

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE

CRR 365 of 2025

**Madhavi Mahesh Kalra
Vs.
The State of West Bengal & Anr.**

For the petitioners : Mr. Sabyasachi Banerjee
Mr. Nigam Ashis Chakraborty

Heard on : 11.05.2026

Judgment on : 16.06.2026

Dr. Ajoy Kumar Mukherjee, J.

1. The present application under section 528 of the BNSS has been filed by the petitioner taking an exception to the proceeding being New Market P.S. Case no. 10 of 2023 dated 17.01.2023 under section 306 of the IPC corresponding to GR. (s) case no. 57 of 2023, presently registered as Sessions Case no. 73 of 2024, pending before learned Fast Track, Second Court at Calcutta.

2. Written complaint was filed on 02.01.2023 by the Opposite Party (in short OP) no.2 with allegations to the effect that the brother of the defacto complainant namely Mahesh Kalra was married to the present petitioner on

22nd December, 1999 at Mumbai. It is alleged in the complaint that the petitioner is a quarrelsome wife and insisted the deceased brother of the defacto complainant to reside separately. As such the petitioner and said Mahesh Kalra used to reside at a different place and meanwhile they were blessed with a male child on 4th December, 2005. It is further alleged that the petitioner used to harass her said husband Mahesh Kalra by torturing him both physically and mentally. One house was bought at Powai, Mumbai with the aid of his father and the defacto complainant in the name of deceased Mahesh Kalra. It is further alleged in the complaint that said Mahesh Kalra who was a patient of depression was subjected to threat on a regular basis by the petitioner that he would be thrown out of the said house. On 12.10.2022, the defacto complainant got a call from Kolkata that he is required to come to Kolkata immediately as his brother Mahesh is caught at Park Street Metro Station for attempting to commit suicide by way of jumping in front of a running metro train. As a result of such incident one leg of Mahesh got amputated and finally on 18.10.2022, Mahesh Kalra succumbed to the injuries sustained in the course of the unfortunate incident.

3. Complainant further stated in the complaint that smelling foul play on the part of the petitioner and after getting to know that the deceased Mahesh Kalra did consume sleeping pills even one week before the incident of his attempt to commit suicide at the metro station, due to harassment of the petitioner the defecato complainant lodged the instant complaint against the petitioner, alleging commission of offence of abetment to suicide. The deceased was a sensitive person and a patient of depression and as such in

order to get rid of the deceased, the petitioner filed a petition for divorce before the Family Court at Bandra, Mumbai, wherein it has been mentioned that after the sale of residential flat at Powai Mumbai, 50% each will be proceeded towards the petitioner and towards the deceased which is valued at Rs. 3 crores. In such circumstances after the foreclosure of loan in respect of the said flat the petitioner started torturing deceased mentally. Further it is alleged that before the death of the deceased, the petitioner quarrelled with the deceased and did not even follow up after the unfortunate incident and that the petitioner did so to enjoy the fruits of her crimes. The petitioner, is an adamant and short tempered person, who is fond of lavish independent life and she has a habit of going to pubs and night clubs along with friends. It is also alleged that on a perusal of the Whats App messages and the audio recordings of the deceased, it transpires that the deceased begged for mercy and acceptance towards the petitioner and the minor son, to which the petitioner and even the minor son tortured the deceased mentally.

4. Both the defacto complainant/opposite party and the state/opposite party are not represented

5. Being aggrieved by the impugned proceeding learned counsel for the petitioner Mr. Banerjee submits that from the facts as stated in the FIR, it is clear that no criminal intent and/or incitement or instigation or mens rea on the part of the petitioner towards the suicide committed by the deceased has transpired from either the written complaint or the charge sheet. As per the law laid down in various reported decisions it is the criminal intent and the incitement which attributes and/or makes a person liable to be

booked/charged for offence of abetment for suicide as envisaged under section 306 IPC. Mens rea on the part of the petitioner towards the alleged incident is absolutely missing. The deceased was a chronic patient of bipolar disorder, depression for a prolonged period of time. He attempted to commit suicide on earlier occasion on 28th September, 2022 when he was there alone in Kolkata and the petitioner had only rescued and ensured that he is taken to hospital by way of coordinating and tracking him with the help of the Lalbazar Control Room. Such facts are apparent from the whatsapp communications made by the petitioner.

6. Mr. Banerjee further submits that the deceased used to live alone in Kolkata as he was engaged as a curator at RBI Museum in Kolkata, whereas the petitioner used to stay at Mumbai and therefore there appears to be no proximate relationship by and between and the petitioner and the deceased. The Hon'ble Division Bench of this court while granted pre arrest bail to the petitioner vide order dated 04.10.2023 had made the similar observation. He further said that subsequent to the pre arrest bail order dated 04.10.2023, no investigation and/or development in the investigation took place as noted from the charge sheet.

7. He further submits that the FIR has been lodged after a prolonged delay and therefore, the contention of the defacto complainant made in the FIR are suspicious and not sustainable in the eye of law. Therefore he prayed for quashment of the impugned proceeding.

8. At the outset it would be relevant to set out section 306 IPC, which reads as under;

“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. Therefore Section 306 IPC makes abetment of suicide a criminal offence and prescribes punishment for the same. Abetment is defined under section 107 IPC which reads as under

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

10. In ***M. Arjunam Vs. State***, reported in **(2019) 3 SCC 315** a Bench of the Apex Court has expounded the ingredients of section 306 IPC in the following words

7. *The essential ingredients of the offence under Section 306 IPC are: (i) the abetment; (ii) the intention of the accused to aid or instigate or abet the deceased to commit suicide. The act of the accused, however, insulting the deceased by using abusive language will not, by itself, constitute the abetment of suicide. There should be evidence capable of suggesting that the accused intended by such act to instigate the deceased to commit suicide. Unless the ingredients of instigation/abetment to commit suicide are satisfied the accused cannot be convicted under Section 306 IPC.*

11. In *Ude Singh Vs. State of Haryana* reported in (2019) 17 SCC 301

the supreme Court has elucidated on the essential ingredients of the offence under section 306 IPC in the following words

16. 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 could hardly be disputed that the question of cause of a suicide, particularly in the context of an offence of abetment of suicide, remains a vexed one, involving multifaceted and complex attributes of human behaviour and responses/reactions. In the case of accusation for abetment of suicide, the court would be looking for cogent and convincing proof of the act(s) of incitement to the commission of suicide. In the case of suicide, mere allegation of harassment of the deceased by another person would not suffice unless there be such action on the part of the accused which compels the person to commit suicide; and such an offending action ought to be proximate to the time of occurrence. Whether a person has abetted in the commission of suicide by another or not, could only be gathered from the facts and circumstances of each case.

12. In *Jeo Varghese Vs. State of Rajasthan* reported in (2021) 19 SCC

144 while discussing about the requirement to constitute an offence of abetment to commit suicide, the Apex Court held in para 22 as follows:-

22. What is required to constitute an alleged abetment of suicide under Section 306IPC is there must be an allegation of either direct or indirect act of incitement to the commission of offence of suicide and mere allegations of harassment of the deceased by another person would not be sufficient in itself, unless, there are allegations of such actions on the part of the accused which compelled the commission of suicide. Further, if the person committing suicide is hypersensitive and the allegations attributed to the accused are otherwise not ordinarily expected to induce a similarly situated person to take the extreme step of committing suicide, it would be unsafe to hold the accused guilty of abetment of suicide. Thus, what is required is an examination of every case on its own facts and circumstances and keeping in consideration the surrounding circumstances as well, which may have bearing on the alleged action of the accused and the psyche of the deceased.

13. In *Chitesh Kumar Chopra Vs. NCT Delhi* reported in (2009) 16 SCC

605, the court held that each individuals suicideability pattern depends on his inner subjective experience of mental pain, fear and loss of self-respect which are to be kept in mind, while adjudicating the issue. Para 20 runs as follows:-

20. In the background of this legal position, we may advert to the case at hand. The question as to what is the cause of a suicide has no easy answers because suicidal ideation and behaviours in human beings are complex and multifaceted. Different individuals in the same situation react and behave differently because of the personal meaning they add to each

event, thus accounting for individual vulnerability to suicide. Each individual's suicidability pattern depends on his inner subjective experience of mental pain, fear and loss of self-respect. Each of these factors are crucial and exacerbating contributor to an individual's vulnerability to end his own life, which may either be an attempt for self-protection or an escapism from intolerable self.

14. In ***Amalendu Pal @ Jhantu Vs. State of West Bengal*** reported in **(2010) 1 SCC 707** the apex Court observed as follows:-

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.

15. In ***M. Manmohan Vs. State*** reported in **(2011) 3 SCC 626** it was observed in para 45 follows:-

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.

16. In ***Syrik Vs. SI of Police, 2005 KHC 1021***, Kerala High Court observed that it is not what the deceased 'felt', but what the accused 'intended' by his act, which is more important in this context. Of course the deceased person's frail psychology which forced him to commit suicide also may become relevant, but it is only after establishing the requisite intention of the accused.

17. In the backdrop of the above judicial pronouncements, I may now advert to the facts of the present case to test whether the ingredients of

offence under section 306 IPC exist even prima facie to continue with the proceeding. In the instant case deceased had not left behind any suicide note nor had held anyone responsible for his death.

18. It is settled law that it is the criminal intent and the incitement which attributes and/or makes a person liable to be charged for offence for abetment to commit suicide under section 306 IPC and *mens rea* of the petitioner towards the alleged offence is absolutely necessary. It is reflected from the FIR itself that the deceased was a chronic patient of depression and he previously also attempted to commit suicide even one week before the unfortunate incident, when he was alone in Calcutta. The petitioner's unchallenged averment demands that she rescued and ensued to take him hospital by way of coordinating and tracking him with the help of the Lalbazar Control Room, which is evident from Whats App communications. It is also undisputed fact that the deceased used to live in Calcutta at the time of occurrence and the petitioner used to stay in Mumbai

19. In the instant case the defacto complainant waited for a period of 82 days from the date of incident to lodge the FIR and has not assigned any reason for such glaring gap between the date of his knowledge/incident and date of filing the instant case in his lengthy FIR. The petitioners specific case is that the instant case has been filed by the opposite party no.2 on 02.01.2023 only when the petitioner had refused to pay the money to the tune of Rs. 25 lakhs as sought by defacto complainant on 14.12.2022, in lieu of handing over the death certificate of the deceased to the petitioner. Such averment has also remained unchallenged.

20. Though delay in lodging FIR by itself cannot be a ground to disbelieve the prosecution case but unexplained delay coupled with surrounding circumstances can certainly dent the prosecution version. Here the defacto complainant admitted in FIR that he got phone call on 12.10.2022 and reached hospital on 13.10.2022 and therefore he was eventually aware of deceased person's attempt to commit suicide by jumping before the running Metro Train at Park Street Station on 12.10.2022 when his leg got imputed and finally on 18.10.2022 he succumbed to injuries sustained in the course of unfortunate incident. But FIR was lodged on 02.11.2022 after delay of 82 days which has not been explained. Such a behaviour on the part of defacto complainant in lodging delayed FIR is unusual in the facts and circumstances of the present case.

21. In ***Kishan Singh Vs. Gurpal Singh*** , reported in **(2010) 8 SCC 775** the court observed in connection with unexplained delayed FIR as follow:-

22. *Prompt and early reporting of the occurrence by the informant with all its vivid details gives an assurance regarding truth of its version. In case there is some delay in filing the FIR, the complainant must give explanation for the same. Undoubtedly, delay in lodging the FIR does not make the complainant's case improbable when such delay is properly explained. However, deliberate delay in lodging the complaint is always fatal.*

22. *In cases where there is a delay in lodging an FIR, the court has to look for a plausible explanation for such delay. In the absence of such an explanation, the delay may be fatal. The reason for quashing such proceedings may not be merely that the allegations were an afterthought or had given a coloured version of events. In such cases the court should carefully examine the facts before it for the reason that a frustrated litigant who failed to succeed before the civil court may initiate criminal proceedings just to harass the other side with mala fide intentions or the ulterior motive of wreaking vengeance on the other party. Chagrined and frustrated litigants should not be permitted to give vent to their frustrations by cheaply invoking the jurisdiction of the criminal court. The court proceedings ought not to be permitted to degenerate into a weapon of harassment and persecution. In such a case, where an FIR is lodged clearly with a view to spite the other party because of a private and personal grudge and to enmesh the other party in long and arduous criminal proceedings, the court may take a view that it amounts to an abuse of the process of law in the facts and circumstances of the case. (Vide Chandrapal Singh v. Maharaj Singh [(1982) 1 SCC 466 : 1982 SCC (Cri) 249 : AIR 1982 SC 1238] ; State of Haryana v. Bhajan Lal [1992 Supp (1) SCC 335 : 1992 SCC*

(Cri) 426 : AIR 1992 SC 604] ; G. Sagar Suri v. State of U.P. [(2000) 2 SCC 636 : 2000 SCC (Cri) 513 : AIR 2000 SC 754] ; and Gorige Pentaiah v. State of A.P. [(2008) 12 SCC 531 : (2009) 1 SCC (Cri) 446])

23. It is needless to say that in cases of alleged abetment of suicide there must be a proof of direct or indirect act of incitement to the commission of suicide. In the case of accusation of abetment of suicide, there must be cogent and convincing allegation in the FIR about the act of incitement to the commission of the suicide. Mere allegation that the petitioner is adamant and after foreclosure of home loan, she started mentally harassing Mahesh on one or the other pretext, inspite of knowing that he is supersensitive, would not suffice unless there be such action on the part of the accused which compels the victim/her husband to commit suicide and not only that any such offending action ought to be proximate to the time of occurrence. The allegation that soon before his death she had quarrelled with him and/or abated him to commit suicide instead of taking care, in the absence of any direct action, proximate to the time of occurrence can hardly satisfy the essential ingredients of offence under section 306 IPC.

24. The entire allegations levelled against the petitioner is that after clearance or foreclosure of Home Loan she started mentally harassing Mahesh and has kept him continuously depressed condition so that it will lead Mahesh to end his life and the petitioner can enjoy her personal life and the property left by her husband

25. Such uncorroborative allegation of mental harassment and/or allegations of unnecessary quarrelling before such incident allegedly in order to get ownership of the property, even if taken to be true in its entirety, it would not suffice to attract section 306 IPC, unless there be such action on

the part of the petitioner which compels the victim to make an attempt to commit suicide and that such an offending action is proximate to the time of occurrence. Here the victim had made attempt to commit suicide and ultimately succumbed to injury. In the FIR it is admitted that prior to one week before the unfortunate incident, victim has consumed sleeping pill as an attempt to commit suicide, discloses that victim had a tendency to kill himself and the FIR maker also stated in FIR that victim was very much sensitive.

26. It is settled law in view of **Ude Singh and Ors.** (supra) that if the person who committed suicide had been hypersensitive and the action of the accused is otherwise not ordinarily expected to induce a similarly circumstanced person to commit suicide, it may not be safe to hold the accused guilty of abetment of suicide. Not only that the question of *mens rea* on the part of accused must have been manifested with reference to the actual acts and deeds of the accused and if the acts and deeds are only of such nature, where the accused intended nothing more than harassment or snap show of angers, as alleged in the FIR, it may fall short of the offence of the abetment of suicide. The allegation that the victim was very sensitive and he used to remain in depression due to mental harassment caused to him by his wife/accused and that for such harassment victim was in deep mental depression and started medication and medical treatment or that she used to threaten him to throw him out of his house, can hardly attract section 306 IPC or case of abetment specially in view of unchallenged averment made by petitioner that at the time of occurrence she was in

Mumbai and victim was in Calcutta and that about one year prior to the unfortunate incident the petitioner and the deceased were living separately.

27. Therefore, from the discussion I am of the view that the act or conduct of the petitioner/accused/wife however, insultative and/or harassive those will not by themselves suffice to constitute abetment of commission of suicide, unless those are reasonably capable of suggesting that the accused intended by such acts consequence of suicide. Infact even if any harassive, act or words on the part of the petitioner from Mumbai had driven the victim to commit suicide, such act may not amount to instigation or abetment of commission of suicide unless it is established that the petitioner/accused intended by her acts, consequence of a suicide. It is not enough if any words of the accused has caused any persuasion in the mind of the deceased to commit suicide

28. The scope and ambit of inherent power of the High Court under section 528 of the BNSS is to act *ex debito justitiae* i.e. to do real and substantial justice or to prevent abuse of the process of the court. It is no doubt true that inherent jurisdiction vested in the Court should not be exercised to stifle a legitimate prosecution but that does not mean that such jurisdiction can not be invoked, if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the court or that the ends of justice requires that the proceeding ought to be quashed.

29. In the absence of any material on record even prima facie in the FIR or statement of the complainant, I do not find that it is pointing out any circumstance showing any such act or intention on the part of victim's wife/petitioner that she intended to bring about the suicide of her husband

nor I find anything to think that the petitioner had any intention to place the victim in such circumstance that he had no other option available than to commit suicide. In the absence of any specific allegation and material of definite nature, it would be travesty of justice to ask the petitioner/wife to face the trial and it would cause great prejudice to the petitioner, if she is forced to face the proceeding on absurd allegations of irrelevant nature

30. In view of above **CRR 365 of 2025** is allowed.

31. The impugned proceeding being GR (s) 57 of 2023 arising out New Market P.S. Case no. 10 of 2023 dated 17.01.2023 under section 306 of the IPC corresponding to GR. (s) case no. 57 of 2023 presently registered as Sessions Case no. 73 of 2024, pending before learned Fast Track, Second Court Calcutta is hereby quashed.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(DR. AJOY KUMAR MUKHERJEE, J.)