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

CRIMINAL APPLICATION (APL) NO.1198 OF 2025

Swati D/o Himmat Anbhore,
Aged about 36 Years,
Occupation : Private,
R/o. At – Nagoli,
Taluka Murtijapur,
District Akola.

.... APPLICANT

// VERSUS //

1. State of Maharashtra, Through
Police Station Officer, Balapur
Police Station, Balapur,
District Akola.
2. Waman s/o Ramrao Tambare,
Aged 65 Years, Occupation : Private,
R/o At Vivara, Taluka – Patur,
District Akola.

.... NON-APPLICANTS

Mr. Nihalsingh Rathod, Advocate for the applicant.
Mr. M. J. Khan, APP for non-applicant No.1/State.

CORAM : URMILA JOSHI-PHALKE AND
NANDESH S. DESHPANDE, JJ.
RESERVED ON : 12.12.2025
PRONOUNCED ON : 22.12.2025

JUDGMENT : (PER : URMILA JOSHI-PHALKE, J.)

1. **Admit.**
2. Heard finally with the consent of the learned Counsel
for the parties.
3. Present application is preferred by the applicant for
quashing of the First Information Report in connection with
Crime No.632/2024 registered with Police Station, Balapur,

(2)

District Akola for the offence punishable under Sections 3(5), 108, 85 and 352 of the Bharatiya Nayaya Sanhita, 2023 and the consequent proceeding arising out of the same bearing Sessions Case No.84/2025.

4. Brief facts which are necessary for the disposal of the application are as under:

One Waman Ramrao Tambre has lodged a report at Balapur Police Station, District Akola, alleging that the deceased Uma Amol Telgote was his daughter. Her marriage performed with the co-accused Amol prior to 15 years and she is having two children from the said wedlock. As per the allegations, deceased was treated well for some days after marriage and thereafter, she was ill-treated by all the family members on the count that she is not good looking and also demanding money from her. It is further alleged that co-accused Amol was having illicit relations with the present applicant and therefore, he insisting the deceased to give him divorce. As far as the present applicant is concerned, against whom it is alleged that she was insisting the deceased to give the divorce to the co-accused Amol. On the basis of the said report, police have registered the crime against the present applicant and the other co-accused.

5. During the investigation, the Investigating Officer has drawn the spot panchnama and various statements of the

(3)

witnesses and after completion of investigation submitted charge sheet against the present applicant and other co-accused.

6. Heard learned counsel Mr. Rathod for the applicant, who submitted that as far as the illicit relations are concerned, there is no material to show that there was any relationship between the co-accused Amol and the present applicant. Only because she got acquaintance with the present applicant as being she is divorcee. She has registered the profile on a matrimonial website and co-accused Amol has also registered himself on the said matrimonial website and shown that he is divorcee. They have communicated as they both have responded to each other's profiles. There is no other reason for them to have acquaintance to each other. As far as the illicit relations between him and the co-accused Amol is concerned, a baseless allegation levelled against the present applicant. Even the present applicant was not aware that he is divorcee or not. Only because he has mentioned on the matrimonial website that he is a divorcee, therefore, she has communicated with him. It is submitted that even accepting that there was an illicit relationship, she may be a cause for the deceased's suicide, but it is not sufficient to show that she has abetted the deceased to commit suicide. In support of his contention, he placed reliance

(4)

on **Abhinav Mohan Delkar v. State of Maharashtra and others** reported in **(2025) SCC OnLine 1725**.

7. Per contra, learned APP for the State submitted that at the time of the quashing of the First Information Report what requires to be seen is whether there was requisite *mens rea* and obviously it is a matter of evidence. A strong suspicion is also sufficient to proceed against the applicant. He submitted that overall material shows that the applicant created certain circumstances which compelled the deceased to commit suicide. The WhatsApp communication between the present applicant and the co-accused and the statement of the minor witnesses, who are children of the deceased shows the involvement of the present applicant in the alleged offence. At this stage, the Court is required to evaluate the material documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose existence of ingredients or not. Thus, at this stage, the material collected during investigation is sufficient to proceed against the present applicant and therefore, the application deserves to be rejected.

8. Before entering into the merits of the case, it is necessary to see what are considerations as far as the offence under Section 306 of the IPC is concerned.

(5)

9. Section 306 (Section 108 of the Bharatiya Nyaya Sanhita, 2023) of the Indian Penal Code 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.

10. Section 107 of the Indian Penal Code (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.

(6)

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, wilfully 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.

11. Section 108 of the Indian Penal Code (Section 46 of the Bharatiya Nyaya Sanhita, 2023) 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.

(7)

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.

(8)

(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 an 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 concert 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

(10)

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.

12. Section 306 of the Indian Penal Code 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. This means the accused either encouraged the individual to take their life, conspired with others to ensure the person committed suicide.

13. 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.

(11)

14. 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.

15. In the case of **Prabhu vs. The State represented by the Inspector of Police and anr SLP [Cri] Diary No. 39981/2022, decided on 30.01.2024**, relied by learned counsel for the applicant, by referring the various earlier decisions, the Hon'ble Apex Court held that the physical relationship over a considerable period of time was out of mutual love between the appellant and the deceased and not based on the promise of marriage. In the said case, 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 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.

8.3. In **Ramesh Kumar vs. State of Chattisgarh**, reported in **AIR 2001 SC 383**, this Court has analysed different meanings of "instigation". The relevant para of the said judgment 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 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.

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

(14)

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 106 IPC were also discussed in **Amalendu Pal alias Jhantu vs. West bengal AIR 2010 SC 512**, 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

(15)

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.”

8.6. On a careful reading of the factual matrix of the instant case and the law regarding Section 306 IPC, there seems to be no proximate link between the marital discord between the deceased and the appellant and her subsequent death by burning herself. The appellant has not committed any positive or direct act to instigate or aid in the commission of suicide by the deceased.”

16. In the light of above said principles laid down by the Hon’ble Apex Court, it is well settled that to attract the provisions what is to be shown is that the accused have actually instigated or aided to the victim in committing suicide. There must be

(16)

direct or indirect incitement to the commission of suicide and 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.

17. Applying the above principles to the facts of the present case and even accepting the case as it is, it reveals that the allegation against the present applicant is that she was having illicit relations with the co-accused Amol. As far as the nature of the relationship between the present applicant and the co-accused is concerned, except the statements of the children and the parents of the deceased, there is no other material collected during the investigation. Admittedly, the death of the deceased is due to hanging. Thus, the death admittedly is not a natural death. During the investigation, the Investigating Officer has collected the screenshot of the matrimonial website which shows that the present applicant has registered herself on the matrimonial website by disclosing that she is divorcee and her profile was uploaded. As far as the co-accused Amol is concerned, though he is not a divorcee, he has uploaded his profile as divorcee on the said matrimonial website and communicated with the present applicant. Even if the WhatsApp chat is taken into consideration, it nowhere shows that there was any illicit relationship between the deceased and the present

(17)

applicant, as nothing reflected from the said WhatsApp chat. Thus, even accepting the said communication as it is, and even accepting the facts that there was any relationship between the present applicant and the co-accused, there is nothing on record to show that she has in any manner abetted the deceased to commit suicide. At the most, she can be cause for the deceased to commit suicide, but as far as the abetment at the hands of the present applicant is concerned, the material collected during investigation falls short to say that she has abetted the deceased to commit suicide.

18. The crucial word in Section 306 IPC is 'abets'. 'Abetment' is defined in Section 107 of IPC. As per Section 107 IPC, a person would be abetting the doing of a thing if he instigates any person to do that thing or if he encourages with one or more person or persons in any conspiracy for doing that thing or if he intentionally aids by any act or illegal omission doing of that thing. There are two explanations to Section 107. As per Explanation 1, even if a person by way of wilful misrepresentation or concealment of a material fact which he is otherwise 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 clarifies that whoever does anything in order to facilitate the commission of an

act, either prior to or at the time of commission of the act, is said to aid the doing of that act.

19. By referring the decision of **Ramesh Kumar V. State of Chhattisgarh**, reported in **(2001) 9 SCC 618** the Hon'ble Apex Court held that " 'instigate' means to goad, urge, provoke, incite or encourage to do 'an act'. To satisfy the requirement of 'instigation', it is not necessary that actual words must be used to that effect or that the words or act should necessarily and specifically be suggestive of the consequence. Where the accused by his act or omission or by his continued course of conduct creates a situation that the deceased is left with no other option except to commit suicide, then 'instigation' may be inferred. A word uttered in a fit of anger or emotion without intending the consequences to actually follow cannot be said to be 'instigation'."

20. The Hon'ble Apex Court further refers the judgment of **Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi)** reported in **(2009) 16 SCC 605** observed that to constitute 'instigation', a person who instigates another has to provoke, incite, urge or encourage doing of an act by the other by 'goadings' or 'urging forward'. This Court summed up the

(19)

constituents of 'abetment' as under and laid down the constituents as follows:

- (i) the accused kept on irritating or annoying the deceased by words, deeds or wilful omission or conduct which may even be a wilful silence until the deceased reacted or pushed or forced the deceased by his deeds, words or wilful omission or conduct to make the deceased move forward more quickly in a forward direction; and
- (ii) that the accused had the intention to provoke, urge or encourage the deceased to commit suicide while acting in the manner noted above.

21. Applying the above principles to the facts of the present case and even accepting the case as it is, there is nothing on record to show that there were any illicit relations between the applicant and the co-accused and there is any positive act on her part to abet the deceased to commit suicide.

22. A plain reading of Sections 107, 108, and 306 of the Indian Penal Code and applying it to the undisputed facts of the present case indicates that none of the ingredients are attracted to the case in hand. The material appears to be insufficient for subjecting the applicant to trial. On the basis of the nature of the evidence on record, it cannot be said that the material is sufficient for the prosecution to establish the charge against the applicant. In such circumstances, subjecting the applicant to

(20)

trial on the basis of the above said evidence would not only be a mere formality but also abuse of the process of law.

23. In this view of the matter, the application deserves to be allowed. Hence, we proceed to pass following order:

ORDER

(i) The application is **allowed**.

(ii) The First Information Report in connection with Crime No.632/2024 registered with Police Station, Balapur, District Akola for the offence punishable under Sections 3(5), 108, 85 and 352 of the Bharatiya Nayaya Sanhita, 2023 and the consequent proceeding arising out of the same bearing Sessions Case No.84/2025, is hereby quashed and set aside to the extent of the present applicant Swati D/o Himmat Anbhore.

The application is disposed of.

(NANDESH S. DESHPANDE, J) (URMILA JOSHI-PHALKE, J)