



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

CRIMINAL APPLICATION NO.803 OF 2022

1. Kapil s/o Hansraj Sonone, aged 28 years, Occ : Priavte Job,
2. Hansraj Pundlikrao Sonone, aged 64 years, Occ. Retired.
3. Devkala w/o Hansraj Sonone, aged 51 years, Occ. Household,
4. Karuna d/o Hansraj Sonone, aged 25 years, Occ. Education,

Nos. 1 to 4 r/o Warun Nagar, Mahadeo Khori, Amravati, Tq. And Dist. Amravati.

5. Chandramani Hansraj Sonone, aged 31 years, Occu. Pvt. Job,
6. Sayali w/o Chandramani Sonone, aged about 24 years, Occ. Education/Household,

Nos. 5 and 6 r/o Telang Building, Kukday, Layout, Plot No. 182, Near Maharashtra Cooperative Bank, Nagpur 440 027

... APPLICANTS

VERSUS

1. State of Maharashtra, through Police Station Officer, Police Station, Frezarpura, Amravati, Tq. And Dist. Amravati.

2. Ratan Niranjana Thorat, aged 28 years, Occ. Education, r/o Lumbini Nagar, Kumbharwada, Amravati, Dist. Amravati.

... NON-APPLICANT(S).

Shri Tushar U. Tathod, Advocate for the applicants.
Ms. M.H. Deshmukh, Additional Public Prosecutor for the State.
Shri D.N. Mudgale, Advocate for non-applicant no.2.

CORAM : ANIL S. KILOR AND PRAVIN S. PATIL, JJ.

DATE : 02.04.2025.

JUDGMENT : (Per : Pravin S. Patil, J.)

Heard. **ADMIT.**

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

3. By this application the applicants are challenging the criminal proceedings registered against them vide R.C.C. No.722 of 2024 pending on the file of the Judicial Magistrate First Class, Amravati and charge-sheet arising out of Crime No.298 of 2022 registered with the Frezarpura Police Station, Amravati City for the offence punishable under Sections 306 read with Section 34 of the Indian Penal Code ('IPC').

4. In short, the case of the prosecution is that on 01.05.2022, Investigating Agency received information that one Diksha Thorat committed suicide by hanging herself. On that basis, earlier the offence was registered as Merg No.33 of 2022. After that, the brother of the deceased lodged complaint stating that deceased Diksha was having love affair with applicant no.1 Kapil since last 6 years and he has given assurance of marriage to deceased Diksha and on that basis established physical relations with her for several times. However, from the month of April, 2021, applicant no.1 was avoiding to contact Diksha and thereby caused harassment to her. So also, applicant no.1 driven out her from the rented room in which they were residing as husband and wife. Due to this act of applicant no.1, mental condition of Diksha was disturbed.

5. Furthermore, it is stated that applicant no.1 fled away to Indore. The deceased Diksha went behind him at Indore but applicant no.1 avoided to meet her. As such, deceased under frustration returned back to Amravati. Thereafter, applicant nos. 2 to 6, who are the relatives of applicant no.1, had been to the house of the informant and gave threats to kill her if the deceased Diksha asked for marriage to applicant no.1.

6. It is further alleged that on 17.01.2022, the deceased came in contact with Sau. Padma Puri, who is running Mahila Sevabhavi Sanstha at Amravati. Applicant no.1 admitted before her that he was having love affair with Diksha but he denied to marry her. Later on, on 29.04.2022 when Diksha repeatedly called the applicant no.1 on his mobile, applicant no.1 did not pick up her call. On 30.04.2022 Diksha went to the Frezarpura Police Station and lodged complaint against him. At that time, lady Police Constable telephonically called applicant no.1 at that time he clarified that he is not ready to perform marriage with Diksha. Therefore, according to the informant, on 01.05.2022, Diksha (deceased) committed suicide and therefore, present applicants should be prosecuted for offence punishable under Sections 306 read with Section 34 of the IPC.

7. In the present case as the offence is registered under Section 306 of the IPC, it will be necessary to consider Sections 107 and 306 of the IPC, which read as under :

“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.

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 facilitate the commission thereof, is said to aid the doing of that act.”

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.”

8. The first Clause of Section 107 lays down that a person who abets the doing of a thing, is a person who instigate any person to do that thing. Therefore ‘instigation’ to do a particular thing is necessary for charging a person with abetment. Further more, the abetment involves a mental process to instigate a person or intentional aiding a person in doing a particular thing and without a positive act on the part of the accused there would be no instigation. As such to convict a person for abetment of suicide under Section 306 of the IPC, there has to be a clear *mens rea* on the part of the accused to abet such a crime and it requires active act or direct act leading to the

commission of offence.

9. Hon'ble Supreme Court in the case of *Kamlakar vs. State of Karnataka in Criminal Appeal No.1485 of 2011 (decided on 12.10.2023)* explained the ingredients of Section 306 of the IPC 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.

8.3. In Ramesh Kumar V. State of Chhattisgarh (2001) 9 SCC 618, this Court has analysed different meanings of "instigation". The relevant para of the said judgement is reproduced herein:

"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."

8.4. The essentials of Section 306 IPC were elucidated by this Court in M. Mohan v. State2, 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 self-esteem and self-respect. 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.

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.”

8.5. The essential ingredients which are to be meted out in order to bring a case under Section 306 IPC were also discussed in Amalendu Pal alias Jhantu v. State of West Bengal (2010) 1 SCC 707 in the following paragraphs:

“12. Thus, this Court has consistently taken the view that before holding an accused guilty of an offence under Section 306 IPC, 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 IPC is not sustainable.

13. In order to bring a case within the purview of Section 306 IPC 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. Therefore, the act of abetment by the person charged with the said offence must be proved and established by the prosecution before he could be convicted under Section 306 IPC.”

10. On relying abovesaid observation Hon’ble Supreme Court in the case of ***Prabhu vs. The State represented by the Inspector of Police and anr. (Criminal Appeal @ SLP (Crl.) Diary No.39981/2022)*** dated 30.01.2024 laid down the following principles :

“10. On a perusal of the above, and relying upon this Court’s previous judgments discussing the elements of Section 306 IPC, the following *principles* emerge:

10.1 Where the words uttered are casual in nature and which are often employed in the heat of the moment between quarrelling people, and nothing serious is expected to follow from the same, the same would not amount to abetment of suicide. [Swami Prahaladdas v. State of M.P 1995 Supp. (3) SCC 438, Paragraph 3; Sanju v. State of M.P (2002) 5 SCC 371, Paragraph 12]

10.2 In order to constitute ‘instigation’, it must be shown that 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. The words uttered by the accused must be suggestive of the consequence [Ramesh

Kumar v. State of Chhatisgarh (2001) 9 SCC 618, Paragraph 20]

10.3 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. [Chitresh Kumar Chopra v. State (Government of NCT of Delhi) (2009) 16 SCC 605, Paragraph 20].

10.4 There must be direct or indirect acts of incitement to the commission of suicide. The accused must be shown to have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide [Amalendu Pal v. State of West Bengal (2010) 1 SCC 707, Paragraph 1214]

10.5 The accused must have intended or known that the deceased would commit suicide because of his actions or omissions [Madan Mohan Singh v. State of Gujarat (2010) 8 SCC 628].

In the teeth of abovesaid legal position and principles laid down by Hon'ble Supreme Court, we proceeded to decide the present case.

11. From the perusal of the FIR it appears that due to denial of marriage by applicant no. 1 and consequently avoiding to meet her, the deceased came in mental pressure and committed suicide. One thing is clear from the allegations made by the informant that applicant no.1 was not in contact with the deceased as per the case of prosecution. Hence, it can be said that there was no instigation of any kind on the part of applicant no.1 and by his family members, to deceased to commit suicide. Broken relationship and heart breaks are part of

everyday life. Same cannot constitute any instigation or abetment of suicide. Hon'ble Supreme Court in the case of *Prabhu (supra)* has specifically observed in paragraph 12 as under :

“12. Broken relationships and heart breaks are part of everyday life. It could not be said that the appellant by breaking up the relationship with Lousalya and by advising her to marry in accordance with the advice of her parents, as he himself was doing, had intended to abet the suicide of Kousalya. Hence the offence under Section 306 is not made out.”

12. It is further pertinent to note that there is no direct evidence available on record to show that the applicants instigated or provoked the deceased to commit suicide. The only allegation against applicant no.1 is that he refused to marry with the deceased, which is not a positive act on his part with an intention to abet the crime of suicide.

13. In respect of applicant nos.2 to 5, who are the relatives of the applicant no.1 only allegation made in the complaint is that when they got knowledge about the relations of the deceased with Kapil, they had been to the house of the deceased to discuss the matter and there was hot exchange of words between them. However, these allegations are not sufficient to constitute the offence of abetment of suicide. Furthermore, it is not the case of informant that applicants/accused

created such circumstances that deceased was left no option except to commit suicide. Hence according to us, the case of the applicants is squarely covered by the law laid down by the Hon'ble Supreme Court in the case of *Prabhu (supra)*.

14. For aforesaid reason, we proceed to pass the following order :

ORDER

- (a) The Criminal Application is allowed.
- (b) The Criminal Proceeding bearing R.C.C. No.722 of 2024 pending on the file of learned Judicial Magistrate First Class Amravati and Charge-sheet bearing No.92/2024 arising out of Crime No.298 of 2022 registered with the Frezarpura Police Station, Amravati City for the offence punishable under Sections 306 read with Section 34 of the Indian Penal Code, is hereby quash and set aside against the present applicants.

(PRAVIN S. PATIL, J.)

(ANIL S. KILOR, J.)

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