there is any allegation or proof that the applicant intentionally pushed victim in such position that he committed suicide and there was no other alternative but to commit suicide, and therefore the victim has committed suicide.

The investigating agency in there reply has stated that there is abetment at the hands of the present applicant and therefore, deceased has committed suicide, but this allegation is not substantiated by any other material to fulfill the ingredients of the offence under Section 306 of Indian Penal Code, 1860.

30. On overall perusal of the FIR and the investigation papers, which are not sufficient even to frame a charge against the

present applicant. After having sifted weighing the evidence on record, and gone through the investigation papers and considering the material on record, it is difficult to hold that inference of grave suspicion can be raised against the applicant on the basis of the evidence on record. The material appears to be insufficient for subjecting the applicant to trial. On the basis of the evidence on record, it cannot be stated that the material is sufficient for the prosecution to establish the charge against the present applicant. Subjecting the applicant to trial on the basis of the above said evidence would not only be a mere formality but also abuse of process of law.

31. In this view of the matter, the criminal revision application deserves to be allowed. Hence, I proceed to pass following order:

ORDER

- a. The Criminal Revision Application is allowed.
- b. The order passed by Assistant Sessions Judge, Khamgaon District Buldana, dated 27/12/2023 in Sessions Trial No. 72/2021 below Exhibit

No.6, rejecting the discharge application is hereby quashed and set aside.

- c. The applicant is hereby discharge of offence punishable under Section 306 read with 34 of Indian Penal Code, 1860 in connection Crime No. 50/2015 and charge-sheet No. 92/2021 registered by Shegaon Police Station District Buldhana.

32. The Criminal Revision Application stands **disposed of**.

[URMILA JOSHI-PHALKE, J.]