



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION (APL) No.744 OF 2025

1. Vijay Purushottam Kharche,
Age 74 years,
Occupation : Retired employee.

2. Rekha Vijay Kharche,
Aged about 66 years,
Occupation : Housewife.

Both residing at Karanja Road,
Gunvant Nagar, Murtizapur,
Tq. Murtizapur,
Distt. Akola-444 107.

3. Dipa alias Dipali Pradip Patil,
Aged about 45 years,
Occupation : Housework,
Residing at Talegaon Dabhade Road,
Pune, Tq. Distt. Pune- 410 506.

4. Rahul Vijay Kharche,
Aged about 37 years,
Occupation : Service,
Residing at Krishna Nagari,
Kaulkhed, Akola, Tq. Distt. Akola.

: APPLICANTS

...VERSUS...

1. The State of Maharashtra,
Police Station Officer,
Police Station Murtizapur,
Tq. Murtizapur, Distt.Akola.

2. Abhishek Vijay More,
Aged about 22 years,
R/o. Gunvant Nagar, Murtizapur,
Tq. Murtizapur, Distt. Akola.

: RESPONDENTS

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Ms. Mansi J. Saraykar, Advocate for Applicants.
Mr. Nikhil Joshi, Additional Public Prosecutor for Respondent No.1.
Mr. V.A. Sharma, Advocate for Respondent No.2.

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CORAM : **URMILA JOSHI-PHALKE AND**
NANDESH S. DESHPANDE, JJ.
DATE : **08th OCTOBER, 2025.**

ORAL JUDGMENT : (Per : Urmila Joshi-Phalke, J.)

1. Heard. Admit. Heard finally by consent of learned counsel appearing for the parties.
2. The present application is preferred by the applicants for quashing of First Information Report in connection with Crime No.407/2024, registered under Sections 108 and 3(5) of the Bharatiya Nyaya Sanhita, 2023 and the consequent proceeding bearing Charge-sheet No.25/2025 and R.C.C. No.99/2025 pending before the Judicial Magistrate, First Class, Murtijapur.
3. Brief facts which are necessary for the disposal of the application are as under :

One Abhishek Vijay More lodged the report alleging therein that he along with his parents is residing in a house opposite to the house of applicant No.1/Vijay Kharche. It is further alleged that the applicant No.1 and his wife and sons i.e. applicant Nos.2 to 4 and his daughter were resident of Murtizapur and

usually raises a quarrel with the complainant and his family. On 8.11.2024 around 10.00 a.m. the complainant and his father had went at their agriculture field and around 5.00 p.m. the applicant No.1 called his father and informed that his wife is quarreling with the family of the applicant. Thereafter, the complainant and his father came back at their home and asked the mother of the complainant as to what has happened and she disclosed that due to throwing of the garbage in front of their house by the applicants there was a quarrel. They have also shooted the video of that quarrel and it is alleged that as the deceased was abused in a filthy language and therefore the father of the complainant has committed suicide by hanging to Neem tree near Well in the field. At the time of inquest panchanama one paper chit was found in his pocket of shirt wherein names of the present applicants were mentioned. On the basis of said report Police have registered the crime against the present applicants.

4. After registration of the crime the investigation was conducted by the Investigating Officer. During the investigation the Investigating Officer has drawn the inquest panchanama as well as spot panchanama. During inquest panchanama one chit was found along with the deceased which was seized. Some WhatsApps chats are also collected by the Investigating Officer and various

statements are also recorded. After completion of the investigation the charge-sheet is submitted against the present applicants and, therefore, the applicants are before this Court for quashing of the First Information Report.

5. Heard learned counsel Ms. Mansi Saraykar, for the applicants who submitted that as far as allegations are concerned there is no material to show that there was any type of inducement or instigation or any aiding as far as the suicide is concerned. There is no proximity between the two acts also. Considering there is no compliance of Section 107 and the essential ingredients to attract the offence of abatement to commit suicide are not made out. She further submitted that from the First Information Report nowhere it reveals that *mens rea* was there and, therefore, no prima facie case is made out against the present applicants as far as offence under Section 306 is concerned. In support of her contentions she placed reliance in the case of **Madan Mohan Singh Vs. State of Gujarat and another**, reported in **(2010) 8 SCC 628** and the order passed by this Court in Criminal Application No.484/2023 dated 8.5.2025.

6. Per contra, learned Additional Public Prosecutor Mr. Nikhil Joshi for the respondent No.1 as well as learned counsel Mr. V.A. Sharma for the respondent No.2 submitted that at the time of quashing of the First Information Report what requires to be seen is

whether there was requisite *mens rea* and obviously it is matter of evidence. A strong suspicion is also sufficient to proceed against the accused. They submitted that overall material shows that the applicants created certain circumstances which compelled the deceased to commit suicide. The WhatsApp chats as well as the video which was obtained at the time of quarrel sufficiently shows the involvement of the present applicants 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 imagine therefrom taken at their face value discloses existence of ingredients or not. Thus, at this stage, the material collected during the investigation is sufficient to proceed against the present applicants and, therefore, the application deserves to be rejected.

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

10. 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.

11. *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

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.

12. *Section 108 of the Indian Penal reads thus:*

108. Abettor.—

A person abets an offence, who abets either the commission of an offence, or the commission of an act which would be an offence, if committed by a person capable by law of committing an offence with the same intention or knowledge as that of the abettor.

Explanation 1.— The abetment of the illegal omission of an act may amount to an offence although the abettor may not himself be bound to do that act.

Explanation 2.— To constitute the offence of abetment it is not necessary that the act abetted should be committed, or that the effect requisite to constitute the offence should be caused.

Illustrations

(a) A instigates B to murder C. B refuses to do so. A is guilty of abetting B to commit murder.

(b) A instigates B to murder D. B in pursuance of the instigation stabs D. D recovers from the wound. A is guilty of instigating B to commit murder.

Explanation 3.— It is not necessary that the person abetted should be capable by law of committing an offence, or that he should have the same guilty intention or knowledge as that of the abettor, or any guilty intention or knowledge.

Illustrations

(a) A, with a guilty intention, abets a child or a lunatic to commit an act which would be an offence, if committed by a person capable by law of committing an offence, and having the same intention as A. Here A, whether the act be committed or not, is guilty of abetting an offence.

(b) A, with the intention of murdering Z, instigates

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

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

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

Explanation 4.— The abetment of an offence being an offence, the abetment of such an abetment is also 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 concerts with B a plan for poisoning Z. It is agreed that A shall administer the poison. B then explains the plan to C mentioning that a third person is to administer the poison, but without mentioning A's name. C agrees to procure the poison, and procures and delivers it to B for the purpose of its being used in the manner explained. A administers the poison; Z dies in consequence. Here, though A and C have not conspired together, yet C has been engaged in the conspiracy in pursuance of which Z has been murdered. C has therefore committed the offence defined in this section and is liable to the punishment for murder.

13. *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.*

14. *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.”*

8. 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.

9. In the case of **Kamlakar vs. State of Karnataka (Criminal Appeal No.1485/of 2011, decided on 12.10.2023** wherein 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 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.”

10. 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 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.

11. 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 applicants is that there was a quarrel between the two neighbours and the deceased was abused and, therefore, he committed suicide. The essential ingredients which are meted out in order to bring a case under Section 106 of the Indian Penal Code are 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 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.”

12. Thus, in view of the decision of the Hon’ble Apex Court in the case of **Ramesh Kumar State of Chhatisgarh**, reported in **AIR 2001 SC 383** and in **Prabhu Vs. The State represented by the Inspector of Police and another** **2024 ALL SCR 895** (supra) wherein the Hon’ble Apex Court has examined different meaning of instigation which reads as ‘instigation’ is to goad, urge, 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 which acts or omission or by 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 hit of anger or in emotion without intending the consequences who actually followed cannot be said to be instigation.

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

14. After going through the catena of decisions it reveals that the 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 provision what is shown is that the accused have actually instigated or aided to the victim in the act of committing suicide.

There must be direct or indirect incitement to the commission of suicide and the accused was shown to have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide.

15. Applying the above principles to the facts of the present case and even accepting the case as it is, it reveals that there was dispute between two neighbours and out of that dispute the deceased allegedly abused by the neighbour and, therefore, he committed suicide. On examination of the instant case on the touchstone of the principles laid down by the Hon'ble Apex Court, the exhaustive suicide note is not there and only names are mentioned. The WhatsApp chats also shows that there was a quarrel and due to that quarrel the deceased has committed suicide. 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 are attracted to the case in hand. After having shifted vague 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 applicants on the basis of evidence on record. The material appears to be insufficient for subjecting the applicants through trial on the basis of evidence on record it cannot be stated

that the material is sufficient for the prosecution to establish such act against the applicant. Subjecting the applicants through trial on the basis of abovesaid evidence would not only be mere formality but also abuse of process of law.

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

ORDER

(i) The application is allowed.

(ii) The First Information Report in connection with Crime No.407/2024, registered under Sections 108 and 3(5) of the Bharatiya Nyaya Sanhita, 2023 and the consequent proceeding bearing Charge-sheet No.25/2025 and R.C.C. No.99/2025, pending before the Judicial Magistrate, First Class, Murtijapur is hereby quashed and set aside.

(iii) The application is disposed of in the abovesaid terms.

(iv) The fees of the appointed counsel be quantified as per rules.

(Nandesh S. Deshpande, J.)

(Urmila Joshi-Phalke, J.)