



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

Criminal Application (APL) No. 1327 of 2023

Pratham S/o Kishor Sarwan,
Age : 21 years, Occ. Student,
R/o Talav Road, Shakti Mandir,
Khamgaon, Buldhana

... Applicant

// VERSUS //

1. The State of Maharashtra through
Police Station Officer, Police Station
Shivajinagar, Buldhana
2. Sagar Raju Gawande,
Age : 25 years, Occupation
R/o Miranagar, Jamuna Khamgaon,
Shivaji Nagar, Buldhana, Maharashtra

... Non-applicants

Shri R.R.Vyas, Advocate for the applicant.

Shri Sagar Ashirgade, Addl. P.P. for the non-applicant/State.

Shri S.S.Dewani, Advocate for the non-applicant no.2

**CORAM : ANIL S. KILOR &
PRAVIN S. PATIL, JJ.**

DATED : 25th MARCH, 2025.

ORAL JUDGMENT : (PER : PRAVIN S. PATIL, J.)

Rule. Rule is made returnable forthwith. By consent of the
learned counsel for the parties, the matter is taken for final disposal.

2. By way of present application, the applicants seeks to quash
and set aside the proceedings i.e. Regular Criminal Case No. 201 of 2024

pending on the file of Joint Civil Judge, Junior Division and Judicial Magistrate First Class, Khamgaon arising out of charge-sheet bearing no. 43 of 2024 dated 10th April, 2024 for the offence punishable under Sections 306, 417 read with Section 34 of the Indian Penal Code.

3. In short, the case of the prosecution is that informant lodged the report on 14th July, 2023 stating therein that his brother namely Shubham used to run small shop under the name and style “Amol Nashta Centre”. On 11th July, 2023, he came to know that his brother Shubham committed suicide by hanging himself in the hotel. As such, initially case of accidental death No. 17 of 2023, came to be registered in the matter.

The informant stated that after completion of cremation of the body, he went home and noticed that at 4.53 am, on 11th July, 2023 he received a voice call on his mobile from the deceased Shubham. In the said voice call message, deceased had informed him to see certain video clips which were recorded by him on his mobile. There were around six video recording clips. After going through video clip, it is revealed to him that Shubham in one of the clip stated that against applicant and one Yogesh Yadav amount of Rs.2,80,000/- and Rs.1,40,000/- is outstanding.

On demand of the said outstanding amount, both the accused gave threatening to him and therefore he was under pressure and ultimately committed suicide. As such, according to informant present applicant and another accused are responsible for his death. On this accusation, Police Station Shivaji Nagar, Buldhana vide Crime No. 196 of 2023 registered the offence against the applicant and one Yogesh Yadav under Section 306 read with Section 34 of Indian Penal Code.

4. The applicant challenge the First Information Report dated 14th July, 2023 before this Court by way of present application. During the pendency of the present application, investigation was completed and charge-sheet came to be filed on 10th April, 2024 vide charge-sheet No. 43 of 2024 before the Judicial Magistrate First Class Court No.3, Khamgaon and consequently Regular Criminal Case No. 201 of 2024 is registered in the matter.

5. Learned Additional Public Prosecutor has filed affidavit in the matter and stated that after conducting the investigation, it is transpired that deceased has lent Rs.2,80,000 to the applicant and inspite of returning the same, applicant harassed and threatened the deceased. As

such, it is submission of the learned Additional Public Prosecutor that applicant failed to make out the case for quashing of the First Information Report and therefore application deserves to be rejected.

6. Non-applicant no.2 also supported the case of prosecution and stated that present applicant is responsible for suicide committed by the brother of the non-applicant no.2. Therefore, he also stated that the present application being devoid of merit is liable to be quashed and set aside.

7. We have perused the record and considered the submission of respective parties.

In the present case before dealing with the merits of the matter, it is necessary to consider the relevant provisions which is reproduced as under:

Section 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.

Section 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.

9. From the perusal of the above said provisions of law, it is clear that two basic ingredients are required to be satisfied, first act of suicide by one person and second abetment of suicide by another person. In order to sustain a charge under Section 306 of the Indian Penal Code, it must necessarily be proved that the accused person has contributed to the suicide by the deceased by some direct or indirect act and to prove such contribution or involvement, one of the three conditions outlined in Section 107 of the IPC has to be satisfied.

10. It is settled principle of law that 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 other requirement under Section 306 of the Indian Penal Code is that there has to be clear mens rea to commit the offence and in furtherance of same is required active act or direct act which led the deceased to commit suicide, seeing no option than to commit suicide.

11. In the case of Prakash and others Vs. State of Maharashtra and another in Criminal Appeal No. of 2024 (arising out of SLP (Cri) No. 1073 of 2023), the Hon'ble Supreme Court has observed thus:

22. It could thus be seen that this Court observed that 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 has been held that since the cause of suicide particularly in the context of the offence of abetment of suicide involves multifaceted and complex attributes of human behaviour, the court would be looking for cogent and convincing proof of the act(s) of incitement to the commission of suicide. This Court further observed that a mere allegation of harassment of the deceased by another person would not suffice unless there is such action on the part of the accused which compels the person to commit suicide. This Court also emphasised that such an offending action ought to be proximate to the time of occurrence. It was further clarified that 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. It was further held that if the acts and

deeds are only of such nature where the accused intended nothing more than harassment or a 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. This Court held that owing to the fact that the human mind could be affected and could react in myriad ways and that similar actions are dealt with differently by different persons, each case is required to be dealt with its own facts and circumstances.

23. In the case of Sanju @ Sanjay Singh Sengar (*supra*), the appellant before this Court was charged with having abetted the suicide by his brother-in-law (sister's husband). The prosecution story was that there were strained relations between the deceased and his wife who at the material time was staying with the appellant therein. On 25th July, 1998 the deceased went to the appellant to bring back his wife. There was a quarrel between the appellant and the deceased who came back alone. The deceased told his brothers and other acquaintances that the appellant had threatened and abused him by using filthy words. On 27th July, 1998 the deceased was found dead. The deceased left a suicide note which showed his disturbed state of mind but otherwise he blamed the appellant for the suicide. The appellant's petition for quashing of the charge-sheet filed under Section 482 Cr.P.C. was dismissed by the High Court which led him to file an appeal before this Court which came to be allowed. While taking note of the disturbed state of mind of the deceased as was evident from the suicide note and the lack of intention on the part of the accused to abet the commission of suicide by the deceased, the Court held that there was a time gap of 48 hours between the abusive language being used and the commission of suicide. As such, owing to the passage of 48 hours, giving the deceased enough time to reflect, there was no proximate link between the words uttered and the act of suicide. This Court observed as follows:

“8. In *Swamy Prahaladdas v. State of M.P.* [1995 Supp (3) SCC 438 : 1995 SCC (Cri) 943] the appellant was charged for an offence under Section 306 IPC on the ground that the appellant during the quarrel is said to have remarked to the deceased “to

go and die”. This Court was of the view that mere words uttered by the accused to the deceased “to go and die” were not even prima facie enough to instigate the deceased to commit suicide.

9. In Mahendra Singh v. State of M.P. [1995 Supp (3) SCC 731 : 1995 SCC (Cri) 1157] the appellant was charged for an offence under Section 306 IPC basically based upon the dying declaration of the deceased, which reads as under: (SCC p. 731, para 1)

“My mother-in-law and husband and sister-in-law (husband's elder brother's wife) harassed me. They beat me and abused me. My husband Mahendra wants to marry a second time. He has illicit connections with my sister-in-law. Because of these reasons and being harassed I want to die by burning.”

10. This Court, considering the definition of “abetment” under Section 107 IPC, found that the charge and conviction of the appellant for an offence under Section 306 is not sustainable merely on the allegation of harassment of the deceased. This Court further held that neither of the ingredients of abetment are attracted on the statement of the deceased.

11. In Ramesh Kumar v. State of Chhattisgarh [(2001) 9 SCC 618] this Court was considering the charge framed and the conviction for an offence under Section 306 IPC on the basis of dying declaration recorded by an Executive Magistrate, in which she had stated that previously there had been quarrel between the deceased and her husband and on the day of occurrence she had a quarrel with her husband who had said that she could go wherever she wanted to go and that thereafter she had poured kerosene on herself and had set herself on fire. Acquitting the accused this Court said: (SCC p. 620)

“A word uttered in a fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation. 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.”

12. Reverting to the facts of the case, both the courts below have erroneously accepted the prosecution story that the suicide by the deceased is the direct result of the quarrel that had taken place on 25-7- 1998 wherein it is alleged that the appellant had used abusive language and had reportedly told the deceased “to go and die”. For this, courts relied on a statement of Shashi Bhushan, brother of the deceased, made under Section 161 CrPC when reportedly the deceased, after coming back from the house of the appellant, told him that the appellant had humiliated him and abused him with filthy words. The statement of Shashi Bhushan, recorded under Section 161 CrPC is annexed as Annexure P-3 to this appeal and going through the statement, we find that he has not stated that the deceased had told him that the appellant had asked him “to go and die”. Even if we accept the prosecution story that the appellant did tell the deceased “to go and die”, that itself does not constitute the ingredient of “instigation”. The word “instigate” denotes incitement or urging to do some drastic or inadvisable action or to stimulate or incite. Presence of mens rea, therefore, is the necessary concomitant of instigation. It is common knowledge that the words uttered in a quarrel or on the spur of the moment cannot be taken to be uttered with mens rea. It is in a fit of anger and emotion. Secondly, the alleged abusive words, said to have been told to the deceased were on 25- 7-1998 ensued by a quarrel. The deceased was found hanging on 27-7-1998. Assuming that the deceased had taken the abusive language seriously, he had enough time in between to think over and reflect and, therefore, it cannot be said that the abusive language, which had been used by the appellant on 25-7-1998 drove the deceased to commit suicide. Suicide by the deceased

on 27- 7-1998 is not proximate to the abusive language uttered by the appellant on 25-7-1998. The fact that the deceased committed suicide on 27-7- 1998 would itself clearly point out that it is not the direct result of the quarrel taken place on 25- 7- 1998 when it is alleged that the appellant had used the abusive language and also told the deceased to go and die. This fact had escaped notice of the courts below.

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14. A plain reading of the suicide note would clearly show that the deceased was in great stress and depressed. One plausible reason could be that the deceased was without any work or avocation and at the same time indulged in drinking as revealed from the statement of the wife Smt Neelam Sengar. He was a frustrated man. Reading of the suicide note will clearly suggest that such a note is not the handiwork of a man with a sound mind and sense. Smt Neelam Sengar, wife of the deceased, made a statement under Section 161 CrPC before the investigation officer. She stated that the deceased always indulged in drinking wine and was not doing any work. She also stated that on 26-7-1998 her husband came to them in an inebriated condition and was abusing her and other members of the family. The prosecution story, if believed, shows that the quarrel between the deceased and the appellant had taken place on 25-7-1998 and if the deceased came back to the house again on 26-7-1998, it cannot be said that the suicide by the deceased was the direct result of the quarrel that had taken place on 25- 7-1998. Viewed from the aforesaid circumstances independently, we are clearly of the view that the ingredients of “abetment” are totally absent in the instant case for an offence under Section 306 IPC. It is in the statement of the wife that the deceased always remained in a drunken condition. It is common knowledge that excessive drinking leads one to debauchery. It clearly appeared, therefore, that the deceased was a victim of his own conduct unconnected with the quarrel that had ensued on 25- 7-1998 where the appellant is stated to have used abusive language. Taking the totality of materials on record and facts and circumstances of the

case into consideration, it will lead to the irresistible conclusion that it is the deceased and he alone, and none else, is responsible for his death.”
(emphasis supplied)

13. In the light of above legal position, we have given considerable thought to the allegations made in First Information Report and charge-sheet. After going through, we have noticed from the facts of case in hand that as per allegation only due to non-payment of amount by applicant to deceased, he has committed suicide. However, as required under the provisions of Section 306 of Indian Penal Code, there should be a clear mens rea to abate the deceased to commit suicide, the same is absent in the present case. From the entire record, it is not clear that applicant has any intention and created the circumstances by keeping no other option to deceased to commit the suicide.

14. From the perusal of the record, it is clear that the said demand of refund of amount was made on 15th April, 2023 and the deceased has committed suicide after period of three months i.e. on 11th July, 2023. As such, considering the period of alleged demand and suicide it cannot be said that there was continuous harassment at the instance of applicant which prompted the deceased to commit the suicide.

15. It is clear from the averment of FIR that informant received six video clips from the mobile of deceased. During investigation, it not made clear about other video clips nor it is the case of prosecution that in all video clips, deceased has stated that applicant has instigated or harass him, which left him no option than to commit suicide. On the other hand, from perusal of record can be inferred that out of emotional outburst, deceased has committed suicide. Hence, for such act of the deceased, the applicant cannot be prosecuted under Section 306 of the Indian Penal Code.

16. That applicant came with the case that he has no criminal antecedents and he is student by profession and pursuing his study as a Bachelor of Commerce and belongs to middle class family. So also, there is no other criminal antecedents placed on record stating that except demand of money there was any overt act on the part of applicant to instigate the deceased to commit suicide.

As such considering factual as well as legal position, we are of the opinion that even the case of prosecution and allegation made in complaint are taken at their face value, it does not disclose commission of

offence as same does not satisfy the pre-requisite of Sections 306 and 107 of Indian Penal Code. Furthermore, alleged demand is in the month of April, 2023 and deceased has committed suicide in the month of July, 2023. Hence, considering this long period between the demand and suicide, it cannot be held that due to harassment caused to him by the applicant, deceased has committed suicide. Hence, we proceed to pass the following order.

- i. Criminal Application No. 1327 of 2023 is allowed;
- ii. Regular Criminal Case No. 201 of 2024 pending on the file of Joint Civil Judge, Junior Division and Judicial Magistrate First Class, Khamgaon arising out of charge-sheet bearing no. 43 of 2024 dated 10th April, 2024 for the offence punishable under Sections 306, 417 read with Section 34 of the Indian Penal Code is hereby quashed and set aside in respect of present applicant only.

Rule is made absolute in aforesaid terms. No order as to costs.

[PRAVIN S. PATIL, J.]

[ANIL S. KILOR, J.]