



Judgment

366 revn159.24

1

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

CRIMINAL REVISION APPLICATION NO.159 OF 2024

Saurabh s/o Sharad Wasule,
aged about 33 years, occupation -
service, resident of Jamdar Wadi,
Mehdibagh Corner, Nagpur. **Applicant.**

:: VERSUS ::

1. The State of Maharashtra,
through Police Station Officer,
Police Station, Mankapur, Nagpur
City, Nagpur.

2. Krushnarao Raghobaji Makode,
aged about 48 years, resident of plot
No.50, Jamdar Wadi, Mehdiabagh
Corner, Nagpur. **Non-applicants.**

Shri Akshay Naik, Senior Counsel assisted by Shri Atharva S.Manohar,
Advocate for the Applicant.
Mrs.S.S.Dhote, Additional Public Prosecutor for Non-applicant
No.1/State.

CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 10/02/2025

PRONOUNCED ON : 28/02/2025

JUDGMENT

2

1. Heard finally by consent of learned Senior Counsel Shri Akshay Naik for the applicant and learned Additional Public Prosecutor Mrs.S.S.Dhote for the State.

2. The challenge in the revision is to order dated 13.9.2024 passed below Exh.3 by learned Incharge Assistant Sessions Judge-8, Nagpur in Sessions Trial No.345/2021 whereby learned Sessions Judge rejected the application filed for discharge in connection with Crime No.74/2020 registered with the non-applicant No.1/Police Station for offence under Section 306 of the Indian Penal Code.

3. Factual matrix of the case is as under:

On 3.3.2020, FIR came to be registered by Krushnarao Makode, who is the father of the deceased. As per the report, he alleged that there was relationship between his daughter (the deceased) and the applicant

3

(the accused) around 3 years ago. He asked the deceased to desist meeting from the accused, but it was the accused who was insisting the deceased to perform marriage with the accused. Due to repeated proposals of the marriage on the part of the accused, the deceased committed suicide by jumping from 4th Floor of her office. Thus, the accused has abetted her to commit suicide.

4. After registration of the crime, wheels of the investigation started rotating. During the investigation, the Investigating Officer has drawn the spot panchanama, which was building "Raj Palace". He has recorded various statements of the witnesses and collected CCTV Footage on the day of the incident which show that the deceased had been out of the office during the recess and met the accused. Thereafter, they both travelled together on one vehicle and came to the office of the deceased and, thereafter, the deceased has committed suicide. After

4

completion of the investigation, the chargesheet was submitted against the accused.

5. After filing of the chargesheet, the case was committed to the Court of Sessions. The accused filed an application below Exh.3 under Section 227 of the Code of Criminal Procedure for discharge contending that the entire investigation papers nowhere reveal in what manner he had abetted the deceased to commit suicide. As per the prosecution, the deceased has broken the relationship with him, is not also substantiated by any material as the deceased was on visiting terms with the accused. The CCTV Footage also shows that on the day of the incident, she left the office during the lunch hours and came to meet the accused. Thereafter, they travelled together till her office and the deceased rushed towards the office and, thereafter, went at fourth floor and jumped from the said place. There is no proximity between the abetment and act

5

of commission of suicide. Thus, material available on record is not sufficient to frame charge against him.

6. Learned Sessions Judge, after considering the application, held that material available on record is sufficient to proceed with the trial and thereby rejected the application.

Hence, this revision.

7. Learned counsel for the accused submitted that the relationship between the accused and the deceased is not denied. As far as the statement is concerned, that she broke the relationship, the same is not sufficient by any material as the prosecution evidence itself shows that she left the office on the day of the incident during lunch hours to meet the accused. The CCTV Footage collected by the investigating agency also shows that on the day of the incident, she met the accused and, thereafter, they

6

travelled together towards the office. There is no evidence on record to show that there was any altercations of words between the accused and the deceased and, thereafter, she has committed suicide. On the contrary, they travelled together itself is sufficient to show that they were still in relationship. Thus, no positive act or action is there on the part of the accused to abet her to commit suicide. To attract Section 306 of the Indian Penal Code, two basic ingredients by one person and abetment by another person are to be established. In order to substantiate charge under Section 306 of the Indian Penal Code, it must necessarily be proved that the accused has contributed to suicide by the deceased by some direct or indirect act. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a particular thing. To bring charge under section 306 of the Indian Penal Code, the act of abetment would require the positive

7

act of instigating or intentionally aiding another person to commit suicide. Without such *mens rea* on the part of the accused being apparent from the face of record, the charge under the aforesaid Section cannot be sustained. In view of that, the order passed by learned Sessions Judge deserves to be quashed and set aside.

8. In support of his contentions, learned Senior Counsel for the accused placed reliance on following decisions:

1. Criminal Appeal No.174/2024 (Vaibhav s/o Premanand Mawale vs. State of Maharashtra) decided by this court on 15.1.2025;
2. Criminal Appeal No.221/2025 (Mahendra Awase vs. The State of Madhya Pradesh) decided by the Supreme Court on 17.1.2025;
3. Criminal Appeal No.705/2017 (Laxmi Das vs. The State of West Bengal) decided by the Supreme Court on 21.1.2025, and

4. Criminal Appeal NO.461/2025 (Ayyub and ors vs. State of Uttar Pradesh and anr) decided by the Supreme Court on 7.2.2025.

9. *Per contra*, learned Additional Public Prosecutor for the State submitted that at the time of framing of charge, a strong suspicion is also sufficient to frame charge. Whether there was requisite *mens rea* or not is a matter of evidence. The material of the case shows that the accused created certain circumstances which compelled the deceased to commit suicide. At the stage of framing of charge, the court is required to evaluate material and documents on record with a view to find out whether the facts emerging therefrom taken at their face value disclose existence of ingredients or not. Thus, at this stage, the material collected during the investigation is sufficient to frame charge and, therefore, no interference is called for.

10. 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.

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

10

“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

11

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

12

the offence. The law does not permit a mini trial at this stage."

12. 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

13

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.

13. In the case of **Union of India vs. Prafulla Kumar Samal and anr, reported in (1973)3 SCC 4**, the Hon'ble Apex Court considered the scope of Section 227 of the Code of Criminal Procedure. After adverting 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.

14

(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

15

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.”

14. Thus, the catena of decisions explains the scope of Sections 227 and 228 of the Code of Criminal Procedure from which following principles emerge:

1. While considering the question of framing the charges under section 227 of the Code, the court has the undoubted power to sift and weigh the evidence for the limited purpose of

16

finding out whether or not a prima facie case against the accused has been made out: The test to determine prime facie case would depend upon the facts of each case.

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 court 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. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

17

4. If on the basis of the material on record, the Court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

5. At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the Court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

6. At the stage of sections 227 and 228 the Court is required to evaluate the material and documents on record with a view to find out if the facts emerging there from taken at their face value discloses the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it

18

cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

7. If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.

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 deceased and the accused were in relationship. As far as breaking of relationship concerned, the same is not substantiated by any material. On the contrary, the statements of the witnesses show that on the day of the incident i.e. 3.3.2020 the deceased left the office to meet the accused. They

19

communicated with each other. Thereafter, the accused and the deceased proceeded towards the spot of the incident on one vehicle. The seizure panchanama date 6.3.2020 shows that the investigating officer has collected the CCTV Footage from which it reveals that the accused and the deceased proceeded from Mankapur Chowk to Jafar Nagar on 3.3.2020. Thereafter, from 2:36 to 3:00 pm they were together near the Mankapur Square and after that they again proceeded towards the spot of the incident on one vehicle. The statements of the witnesses, especially of colleagues of the deceased, show that the deceased had been to the office and was present in the office till lunch break. During lunch break at about 2:00 pm, she left the office and did not return back. One of her colleagues called the deceased and the deceased disclosed that her vehicle is not properly working and she will return in the office within two minutes. After 10-15 minutes, she

20

attempted to call the deceased, but her phone was switched off. At about 3:00 pm, the deceased had committed suicide by jumping from 4th Floor. The father and brother of the deceased, though stated that the accused was torturing the deceased, they have not specifically stated nature of the torture.

16. Recital of the FIR shows that it was the father who asked her to desist the relationship with the accused and as per contentions, she has broken up the said relationship. The CCTV Footage states otherwise that the deceased had been to Mankapur Square to meet the accused. The CCTV Footage only shows that they were together at the said Mankapur Square. It nowhere reveals that there any adverse communication was going between them. The circumstance, that they returned together on one vehicle till she reaches at office, itself is sufficient to show that the relationship was not such that she was avoiding the

21

accused. As far as the allegation is concerned, that the accused was torturing her, it is not supported by any evidence.

17. Now, a question remains, whether breaking of the relationship with the deceased victim is sufficient to say that the applicant has abetted her to commit suicide?

18. 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.

22

19. 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.

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

23

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.

20. 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

24

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.

25

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

26

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

27

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

28

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.

21. 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

29

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.

22. 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.

23. 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.

30

24. 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

31

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.”

32

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 “goadings”. 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.

33

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 106 IPC were also discussed in **Amalendu Pal**

34

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 to commit suicide, conviction in terms of Section 306 IPC is not sustainable.

35

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

36

or aid in the commission of suicide by the deceased.”

25. In the case of **Sanju @ Sanjay Singh Sengar v. State of M.P., reported in (2002) 5 SCC 371**, the Hon’ble Apex Court extensively dealt with concept of 'abetment' in the context of the offence punishable under Section 306 of the Indian Penal Code. In that case, the allegation against the accused/appellant therein was that he had abetted the commission of suicide of his sister's husband one Chander Bhushan. The facts reveals that there were matrimonial disputes between sister of the appellant/accused and her husband and in connection with the said disputes, the appellant had allegedly threatened and abused Chander Bhushan. Chander Bhushan committed suicide and the suicide was attributed by the prosecution to the quarrel that had taken place between the appellant and the said Chander Bhushan, a day prior. It was alleged that the

37

appellant had used abusive language against said Chander Bhushan and had told him "to go and die". The appellant, who had been chargesheeted for an offence punishable under Section 306 of the Indian Penal Code, filed a Petition under Section 482 of the Code of Criminal Procedure, for quashing the proceedings against him, but his Petition was dismissed by the High Court. While allowing the appeal, the Hon'ble Apex Court, *inter alia*, observed as follows:

"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 unadvisable action or to stimulate or incite. Presence of mens rea, therefore, is the necessary concomitant of instigation."

26. Thus, a direct influence or an oblique impact with the acts or utterances of the accused caused or created in

38

the mind of the deceased and which draw him to suicide will not be sufficient to constitute offence of abetment of suicide. A fetal impulse or ill-fated thoughts of the suicide, however unfortunate and touchy it may be, cannot fray the fabric of the provision contained in Section 306 of the Indian Penal Code. In order to bring out an offence under Section 306 of the Indian Penal Code specific abetment as contemplated by Section 306 of the Indian Penal Code on the part of the accused with an intention to bring about the suicide of the person concerned as a result of that abetment is required. The intention of the accused to aid or to instigate or to abet the deceased to commit suicide is a must for an offence under Section 306 of the Indian Penal Code.

27. The Hon'ble Apex Court in the case of **Ramesh Kumar vs. State of Chhattisgarh**, *supra*, in para No.20, has examined different meaning of 'instigation', which reads

39

as, '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'.

28. Thus, combine reading of Sections 306, 107, and 108 of the Indian Penal Code, shows the requirement is a positive act on the part of the accused to instigate or aid in

40

committing suicide and in the absence of the same, the conviction cannot be sustained. There has to be a clear intention to commit the offence for being held liable under Section 306 of Indian Penal Code.

29. The Hon'ble Apex Court, in the case of **Mariano Anto Bruno vs. State, reported in (2023)15 SCC 560** in the context of culpability under Section 306 of the Indian Penal Code, observed as under :

“45. ... 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.”

41

30. Recently, the Hon'ble Apex Court in **Criminal Appeal No.221/2025 (Mahendra Awase vs. The State of Madhya Pradesh)** *supra* dealt with the issue of abetment of suicide has referred the earlier decisions in the cases of **Swamy Prahaladdas vs. State of M.P. and anr**, reported in 1995 Supp (3) SCC 438; **Madan Mohan Singh vs. State of Gujarat and anr**, reported in (2010)8 SCC 628; **Amalendu Pal alias Jhantu vs. State of West Bengal**, reported in (2010)1 SCC 707, and **Ramesh Kumar vs. State of Chhattisgarh**, reported in (2001)9 SCC 618 and reiterated that Section 306 IPC (Now Section 108 read with Section 45 of the Bharatiya Nyaya Sanhita, 2023) appears to be applied casually. While the persons involved in genuine cases where the threshold is met should not be spared. 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. 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 of the IPC.

31. In **Laxmi Das vs. The State of West Bengal** *supra* also after referring catena of decisions including **Ramesh Kumar vs. State of Chattisgarh** *supra* it is held that even if all evidence on record, including the chargesheet and the witness statements, are taken to be correct, there is not an iota of evidence against the appellant.

32. In **Ayyub and ors vs. State of Uttar Pradesh and anr** *supra* the Hon'ble Apex Court reiterated that in order to make out an offence under Section 306 IPC, specific

43

abetment as contemplated by Section 107 IPC on the part of the accused with an intention to bring about the suicide of the person concerned as a result of that abetment is required. It has been further held that the intention of the accused to aid or instigate or to abet the deceased to commit suicide is a must for attracting Section 306 IPC. It is further held that the alleged harassment meted out should have left the victim with no other alternative but to put an end to her life and that in cases of abetment of suicide there must be proof of direct or indirect acts of incitement to commit suicide.

33. After going through the catena of decisions, it reveals that test that the court should adopt in these types of cases is to make an endeavour to ascertain on the basis of the materials on record whether there is anything to indicate even prima facie that the accused intended the consequences of the act, i.e., suicide. To attract the

44

provisions what is to be shown is that the accused have actually instigated or aided in the victim act of committing suicide. There must be 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.

34. Applying the above principles to the facts of the present case and even accepting the case as it is, it reveals that there was relationship between the accused and the deceased. After sifting the evidence on record on the touchstone of the principles laid down by the Hon'ble Apex Court, there is no evidence that the said relationship was broken between them. As far as investigation papers are concerned, it nowhere reveals that the applicant at any time provoked the deceased in any manner to kill herself. On the contrary, the evidence shows that they were in contact with each other. Merely because the deceased has

45

committed suicide that by itself is not sufficient to attract the offence against the accused.

35. 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 ingredients is attracted to the case in hand.

36. After having sifted weigh through the evidence on record and gone through the investigation papers and considering the materials 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 applicant. Subjecting the applicant to trial on the basis of the above

46

said evidence would not only be a mere formality but also abuse of process of law. Learned Sessions Judge ought to have appreciated this position while deciding the application for discharge. Learned Sessions Judge ought to have appreciated that the ingredients of the offence under Section 306 are absent. Even, if it is assumed that the material collected by the prosecution is true, it would not be sufficient to establish the case of the prosecution and, therefore, the conducting of the trial against the applicant would be an empty formality. I am, therefore, of the view that the order impugned is liable to be set aside.

37. In this view of the matter, this Court passes following order:

ORDER

(1) The Criminal Revision Application is **allowed**.

47

(2) The order dated 13.9.2024 passed below Exh.3 by learned Incharge Assistant Sessions Judge-8, Nagpur in Sessions Trial No.345/2021 whereby learned Sessions Judge rejected the application filed for discharge in connection with Crime No.74/2020 is hereby quashed and set aside.

(3) The accused is hereby discharged of the offence under section 306 read with 34 of the Indian Penal Code.

Revision stands **disposed of**.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!